



Australian Capital Territory

Land (Planning and Environment) Act 1991

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Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Land (Planning and Environment) Act 1991* effective from 1 January 1997 to 23 June 1997.

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- authorised republications to which the *Legislation Act 2001* applies
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Australian Capital Territory

LAND (PLANNING AND ENVIRONMENT) ACT 1991

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Updated as at 1 January 1997

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Australian Capital Territory

LAND (PLANNING AND ENVIRONMENT) ACT 1991

An Act relating to the use of land in the Territory, and for related purposes

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Land (Planning and Environment) Act 1991*.¹

Commencement

2.¹ (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or on respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before 2 April 1992, that provision, by force of this subsection, commences on that day.

Interpretation

4.² In this Act, unless the contrary intention appears—

“Assessment” means an Assessment made under Division 3 of Part IV;

“Authority” means the Australian Capital Territory Planning Authority established under Division 4 of Part II;

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“Conservator” means the Conservator of Flora and Fauna under the *Nature Conservation Act 1980*;

“controlled activity” means—

- (a) an activity of a kind specified in Schedule 4 or 5; or
- (b) an activity under another Act that is declared by that Act to be a controlled activity for the purposes of Schedule 4 or 5;

“determined fee” means the fee determined pursuant to section 287 for the purposes of the provision in which the expression occurs;

“Environment Minister” means the Minister administering Part IV;

“formal error” means—

- (a) a clerical error;
- (b) an error arising from an accidental slip or omission; or
- (c) a defect of form;

“Gungahlin Central Area” means the area referred to as the Gungahlin Town Centre and Central Area in the Territory Plan;

“Heritage Council” means the Heritage Council established under Division 8 of Part III;

“Heritage Places Register” means the register of heritage places incorporated in the Plan;

“heritage significance” means archaeological, historic, aesthetic, architectural, scientific, natural or social significance, or other special significance in relation to the environment, for the present community, and for future generations;

“Inquiry” means an inquiry conducted under Division 4 of Part IV;

“interim Heritage Places Register” has the meaning assigned to that expression by section 53;

“newspaper” means a newspaper published and circulating in the Territory;

“Plan” means the Territory Plan as in effect from time to time under this Act;

“Territory authority” means—

- (a) a body (whether corporate or not) established by or under an Act, or by the Executive; or
- (b) the holder of an office established by or under an Act, or by the Executive.

PART II—PLANNING

Division 1—Preliminary

Interpretation

5.² In this Part, unless the contrary intention appears—

“background papers”, in relation to a draft Plan variation or a Plan variation means—

- (a) an explanatory statement;
- (b) a copy of—
 - (i) any relevant direction of the Executive;
 - (ii) any relevant direction of the Minister under paragraph 93 (1) (b);
 - (iii) any submission of the Conservator referred to in section 16, including any preliminary draft Plan of Management (prepared under Subdivision D of Division 5 of Part V) accompanying such a submission;
 - (iv) any interim Heritage Places Register referred to in section 17;
 - (v) any relevant environmental report;
 - (vi) the report of any relevant Inquiry; and
 - (vii) the report of any other inquiry relating to the variation;
- (c) if the draft Plan is inconsistent with—
 - (i) a direction referred to in subparagraph (b) (i) or (ii);
 - (ii) a submission referred to in subparagraph (b) (iii);
 - (iii) any interim Heritage Places Register referred to in section 17; or

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(iv) a recommendation included in a report referred to in subparagraph (b) (v), (vi) and (vii);

a statement of reasons by the Authority for that inconsistency;

(d) in the case of a draft Plan variation of the kind referred to in subsection 17 (3)—a copy of any written response of the Heritage Council submitted in accordance with subsection 17 (4), together with a statement by the Authority commenting on that response; and

(e) any other documents—

(i) considered by the Authority to be necessary or useful in explaining the draft Plan variation; and

(ii) designated by the Authority in writing as background papers;

“Chief Planner” means the Chief Planner for the Australian Capital Territory appointed under section 43;

“Commonwealth Planning Act” means the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;

“development”, in relation to land, means—

(a) the erection, alteration or demolition of a building on that land;

(b) the carrying on of work on that land;

(c) the use or change of use of that land;

(d) the use or change of use of a building or works on that land;

(e) the subdivision or consolidation of that land; or

(f) the display of signs or advertising material on that land;

“draft Plan variation” means a draft Plan variation notified under section 19, as revised under paragraph 22 (1) (a) and section 27;

“environmental report” means—

(a) a preliminary assessment under Division 2 of Part IV;

(b) a report under section 128; or

(c) an Assessment;

“land” includes water;

“National Authority” means the National Capital Planning Authority established by section 5 of the Commonwealth Planning Act;

“National Capital Plan” means the plan approved under section 19 of the Commonwealth Planning Act, being that plan as amended and in effect from time to time;

“variation”, in relation to the Plan, includes the revocation of the Plan and its substitution with a new Plan.

Stages and parts of the Plan

6. In this Part, unless the contrary intention appears, a reference to a draft Plan variation is to be read as including a reference to—

- (a) a draft stage or part of the variation; or
- (b) a provision—
 - (i) of the draft variation; or
 - (ii) of a draft stage or part of the variation.

Division 2—Territory Plan—object and effect

Object

7.² (1) The object of the Plan shall be to ensure, in a manner not inconsistent with the National Capital Plan, that the planning and development of the Territory provides the people of the Territory with an attractive, safe and efficient environment in which to live, work and have their recreation.

(2) The Plan shall—

- (a) set out the planning principles and policies for giving effect to its object; and
- (b) reserve an area of public land for each of the purposes specified in section 193.

(3) For the purpose of giving effect to the object of the Plan and the principles and policies referred to in subsection (2), the Plan may—

- (a) set out specific objectives and policies;

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- (b) specify purposes for which land may be used;
- (c) for the purposes of Part VI, specify—
 - (i) controlled activities and authorities that are concurring authorities in relation to each controlled activity so specified; and
 - (ii) circumstances in which persons are not entitled to apply for the review of decisions referred to in that Part;
- (d) incorporate a register of heritage places known as the Heritage Places Register;
- (e) identify land for the purposes of Subdivision D of Division 3 of this Part, specifying in addition the principles and policies for its development;
- (f) for the purposes of Division 5 of Part V—identify an area of land as public land and reserve it for a purpose specified in that Part;
- (g) provide for such other matters as are relevant to—
 - (i) the exercise; or
 - (ii) the administrative review of the exercise;of the powers of the Territory, the Executive or a Territory authority under a Territory law; and
- (h) provide for such matters as are otherwise necessary or convenient.

Effect of Plan

8.² (1) Subject to subsection (2), the Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act, that is inconsistent with the Plan.

(2) Subsection (1) does not apply in relation to the approval pursuant to the *Buildings (Design and Siting) Act 1964* of a proposal for the development of land involving an aspect of external design and siting where—

- (a) the application for approval of the proposal was made pursuant to that Act before 18 October 1993;
- (b) the Authority did not refuse to approve the application before that day; and

- (c) the proposal is consistent with the Plan as in effect on 17 October 1993.

Effect of draft Plan variations

9.² (1) Subject to section 11, during—

- (a) the defined period; or
- (b) the period specified in the notice under section 19 of a draft Plan variation;

whichever is shorter, the Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act that—

- (c) would be inconsistent with the Plan if it were varied in accordance with the draft variation; or
- (d) is inconsistent with the Plan.

(2) Where a draft Plan variation is deferred under paragraph 22 (1) (b) or 27 (a), this section does not apply in relation to that draft variation during the period of its deferral.

(3) In this section—

“defined period” means the period commencing on the date the draft Plan variation is notified in the *Gazette* under section 19 and terminating at the expiration of the day before—

- (a) the date the draft variation comes into effect;
- (b) the date the corresponding Plan variation is rejected by the Legislative Assembly;
- (c) the date the Executive revokes its approval of the corresponding Plan variation; or
- (d) the date the draft variation, or the corresponding Plan variation, is withdrawn under paragraph 22 (1) (c), 27 (a) or 29 (9) (b);

as the case requires;

“draft Plan variation”—

- (a) means a draft Plan variation as revised under paragraph 22 (1) (a) and section 27; and

- (b) includes a provision of a draft Plan variation.

Effect of interim Heritage Places Register

10. (1) Where an interim Heritage Places Register that has been submitted to the Authority pursuant to section 63 is not submitted to the Executive in a draft Plan variation before the expiration of the applicable period, it ceases to have effect on the expiration of that period.

(2) For the purposes of this section, the applicable period in relation to an interim Heritage Places Register is the period of 4 months commencing on the day on which the Register is submitted to the Authority pursuant to section 63 or such longer period commencing on that day as the Minister, by writing, allows.

(3) Where an interim Heritage Places Register that has been submitted to the Authority pursuant to section 63 is not submitted to the Executive in a draft Plan variation before the expiration of the applicable period, the Authority shall, within 28 days after the expiration of that period, submit a statement in writing to the Executive setting out the reasons why the Authority did not include the Register in a draft Plan variation.

Draft Heritage Places Register and variations—lack of effect

11. (1) A draft Heritage Places Register, or a draft variation to the Heritage Places Register, notified under section 19 as a draft Plan variation, or as part of a draft Plan variation, has no effect.

(2) Subsection (1) does not apply in relation to an interim Heritage Places Register.

Plan not to have retrospective effect

12. Where, immediately before the Plan comes into effect under this Act, it would be lawful to use any land in a particular way in the exercise of a right derived from an estate in that land, the Plan does not prevent the use of that land in that way during the term of the estate.

Division 3—Territory Plan—continuation and variation

Subdivision A—Territory Plan

Continuation of Plan

13. The plan established under Part III of the *Interim Planning Act 1990*, being that plan as in effect under that Act immediately before the

commencement of this section, continues in effect under this Act as the Territory Plan and may be varied in accordance with this Part.

Subdivision B—Preparation of variations of the Plan

Application

14. This Subdivision does not apply in relation to a variation to the Plan under Subdivision D.

Preparation of variations

15.² (1) The Authority shall prepare the variations to the Plan.

(2) The Authority may prepare Plan variations in separate stages or parts.

(3) All variations to the Plan prepared by the Authority shall have regard to any relevant provisions of the document known as the Metropolitan Policy Plan (1984) until that policy plan is replaced by a further comprehensive strategy for the long term development of land in the Territory.

Conservator's recommendations

16.² In preparing a draft Plan variation, the Authority shall consider any submission made by the Conservator, including any preliminary draft Plan of Management under Subdivision D of Division 5 of Part V accompanying such a submission.

Heritage

17. (1) Where the Heritage Council submits an interim Heritage Places Register to the Authority pursuant to section 63, the Authority shall consider the interim Register and, if it agrees with all the proposals contained in the Register or any of them—

- (a)** where it agrees with all the proposals—forthwith include the interim Register in a draft Plan variation; or
- (b)** where it does not agree with all the proposals—forthwith prepare a draft Heritage Places Register, or a draft variation to the Heritage Places Register, that contains the proposals with which it agrees and include the draft Register, or the draft variation of the Register, prepared by the Authority in a draft Plan variation.

(2) A draft Heritage Places Register, or a draft variation to the Heritage Places Register, included in a draft Plan variation is not to include any

provision which would have the effect of including in the Heritage Places Register any entry in addition to the entries—

- (a) proposed, in any relevant interim Heritage Places Register, for inclusion in the Heritage Places Register; or
 - (b) in the case of a draft variation to the Heritage Places Register— included in that Register.
- (3) If the Authority—
- (a) prepares a draft variation to the Heritage Places Register in the absence of a relevant interim Heritage Places Register; or
 - (b) prepares a draft Heritage Places Register, or a draft variation to that Register, which is different from any relevant interim Heritage Places Register;

the Authority shall give written notice to the Heritage Council no later than 28 days before the date (being a date specified in the notice) on which the Authority intends to notify the relevant draft Plan variation in the *Gazette* under section 19.

(4) In preparing a draft variation of the kind referred to in subsection (3), the Authority shall consider any written response submitted by the Heritage Council where that response is submitted not later than 7 days before the date specified in the notice under subsection (3) as the date the Authority intends to notify the relevant draft Plan variation in the *Gazette* under section 19.

(5) In this section—

“relevant interim Heritage Places Register” means an interim Heritage Places Register which has effect under Part III, as revised under that Part.

Environmental reports and Inquiries

18. (1) In preparing a draft Plan variation, the Authority shall consider—

- (a) any relevant environmental report;
- (b) the report of any relevant Inquiry; and
- (c) any relevant report required to be prepared by the Plan.

(2) At the Authority’s written request, or of his or her own motion, the Minister may—

- (a) direct that an Assessment be made; or
- (b) establish a panel to conduct an Inquiry;

about any aspect of a draft Plan variation or a proposed draft Plan variation.

Public consultation

19.² (1) Before submitting a draft Plan variation to the Executive, the Authority shall cause to be published in the *Gazette*, and in a daily newspaper, a notice—

- (a) stating that copies of the draft Plan variation and the background papers are available for public inspection and purchase during a specified period of not less than 21 days at specified places;
- (b) inviting interested persons to submit written comments about the draft variation to the Authority at a specified address and within a period of not less than 21 days;
- (c) stating the effect of sections 9 and 11; and
- (d) specifying, for the purpose of paragraph 9 (1) (b), the maximum period (being a period not exceeding 1 year) during which the draft variation is to have an interim effect.

(2) The Authority shall make copies of the draft Plan variation and the background papers available for public inspection and purchase during office hours during the period, and at the places, specified in the notice.

(3) The Authority may, on request by a person who has provided written comments in relation to a draft Plan variation, exclude from the copies of the draft variation, or the background papers relating to the draft variation, that are made available for public inspection or purchase pursuant to subsection (2) information which would identify the person if, in the opinion of the Authority based on reasonable grounds, it would not be in the public interest for the information to be published.

(4) Where, in the opinion of the Authority based on reasonable grounds, it would not be in the public interest for part of a draft Plan variation, or a part of a background paper relating to a draft Plan variation, to be published, the Authority shall cause that part to be excluded from each copy of the draft variation or the background paper made available for public inspection or purchase pursuant to subsection (2).

(5) Where part of a draft Plan variation or a background paper is excluded from the copies of the draft variation or paper made available for public inspection or purchase pursuant to subsection (2), each copy so made available shall include a statement to the effect that an unspecified part of the draft variation or paper has been excluded in the public interest.

(6) Where, on application by the Authority, the Executive is satisfied that a draft Plan variation—

- (a) has the sole purpose of correcting a formal error in the Plan; or
- (b) would, if approved, not affect the rights of any person in a manner prejudicial to that person;

it may, by instrument, relieve the Authority of the necessity for complying with subsections (1) and (2) in relation to the draft variation.

(7) Where, pursuant to an instrument under subsection (6), the Authority does not comply with subsections (1) and (2) in relation to a draft Plan variation it shall obtain such information about the public attitudes to the draft variation as is reasonable in the circumstances.

(8) This section does not apply in relation to a draft Plan variation that has been revised by the Authority pursuant to a direction under paragraph 26 (1) (b).

Consultation with the National Capital Planning Authority

20. Before submitting a draft Plan variation to the Executive, the Authority shall consult with the National Authority about the draft.

Public inspection of comments

21.² (1) Before submitting a draft Plan variation to the Executive, the Authority shall cause to be published in a daily newspaper a notice stating that copies of any written comments—

- (a) submitted pursuant to the invitation in the relevant notice under subsection 19 (1) or otherwise; and
- (b) received from the National Authority;

are available for public inspection within a specified period of at least 21 days from the date of the notice, at specified places.

(2) The Authority shall make copies of any comments referred to in subsection (1) available for public inspection during office hours during the period, and at the places, specified in the notice.

(3) The Authority may, on request by a person who has provided written comments in relation to a draft Plan variation, exclude from the copies of the written comments that are made available for public inspection pursuant to subsection (2) information which would identify the person if, in the opinion of the Authority based on reasonable grounds, it would not be in the public interest for the information to be published.

Revision, deferral or withdrawal of draft Plan variation

22.² (1) After the expiration of the period specified in the notice under subsection 19 (1) the Authority may—

- (a) revise the draft Plan variation;
- (b) by notice published in the *Gazette* defer until a specified date, or until the occurrence of a specified event, the submission of the draft Plan variation to the Executive; or
- (c) by notice published in the *Gazette* withdraw the draft Plan variation.

(2) A notice under paragraph (1) (b) or (c) shall include a statement of the effect of section 9 in relation to the deferral or withdrawal of the draft Plan variation.

(3) In revising, deferring or withdrawing a draft Plan variation under subsection (1), the Authority shall consider written comments about the draft variation received from any person or the National Authority.

(4) In addition to its power under subsection (1), the Authority may, at any time before the submission or re-submission of a draft Plan variation to the Executive, revise the draft variation to correct any formal error.

(5) Where a draft Plan variation is deferred by notice under paragraph (1) (b), on the date specified in the notice, or as soon as practicable after the occurrence of the event specified in the notice, as the case requires, the Authority shall cause to be published in the *Gazette* a notice stating—

- (a) that the draft variation is revived; and
- (b) the effect of section 9 in relation to the revival of the draft variation.

(6) Where a draft Plan variation has been revised the Authority shall cause to be published in the *Gazette* and on a Saturday in a daily newspaper circulating in the Territory that the draft Plan variation has been revised and that copies are available for public inspection.

Subdivision C—Executive approval and consideration by the Legislative Assembly

Application

23. This Subdivision does not apply in relation to a Plan variation under Subdivision D.

Submission of draft Plan variation to Executive

24.² (1) After the expiration of the period specified in the notice under subsection 19 (1), the Authority shall submit a draft Plan variation to the Executive for approval, together with—

- (a) the background papers;
- (b) a written report setting out the issues raised in any written comments concerning the draft variation submitted pursuant to the invitation in the relevant notice under subsection 19 (1) or otherwise;
- (c) a written report about its consultation with the public and the National Authority;
- (d) a written report about any consultation between the Authority and the Heritage Council relating to the draft variation, being a report that specifies any difference between the views of the Authority and the Heritage Council in relation to any site of heritage significance; and
- (e) a copy of any written comments submitted to the Authority by the National Authority or the Heritage Council in relation to the draft variation.

(2) The Authority shall cause to be published in the *Gazette* by advertising and in a daily newspaper a notice stating that the documents referred to in subsection (1) are available for public inspection.

Consideration by a Legislative Assembly Committee

25. The Executive shall, within 28 days of receiving a draft Plan variation under section 24, refer—

- (a) the draft Plan variation; and
- (b) the documents referred to in subsection 24 (1) that relate to the draft Plan variation;

to an appropriate committee of the Legislative Assembly together with a request that the committee report on the draft Plan to the Legislative Assembly.

Executive powers

26.² (1) On receipt of a draft Plan variation submitted or re-submitted for approval, the Executive shall—

- (a) approve the draft variation in the form in which it is submitted or re-submitted; or
- (b) return the draft variation to the Authority together with any or all of the following written directions:
 - (i) to conduct further specified consultation;
 - (ii) to consider any relevant environmental report, the report of any relevant Inquiry, or any other relevant report;
 - (iii) to consider any revision suggested by the Executive;
 - (iv) to revise the draft variation in a specified manner;
 - (v) to defer, by notice published in the *Gazette*, the re-submission of the draft variation to the Executive until a specified date or the occurrence of a specified event;
 - (vi) to withdraw the draft variation by notice published in the *Gazette*.

(2) Before exercising its powers under paragraph (1) (a) the Executive shall have regard to any recommendations of a committee of the Legislative Assembly in relation to the draft Plan variation, background papers and reports submitted to the Executive and the committee under sections 24 and 25.

(3) A notice under subparagraph (1) (b) (v) or (vi) shall state the effect of section 9 in relation to the deferral or withdrawal of the draft Plan variation.

(4) The Executive may revoke its approval of a Plan variation at any time before the variation is laid before the Legislative Assembly.

(5) Where the Executive revokes its approval of a Plan variation it shall cause to be published in the *Gazette* a notice stating—

- (a) that the approval of the variation has been revoked; and
- (b) the effect of section 9 in relation to the revocation of the approval.

Return of draft Plan variation to the Authority

27. If the Executive returns a draft Plan variation to the Authority under paragraph 26 (1) (b), the Authority shall—

- (a) comply with any Executive direction;
- (b) if the Executive gives a direction under subparagraph 26 (1) (b) (i), (ii) or (iii)—
 - (i) if the Authority thinks fit, revise the draft variation; and
 - (ii) re-submit the draft variation to the Executive for approval together with a written report about the Authority’s compliance with the Executive directions and any further revision of the draft variation under subsection 22 (4); and
- (c) if the Executive gives a direction under subparagraph 26 (1) (b) (iv)—re-submit the draft variation (as revised) together with a written report about any further revision of the draft variation under subsection 22 (4).

Notice of revival of deferred draft Plan variation

28. Where the Authority, in compliance with an Executive direction under subparagraph 26 (1) (b) (v), defers a draft Plan variation, on the date specified in the notice of deferral, or within a reasonable time after the occurrence of the event specified in that notice, as the case requires, the Authority shall—

- (a) cause to be published in the *Gazette*, and in a daily newspaper, a notice stating—
 - (i) that the draft variation is revived;
 - (ii) the effect of section 9 in relation to the revival of the draft variation; and
 - (iii) the effect of any revision under subsection 22 (4);
- (b) re-submit the draft variation to the Executive; and
- (c) advise the Legislative Assembly.

Consideration of Plan variation by Legislative Assembly

29.² (1) A Plan variation shall be laid before the Legislative Assembly within 5 sitting days of its approval by the Executive, together with—

- (a) the background papers;

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- (b) a copy of the summaries and reports referred to in paragraphs 24 (b), (c) and (d);
- (c) a copy of any direction given under paragraph 26 (1) (b);
- (d) a copy of any report referred to in subparagraph 26 (1) (b) (ii); and
- (e) a copy of any report referred to in paragraph 27 (c);

in relation to the variation.

(2) If a Plan variation is not laid before the Legislative Assembly in accordance with subsection (1) it does not come into effect.

(3) The Legislative Assembly may, pursuant to a motion of which notice has been given within 5 sitting days after a Plan variation has been laid before it, by resolution reject the variation or any provision of it.

(4) If, at the expiration of 5 sitting days after notice of a motion to reject a Plan variation or a provision of a Plan variation has been given in the Legislative Assembly (being notice given within 5 sitting days after the variation was laid before the Legislative Assembly)—

- (a) the notice has not been called on; or
- (b) the motion has been called on and moved and has not been withdrawn or otherwise disposed of;

the Plan variation or provision specified in the motion shall be deemed to have been rejected by the Legislative Assembly.

(5) If, before the expiration of 5 sitting days after a notice of motion to disallow a Plan variation or a provision of a Plan variation has been given in the Legislative Assembly (being notice given within 5 sitting days after the variation was laid before the Legislative Assembly)—

- (a) the Legislative Assembly is dissolved or expires; and
- (b) at the time of dissolution or expiry—
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - (ii) the motion has been called on and moved and has not been withdrawn or otherwise disposed of;

the Plan variation shall, for the purposes of subsections (3) and (4), be deemed to have been laid before the Legislative Assembly on the first sitting day of the

Legislative Assembly after the next general election of members of the Assembly.

(6) If, at the expiration of 5 sitting days after a Plan variation is laid before the Legislative Assembly, the Assembly has not passed a resolution rejecting the variation or any provision of it and is not, pursuant to subsection (4), to be deemed to have rejected the variation or any provision of it, the Minister shall cause to be published in the *Gazette* a notice—

- (a) specifying the date of commencement of the variation, or the dates of commencement of the various provisions of the variation, being a date or dates not before the date of publication of the notice; and
- (b) specifying a place or places where copies of the variation may be inspected or purchased.

(7) If a Plan variation or a provision of a Plan variation is—

- (a) rejected pursuant to subsection (3); or
- (b) to be deemed to be rejected pursuant to subsection (4);

the variation or provision does not come into effect.

(8) If the whole of a Plan variation is rejected, the Minister shall cause a notice to be published in the *Gazette* stating that the variation has been rejected.

(9) If part only of a Plan variation is rejected, or is pursuant to subsection (4) to be deemed to be rejected, the Minister shall, in relation to each remaining provision of the variation—

- (a) cause to be published in the *Gazette* a notice specifying—
 - (i) the date of commencement of the provision being a date not before the date of publication of the notice; and
 - (ii) a place or places where copies of the provision may be inspected or purchased; or
- (b) by notice published in the *Gazette* withdraw the provision.

(10) The Minister shall make copies of a Plan variation, or any relevant provision of a Plan variation, available for inspection or purchase during office hours at the places and during the period specified in the relevant notice under subsection (6) or paragraph (9) (a).

Commencement

30. A Plan variation, or a provision of a Plan variation, comes into effect on the date specified in the relevant notice under subsection 29 (6) or paragraph 29 (9) (a).

Subdivision D—Plan variations—defined land

Interpretation

31. In this Subdivision—

“defined land” means land identified in the Plan pursuant to paragraph 7 (3) (e).

Plan variations in relation to defined land

32.² (1) Upon approval of the subdivision of a parcel of defined land, the Authority shall, by notice published in the *Gazette*, vary the Plan to specify the purposes for which that land may be used.

(2) A notice under subsection (1) in relation to a parcel, or part of a parcel, of land shall include a map of that parcel or part showing the purposes for which identified parts of that land may be used.

(3) A variation of the Plan under subsection (1) is to be consistent with—

- (a) the relevant subdivision and any conditions subject to which that subdivision is approved; and
- (b) the principles and policies specified in the Plan for the development of the relevant defined land.

(4) A variation of the Plan under subsection (1) takes effect from the date of its publication in the *Gazette*, or from such later date as is specified in the notice under that subsection.

(5) The Authority shall, within 7 days after the date on which a notice under subsection (1) is published in the *Gazette*, cause to be published in a daily newspaper a notice that—

- (a) specifies the variation made to the Plan by the notice under subsection (1);
- (b) includes a copy of the map that was included in the notice under subsection (1); and

- (c) specifies the date on which the variation to the Plan took effect or is to take effect.

Division 4—Australian Capital Territory Planning Authority

Subdivision A—Establishment, constitution, functions and powers²

Establishment

33.² The Australian Capital Territory Planning Authority is established by this section.

Constitution

34.² The Authority is constituted by the Chief Planner.

Agent of the Crown

35. The Authority is an agent of the Crown.

Functions

36. (1) The functions of the Authority are—

- (a) to administer the Plan;
- (b) to keep the Plan under constant review and to propose variations to it where necessary;
- (c) to perform such other functions as are required by this Act or any other law of the Territory, or by any law of the Commonwealth; and
- (d) with the written approval of the Minister, to perform planning services for any person or body, whether within Australia or overseas.

(2) The Authority shall perform its functions in accordance with any directions given under subsection 37 (1).

(3) The Authority shall comply with any directions given under subsection 37 (2).

Executive policy directions

37.² (1) The Executive may give the Authority general directions in writing about the policies and objectives it should pursue in the performance of its functions.

(2) The Executive may give the Authority general directions in writing to review the Plan, or any specified part of the Plan.

(3) The Minister shall cause particulars of any directions to be published in the *Gazette* within 14 days.

(4) Directions not published in accordance with subsection (3) cease to have effect from the expiration of the 14th day after they are given.

(6) This section does not apply in relation to a direction given under section 26.

Powers

38. (1) The Authority has power to do all things necessary or convenient to be done in connection with the performance of its functions.

(2) For the purposes of the performance of its functions, the Authority may, on behalf of the Territory, enter into contracts.

(3) The Authority shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt by the Authority of an amount exceeding \$100,000.

(4) Nothing in subsection (2) shall be read as conferring on the Authority a power to enter into a contract of employment.

Delegation

40. The Authority may, by instrument, delegate all or any of the Authority's powers to a public servant or to the holder of an office established by or under an Act.

Staff

41. The Authority is to be assisted in the performance of its functions by public servants.

Effect of irregularity of appointment of Chief Planner

42.² Anything done by or in relation to the Authority is not invalid because—

- (a) there is a defect or irregularity in or in connection with the appointment of the Chief Planner; or
- (b) that appointment had ceased to have effect.

Subdivision B—Chief Planner²

Chief Planner

43.² (1) The Minister shall, by instrument, appoint a person to be Chief Planner for the Australian Capital Territory.

(2) The Chief Planner holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment.

(3) The Chief Planner holds office on such terms and conditions (in respect of matters not provided for by this Part) as are determined by the Minister in writing.

(4) A retiring Chief Planner is eligible for re-appointment.

(5) In the performance of his or her functions and the exercise of his or her powers the Chief Planner is directly responsible to the Minister.

Acting Chief Planner

44.² (1) The Minister may, by instrument, appoint a suitably qualified and experienced person to act as Chief Planner—

- (a)** during a vacancy in the office of Chief Planner, whether or not an appointment has previously been made to the office; or
- (b)** during any period, or during all periods, when the Chief Planner is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of that office;

but a person appointed to act during a vacancy shall not continue to do so for more than 12 months.

(2) Anything done by or in relation to a person purporting to act as Chief Planner is not invalid because—

- (a)** the occasion for the appointment had not arisen;
- (b)** there is a defect or irregularity in connection with the appointment;
- (c)** the appointment had ceased to have effect; or
- (d)** the occasion to act had not arisen or had ceased.

(3) A person who is acting as Chief Planner, if a public servant, shall continue to be paid the remuneration and allowances payable to him or her as a public servant, but shall also be paid—

- (a) so much of any remuneration payable to the Chief Planner as exceeds the remuneration that so continues to be paid;
- (b) so much of any allowance payable to the Chief Planner as exceeds the corresponding allowance that so continues to be paid; and
- (c) if an allowance is payable to the Chief Planner in respect of which there is no corresponding allowance payable to the acting Chief Planner as a public servant—that allowance.

Leave of absence

46.² The Minister may, by writing, grant leave of absence to the Chief Planner on specified terms and conditions as to remuneration or otherwise.

Disclosure of interests

47.² (1) A person appointed to be the Chief Planner or to act as Chief Planner shall, upon his or her appointment and on each subsequent 30 June, give written notice to the Minister of all his or her direct or indirect pecuniary interests.

(2) If the Chief Planner or a person acting as Chief Planner has or acquires a direct or indirect pecuniary interest in a matter which, to his or her knowledge, is being considered or about to be considered by the Authority, the Chief Planner shall give written notice to the Minister of that interest.

Other employment, remuneration, business etc.

48.² (1) Except with the written permission of the Minister, the Chief Planner shall not—

- (a) accept or continue to hold an office in or under the Government of the Commonwealth, another Territory or a State, or in or under any public or municipal corporation;
- (b) accept or continue to hold or discharge the duties of, or be employed in a paid office in connection with any business whether carried on by any corporation, company, firm or individual;
- (c) engage in or undertake any business, whether as principal or agent;
- (d) engage or continue in the private practice of any profession, occupation or trade, or enter into any employment, whether remunerative or not, with any person, company or firm who or which is so engaged;

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- (e) act as a director of a company or incorporated society, otherwise than in accordance with the requirements of the duties of his or her office as Chief Planner or as a public servant; or
- (f) accept or engage in any remunerative employment other than in connection with the duties of his or her office as Chief Planner or as a public servant.

(2) Nothing in this section is to be taken to prohibit the Chief Planner from becoming a member or shareholder of any incorporated company, or of any company or society of persons.

Resignation

49.² The Chief Planner may resign office by writing signed by him or her and delivered to the Minister.

Termination of appointment

50.² (1) The Minister may terminate the appointment of the Chief Planner for misbehaviour or physical or mental incapacity.

(2) The Minister shall terminate the appointment of the Chief Planner if he or she—

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) without reasonable excuse, contravenes section 47 or 48; or
- (c) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 1 year.

Division 5—Miscellaneous

Challenge to validity of provisions of Plan

51. The validity of a provision of the Plan shall not be questioned in any legal proceedings except those commenced within 3 months after the date of the commencement of the provision or of a variation of the provision.

PART III—HERITAGE

Division 1—Preliminary

Interpretation

52. (1) In this Part, unless the contrary intention appears—

“Aboriginal object” means—

- (a) a natural or manufactured object; or
- (b) human remains not buried in accordance with a law of the Territory, a State or another Territory;

which is, or are, of significance in Aboriginal tradition;

“Aboriginal place” means a place which is of significance in Aboriginal tradition;

“Aboriginal tradition” means the traditions, observances, customs or beliefs of the people who inhabited Australia before European colonisation and include traditions, observances, customs and beliefs that have evolved or developed from that tradition since European colonisation;

“conservation” includes preservation, protection, maintenance, restoration and enhancement;

“heritage object” means a natural or manufactured object, including an Aboriginal object, of heritage significance in relation to the Territory;

“heritage place” means a place in the Territory of heritage significance;

“interim variation”, in relation to the Heritage Places Register, means a proposed variation to that Register notified under section 60;

“relevant Aboriginal organisation”, in relation to a proposed action by the Territory, the Executive, the Minister or a Territory authority, means an organisation or association (whether corporated or unincorporated)—

- (a) comprised substantially of Aboriginal persons;
- (b) having amongst its principal objects the conservation of Aboriginal tradition in the Territory; and

- (c) which the person or body proposing the action believes on reasonable grounds to have an object or interest directly relevant to, or directly affected by, that action;

“restricted information”, in relation to an Aboriginal place, means information which is the subject of a declaration under subsection 82 (1);

“variation” includes revocation and substitution.

(2) Where this Part requires the Executive, the Minister or the Heritage Council to consult with, or to notify, any person or body (whether incorporated or unincorporated), that requirement is to be taken to be satisfied if the Executive, the Minister or the Heritage Council (as the case requires) takes all reasonable steps to consult with, or to notify, that person or body.

Interim Registers—interpretation

53. In this Part, unless the contrary intention appears, a reference to an interim Heritage Places Register is to be taken to be a reference to—

- (a) where there is no Heritage Places Register—a proposed Heritage Places Register; or
- (b) where there is a Heritage Places Register—an interim variation to that Register;

being a proposed Register, or an interim variation to a Register, notified in the *Gazette* under section 60, as revised under section 62.

Division 2—Heritage Places Register

Content of Heritage Places Register

54. (1) The Heritage Places Register shall—

- (a) identify heritage places, specifying any that are Aboriginal places;
- (b) identify—
 - (i) each structure or group of structures;
 - (ii) each object or group of objects, specifying any that are Aboriginal objects;
 - (iii) each landform or group of landforms;
 - (iv) each plant or group of plants;

- (v) each animal habitat; or
- (vi) each other feature (whether manufactured or natural);

which is located on each identified heritage place and which is intrinsic to the heritage significance of the place;

- (c) include a statement of the heritage significance of each identified heritage place;
- (d) specify requirements for the conservation of the heritage significance of each identified heritage place, including any requirements for the conservation of features identified as intrinsic to that heritage significance; and
- (e) specify any restricted information in the Register in relation to an Aboriginal place referred to in the Register.

(2) A word or phrase in the Heritage Places Register has the same meaning as in this Part, unless the contrary intention appears in the Register.

Division 3—Interim Heritage Places Registers

Subdivision A—Effect

Effect of interim Registers

55. (1) Where there is no Heritage Places Register, during the defined period an interim Heritage Places Register has effect as if it were the Heritage Places Register.

(2) Where an interim Heritage Places Register is in the form of an interim variation to the Heritage Places Register, during the defined period the Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act, which—

- (a) would be inconsistent with the Heritage Places Register if it were varied in accordance with the interim variation; or
- (b) is inconsistent with the Heritage Places Register.

(3) In this section, in relation to an interim Heritage Places Register—

“defined period” means the period commencing on the date the interim Register is notified in the *Gazette* under section 60 and terminating at the expiration of—

- (a) the day before the date a Heritage Places Register prepared in consideration of the interim Register comes into effect under section 30; or
- (b) the period specified in that notice in the *Gazette*;

whichever is shorter.

***Subdivision B—Preparation, notification, submission of
Registers***

Criteria for preparation

56. In preparing an interim Heritage Places Register, the Heritage Council shall—

- (a) assess the heritage significance of a place in accordance with the criteria specified in Schedule 2; and
- (b) consider the need to take measures which are prudent and feasible to conserve the heritage significance of each heritage place.

Ministerial directions and declarations under Division 5

57. (1) Where the Minister issues a direction under paragraph 69 (1) (a) or 73 (1) (a) to the Heritage Council to notify an interim Heritage Places Register in relation to a place, the Heritage Council shall comply with that direction.

(2) While a declaration of the Minister under paragraph 69 (1) (b) or 73 (1) (b) is in force, the Heritage Council shall not notify an interim Heritage Places Register which would have the effect of listing that place on the Heritage Places Register.

Public consultation

58. (1) In preparing an interim Heritage Places Register, the Heritage Council shall—

- (a) obtain such information about the public attitude to its proposals as the Heritage Council considers appropriate; and
- (b) consider that information.

(2) Before notifying an interim Heritage Places Register under section 60, the Heritage Council shall consult with, and consider the views of, any person whose interests, in the opinion of the Heritage Council based on reasonable grounds, would be affected by its proposals.

(3) This section does not apply where subsection 57 (1) applies.

Application for inclusion of places in interim Register

59. (1) A person may apply in writing to the Heritage Council for the inclusion of a provision in an interim Heritage Places Register which would have the effect of including an entry in relation to that place on the Heritage Places Register.

(2) An application shall be accompanied by a statement of the reasons why the applicant considers that the place should be included on the Heritage Places Register.

(3) On application in accordance with this section, the Heritage Council may, in consideration of the matters referred to in section 56—

- (a) include a provision in an interim Heritage Places Register which would have the effect of including an entry in relation to the relevant place in the Heritage Places Register; or
- (b) refuse to approve the application.

(6) This section is not to be read as limiting the power of the Heritage Council to prepare interim Heritage Places Registers.

Public notification

60. (1) After preparing an interim Heritage Places Register, the Heritage Council shall cause to be published in the *Gazette*, and in a daily newspaper, a notice—

- (a) stating that copies of the interim Register are available for public inspection at specified places;
- (b) specifying, for the purpose of section 55, the maximum period during which the interim Register, or each part of it, is to have effect under that section; and
- (c) including—
 - (i) a statement of the effect of section 55; and
 - (ii) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, a person whose interests in relation to land are affected may apply to the Administrative Appeals Tribunal for a review of a decision of the Heritage Council to include a provision in the interim Register.

(2) The Heritage Council shall make copies of the interim Heritage Places Register available for public inspection during office hours at the places specified in the notice under subsection (1).

(3) A copy of an interim Heritage Places Register made available for public inspection under subsection (2) shall not include any restricted information in relation to an Aboriginal place.

(4) The validity of a decision of the Heritage Council to include a provision in an interim Register is not affected by a failure to comply with paragraph (1) (a) or (c) or subsection (2) or (3).

Notification of lessees and occupiers

61. (1) As soon as practicable after a notice is published in the *Gazette* under section 60 in relation to an interim Heritage Places Register, the Heritage Council shall give each lessee, and each occupier, of land affected by a decision of the Heritage Council to include a provision in the interim Register a notice—

- (a) specifying that provision;
- (b) specifying, and identifying as such, any relevant restricted information about Aboriginal places on that land;
- (c) including the statements referred to in paragraph 60 (1) (c) in relation to the interim Register; and
- (d) including a statement of the effect of section 84 in relation to the publication of restricted information.

(2) The validity of a decision of the Heritage Council to include a provision in an interim Heritage Places Register is not affected by a failure to comply with subsection (1).

Revision of interim Register

62. (1) After the notification of an interim Heritage Places Register under section 60, the Heritage Council may, by notice published in the *Gazette*, revise the interim Register—

- (a) to correct a formal error; or
- (b) except where subsection 57 (1) applies—to provide for the removal of a provision of the interim Register which would have had the effect of including an entry in the Heritage Places Register;

with effect from the date of the notice.

(2) The Heritage Council shall cause a copy of a notice under subsection (1) to be published in a daily newspaper.

(3) A notice under paragraph (1) (b) shall include—

- (a) a statement that copies of the interim Register, as revised, are available for public inspection at specified places;
- (b) a statement of the effect of section 55 in relation to the interim Heritage Places Register as revised; and
- (c) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, a person whose interests in relation to land are affected may apply to the Administrative Appeals Tribunal for a review of the Heritage Council's decision to revise a provision of the interim Register.

(4) The Heritage Council shall make copies of the interim Heritage Places Register, as revised, available for public inspection during office hours at the places specified in the notice under subsection (3).

(5) Where paragraph (1) (b) applies, the Heritage Council shall give each lessee, and each occupier, of land affected by the decision of the Heritage Council to revise the interim Register a notice—

- (a) specifying the revision; and
- (b) including the statements referred to in subsection (3).

(6) The validity of a decision of the Heritage Council to revise a provision of an interim Heritage Places Register under paragraph (1) (b) is not affected by a failure to comply with subsection (2), (3), (4) or (5).

Submission of interim Register to the Authority

63. (1) For the purposes of section 17, the Heritage Council shall submit an interim Heritage Places Register to the Authority in accordance with this section.

(2) The Heritage Council shall submit an interim Heritage Places Register to the Authority after the expiration of 28 days after the interim Register is notified in the *Gazette* under subsection 60 (1), except where there is an application for review of a decision referred to in paragraph 282A (1) (a) or 282A (3) (b) in relation to the interim Register.

(3) Where there is an application for review of a decision referred to in paragraph 282A (1) (a) or 282A (3) (b) in relation to an interim Heritage Places Register, the Heritage Council shall—

- (a) in relation to those provisions of the interim Register which are not the subject of such an application—submit those provisions to the Authority after the expiration of 28 days after the interim Register is notified in the *Gazette* under subsection 60 (1); and
- (b) in relation to each provision of the interim Register which is the subject of such an application—where appropriate, submit that provision to the Authority, as varied (if at all) to reflect the Administrative Appeals Tribunal's decision, after the resolution of the application.

(4) Where there is an application under paragraph 282A (5) (a) for the review of a decision of the Heritage Council to refuse to approve an application under section 59 for the inclusion of a provision in an interim Heritage Places Register—

- (a) subsection (1) applies notwithstanding the application for review; and
- (b) if the application for review is successful—the Heritage Council shall submit that provision to the Authority in the form approved by the Administrative Appeals Tribunal in its decision.

(5) Where there is an application under paragraph 282A (5) (a) for the review of a decision of the Heritage Council to revise an interim Heritage Places Register so as to remove a provision—

- (a) subsection (1) applies notwithstanding the application; and
- (b) if the application is successful—the Heritage Council shall submit that provision to the Authority as reinstated in the interim Register in accordance with the decision of the Administrative Appeals Tribunal.

Division 4—Acquisition of heritage places and objects

Acquisition

64. (1) The Executive may, on behalf of the Territory, acquire a place listed on the Heritage Places Register where the Executive is satisfied that—

- (a) the place has substantial heritage significance;
- (b) acquisition is the most prudent and feasible means to ensure the conservation of that significance; and

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(c) it is in the public interest for the Territory to acquire the place.

(2) Where subsection (1) applies in relation to a place, the Executive may acquire an object identified in the Heritage Places Register as intrinsic to the heritage significance of that place.

(3) The Executive shall acquire a place or an object under this section on just terms.

(4) The Executive shall not acquire a place or an object under this section without first consulting with, and considering the views of—

- (a) the lessee and the occupier of the place;
- (b) where an object is to be acquired—the owner and the possessor of the object;
- (c) the Heritage Council; and
- (d) any relevant Aboriginal organisation;

about the proposed acquisition.

Division 5—Aboriginal heritage

Subdivision A—Preliminary

Interpretation

66. (1) In this Division, unless the contrary intention appears—

“interim Register” means an interim Heritage Places Register;

“Register” means the Heritage Places Register.

(2) In this Division, a reference to a registered place is to be read as a reference to a place in relation to which—

- (a) there is an entry in a Register; or
- (b) there is a provision in an interim Register which would have the effect of including such an entry in a Register;

and a reference to—

- (c) an unregistered place; or
- (d) the registration of a place;

is to be read accordingly.

***Subdivision B—Reporting discoveries of unregistered
Aboriginal places***

Reports

67. (1) A person who discovers a place which he or she believes on reasonable grounds to be an unregistered Aboriginal place shall, within 7 days, report that discovery to the Minister in accordance with subsection (2).

(2) A report under subsection (1) shall—

- (a) be in writing;
- (b) specify the name and address of—
 - (i) the person giving the report; and
 - (ii) the lessee and each occupier of the land on which the place is located (where the identity of those persons is known to the person giving the report); and
- (c) specify the nature and location of the discovery.

(3) A person shall not, without reasonable excuse, fail to comply with subsection (1).

Penalty:

- (a) if the offender is a natural person—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

(4) This section does not apply in relation to a person who—

- (a) in accordance with Aboriginal tradition, has traditional affiliations with the land on which the place is located;
- (b) believes on reasonable grounds that a declaration under paragraph 69 (1) (b) or 73 (1) (b) (that the place is not to be registered) is in force; or
- (c) believes on reasonable grounds that the place has previously been registered.

(5) Notwithstanding paragraph (4) (a), a person who, in accordance with Aboriginal tradition, has traditional affiliations with particular land may, for the purposes of this Subdivision, report the discovery of an Aboriginal place on that land in accordance with subsection (1).

Aboriginal heritage discoveries—consideration of reports

68. (1) Upon receiving a report of a discovery under section 67, the Minister shall—

- (a) if the place is registered, or has previously been registered—give the lessee and the occupier of the land on which the place was discovered written notice of the details of that registration, including any relevant restricted information, together with a statement of the effect of that registration (where it is still in force); or
- (b) if the place has never been registered—direct the Heritage Council to report to the Minister within 21 days about the heritage significance of the place or object.

(2) The Heritage Council shall—

- (a) prepare a report for submission to the Minister in compliance with a direction under paragraph (1) (b); and
- (b) in preparing that report, consult with, and consider the views of—
 - (i) the lessee and the occupier of the place;
 - (ii) the person who reported the discovery; and
 - (iii) any relevant Aboriginal organisation.

Aboriginal heritage discoveries—Ministerial directions and declarations

69. (1) Within 14 days after receiving a report from the Heritage Council under section 68, the Minister shall—

- (a) direct the Heritage Council to notify an interim Register under section 60 which would have the effect of registering the place on particular terms; or
- (b) declare that the place is not to be registered, by notice in writing to—
 - (i) the lessee and the occupier of the land where the place was discovered;
 - (ii) the person who reported the discovery; and
 - (iii) any relevant Aboriginal organisation.

(2) Before making a decision under subsection (1), the Minister shall consult with the persons referred to in paragraph (1) (b).

- (3) In making a decision under subsection (1), the Minister shall—
- (a) after taking into account the report of the Heritage Council—consider whether the place is of sufficient heritage significance to be registered; and
 - (b) after taking into account the views of the persons consulted under subsection (2)—consider the effect of registration on those persons' interests.

(4) Where the Minister makes a decision under paragraph (1) (a), sections 60 and 61 apply in relation to a decision of the Minister under paragraph (1) (a) as if the references in those sections to a decision of the Heritage Council to include a provision in an interim Register were references to that decision of the Minister.

(5) The Minister shall cause particulars of a direction under paragraph (1) (a) and a declaration under paragraph (1) (b) to be published in the *Gazette* within 14 days after the making of the direction or declaration.

Subdivision C—Protection of unregistered Aboriginal heritage

Damaging unregistered Aboriginal places

70. A person shall not without reasonable excuse, disturb, damage or destroy or cause or permit to be disturbed, damaged or destroyed an unregistered Aboriginal place, unless—

- (a) that place has previously been registered; and
- (b) that registration has been cancelled.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

Orders for the protection of unregistered Aboriginal places— application of Part VI

71. (1) In this section—

“order” means an order referred to in subsection (2).

(2) The Executive may make an order under Division 3 of Part VI in relation to the disturbance, damage or destruction of an unregistered Aboriginal place except where—

- (a) a declaration under paragraph 69 (1) (b) or 73 (1) (b) is in force in relation to that place; or
- (b) the place has previously been registered.

(3) For the purposes of Division 3 of Part VI in its application to an order, the disturbance, damage or destruction referred to in subsection (2) is to be taken to be a controlled activity.

(4) In deciding whether to make an order, the Minister shall consider whether the relevant controlled activity is likely to affect adversely the heritage significance of the place.

(5) An order—

- (a) shall specify the grounds on which the order is made; and
- (b) may direct any person against whom it is made—
 - (i) to stop disturbing, damaging or destroying an unregistered Aboriginal place; or
 - (ii) not to commence disturbing, damaging or destroying such a place.

(6) An order shall remain in force for such period, not exceeding 35 days, as is specified in the order.

(7) Subsection 256 (5) does not apply in relation to an order for the purposes of this section.

Orders—reports by Heritage Council

72. (1) Where the Minister makes an order for the purposes of section 71, he or she shall direct the Heritage Council to report within 21 days about the heritage significance of the relevant place.

(2) The Heritage Council shall—

- (a) prepare a report for submission to the Minister in compliance with a direction under subsection (1); and
- (b) in preparing that report, consult with, and consider the views of—

- (i) the lessee and the occupier of the place;
- (ii) the person who reported the discovery; and
- (iii) any relevant Aboriginal organisation.

Orders—Ministerial directions and declarations

73. (1) Within 14 days after receiving a report from the Heritage Council under section 72, the Minister shall—

- (a) direct the Heritage Council to notify an interim Register under section 60 which would have the effect of registering the place on particular terms; or
- (b) declare, by notice in writing to the lessee and the occupier of the land where the place was discovered and to any relevant Aboriginal organisation, that the place is not to be registered.

(2) Before making a decision under subsection (1), the Minister shall consult with the persons referred to in paragraph (1) (b).

(3) In making a decision under subsection (1), the Minister shall—

- (a) taking into account the report of the Heritage Council—consider whether the place is of sufficient heritage significance to be registered;
- (b) taking into account the views of the persons consulted under subsection (2)—consider the effect of registration on those persons' interests; and
- (c) taking into account that report and those views—consider whether there is any prudent and feasible alternative to the activity in relation to which the order is in force.

(4) Where the Minister makes a decision under paragraph (1) (a), sections 60 and 61 apply in relation to a decision of the Minister under paragraph (1) (a) as if the references in those sections to a decision of the Heritage Council to include a provision in an interim Register were references to that decision of the Minister.

(5) The Minister shall cause particulars of a direction under paragraph (1) (a) and a declaration under paragraph (1) (b) to be published in the *Gazette* within 14 days after the making of the direction or declaration.

Subdivision D—Compensation claims

Interpretation

74. In this Subdivision—

“compensation” means compensation under section 78.

Application

75. This Subdivision applies where—

- (a) a person reports the discovery of an unregistered place in accordance with section 67;
- (b) an order referred to in subsection 71 (2) is made in relation to a place;
- (c) a place is registered in an interim Register pursuant to a direction under paragraph 69 (1) (a) or 73 (1) (a) following such a report or order; or
- (d) a place is registered in a Register as a result of its registration in an interim Register pursuant to such a direction.

Right to compensation

76. (1) In a circumstance in which this Subdivision applies, on application in accordance with subsection (4) the Minister shall, on behalf of the Territory, compensate the applicant for loss or damage—

- (a) directly attributable to that circumstance; and
- (b) which arises out of any contractual or statutory obligations incurred by the applicant prior to the occurrence of that circumstance.

(2) Where this Subdivision applies in relation to more than 1 circumstance relating to the same land—

- (a) the Minister may compensate the applicant under subsection (1) for the combined loss or damage directly attributable to that combination of circumstances; and
- (b) such compensation is only payable for loss or damage in relation to contractual or statutory obligations incurred by the applicant prior to the occurrence of the earliest of those circumstances.

(3) Where an order referred to in section 71 is made against a person, no compensation is payable to that person for any loss or damage attributable to

that order being made, or to any subsequent registration of the relevant place, which arises out of an obligation incurred by the applicant where, at the time the obligation was incurred, the applicant believed that the relevant place was an Aboriginal place.

(4) An application for compensation shall be made within 1 year of the date of occurrence of the latest of the relevant circumstances by virtue of which this Subdivision applies.

(5) Where this Subdivision applies, no amount for damages or compensation is payable to any person by reason only of the circumstances of that application, except under this Subdivision.

Loss for which compensation is recoverable

77. (1) Compensation is only payable for loss or damage attributable to the application of this Subdivision which—

- (a) is capable of being assessed by way of a liquidated amount;
- (b) takes into account any opportunity for recovery of taxes or diminution of tax liabilities; and
- (c) is not otherwise capable of recovery or mitigation, or further recovery or mitigation.

(2) Loss for which compensation is payable includes—

- (a) expenditure incurred in the preparation of plans for the purposes of any work in relation to which the compensation is sought;
- (b) any other expenditure necessarily preparatory to carrying out that work; and
- (c) the cost of acquisition of any land or object, including any incidental costs.

(3) Loss for which compensation is payable does not include—

- (a) any capital costs or capital depreciation except for expenditure or costs referred to in subsection (2); or
- (b) any amount in relation to the prospective use of the land in relation to which this Subdivision applies, except where—
 - (i) that land is registered in a Register; and
 - (ii) that use is consistent with the requirements of the Register.

Amount of compensation

78. (1) Subject to section 77, where the Minister decides that compensation should be paid to an applicant, the Territory shall pay the applicant such amount as is determined by the Minister by notice in writing to the applicant.

(2) Where an applicant, by notice in writing to the Minister, disputes the amount of compensation determined under subsection (1), the Minister may, by notice in writing to the applicant, revise that determination in accordance with a determination—

- (a) of a valuer appointed by agreement between the Minister and the applicant; or
- (b) arrived at by such other method as is agreed upon between the Minister and the applicant.

Consultation with applicants

79. Before giving an applicant for compensation a notice in accordance with paragraph 282A (1) (b), the Minister shall—

- (a) consult with the applicant; and
- (b) consider the views of the applicant;

about the Minister's proposed decision.

Notice of decisions about compensation

80. (1) Where the Minister decides to grant an applicant compensation, he or she shall notify the applicant within 60 days after receiving the application.

(2) Notice in accordance with paragraph 282A (1) (b) shall be given within 60 days of receiving the application to which the notice relates.

Subdivision E—Consultation in relation to Registers

Consultation with Aboriginal organisations

81. (1) This section applies where the Heritage Council is preparing an interim Register, or a revision to an interim Register, which relates to an Aboriginal place.

(2) Where this section applies, the Heritage Council shall consult with, and consider the views of, any relevant Aboriginal organisation about the effect of the interim Register or revision on Aboriginal tradition.

(3) In this section—

“Aboriginal place” includes a place which the Heritage Council at one time considered to be an Aboriginal place, but which the Heritage Council no longer considers to be such a place.

Subdivision F—Restricted information

Restricted information

82. (1) Where, in the Minister’s opinion, the public disclosure of particular information about the location or nature of an Aboriginal place would be likely to have a significant adverse effect on—

- (a) Aboriginal tradition; or
- (b) the heritage significance of the place;

the Minister shall, in writing, declare that information to be restricted information for the purposes of this Act.

(2) The Minister shall not make a declaration under subsection (1) without first consulting with, and considering the views of—

- (a) the Heritage Council; and
- (b) any relevant Aboriginal organisation;

about the relevant information.

(3) The Minister shall give a copy of a declaration under subsection (1) to—

- (a) the lessee and the occupier of any land in relation to which the declaration is given;
- (b) the Heritage Council; and
- (c) any relevant Aboriginal organisation.

(4) A copy of a declaration given to a person under paragraph (3) (a) shall be accompanied by a notice in accordance with paragraph 282A (1) (d).

(5) The validity of a decision of the Minister to make a declaration under subsection (1) is not affected by a failure to comply with subsections (2), (3) and (4).

Publication of restricted information by public officials

83. (1) The Territory, the Executive, a Minister or a Territory authority shall not publish or cause to be published any restricted information about an Aboriginal place except—

- (a) for the purposes of this Part or Part II;
- (b) in accordance with subsection (2); or
- (c) in accordance with the prescribed procedures.

(2) For the purposes of paragraph (1) (b), restricted information may be published where the person or body responsible for its publication is satisfied on reasonable grounds that the publication would not have a significant adverse effect on—

- (a) Aboriginal tradition; or
- (b) the heritage significance of the relevant place.

Publication of restricted information generally

84. (1) A person (other than a person referred to in subsection 83 (1)) shall not, without reasonable excuse, publish or cause to be published restricted information about an Aboriginal place except—

- (a) in accordance with an approval under subsection (2); and
- (b) where that publication is accompanied by a written statement in the form referred to in paragraph 82 (4) (a).

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(2) On application in accordance with subsection (3), the Heritage Council shall, by notice in writing to the applicant, approve the publication of restricted information about an Aboriginal place where it is satisfied on reasonable grounds that the publication would not have a significant adverse effect on—

- (a) Aboriginal tradition; or
- (b) the heritage significance of the relevant place.

(3) An application under subsection (2) shall be in writing specifying—

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- (a) the nature of the restricted information;
- (b) the reason for the proposed publication; and
- (c) the nature of the proposed publication, including the person, persons or class of persons to whom or to which it is directed.

Access to restricted information

85. (1) On application in accordance with subsection (2) by—

- (a) a lessee or an occupier of land; or
- (b) where an interest in relation to land is being offered for sale—a person who is considering purchasing that interest;

the Heritage Council shall publish to that person any restricted information relevant to the conservation and use of that land.

(2) An application shall be in writing accompanied by a written declaration—

- (a) in the case referred to in paragraph (1) (a)—specifying the capacity in which the applicant is applying; or
- (b) in the case referred to in paragraph (1) (b)—specifying the interest being offered for sale, and stating that the applicant is considering the purchase of that interest.

(3) Where the Heritage Council publishes restricted information to a person under subsection (1), the Council shall give the person a written statement explaining the effect of the Minister's declaration that information is restricted information for the purposes of this Act.

Division 7—Public access to heritage information

Subdivision A—Information about administrative action

Application

87. This Subdivision applies in relation to the following documents:

- (a) reports under section 67;
- (b) declarations under paragraph 69 (1) (b), while the declarations are in force;
- (c) orders referred to in section 71, while the orders are in force;
- (d) declarations under paragraph 73 (1) (b), while the declarations are in force.

Searching administrative records

88. (1) A person may, during office hours, inspect a document to which this Subdivision applies, excluding any part of the document which—

- (a) contains restricted information; or
- (b) contains information which is the subject of a declaration under subsection (3).

(2) On application by a person, accompanied by the determined fee, the Minister shall give the person a copy of a document to which this Subdivision applies, or any part of such document, excluding any part of the document which—

- (a) contains restricted information; or
- (b) contains information which is the subject of a declaration under subsection (3).

(3) The Minister may, by written notice to the applicant, declare that a document to which this Subdivision applies, or a specified part of such a document, is not to be available for public inspection under subsection (1) or (2).

(4) The Minister shall only make a declaration under subsection (3) if he or she is satisfied that—

- (a) information in the relevant application or part—
 - (i) relates to the personal or business affairs of a person; and
 - (ii) was supplied to the Minister in confidence; and
- (b) the publication of that information would not be in the public interest.

Subdivision B—Access to Heritage Registers

Searching the Heritage Registers

89. (1) A person may, during office hours, inspect the Register or interim Register, other than any part which contains restricted information.

(2) On application by a person, accompanied by the determined fee, the Heritage Council shall give the person a copy of, or of any part of, the Register or interim Register, other than any part which contains restricted information.

(3) On application to the Heritage Council accompanied by the determined fee, in relation to a place which—

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- (a) is not listed in the Register or interim Register; and
- (b) is not, in an interim Register, proposed to be listed in the corresponding Register;

the Heritage Council shall give the applicant a certificate stating—

- (c) whether a declaration in relation to that place is in force under paragraph 69 (1) (a) or 73 (1) (a); or
- (d) whether the place has previously been so listed, or proposed to be so listed.

(4) In this section—

“interim Register” means the interim Heritage Places Register;

“Register” means the Heritage Places Register.

Division 8—Australian Capital Territory Heritage Council

Subdivision A—Preliminary

Interpretation

90. In this Division, unless the contrary intention appears—

“appointed member” means a member appointed under paragraph 97 (1) (b);

“Chairperson” means the Chairperson of the Heritage Council;

“Deputy Chairperson” means the Deputy Chairperson of the Heritage Council;

“deputy member” means a deputy member of the Heritage Council;

“ex-officio member” means a member referred to in paragraph 97 (1) (a);

“member” means a member of the Heritage Council;

“Secretary” means the Secretary to the Heritage Council.

Subdivision B—Establishment, functions and powers

Establishment

91. There is established by this section a council called the Australian Capital Territory Heritage Council.

Functions

92. The functions of the Heritage Council are—

- (a) to advise the Minister about—
 - (i) the criteria according to which the heritage significance of places and objects is to be determined for the purposes of this Part and the *Heritage Objects Act 1991*;
 - (ii) incentives for the conservation of the heritage significance of heritage places and heritage objects;
 - (iii) promotion of public awareness of heritage places and heritage objects; and
 - (iv) other matters in relation to heritage significance in the Territory;
- (b) at the request of a Territory authority—to advise the authority about the matters and incentives referred to in paragraph (a) as they relate to the exercise or performance of the authority's powers or functions under this or any other Act;
- (c) to prepare an initial interim Heritage Places Register and an initial interim Heritage Objects Register and, subsequently, to prepare interim variations to the Heritage Places Register and the Heritage Objects Register; and
- (d) such other functions as are conferred on it by or under this or any other Act.

Ministerial directions

93. (1) The Minister may give the Heritage Council directions in writing—

- (a) about the policy and objectives it should pursue in the performance of its functions; or
- (b) to review the Heritage Places Register or the Heritage Objects Register, or any specified parts of either Register, in consideration of any specified matters.

(2) The Minister shall cause particulars of any directions to be published in the *Gazette* within 14 days of their being given.

(3) The Heritage Council shall comply with any directions published in accordance with subsection (2).

Powers

94. The Heritage Council has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Delegation to Secretary

96. The Heritage Council may, by resolution at a properly constituted meeting, delegate to the Secretary any of its powers or any functions referred to in paragraph 92 (d).

Subdivision C—Constitution and meetings

Constitution

97.² (1) The Heritage Council is constituted by—

- (a) the Chief Planner and the Conservator as ex-officio members; and
- (b) not more than 9 other members appointed by the Minister in writing.

(2) An ex-officio member shall not vote on any question in relation to an interim Heritage Places Register.

(3) The performance of the functions or the exercise of the powers of the Heritage Council is not affected by reason only of a vacancy or vacancies in the membership of the Heritage Council.

Deputy ex-officio members

98. (1) The Minister may, in writing, appoint a person to be the deputy of an ex-officio member.

(2) In the absence of a member from a Heritage Council meeting, any person appointed under subsection (1) to be the member's deputy has all the powers of the member.

Expert appointments

99. (1) In making appointments under paragraph 97 (1) (b) or subsection 98 (1) or 107 (1), the Minister shall endeavour to ensure that the following disciplines and areas of expertise are represented amongst the appointed members of the Heritage Council:

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- (a) archaeology;
- (b) Aboriginal tradition;
- (c) local history;
- (d) town planning;
- (e) engineering;
- (f) architectural history and conservation;
- (g) landscape architecture;
- (h) the natural environment and its conservation;
- (j) archivism;
- (k) librarianship;
- (m) preservation of Australian material culture;
- (n) knowledge of objects in an Australian context.

(2) A retiring appointed member is eligible for re-appointment for 1 term initially, and for a further 2 terms after the expiration of 3 years following the expiration of the initial re-appointment.

Terms of appointment

100. (1) Members hold office as part-time members.

(2) An appointed member holds office—

- (a) for such period, not exceeding 3 years, as is specified in the instrument of appointment; and
- (b) on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined in writing by the Minister.

Chairperson, Deputy Chairperson and Secretary

101. (1) The Minister shall appoint from the members—

- (a) a Chairperson; and
- (b) a Deputy Chairperson.

(2) The Minister shall appoint a public servant who is not a member to be Secretary to the Heritage Council.

Remuneration and allowances

102. (1) Appointed members shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply—

- (a) in relation to remuneration—if there is a subsisting determination relating to the remuneration to be paid to the appointed members; or
- (b) in relation to an allowance of a particular kind—if there is a subsisting determination relating to an allowance of that kind to be paid to the appointed members.

(3) In subsection (2)—

“determination” means a determination of the Remuneration Tribunal of the Commonwealth.

Leave of absence

103. The Minister may, by writing, grant leave of absence to a member on specified terms and conditions as to remuneration (subject to section 102) or otherwise.

Disclosure of interests

104. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Heritage Council shall, as soon as practicable after the relevant facts have come to the member’s knowledge, disclose the nature of the interest at a Heritage Council meeting.

(2) A disclosure shall be recorded in the minutes of the meeting and, unless the Minister otherwise determines, the member shall not—

- (a) be present during any deliberation of the Heritage Council with respect to that matter; or
- (b) take part in any decision of the Heritage Council with respect to that matter.

Resignation

105. A member may resign his or her office by writing signed by the member and delivered to the Minister.

Termination of appointment

106. (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) If a member—

- (a) is absent, except on leave granted under section 103, from 3 consecutive meetings of the Committee; or
- (b) without reasonable excuse, contravenes section 104;

the Minister shall terminate the appointment of the member.

Acting members

107. (1) The Minister may appoint a person to act as a member—

- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the member is absent from duty or from the Territory or is, for any reason, unable to perform the duties of the office;

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Convening meetings

108. (1) The Chairperson, or, if he or she is unable to do so, the Deputy Chairperson, shall convene such Heritage Council meetings—

- (a) as the Chairperson or the Deputy Chairperson considers necessary for the efficient performance of its functions; and

- (b) as the Minister directs by notice in writing given to the Chairperson or the Deputy Chairperson.

(2) Where the Chairperson or the Deputy Chairperson proposes to convene a meeting of the Heritage Council, he or she shall, not later than 5 days before the date of the proposed meeting, give each member a notice in writing specifying—

- (a) the date, time and place of the meeting; and
- (b) the matters to be considered at the meeting.

Procedure at meetings

109. (1) The Chairperson shall preside at all Heritage Council meetings at which he or she is present.

(2) Where the Chairperson is not present at a meeting the Deputy Chairperson shall preside.

(3) Where the Chairperson and the Deputy Chairperson are both absent from a meeting, the members present shall elect 1 of their number to preside.

(4) The member presiding at a meeting may give directions regarding the procedure to be followed in connection with the meeting.

(5) Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting.

(6) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

(7) The Heritage Council shall keep minutes of its proceedings.

Quorum

110. At a meeting of the Heritage Council, a majority of the members currently appointed to the Council constitutes a quorum.

PART IV—ENVIRONMENTAL ASSESSMENTS AND INQUIRIES

Division 1—Preliminary

Interpretation

111. In this Part, unless the contrary intention appears—

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“defined decision” means a decision of the Territory, the Executive, a Minister or a Territory authority about a proposal, being a proposal in relation to which a Minister is empowered under Part II, V or VI, an Act other than this Act or a subordinate law—

- (a) to direct that an Assessment be made; or
- (b) to establish a panel to conduct an Inquiry;

“environmental impact”, in relation to a proposal which is the subject of a defined decision, includes the following potential effects of the proposal (if carried out), either by itself or in combination with the potential effects of another such proposal:

- (a) environmental effect on a community;
- (b) physical, biological or cultural transformation of an area;
- (c) environmental effect on the social system or the ecosystems of an area;
- (d) change to the aesthetic, recreational, scientific or other environmental qualities, or values, of an area;
- (e) environmental effect on any premises or land or the surroundings of any premises or land, that has heritage significance;
- (f) the endangering, or further endangering, of a community or an area;
- (g) the endangering, or further endangering, of any species of fauna or flora;
- (h) long-term environmental effects including those with potential to place demands on the social system;
- (i) curtailing of the range of beneficial uses of the environment;
- (j) pollution;
- (k) problems associated with the disposal of waste;
- (l) increased demands on natural resources which are, or are likely to be, in short supply;
- (m) change to the values or lifestyles of particular groups and communities or to existing social relationships;

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(n) socio-economic effect;

“environmental impact statement” means an environmental impact statement prepared in accordance with Division 3;

“land” includes water;

“panel” means a panel established to conduct an Inquiry;

“preliminary assessment” means an assessment made under Division 2;

“proponent”, in relation to a defined decision, means the person designated as such under section 112;

“public environment report” means a public environment report prepared in accordance with Division 3;

“relevant Minister”, means the Minister responsible for the administration of the Act or subordinate law under which—

(a) in relation to an Assessment or Inquiry—that Assessment or Inquiry is authorised to be made or conducted; or

(b) in relation to a defined decision—the relevant decision is authorised to be made.

Proponents

112. (1) For the purposes of this Part, the relevant Minister in relation to a defined decision may, in writing, designate a person or Territory authority as the proponent in relation to the decision.

(2) The relevant Minister shall designate, as the proponent in relation to a defined decision, the person or Territory authority whose interests would be most directly affected by the decision, unless, in the opinion of that Minister, the public interest requires otherwise.

Division 2—Preliminary assessments

Directions

113.² The relevant Minister in relation to a defined decision, or the Environment Minister, may, by written notice to the relevant proponent within 28 days after the day which the decision that a preliminary assessment be required is made, direct the proponent to prepare a preliminary assessment of the environmental impact of the relevant proposal.

Mandatory preliminary assessments

114. Where a defined decision is of a class prescribed by the Plan, the relevant Minister shall, within the period referred to in section 113, issue a notice under that section in relation to the relevant proposal.

Content

115. A preliminary assessment shall consist of the matters specified in Schedule 3.

Submission to Minister

116.² (1) Upon notice under section 113, the proponent shall submit a preliminary assessment to the Environment Minister in accordance with the notice.

(2) Where the Environment Minister is not the relevant Minister in relation to a preliminary assessment, the Environment Minister shall forward the preliminary assessment to the relevant Minister.

Public inspection

117.² (1) A proponent who has submitted a preliminary assessment to the Environment Minister in accordance with a notice under section 113 shall cause to be published in the *Gazette*, and in a daily newspaper, a notice approved by the Environment Minister stating that copies of the preliminary assessment are available for public inspection and purchase from the proponent at specified places and times.

(2) A proponent who has published a notice pursuant to subsection (1) shall—

- (a)** make copies of the preliminary assessment available for inspection and purchase at the places and times specified in the notice; and
- (b)** give a copy of the preliminary assessment, without charge, to the Librarian, ACT Library Service and to the Conservation Council of the South-East Region and Canberra (Inc.).

(3) A copy of a preliminary assessment made available by a proponent for sale pursuant to this section shall not be sold at a price that exceeds a price fixed by the Environment Minister as the maximum price for the sale of a copy of the assessment.

(4) In fixing a maximum price at which a proponent may sell a copy of a preliminary assessment, the Environment Minister shall fix a price that will

reimburse the proponent for the cost of producing the copy but not for any expense incurred by the proponent in preparing the preliminary assessment.

(5) A notice in accordance with paragraph 282A (4) (a) shall include particulars of the calculation of the amount fixed as the maximum price that the proponent may charge for a copy of the preliminary assessment.

Exclusion of material

118. (1) Where, in the opinion of the Environment Minister based on reasonable grounds—

- (a) a part of a preliminary assessment contains information related to the personal or business affairs of a person, being information—
 - (i) supplied to the proponent or the Minister in confidence;
 - (ii) the publication of which would reveal a trade secret; or
 - (iii) the disclosure of which would, or would reasonably be expected to, adversely affect a person in respect of the lawful business affairs of that person; and
- (b) it would not be in the public interest for that part to be published;

the Environment Minister shall cause that part to be excluded from each copy of the preliminary assessment made available to the public or for public inspection.

(2) Where a part of a preliminary assessment is excluded from the copies of that assessment made available to the public or for public inspection, each copy shall include a statement to the effect that an unspecified part of the assessment has been excluded for the purpose of protecting the confidentiality of information included in that part.

Division 3—Assessments

Subdivision A—Form and content

Form

119. Unless otherwise specified in the Act or subordinate law under which it is directed, an Assessment consists of—

- (a) a public environment report; or
- (b) an environmental impact statement;

about the proposal which is the subject of a defined decision, together with the report under section 131 evaluating that public environment report or environmental impact statement.

Content of public environment reports and environmental impact statements

120. Public environment reports and environmental impact statements are each to include such matters as are—

- (a) prescribed; and
- (b) directed under section 123.

Subdivision B—Direction of Assessments

Decisions to direct Assessments

121. (1) Within the prescribed period after a proponent submits a preliminary assessment to the Environment Minister, the relevant Minister may direct that an Assessment be made of the proposal if, in the opinion of the relevant Minister based on reasonable grounds, the environmental impact of the proposal would be of sufficient significance.

(2) In making a decision under subsection (1), the relevant Minister shall consider—

- (a) the preliminary assessment;
- (b) the report of any meeting convened under section 128; and
- (c) whether any aspect of the environmental impact of that proposal is, or could be, the subject of—
 - (i) an Inquiry or another Assessment; or
 - (ii) any environmental assessment action taken by or on behalf of the Commonwealth, a State or the Northern Territory.

(3) This section does not apply where a Minister is required under an Act or subordinate law to direct that an Assessment be made.

Environment Minister's power to direct Assessments

122. Where a Minister other than the Environment Minister has the power under an Act or subordinate law to direct that an Assessment be made, the Environment Minister also has that power.

Directions

123.² (1) A direction by a Minister that an Assessment be made in relation to a defined decision shall—

- (a) be in writing given to the proponent; and
- (b) specify—
 - (i) the form of the Assessment;
 - (ii) the matters to be included in the public environment report or the environmental impact statement (as the case requires), and the relative emphasis to be given to each such matter;
 - (iii) subject to section 124 or sections 125 and 126, as the case requires—the manner in which the report or statement is to be prepared; and
 - (iv) where, in the opinion of the Environment Minister based on reasonable grounds, the environmental impact of a proposal which is the subject of another defined decision is relevant to the environmental impact of the relevant proposal—sufficient details of the first-mentioned proposal to enable the proponent to assess the potential combined effects of the proposals.

(2) The Environment Minister shall, in consultation with the relevant Minister, determine the matters to be specified under paragraph (1) (b).

(3) Where a Minister gives a direction that an Assessment be made, he or she shall cause to be published in the *Gazette*, and in a daily newspaper, a notice that sets out—

- (a) the name of the proponent;
- (b) the matters specified in the direction pursuant to paragraph (1) (b); and
- (c) the name of any consultant nominated by the Minister pursuant to subsection (4) to assist in the preparation of the Assessment.

(4) A Minister who directs that an Assessment be made may, under subparagraph (1) (b) (iii), direct the proponent in relation to an Assessment to engage the services of a consultant specified by the Minister in accordance with

the prescribed criteria to assist the proponent in the preparation of the Assessment.

Subdivision C—Preparation, evaluation and consideration by the Legislative Assembly

Public environment reports—preparation

124. (1) The Environment Minister may, in writing, direct the proponent in relation to a public environment report—

- (a) to undertake such consultation in relation to the preparation of the report as is specified; and
- (b) after any such consultation—to make the report available, in a specified manner and form, for public inspection, with such notice of that availability as is specified.

(2) The proponent in relation to a public environment report shall comply with a direction under subsection (1).

(3) This section does not apply in relation to the preparation of a public environment report for the purposes of an Assessment which will be—

- (a) a background paper within the meaning of Part II; or
- (b) notified together with a draft Plan of Management under Division 5 of Part V.

Environmental impact statements—consultation and public inspection

125. (1) The proponent in relation to an environmental impact statement shall cause to be published in the *Gazette*, and in a daily newspaper, a notice approved in writing by the Environment Minister—

- (a) stating that copies of the draft environmental impact statement are available for public inspection and purchase from the proponent at specified places and times; and
- (b) inviting interested persons to submit written comments about the draft to the proponent at a specified address and within a period of 28 days or such longer period as is directed in writing by the relevant Minister.

(2) The proponent in relation to an environmental impact statement shall make copies of the draft statement available for inspection and purchase at the places and times specified in the notice under subsection (1).

(3) A proponent shall not sell a copy of a draft environmental impact statement that he or she has made available for purchase pursuant to subsection (2) at a price that exceeds a price fixed by the Environment Minister as the maximum price for the sale of a copy of the statement.

(4) In fixing a maximum price at which a proponent may sell a copy of a draft environmental impact statement, the Environment Minister shall fix a price that will reimburse the proponent for the cost of producing the copy but not for the expense incurred by the proponent in preparing the draft statement.

(5) A notice in accordance with paragraph 282A (4) (b) shall include particulars of the calculation of the amount fixed as the maximum price that the proponent may charge for a copy of the draft environmental impact statement.

(6) This section does not apply in relation to the preparation of an environmental impact statement for the purposes of an Assessment which will be—

- (a) a background paper within the meaning of Part II; or
- (b) notified together with a draft plan of management under Division 5 of Part V.

Environmental impact statements—consideration of relevant comments and reports

126. The proponent in relation to an environmental impact statement shall, in preparing the statement, consider any written comments from any person or Territory authority, and any reports, related to the environmental impact of the relevant proposal.

Submission of reports and statements to Environment Minister

127. The proponent shall submit the relevant public environment report or environmental impact statement to the Environment Minister, together with—

- (a) a written report about the proponent's consultation in relation to the report or statement;
- (b) a copy of each written comment about the report or statement received by the proponent; and
- (c) a copy of each report referred to in section 126 which is not available to the public.

Consultation

128. (1) The Environment Minister may, by giving reasonable notice to—

- (a) the proponent of a proposal that has an environmental impact;
- (b) any other person that the Environment Minister believes on reasonable grounds to have an interest directly affected by the proposal; and
- (c) any other person that the Environment Minister considers appropriate;

convene a meeting of such persons for the purposes of—

- (d) clarifying the proposal or concerns relating to the proposal;
- (e) clarifying the report of a panel established to conduct an Inquiry into the proposal; or
- (f) discussing any ways in which the proposal could be modified in order to reduce or eliminate any potential adverse environmental impact.

(2) The Environment Minister shall give a written report to each participant in the meeting stating—

- (a) the outcome of the meeting; and
- (b) any recommendations which the Environment Minister intends to include in his or her report under section 131 as a result of the meeting.

(3) Where a meeting recommends that a proposal be varied, the Minister shall cause copies of the report prepared in relation to the meeting for the purposes of subsection (2) to be made available for public inspection at times and places specified in a notice published in the *Gazette* and in a daily newspaper.

Further information

129. (1) Within the prescribed period after the submission of a public environment report or an environmental impact statement to the Environment Minister, that Minister may, by notice in writing to the proponent, direct the proponent to provide further specified information in relation to the proposal, report or statement.

(2) Upon notice under subsection (1), the proponent shall, in writing, provide the specified information to the Environment Minister.

Further revision

130. (1) Within the prescribed period after the submission of a public environment report or an environmental impact statement to the Environment Minister, that Minister may, by notice in writing to the proponent, request the proponent to revise the report or statement in consideration of specified matters.

(2) Upon notice under subsection (1), the proponent may revise the report or statement in consideration of the specified matters.

(3) The proponent shall—

- (a)** if the report or statement is revised—re-submit the revised report or statement to the Environment Minister; or
- (b)** if the report or statement is not revised—submit a written report to the Environment Minister stating the reasons why the proponent has not revised the report or statement.

Evaluation by Environment Minister

131. (1) Unless subsection (2) applies, within the prescribed period after the submission of a public environment report or environmental impact statement to the Environment Minister, he or she shall prepare a written report evaluating it.

(2) Where the Environment Minister gives a notice to a proponent under subsection 130 (1), that Minister shall prepare a written report evaluating a public environment report or statement within the prescribed period after the proponent—

- (a)** re-submits the report or statement under paragraph 130 (3) (a); or
- (b)** submits a report under paragraph 130 (3) (b);

as the case requires.

(3) A report under subsection (1) shall include—

- (a)** a statement as to whether, in the opinion of the Environment Minister, the public environment report or environmental impact statement has been prepared in accordance with this Division, and with the relevant directions under this Division;
- (b)** any comment by that Minister about the environmental impact of the relevant proposal;

- (c) where that Minister has convened a meeting under section 128—the report of that meeting referred to in subsection 128 (2); and
- (d) any recommendation of that Minister about the conditions subject to which the proposal should be approved.

Tabling in the Legislative Assembly and public inspection

132. (1) Within 6 sitting days after the completion of a report referred to in section 131, the relevant Minister shall cause to be laid before the Legislative Assembly a copy of—

- (a) the relevant Assessment;
- (b) any notice given by the Environment Minister under section 129 or 130; and
- (c) any report, comment or written information submitted to the Environment Minister under section 127, 129 or 130.

(2) After an Assessment is completed, the relevant Minister shall make copies of the Assessment, together with copies of any notice, report, comment or written information referred to in paragraph (1) (b) or (c), available to the public during office hours at places and times specified in a notice published—

- (a) in the *Gazette*; and
- (b) in a daily newspaper.

Exclusion of material

133. (1) Where, in the relevant Minister’s opinion, based on reasonable grounds—

- (a) a part of an Assessment contains information related to the personal or business affairs of a person, being information—
 - (i) supplied to the proponent or that Minister in confidence; or
 - (ii) the publication of which would reveal a trade secret; and
- (b) it would not be in the public interest for that part to be published;

the relevant Minister shall cause that part to be excluded from the copy of the Assessment laid before the Legislative Assembly, and from any copy of the Assessment made available to the public or for public inspection.

(2) Where a part of an Assessment is excluded from the copies of that Assessment made available to the public or for public inspection, each copy shall include a statement to the effect that an unspecified part of the Assessment has been excluded for the purpose of protecting the confidentiality of information included in that part.

Exemptions

134. (1) The Environment Minister may, by instrument—

- (a) exempt a specified defined decision, or defined decisions of a specified class, from being the subject of an Assessment directed under any Act or subordinate law; or
- (b) declare that specified provisions of this Division are not to apply in relation to a specified Assessment, or to Assessments of a specified class.

(2) An instrument of exemption is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(3) Notwithstanding paragraph 6 (1) (b) of the *Subordinate Laws Act 1989* in its application to the instrument, an instrument of exemption takes effect (subject to the remaining provisions of section 6 of that Act) on the expiration of 5 sitting days after it is laid before the Legislative Assembly, or on such a later date as is specified in the instrument.

(4) Paragraph 6 (1) (c) and subsections 6 (7), (7A) and (7B) of the *Subordinate Laws Act 1989* apply to an instrument of exemption as if the references in those provisions to 15 sitting days were references to 5 sitting days.

(5) The Environment Minister shall cause an instrument of exemption to be notified in a daily newspaper.

(6) The validity of an instrument of exemption is not affected by a failure to comply with subsection (5).

Division 4—Inquiries

Subdivision A—Establishment of panels and terms of reference

Constitution

135. (1) Where the relevant Minister in relation to a defined decision decides to establish a panel to inquire into the proposal which is the subject of

that decision he or she shall, in writing, appoint a person or persons to constitute a panel to conduct the Inquiry.

(2) The relevant Minister shall nominate 1 member (or, in the case of a panel constituted by 1 member, that member) of the panel as the presiding member.

Combined Inquiries

136. Where 2 or more proposals, being the subject of 2 or more defined decisions, would in the opinion of the Environment Minister have substantially interconnected effects, he or she may, under section 135, with the consent of the relevant Minister in relation to each decision, establish a panel to conduct an Inquiry into the potential combined effect of those proposals.

Remuneration

137. The Territory shall pay a member of a panel such remuneration as is determined in writing by the relevant Minister.

Terms of reference

138. (1) The relevant Minister shall, in writing, determine the terms of reference of an Inquiry.

(2) The terms of reference of an Inquiry—

(a) shall—

- (i) specify the defined decision;
- (ii) require the panel to assess the potential costs and benefits to the community and to the Territory of the proposal which is the subject of that decision; and
- (iii) specify a reasonable period within which the panel is to report; and

(b) may require the panel—

- (i) to investigate specified aspects of that proposal; or
- (ii) to consider any specified report.

(3) The relevant Minister may, at the request of a panel, or on his or her own motion, by notice published in the *Gazette*, vary the terms of reference of the relevant Inquiry.

Notification

139. The relevant Minister in relation to an Inquiry shall cause to be published a notice in the *Gazette* specifying—

- (a) the members of the panel, and the presiding member;
- (b) the terms of reference of the Inquiry;
- (c) the period within which the panel is to report; and
- (d) such other matters as that Minister considers necessary.

Subdivision B—Inquiry reports

Inquiry reports

140. A panel shall report its findings and recommendations in writing to the relevant Minister in accordance with the terms of reference determined under section 138.

Tabling in the Legislative Assembly and public inspection

141. (1) The relevant Minister shall cause a copy of the report of a panel's findings and recommendations to be laid before the Legislative Assembly within 6 sitting days of receiving the report.

(2) After a report is completed, the relevant Minister shall make copies of the report available to the public at places and times specified in a notice published—

- (a) in the *Gazette*; and
- (b) in a daily newspaper.

Exclusion of material

142. (1) Where, in the panel's opinion based on reasonable grounds and expressed in its report—

- (a) a part of a report contains information related to the personal or business affairs of a person, being information—
 - (i) supplied to the panel in confidence; or
 - (ii) the publication of which would reveal a trade secret; and
- (b) it would not be in the public interest for that part to be published;

the relevant Minister may cause that part of the report to be excluded from the copy laid before the Legislative Assembly, and from any copy made available to the public or for public inspection.

(2) Where a part of a report is excluded under subsection (1), each copy of the report laid before the Legislative Assembly or made available to the public or for public inspection shall include a statement to the effect that an unspecified part of the report has been excluded for the purpose of protecting the confidentiality of information included in that part.

Subdivision C—Procedures and powers

Interpretation

143. (1) In this Subdivision, unless the contrary intention appears—

“authorised person” means—

- (a) a panel member; or
- (b) a person assisting a panel member in a manner authorised in writing by that member;

“place” includes any premises, land, vehicle, aircraft or vessel.

(2) Where an authorised person enters a place in accordance with this Subdivision, a reference in this Subdivision to the occupier of that place includes a reference to a person the authorised person believes on reasonable grounds to be the occupier, or to be in charge, of that place.

Notice of Inquiry hearings

144. At a reasonable time before the commencement of an Inquiry, the presiding member of a panel shall cause to be published in the *Gazette*, and in a daily newspaper, a notice stating—

- (a) the subject-matter of the Inquiry; and
- (b) the time and place at which the Inquiry is to commence.

Public hearings

145. (1) A panel shall conduct its Inquiry in public, except as provided by subsection (2).

(2) A panel may—

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- (a) direct that the Inquiry or any part of it be held in private, and give directions about who may be present during any private hearing;
- (b) give directions prohibiting or restricting the publication of evidence given before the Inquiry, or of matters contained in documents lodged with the Inquiry; or
- (c) give directions prohibiting or restricting the disclosure to any specified person of such evidence or such matters.

(3) In making a direction under subsection (2), a panel shall consider—

- (a) the principle that it is desirable that the Inquiry should be held in public, and that evidence given before the Inquiry, and documents lodged with the Inquiry, should be available to interested persons and to the public; and
- (b) in the circumstances, whether confidentiality is required for the relevant proceedings, evidence or matter.

(4) A panel may issue a direction under subsection (2) for the purposes of a special hearing under section 147.

General procedure

146. (1) At a hearing of an Inquiry, the panel—

- (a) shall not conduct the hearing in an unduly formal manner;
- (b) is not bound by the rules of evidence, and may inform itself—
 - (i) in any way it thinks fit; and
 - (ii) without notice to any person who has made a submission to the Inquiry;
- (c) may take evidence on oath, or affirmation, administered by a member of the panel;
- (d) may prohibit or regulate cross-examination; and
- (e) subject to this Subdivision, may otherwise determine its own procedures.

(2) Unless otherwise required by the panel, a person may make a submission to an Inquiry orally or in writing or partly orally and partly in writing.

(3) The panel may adjourn an Inquiry from time to time and from place to place (whether within or outside the Territory).

Special hearings—consultation with interested persons

147. (1) A panel may hold a special hearing of the Inquiry in order to consult with—

- (a) the proponent;
- (b) any other person that the panel believes on reasonable grounds to have an interest directly affected by the proposal; and
- (c) any other person the panel considers appropriate;

for the purposes of—

- (d) clarifying the proposal; and
- (e) discussing ways in which the proposal could be modified in order to reduce or eliminate any potential environmental impact.

(2) The panel shall give each person referred to in subsection (1) reasonable notice in writing of the special hearing.

(3) The panel shall conduct a special hearing in an informal manner.

(4) The panel shall include in the report of an Inquiry a report stating—

- (a) the outcome of the special hearing; and
- (b) any influence the special hearing has had on the panel's recommendations in relation to the proposal.

Assessments for the purpose of Inquiries

148. (1) For the purposes of an Inquiry, the relevant Minister may, at the written request of the panel, or on his or her own motion, direct that an Assessment be made of the environmental impact of any aspect of the proposal which is the subject of the relevant defined decision.

(2) An Assessment under subsection (1) consists of a public environment report or an environmental impact statement, but does not include a report of the Environment Minister under section 131 evaluating the public environment report or environmental impact statement.

(3) Sections 127, 128, 129 and 130 apply to an Assessment under subsection (1) as if the references to the Environment Minister in those sections were references to the relevant Minister.

(4) Section 131 does not apply in relation to an Assessment under subsection (1).

(5) For the purposes of subsection 132 (1), the relevant Minister shall cause a copy of an Assessment under subsection (1), together with any notice, report, comment or information referred to in paragraph 132 (1) (b) or (c), be laid before the Legislative Assembly within 6 sitting days of—

- (a) receiving the Assessment under section 127;
- (b) where he or she issues a notice under section 129, but does not issue a notice under section 130—receiving the relevant information under subsection 129 (2); or
- (c) where he or she issues a notice under section 130—receiving the Assessment or report under subsection 130 (3).

Witnesses—summons to appear

149. (1) The presiding member of a panel may, by writing, summon a person to attend a hearing of the Inquiry at a specified time and place to give evidence and to produce such books and documents as are—

- (a) relevant to any matter at issue in the Inquiry; and
- (b) specified in the summons.

(2) A person served with a summons under subsection (1) shall not, without reasonable excuse, fail to comply with the summons.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

(3) The Territory shall pay a witness summoned to appear at an Inquiry such allowances as are prescribed.

Victimisation of witnesses

150. (1) A person shall not—

- (a) use violence to or inflict injury upon;

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- (b) cause or procure violence, damage, loss or disadvantage to; or
- (c) cause or procure the punishment of;

a person on account of the person's giving, or proposing to give, evidence to an Inquiry.

Penalty:

- (a) if the offender is a natural person—100 penalty units or imprisonment for 12 months, or both;
 - (b) if the offender is a body corporate—500 penalty units.
- (2)** An employer shall not—
- (a) dismiss an employee from his or her employment, or prejudice an employee in his or her employment, on account of the employee's giving, or proposing to give, evidence to an Inquiry; or
 - (b) threaten so to dismiss, or so to prejudice, an employee on account of the employee's proposing to give evidence to an Inquiry.

Penalty:

- (a) if the offender is a natural person—100 penalty units or imprisonment for 12 months, or both;
- (b) if the offender is a body corporate—500 penalty units.

(3) For the purposes of paragraph (2) (a), in proceedings for an offence against subsection (2), if it is established that an employer dismissed an employee from his or her employment, or prejudiced an employee in his or her employment, after the employee gave, or proposed to give, evidence to an Inquiry, it is to be presumed that that dismissal or prejudice was by reason of the employee's giving, or proposing to give, evidence at the Inquiry, but that presumption is rebuttable.

(4) For the purposes of paragraph (2) (b), in proceedings for an offence against subsection (2), if it is established that an employer threatened to dismiss an employee from his or her employment, or to prejudice an employee in his or her employment, after the employee proposed to give evidence to an Inquiry, it is to be presumed that that threat was by reason of the employee's proposal, but that presumption is rebuttable.

Inspection of books and documents

151. (1) An authorised person may inspect any book or document given in evidence to the Inquiry, and may make copies of, or copy extracts from, such a book or document.

(2) A book or document given in evidence to an Inquiry may be retained by the panel for such reasonable period as the panel thinks fit.

(3) A panel shall allow the owner of a book or document retained by the panel reasonable access to the book or document.

Power of entry

152. (1) For the purposes of an Inquiry, an authorised person may enter any place—

- (a) with the consent of the occupier; or
- (b) pursuant to a warrant issued under section 153.

(2) Before seeking the consent of the occupier of a place for the purpose of subsection (1), an authorised person shall—

- (a) if the authorised person is a panel member—produce written evidence of his or her appointment;
- (b) if the authorised person is the assistant of a panel member—produce written evidence of his or her authority; and
- (c) inform the occupier that he or she may refuse to give consent.

(3) Where an authorised person obtains the consent of the occupier to enter a place under subsection (1), the authorised person shall ask the occupier to sign a written acknowledgment—

- (a) that the occupier has been informed that he or she may refuse to so consent;
- (b) that the occupier has consented; and
- (c) of the day on which, and the time at which the occupier consented.

(4) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented to the entry of premises by an authorised person under subsection (1) and an acknowledgment in accordance with subsection (3) signed by the occupier is not produced in evidence, it shall be presumed that the occupier did not consent, but that presumption is rebuttable.

Search warrants

153. (1) Where a panel member believes on reasonable grounds that it is necessary, for the purposes of the Inquiry, for an authorised person to enter and inspect any place and to search for and inspect any thing or any kind of thing, within the next following 28 days the member may—

- (a) lay before a magistrate an information on oath setting out those grounds; and
- (b) apply for the issue of a warrant to search the place for such a thing or things, and to inspect it or them.

(2) On application under subsection (1), the magistrate may issue a warrant authorising the authorised person named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the place;
- (b) to search for any specified thing or any thing of a specified kind; and
- (c) to inspect any such thing.

(3) A magistrate shall not issue a warrant unless—

- (a) the applicant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(4) A warrant shall—

- (a) specify the Inquiry in relation to which the entry, search and inspection are authorised;
- (b) state the purpose for which it is issued;
- (c) specify particular hours during which the entry is authorised, or state that the entry is authorised at any time of the day or night;
- (d) include a description of the things, or kinds of things, in relation to which any power under section 154 may be exercised; and
- (e) specify a date not later than 28 days after the date of issue of the warrant on which the warrant ceases to have effect.

Powers of search and inspection

154. (1) Subject to the terms of any warrant issued under section 153, where an authorised person enters a place in accordance with section 152, he or she may, for the purposes of the Inquiry—

- (a) inspect the place;
- (b) search for and inspect any thing; or
- (c) require the occupier to give the authorised person such assistance as is reasonable to enable the authorised person to exercise his or her powers under this section.

(2) A person shall not, without reasonable excuse, contravene a requirement made of the person under paragraph (1) (c).

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

Obstructing or resisting an authorised person

155. A person shall not wilfully obstruct or resist an authorised person in the exercise or attempted exercise of his or her powers under this Subdivision.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

Contempt

156. A person shall not, without reasonable excuse—

- (a) contravene a direction lawfully given by a panel member;
- (b) disturb a panel member in the exercise of the member's powers or the performance of his or her functions;
- (c) interrupt a hearing of an Inquiry;
- (d) use insulting language, or act in an insulting manner, towards a panel member;

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- (e) create a disturbance, or participate in the creation or continuation of a disturbance, in or near a place where a hearing of an Inquiry is taking place; or
- (f) do any other act or thing which would, if the panel were a court of record, constitute a contempt of that court.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

Protection of panel members and witnesses

157. (1) A panel member has, in the exercise of the member's powers or the performance of his or her functions, the same protection and immunity as a Justice of the Supreme Court.

(2) Subject to this Division, a person giving evidence to an Inquiry has the same protection, and is subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the Supreme Court.

PART V—LAND ADMINISTRATION

Division 1—Preliminary

Interpretation

159.² (1) In this Part, unless the contrary intention appears—

“building and development provision”, in relation to a lease, means a provision of the lease that requires the lessee to carry out specified works on the land comprised in the lease or on any unleased Territory Land;

“lease” means—

- (a) a lease granted under this Act;
- (b) a lease granted under a repealed Act and continued in force by the *Land (Planning and Environment) (Consequential Provisions) Act 1991*; or
- (c) a lease granted under the *Unit Titles Act 1970*;

but does not include a sublease;

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“lessee” means the person who is the proprietor of a lease, whether or not he or she is the registered proprietor of the lease, and whether or not the lease was granted to him or her or the lease passed to him or her by assignment, transfer, devolution or operation of law;

“public carpark” means an area that is an off-street parking area within the meaning of the *Motor Traffic Act 1936* and that is available for use by the public without the payment of money;

“public land” means land identified as public land in the Plan;

“public road” has the same meaning as in the *Motor Traffic Act 1936*;

“registered lease” means a lease registered in the Register kept under the *Land Titles Act 1925*;

“registered proprietor”, in relation to a lease, means the person who is registered under the *Land Titles Act 1925* as proprietor of the lease;

“repealed Act” means an Act repealed by the *Land (Planning and Environment) (Consequential Provisions) Act 1991*;

“residential lease” means a lease of Territory Land granted for residential purposes only;

“sublease” means a sublease of a parcel of land, or part of a parcel of land, subject to a lease, or of a building, or a part of a building, on a parcel of land subject to a lease;

“sublessee” means the person who is the proprietor of a sublease, whether the sublease was granted to him or her or the sublease has passed to him or her by assignment, transfer, devolution or operation of law;

“Territory Land” has the same meaning as in the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth.

(2) A reference in this Part to a provision of a lease shall be read as including a reference to a provision to which the lease is subject.

(3) A reference in this Part to the variation of a lease shall be read as including a reference to the surrender of a lease and the grant of a new lease to the same lessee over land—

(a) that is the whole or part of the land comprised in the surrendered lease; and

- (b) that is not defined land within the meaning of Subdivision D of Division 3 of Part II;

subject to provisions that differ from those of the surrendered lease.

(4) A reference in this Part to the market value of a lease is a reference to the amount that could be expected to be paid for the lease on the open market if it were sold by a willing but not anxious seller to a willing but not anxious buyer.

Application

160. (1) This Part applies to all grants of estates in Territory Land made by the Executive on behalf of the Commonwealth.

(2) This Part does not apply to a transfer by the Territory of a registered lease of which the Territory is the registered proprietor.

Division 2—Leases

Granting of leases

161.² (1) The Executive may, on behalf of the Commonwealth, grant a lease of Territory Land by—

- (a) auctioning the lease;
- (b) calling tenders for the grant of the lease;
- (c) conducting a ballot for the right to the grant of the lease; or
- (d) a direct grant to an applicant for a lease.

(2) A lease granted under this section may include provisions—

- (a) requiring the lessee to develop the land comprised in the lease, or any unleased Territory Land, in a specified way; or
- (b) requiring the lessee to give security for the performance of any of his or her obligations under the lease.

(3) A lease granted under paragraph (1) (d) shall be granted subject to such provisions as are agreed between the Executive and the applicant for the lease.

(4) The Executive shall not grant a lease of Territory Land under paragraph (1) (d) otherwise than in accordance with criteria specified pursuant to subsection (5).

(5) The Executive may, for the purposes of this section, by instrument—

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- (a) specify criteria for the granting of leases under paragraph (1) (d); or
- (b) amend or revoke criteria so specified.

(6) An instrument under subsection (5) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Fees for granting leases

162. (1) A lease under section 161 shall only be granted on payment of the determined fee.

(2) Different fees may be determined in respect of different classes of leases granted under section 161.

Leases to community organisations

163. (1) In this section—

“community organisation” means a body corporate that—

- (a) has as its principal purpose the provision of a service, or a form of assistance, to persons living or working in the Territory;
- (b) is not carried on for the pecuniary profit or gain of its members; and
- (c) does not hold a Club Licence under the *Liquor Act 1975*.

(2) The Executive may, on behalf of the Commonwealth, grant a lease of Territory Land to a community organisation without charge or for a charge that is less than the market value of the lease.

(3) The Executive shall not grant a lease under this section otherwise than in accordance with criteria for the granting of leases to community organisations specified pursuant to subsection (4).

(4) The Executive may, for the purposes of this section, by instrument—

- (a) specify criteria for the granting of leases to community organisations;
or
- (b) amend or revoke criteria so specified.

(5) An instrument under subsection (4) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(8) A community organisation shall not transfer a lease granted under this section and a purported transfer of such a lease shall be of no effect.

(9) Nothing in this section shall be taken to derogate from the power of the Executive to grant a lease of Territory Land to a community organisation otherwise than under this section.

Special leases

164. (1) The Executive may, on behalf of the Commonwealth, grant a lease of Territory Land for a charge that is less than the market value of the lease where the Executive is satisfied that it is desirable and in the public interest to do so in order to facilitate—

- (a) the economic development of the Territory; or
- (b) the development of business in the Territory.

(2) The Executive shall not grant a lease of Territory Land under this section otherwise than in accordance with criteria for the granting of special leases specified pursuant to subsection (3).

- (3) The Executive may, for the purposes of this section, by instrument—
- (a) specify criteria for the granting of special leases; or
 - (b) amend or revoke criteria so specified.

(4) An instrument under subsection (3) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(7) The lessee under a lease to which this section applies shall not, for a period of 5 years after the day on which the lease is granted—

- (a) assign or transfer the lease;
- (b) sublet the land comprised in the lease or any part of it; or
- (c) part with possession of the land comprised in the lease or any part of it;

without having obtained the written consent of the Executive and any assignment, transfer, sublease, agreement or arrangement made or entered into in contravention of this subsection shall be of no effect.

(8) The Executive shall not consent to the lessee under a lease to which this section applies—

- (a) assigning or transferring the lease;
- (b) subletting the land comprised in the lease or any part of it; or
- (c) parting with possession of the land comprised in the lease or any part of it;

unless it is satisfied that the person to whom it is proposed that the lease should be assigned or transferred, the person to whom it is proposed that a sublease should be granted or the person to whom it is proposed that possession of the land should be given, as the case may be, is a person who satisfies the criteria of eligibility specified pursuant to subsection (2) in respect of the class of leases in which the lease is included.

Authorities to consider proposed leases

165.² (1) In this section—

“Authority” means the Planning Authority or the Gungahlin Development Authority;

“Designated Area” has the same meaning as in the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;

“lease” includes a licence to occupy or use an area of unleased Territory Land for a period exceeding 3 months;

“Planning Authority” means the Australian Capital Territory Planning Authority.

(2) Subject to subsection (2A), where the Executive proposes to grant a lease of Territory Land on behalf of the Commonwealth, not being land in a Designated Area, it shall give to the Planning Authority and, if the land is in the Gungahlin Central Area, also to the Gungahlin Development Authority, notice in writing of its intention to do so and in the notice specify—

- (a) the boundaries of the land over which it is proposed that the lease should be granted;
- (b) the term of the lease;
- (c) the purposes for which the lease is to be granted; and
- (d) the provisions to be included in the lease and any agreement collateral to the lease.

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(2A) The Executive is not required to give notice under subsection (2) to the Gungahlin Development Authority where the lease is proposed to be granted to that Authority.

(3) On receiving a notice under subsection (2), an Authority shall, within the prescribed period, advise the Executive by instrument whether it considers that the lease specified in the notice—

- (a) may appropriately be granted as proposed in the notice under subsection (2);
- (b) may appropriately be granted subject to compliance with conditions specified in the instrument; or
- (c) could not appropriately be granted.

(4) In determining the advice it is to give to the Executive under subsection (3) in relation to a proposed lease, the Planning Authority shall consider each of the following matters, and only the following matters:

- (a) whether the lease would be consistent with the planning principles and policies set out in the Plan;
- (b) whether the lease would be in accordance with any directions of the Executive in force under section 37;
- (c) any matters prescribed by the Plan for the purpose of this subsection;
- (d) the appropriateness of the timing of the grant of the lease.

(4A) In determining the advice it is to give to the Executive under subsection (3) in relation to a proposed lease, the Gungahlin Development Authority shall consider each of the following matters, and only the following matters:

- (a) whether the lease would be consistent with the objectives of the Gungahlin Development Authority set out in the latest statement of intent a copy of which has been laid before the Legislative Assembly under section 36 of the *Gungahlin Development Authority Act 1996*;
- (b) whether the lease would be in accordance with any direction in force under section 11 of the *Gungahlin Development Authority Act 1996*;
- (c) the appropriateness of the timing of the grant of the lease.

(5) The conditions that an Authority may specify pursuant to paragraph (3) (b) in relation to a proposed lease are conditions of the following kinds only:

- (a) a condition specifying the land over which the lease may be granted;
- (b) a condition specifying the term, or the maximum term, for which the lease may be granted;
- (c) a condition specifying the purposes for which the land to be leased may be used under the lease;
- (d) a condition specifying provisions to be included in the lease or an agreement collateral to the lease.

(6) Where an Authority gives the Executive advice of the kind referred to in paragraph (3) (b) or (c), it shall—

- (a) in the case of advice of the kind referred to in paragraph (3) (b)—specify in the instrument under subsection (3) its reasons for considering that the conditions specified in the instrument should be imposed; or
- (b) in the case of advice of the kind referred to in paragraph (3) (c)—specify in the instrument under subsection (3) its reasons for considering that the proposed lease could not appropriately be granted.

(7) Where—

- (a) a notice under subsection (2) has been given only to the Planning Authority and that Authority has advised the Executive pursuant to subsection (3) that the proposed lease referred to in the notice may appropriately be granted as proposed in the notice; or
- (b) a notice under subsection (2) has been given to both Authorities and each Authority has advised the Executive pursuant to subsection (3) that the proposed lease referred to in the notice may appropriately be granted as proposed in the notice;

the Executive may grant the lease as proposed in the notice.

(7A) Where—

- (a) a notice under subsection (2) has been given only to the Planning Authority; and

- (b) that Authority has advised the Executive pursuant to subsection (3) that the lease referred to in the notice may appropriately be granted subject to conditions specified in the instrument under subsection (3);

the Executive may grant the lease subject to compliance with those conditions.

(7B) Where—

- (a) a notice under subsection (2) has been given to both Authorities; and
- (b) an Authority has, or both Authorities have, advised the Executive pursuant to subsection (3) that the lease referred to in the notice may appropriately be granted subject to conditions specified in the instrument or instruments (as the case requires) under subsection (3);

the Executive may grant the lease subject to compliance with those conditions.

(8) Where the Executive has given an Authority a notice under subsection (2) in relation to a proposed lease and the Authority has not, within the time prescribed for the purposes of subsection (3), advised the Executive pursuant to that subsection whether it considers that the proposed lease may appropriately be granted, the Executive may grant the lease as proposed in the notice under subsection (2).

(9) Where an Authority has advised the Executive pursuant to subsection (3) that a lease specified in a notice under subsection (2) may appropriately be granted subject to compliance with specified conditions, the Executive may grant the lease without complying with 1 or more of those conditions.

(10) The Executive may grant a lease specified in a notice under subsection (2) notwithstanding that an Authority has, pursuant to subsection (3), advised the Executive that it considers that the lease could not appropriately be granted.

(12) Notwithstanding anything contained in this Act or any other Act, the power to grant a lease in accordance with subsection (9) or (10) may only be exercised by—

- (a) the Executive; or
- (b) a Minister acting on behalf of the Executive.

Inquiries and Assessments in relation to the granting of leases

166. (1) Where it is proposed that a lease of Territory Land be granted, the Executive may—

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- (a) establish a panel to conduct an Inquiry into whether the proposed lease should be granted; or
 - (b) direct that an Assessment be made into the possible environmental impact of a decision to grant the lease.
- (2) Where the Executive establishes a panel to conduct an Inquiry, or directs an Assessment to be made, pursuant to subsection (1), the Executive—
- (a) shall not grant the proposed lease until—
 - (i) in a case where a panel is established to conduct an Inquiry—the panel has reported to the Executive and the Executive has considered the report; or
 - (ii) in a case where a direction has been given for an Assessment to be made—the Assessment has been completed and the Executive has considered the environment report or the environmental impact statement forming part of the Assessment; and
 - (b) shall review the provisions of the proposed lease taking into consideration the environment report, environmental impact statement or report of the panel established to conduct the Inquiry, as the case requires.

Eligibility for certain classes of leases

167.² (1) The Executive may, by instrument—

- (a) declare a specified class of leases to be leases to which this section applies;
- (b) specify, in respect of a class of leases declared under paragraph (a) to be leases to which this section applies, criteria for determining whether a person is eligible to hold the land comprised in a lease included in that class; or
- (c) amend or revoke a declaration under paragraph (a) or criteria specified under paragraph (b).

(2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(3) The Executive shall not grant a lease to which this section applies to a person who does not satisfy the criteria specified pursuant to paragraph (1) (b) in respect of the class of leases in which the lease is included.

(4) The validity of a lease to which this section applies is not to be taken to be affected by a failure to comply with subsection (3).

(5) The lessee under a lease to which this section applies shall not—

- (a) assign or transfer the lease;
- (b) sublet the land comprised in the lease or any part of it; or
- (c) part with possession of the land comprised in the lease or any part of it;

without having obtained the written consent of the Executive and any assignment, transfer, sublease, agreement or arrangement made or entered into in contravention of this subsection shall be of no effect.

(6) The Executive shall not consent to the lessee under a lease to which this section applies—

- (a) assigning or transferring the lease;
- (b) subletting the land comprised in the lease or any part of it; or
- (c) parting with possession of the land comprised in the lease or any part of it;

unless it is satisfied that the person to whom it is proposed that the lease should be assigned or transferred, the person to whom it is proposed that a sublease should be granted or the person to whom it is proposed that possession of the land should be given, as the case may be, is a person who satisfies the criteria of eligibility specified pursuant to paragraph (1) (b) in respect of the class of leases in which the lease is included.

Executive not bound to grant lease

168. The Executive shall not be bound to grant a lease of Territory Land to any applicant, notwithstanding that applications for a lease have been invited and, where applications for a lease have been invited subject to conditions, the Executive may, without granting a lease, invite fresh applications for the lease subject to the same or other conditions.

Payment for leases

169. (1) Subject to subsection (2), the Executive shall not grant a lease of Territory Land otherwise than for payment of an amount that is not less than the market value of the lease.

(2) Subsection (1) does not apply in respect of—

- (a) a lease granted for a rent that is the full market rental value of the lease; or
- (b) a lease granted under paragraph 161 (1) (d) or section 163, 164, 171 or 172.

Failure to accept and execute lease

170. (1) Subject to subsection (2), where a person who is entitled to the grant of a lease of Territory Land pursuant to this Part fails to—

- (a) accept and execute the lease; or
- (b) pay any amount that he or she is required to pay before being granted the lease;

within the prescribed period, the Executive may, by instrument served on the person, terminate his or her right to the grant of the lease.

(2) An instrument under subsection (1) shall—

- (a) specify the ground on which it is given; and
- (b) state that it takes effect on the day 28 days after the day on which it is served.

(3) An instrument under subsection (1) may be served on a person by—

- (a) delivering it to the person personally;
- (b) sending it to the person by post; or
- (c) where the residential address of the person is not known to the Executive—publishing a copy of the instrument in a daily newspaper.

(4) An instrument under subsection (1) shall take effect on the day 28 days after the day on which it is served.

(5) A person whose right to the grant of a lease has been terminated under this section shall not have any claim for compensation in respect of the

termination of the right or for the recovery of any monies paid to the Executive in respect of the grant of the lease.

Grant of further lease for residential purposes

171.² Where—

- (a) the term of a residential lease of Territory Land is to expire within a period of 30 years;
- (b) the lessee of the land applies to the Executive for the grant of a further residential lease of that land;
- (c) neither the Territory nor the Commonwealth requires the land for a public purpose; and
- (d) the lessee pays such fee fixed by the Executive for granting the further lease as does not exceed the cost of granting the lease;

the Executive shall, on behalf of the Commonwealth, grant the lessee a further residential lease of that land to commence on the day of the grant.

171A.² * * * * *

Grant of further lease for purposes other than residential or rural purposes

172.² Where—

- (a) the term of a lease of Territory Land that has not been granted for residential or rural purposes is to expire within a period of 30 years;
- (b) the lessee applies to the Executive for the grant of a further lease of the land;
- (c) neither the Territory nor the Commonwealth requires the land for a public purpose;
- (d) the Executive does not propose to allow the land to be used for a purpose other than that for which it is presently leased;
- (e) any prescribed requirements for the grant of the further lease applied for are satisfied;
- (f) all rent due under the existing lease is paid; and
- (g) the lessee pays the determined fee;

the Executive shall grant the lessee a further lease of the land to commence on the day of the grant.

172A.² * * * * *

Lessee’s rights in respect of improvements

173.² (1) In this section—

“improvement” means a building or a structure but does not include a building or structure, or a part of a building or structure—

- (a) that has been constructed, erected or installed without an approval or authorisation required under a law of the Territory; or
- (b) that has been constructed, erected or installed at the cost of the Territory or the Commonwealth unless the Territory or the Commonwealth has received, or is entitled to receive, payment for the building, structure or part;

“lessee”, in relation to a lease which has been terminated or surrendered or in relation to a lease the term of which has expired, means the person who was the lessee under the lease at the time of the termination or surrender or at the time of the expiration of the term, as the case may be.

(2) Where, upon the expiration of the term of a lease of Territory Land upon which there are improvements, the lessee is granted a further lease of that land or any part of it, he or she shall not be liable to make any payment to the Executive for the improvements on the land or part of the land, as the case may be.

(3) Subject to subsections (4) and (8), where, upon the expiration of the term of a lease of Territory Land upon which there are improvements, the lessee is not granted a further lease of the land, or is granted a lease of part only of the land, the Executive shall be liable to pay the lessee—

- (a) where no further lease of the land is granted to the lessee—the amount determined by the Minister to be the value of the improvements on the land; or
- (b) where a further lease of part only of the land is granted to the lessee—the amount determined by the Minister to be the value of the improvements on the part of the land not so leased.

(4) If, prior to the expiration of the term of a lease of Territory Land, the Executive declares the land comprised in the lease, or any part of it, to be available for lease and the lessee does not, before the expiration of 6 months after the expiration of the term, elect to take a further lease of the land or part, there shall be deducted from the amount payable to the lessee under this section the amount of such expenditure as the Executive reasonably incurs in connection with the grant to any other person of a lease of that land or part.

(5) Subject to subsections (6), (7) and (8), where a lease is terminated or surrendered the provisions of this section relating to the payment to the lessee of the value of the improvements on the land comprised in the lease upon the expiration of the term shall (so far as applicable) apply as if the term of the lease had expired on the day of the termination or surrender.

(6) Subsection (5) applies in respect of a lease only if the lessee has fully complied with the provisions (if any) of the lease relating to the erection of a building on the land comprised in the lease.

(7) There shall be deducted from any sum payable pursuant to subsection (5) in respect of the value of improvements on the land comprised in a lease which has been terminated or surrendered the amount of such expenditure as the Minister determines has been incurred by the Territory in connection with the termination or surrender of the lease and the grant (if any) of a further lease of the land or any part of it.

(8) Subsections (3) and (5) apply in respect of a lease subject to any provisions of the lease that preclude or limit the right of the lessee to payment in respect of improvements on the land comprised in the lease.

Determination of value of improvements

174.² (1) In this section—

“lessee” has the same meaning as in section 173;

“market value”, in relation to improvements on land, means the amount by which the improvements increase the value of the lease of the land, assuming that the lease, together with the improvements, were offered for sale on the open market on the day immediately before the prescribed day on such reasonable terms and conditions as a *bona fide* seller might require;

“prescribed day”, in relation to land a lease of which has expired, or has been terminated or surrendered, means the day of expiry, determination or surrender, as the case may be.

(2) Where compensation is payable under section 173 in respect of improvements, the Minister shall, as soon as practicable after the day that is the prescribed day in relation to the land on which the improvements are situated, by instrument determine, in accordance with this section, the market value of the improvements on the land as at the prescribed day.

(3) Where compensation is payable under subsection 173 (3), the Minister shall, in valuing the improvements, assume that the lease of the land had been renewed subject to the same provisions, and for the same term, as the lease which has expired.

(4) Where compensation is payable under subsection 173 (5), the Minister shall, in valuing the improvements, assume that the lease of the land had not been terminated or surrendered.

Land to be used for the purpose for which it is leased

175.² Territory Land in respect of which a lease has been granted, whether before or after the commencement of this Part, shall not be used for any purpose other than a purpose authorised by the lease.

Variation of rent

176. (1) Where the rent payable under a lease of Territory Land is varied in accordance with the provisions of the lease, the Minister shall give the lessee notice in writing of the variation by post.

(2) A variation of rent referred to in a notice under subsection (1) shall come into operation on—

- (a) the day 28 days after the day on which the notice is given; or
- (b) where the lease under which the variation is made provides that the variation shall come into operation on a later day—that later day.

Review of variations of rent

177. (1) Where—

- (a) the rent payable under a lease of Territory Land is varied in accordance with the provisions of the lease; and

- (b) the lease does not provide for the submission to arbitration of differences between the parties to the lease regarding variation of the rent;

the lessee may, within 28 days after receiving the notice under subsection 176 (1) relating to the variation, serve on the Minister a request in writing that he or she review the variation.

(2) The making of a request under subsection (1) does not affect the operation of the variation to which the request relates or prevent the taking of action to implement the variation.

(3) Where a request is made under subsection (1), the Minister shall review the variation to which the request relates and may confirm the variation or set it aside and substitute such other variation as the Minister considers appropriate.

Refund of amount paid for grant of lease

178. (1) Subject to subsection (2), the Minister may authorise the payment to—

- (a) a person who has surrendered a lease of Territory Land; or
- (b) a person who held a lease of Territory Land that has been terminated under this Act;

of an amount that is equal to the amount paid by the person for the grant of the lease less any charge determined for the purposes of this subsection in respect of the refund of the amount paid for the grant of a lease of that kind.

(2) The Minister shall not authorise the payment of an amount under this section otherwise than in accordance with criteria for the authorisation of payments specified pursuant to subsection (3).

(3) The Executive may, for the purposes of this section, by instrument—

- (a) specify criteria for the authorisation of payments under this section; or
- (b) amend or revoke criteria so specified.

(4) An instrument under subsection (3) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Certificates of compliance

179.² (1) Subject to subsection (2), where a building and development provision of a lease of Territory Land has been fully complied with, the

Minister shall, on application by the lessee and payment of the determined fee, issue a certificate that the provision has been so complied with.

(2) The Minister shall not issue a certificate under subsection (1) in respect of a building and development provision to which a lease under the *Unit Titles Act 1970* is subject unless the requirements of that subsection are satisfied and the Minister is satisfied—

- (a) in the case of every other lease in respect of the same subdivision that is subject to a building and development provision, that the provision has been complied with; or
- (b) that the occupier of the unit that is held under the lease will not, as occupier, be substantially inconvenienced by works being carried out, or that are to be carried out, in compliance with a building and development provision to which the lease of the common property or another unit contained in the same subdivision under the *Unit Titles Act 1970* is subject.

Transfer of land subject to building and development provision

180.² (1) Where a lease of Territory Land contains a building and development provision, the lease, or an interest in the lease, is not capable of being assigned or transferred, either at law or in equity unless—

- (a) the lessee has died;
- (b) the transfer or assignment is made pursuant to an order of the Family Court of Australia or another court having jurisdiction under the *Family Law Act 1975* of the Commonwealth;
- (c) the transfer or assignment occurs by operation of, or pursuant to, bankruptcy or insolvency; or
- (d) the lessee has obtained—
 - (i) the consent of the Minister under section 28 of the *City Area Leases Act 1936* as in force at any time before 19 December 1973;
 - (ii) a certificate under subsection 179 (1); or
 - (iii) the consent of the Minister under subsection (2).

(2) Where—

- (a) the lessee under a lease of Territory Land that contains a building and development provision; or
- (b) a proposed assignee or transferee of such a lease, or of an interest in such a lease;

applies to the Minister for his or her consent to a legal or equitable assignment or transfer of the lease, or of an interest in the lease, to a specified assignee or transferee and pays the determined fee, the Minister shall, by instrument, consent to that assignment or transfer if—

- (c) he or she is satisfied that the proposed assignee or transferee intends to comply with the building and development provision; and
- (d) any security required by the Minister for compliance by the assignee or transferee with that provision has been given.

Mortgage of leasehold subject to building and development provision

181.² Where a lease contains a building and development provision, the lease, or an interest in the lease, shall not be capable of being mortgaged unless—

- (a) the lessee has obtained a certificate under subsection 179 (1); or
- (b) the mortgage is required by the lessee—
 - (i) to enable the lessee to repay money borrowed by him or her for the purpose of acquiring the lease or interest;
 - (ii) to secure money borrowed by the lessee for the purpose of acquiring the lease or interest; or
 - (iii) to enable the lessee to comply with a building and development provision of the lease.

Land leased to be held as undivided parcel

182. (1) Subject to section 183, the land comprised in a lease of Territory Land shall at all times be held and occupied by or under the lessee as 1 undivided parcel.

(2) Subject to this Part, the land comprised in a lease of Territory Land may be sublet and the lease and any interest in it may be assigned, transferred or mortgaged.

Power of lessee to sublet portion of building or land in certain cases

183. (1) Any portion of a building erected on land comprised in a lease of Territory Land may, subject to the lease and any sublease of the land, be sublet separately from the remainder of that building.

(2) Where a portion of a building is sublet separately from the remainder of the building, any portion of the parcel of land on which the building is erected may be sublet with the portion of the building separately from the remainder of the parcel of land, provided that the portion of the parcel of land so sublet adjoins that portion of the parcel of land on which the building is erected.

(3) Where—

- (a) a lease of Territory Land authorises the use of the land comprised in the lease as a mobile home park; and
- (b) any portion of the land is being used, or intended to be used, for the siting of a mobile home;

that portion may, subject to the lease and any sublease of the land, be sublet separately from the remainder of the land.

(4) In subsection (3)—

“mobile home” means a dwelling (whether on wheels or not) capable of being transferred from place to place and re-erected;

“mobile home park” means land used for the purpose of accommodating mobile homes or caravans, and includes a caravan park or camping ground.

Division 3—Variation of leases

Payments in respect of variation of leases

184.² The Executive shall not execute a variation of a lease of Territory Land unless—

- (a) all rent and additional rent (if any) payable under the lease up to the day of variation has been paid; and
- (b) the lessee has paid the Territory the amount determined by the Minister as prescribed by the regulations in respect of any increase in the value of the lease that would result from the variation.

184A-184D² * * * * *

Advice of rent payable on variation of a lease

185. Where the Executive agrees to a variation of a lease of Territory Land, being a lease under which rent or additional rent is payable, it shall—

- (a) calculate the amount that would be payable under the lease for rent and additional rent up to the day on which it expects the variation to be executed; and
- (b) give the lessee notice in writing of—
 - (i) the amount calculated for rent and additional rent under paragraph (a);
 - (ii) the day up to which the amount payable for rent and additional rent has been calculated; and
 - (iii) the day by which the Executive requires payment of the amount specified pursuant to subparagraph (i) to enable the variation of the lease to be executed on the day specified pursuant to subparagraph (ii).

Variation of lease to pay out rent

186.² (1) A lease shall not be varied to reduce the rent payable to a nominal rent unless—

- (a) the lease is included in a prescribed class of leases;
- (b) all amounts payable to the Territory up to the day of variation of the lease for rates and land tax levied in respect of the land comprised in the lease have been paid; and
- (c) the provisions of the lease requiring the lessee to develop the land comprised in the lease have been complied with up to the day of the variation.

(2) Where a lease of Territory Land is varied to reduce the rent payable to a nominal rent, the lease as varied shall provide that the lessee is to pay a rent of 5 cents per annum if and when that rent is demanded.

(3) The requirements of this section are in addition to, and not in substitution for, the requirements of the other provisions of this Act relating to the variation of leases.

186A.² * * * * *

Division 3A—Consolidation and subdivision²

187.²	*	*	*	*	*
187A-187C.²	*	*	*	*	*

Division 4—Recovery of land

Termination of leases and licences

188.² (1) Subject to subsection (5), where a lessee of Territory Land contravenes the provisions of this Part or the provisions of his or her lease, the Executive may, by notice in writing served on the lessee by post, terminate the lease.

(2) A notice under subsection (1) takes effect on the day 14 days after the day on which it is served.

(3) Subject to subsection (5), where a person who occupies Territory Land under a licence from the Commonwealth or the Territory contravenes the provisions of this Part or the provisions of his or her licence, the Executive may, by notice in writing served on the licensee by post, terminate the licence.

(4) A notice under subsection (3) takes effect on the day 7 days after the day on which it is served.

(5) The Executive shall not terminate a lease or a licence under this section unless it has—

- (a) by notice in writing served on the lessee or licensee by post—
 - (i) informed the lessee or licensee that it is considering terminating the lease or licence;
 - (ii) specified the grounds on which it is considering taking that action; and
 - (iii) invited the lessee or licensee to notify the Executive in writing within 21 days after the date of the notice of any reasons why the lessee or licensee considers that the lease or licence should not be terminated; and
- (b) taken into account any reasons for not terminating the lease or licence notified to the Executive by the lessee or licensee in accordance with the notice served on him or her under paragraph (a).

Recovery of land on expiry, surrender or termination of lease or licence

189. If, after—

- (a) the term of a lease of Territory Land has expired, or such a lease has been surrendered or terminated; or
- (b) the term of a licence granted by the Commonwealth or the Territory to occupy Territory Land has expired, or such a licence has been surrendered or terminated;

the lessee or licensee, or any other person apparently in occupation or possession of the land fails, on demand by the Executive, to deliver up possession of the land, the Magistrates Court may, on the application of the Executive, issue a warrant authorising a police officer, within a period of not more than 30 days after the date of the warrant, to enter the land, with such assistance and by such force as is necessary and reasonable, and deliver possession of the land to the Executive.

Certificate of Minister to be evidence

190. A certificate signed by the Minister, or by a person authorised by the Minister to give such a certificate, stating that a lease has been terminated shall be evidence of the termination of the lease.

Division 5—Public land

Subdivision A—Preliminary

Interpretation

191. In this Division—

“Plan of Management” means a plan of management prepared under Subdivision D, as varied and in effect from time to time;

“variation”, in relation to a Plan of Management, includes the revocation of the Plan and its substitution with a new Plan.

Subdivision B—Public land

Recommendations to the Authority

192.² The Conservator may, in writing, recommend to the Authority that the Plan be varied to provide for—

- (a) the identification of an area of land as public land and its reservation for a purpose referred to in section 193; or
- (b) in relation to an area already identified in the Plan as public land—
 - (i) the variation of its boundaries;
 - (ii) the variation of the purpose for which it is reserved; or

- (iii) the cessation of its designation as public land.

Subdivision C—Management of public land

Reserved areas

193.² The purposes for which areas of public land are to be reserved pursuant to paragraph 7 (2) (b) and for which areas of public land may be reserved under paragraph 192 (a) are for—

- (a) a wilderness area;
- (b) a national park;
- (c) a nature reserve;
- (d) a special purpose reserve;
- (e) an urban open space;
- (f) a cemetery or burial ground;
- (g) a lake; or
- (h) a sport and recreation reserve.

Management

194. An area of public land shall be managed in accordance with—

- (a) the management objectives applying to the area; and
- (b) the Plan of Management (if any) for the area.

Management objectives

195. (1) For the purposes of section 194, the management objectives for an area of public land reserved for a particular purpose are—

- (a) objectives specified in Schedule 1; and
- (b) objectives specified by the Conservator pursuant to subsection (2);

in relation to areas of land reserved for that purpose.

(2) The Conservator may, by instrument—

- (a) specify management objectives for an area of public land reserved for a purpose specified in Schedule 1; or

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- (b) amend or revoke management objectives specified under paragraph (a).

(3) An instrument under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(4) Where there is an inconsistency between the application of 2 management objectives specified in Schedule 1 in relation to an area of public land, the objective last-mentioned in that Schedule is to be read subject to the other objective.

(5) Where there is an inconsistency between the application of a management objective specified in Schedule 1 and a management objective specified by the Conservator pursuant to subsection (2) in relation to an area of public land, the objective specified by the Conservator is to be read subject to the other objective.

- (6) In Schedule 1—

“natural environment” means all biological, physical and visual elements of the earth and its atmosphere, whether natural or modified.

Subdivision D—Plans of Management

Content

196. A Plan of Management includes—

- (a) a description of the area of public land to which it applies; and
(b) the manner in which the relevant management objectives referred to in subsection 195 (1) are to be implemented or promoted in that area.

Preparation

197. (1) The Conservator shall prepare a draft Plan of Management for an area of public land as soon as practicable after the area is identified as such in the Plan.

(2) In preparing a draft Plan of Management, the Conservator shall consider any recommendation submitted by the Authority.

Variations

198. (1) The Conservator may prepare a draft variation of a Plan of Management in the same manner as a draft Plan of Management.

(2) This Subdivision applies to a draft variation of a Plan of Management as if it were a draft Plan of Management.

Environmental Assessments and Inquiries

199. (1) At the written request of the Conservator, or on his or her own motion, at any time before a draft Plan of Management is approved under paragraph 204 (a) the Minister may—

- (a) direct that an Assessment be made; or
- (b) establish a panel to conduct an Inquiry;

about any aspect of the draft Plan.

(2) In preparing or revising a draft Plan of Management, the Conservator shall consider any relevant Assessment or the report of any relevant Inquiry.

Public consultation

200. (1) This section applies to a draft Plan of Management for an area of public land where—

- (a) no corresponding preliminary draft Plan of Management for that area has been notified under section 19; or
- (b) where such a preliminary draft has been so notified—the first-mentioned draft Plan of Management differs significantly from that preliminary draft.

(2) The Conservator shall make copies of a draft Plan of Management to which this section applies available to an appropriate committee of the Legislative Assembly.

(3) The Conservator shall make copies of a draft Plan of Management to which this section applies available for public inspection during office hours at the places specified in a notice published in the *Gazette* and in a daily newspaper.

(4) A notice under subsection (3) shall include a statement inviting persons to submit written comments about the draft Plan of Management to the Conservator at a specified address and within a specified period of not less than 21 days from the date of the notice.

Revision

201. The Conservator may revise a draft Plan of Management—

- (a) in consideration of any written comments received from any person about the draft Plan; or
- (b) to correct any formal error.

Submission to Minister

202. The Conservator shall submit a draft Plan of Management (as revised under section 201) to the Minister for approval, together with—

- (a) a written report setting out the issues raised in any written comments submitted to the Conservator in relation to the draft; and
- (b) a written report about the Conservator's consultation with the public and with any other person or authority about the draft.

Consideration of Plan of Management by a Legislative Assembly committee

203. Where the Conservator submits a draft Plan of Management to the Minister under section 202, the Minister shall, within 7 days of receiving the draft Plan forward—

- (a) a copy of the draft Plan;
- (b) a copy of the reports referred to in paragraphs 202 (a) and (b) relating to the draft Plan; and
- (c) all other documents relating to the draft Plan submitted to the Minister by the Conservator;

to an appropriate committee of the Legislative Assembly.

Minister's powers

204. On receipt of a draft Plan of Management submitted under section 202 or 205 for approval, the Minister shall consider any recommendation relating to the draft by a committee of the Legislative Assembly that considers the draft under section 203 and—

- (a) by instrument, approve a Plan of Management in the form in which the draft is submitted; or
- (b) refer the draft to the Conservator together with any of the following written directions:
 - (i) to conduct further specified consultation;
 - (ii) to consider any revision suggested by the Minister;

- (iii) to revise the draft in a specified manner;
- (iv) to defer, by notice published in the *Gazette*, until a specified date or the occurrence of a specified event, the re-submission of the draft to the Minister;
- (v) to withdraw the draft by notice published in the *Gazette*.

Referral back to the Conservator

205. If the Minister refers a draft Plan of Management to the Conservator under paragraph 204 (b), the Conservator shall—

- (a) comply with the Minister’s directions;
- (b) if the Minister gives a direction under subparagraph 204 (b) (i) or (ii)—if the Conservator thinks fit, revise the draft Plan;
- (c) revise the draft to correct any formal error; and
- (d) re-submit the draft Plan of Management (as revised) to the Minister for approval together with a written report about the Conservator’s compliance with the Minister’s directions and about any revision of the draft under paragraph (c).

Notice of revival of deferred draft Plan of Management

206. Where the Conservator, in compliance with a direction of the Minister under subparagraph 204 (b) (iv), defers a draft Plan of Management, on the date specified in the notice of deferral, or as soon as possible after the occurrence of the event specified in that notice, as the case requires, the Conservator shall cause to be published in the *Gazette* and in a daily newspaper a notice stating that the draft is revived.

Notification, tabling, disallowance, date of effect

207. (1) A Plan of Management, as approved by the Minister under section 204, is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(2) Notwithstanding paragraph 6 (1) (b) of the *Subordinate Laws Act 1989* in its application to the Plan of Management, a Plan of Management takes effect (subject to the remaining provisions of section 6 of that Act) on the expiration of 5 sitting days after it is laid before the Legislative Assembly, or on such later date as is specified in the Plan.

(3) Paragraph 6 (1) (c) and subsections 6 (7), (7A) and (7B) of the *Subordinate Laws Act 1989* apply to a Plan of Management as if the references in those provisions to 15 sitting days were references to 5 sitting days.

Subdivision E—Leases and licences

Leases—generally

208. (1) Except as provided by section 209, the Executive shall not grant a lease—

- (a) of public land; or
- (b) during the defined period—of land designated, in a draft variation of the Plan notified under section 19, to become public land.

(2) In subsection (1)—

“defined period”, in relation to land designated, in a draft variation of the Plan, to become public land, means the period of interim effect, under Part II, of that draft variation.

Grant of leases

209. (1) On the written recommendation of the Conservator, the Executive may, on behalf of the Commonwealth, grant a lease of an area, or part of an area, of public land except where that area is reserved under the Plan as a wilderness area.

(2) On the written recommendation of the Conservator, the Executive may, on behalf of the Commonwealth, during the defined period referred to in subsection 208 (2), grant a lease of an area, or part of an area, of land designated in a draft variation of the Plan to become public land except where it is proposed in that draft variation that the area be reserved as a wilderness area.

Licences

210. (1) The Executive may, on the written recommendation of the Conservator, grant a licence to a person to occupy or use an area of unleased public land.

(2) An application for a licence under subsection (1) shall—

- (a) be in writing signed by the applicant;
- (b) specify—

- (i) the land in respect of which the licence is sought;
 - (ii) the period for which the licence is sought; and
 - (iii) the purposes for which it is proposed that the land should be used under the licence; and
- (c) be accompanied by the determined fee.
- (3)** A licence under subsection (1) shall—
- (a) be in writing;
 - (b) apply to the person to whom it is granted and to all other persons to whom it is expressed to apply;
 - (c) specify the period for which it is granted; and
 - (d) be subject to such conditions, if any, as are specified in the licence.

Miner's rights in respect of public land

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

Division 7—Miscellaneous

Lessee may surrender lease wholly or in part

214. (1) A person who holds a lease of Territory Land may, at any time, with the consent of the Executive, surrender the lease or any part of the land comprised in the lease.

(2) The Executive may agree to accept the surrender of a lease, or part of the land comprised in a lease, under subsection (1) either unconditionally or subject to such conditions as the Executive considers appropriate.

(3) The surrender of a lease, or of part of the land comprised in a lease, shall not entitle the lessee to a refund or remission of any rent already paid or due.

Reduction of rent and relief from provisions of lease

215. (1) The Executive may, in respect of any period, whether commencing before, at or after the commencement of this section, or whether commencing before, at or after the giving of the approval, approve of—

- (a) a reduction of the rent payable under a lease of Territory Land or of the amount payable in respect of any occupation of Territory Land; or

- (b) the grant of relief, to a lessee or occupier of Territory Land, from compliance, wholly or in part, with any provision to which his or her lease or occupation is subject;

and thereupon the liability or obligation of the lessee or occupier under the lease, or in respect of his or her occupation, shall, in respect of that period, be discharged to the extent of the reduction or grant of relief approved.

(2) Any grant of relief approved pursuant to subsection (1) may be unconditional or subject to such conditions as the Executive considers appropriate.

(3) Where the Executive approves a grant of relief to a lessee or occupier under subsection (1), it shall cause to be sent by post or delivered to the lessee or occupier a memorandum specifying the reduction of rent or other grant of relief it has approved.

Access to leased land from public roads and carparks

216.² (1) Where the Executive grants a lease of Territory Land on behalf of the Commonwealth, it shall at all times during the term of the lease give the lessee—

- (a) direct access to the leased land from a public road or public carpark;
or
- (b) access to the leased land from a public road or public carpark by means of an access road or track, or by other means, that the lessee may use without charge and for all purposes at any hour of the day or night.

(2) A means of access to leased land provided by the Executive pursuant to paragraph (1) (b) shall not interfere with any building, garden or stock yard on the land at the time the means of access is provided and the means of access shall be so located as to cause as little damage or inconvenience to the lessee as possible.

Notification of certain leases to the Legislative Assembly

216A.² (1) If the Executive grants a lease under paragraph 161 (1) (d), or section 163, 164 or 209, during a quarter, the Minister shall cause to be laid before the Legislative Assembly within 5 sitting days after the expiration of that quarter a statement that sets out, in respect of each lease granted under any of those provisions during that quarter—

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- (a) the name of the person to whom the lease was granted;
- (b) a description of the land comprised in the lease that is in accordance with section 8 of the *Districts Act 1966*;
- (c) the amount (if any) paid for the grant of the lease; and
- (d) the provision of the Act under which the lease was granted.

(2) If the Executive grants an unrecommended lease during a quarter, the Minister shall cause to be laid before the Legislative Assembly within 5 sitting days after the expiration of that quarter a statement that sets out, in respect of each unrecommended lease granted during the quarter—

- (a) the name of the person to whom the lease was granted;
- (b) a description of the land comprised in the lease that is in accordance with section 8 of the *Districts Act 1966*;
- (c) the amount (if any) paid for the grant of the lease; and
- (d) the provision of the Act under which the lease was granted.

(3) The validity of a lease referred to in subsection (1) or (2) is not affected by a failure to comply with that subsection.

(4) In this section—

“quarter” means a period of 3 months commencing on 1 January, 1 April, 1 July or 1 October in any year;

“unrecommended lease” means a lease in respect of which the Executive has been advised under subsection 165 (3) that the Authority considers that the lease could not appropriately be granted.

Licences in respect of land that is not public land

217. (1) A person may apply to the Executive for a licence to occupy or use an area of unleased Territory Land that is not public land.

(2) An application under subsection (1) shall—

- (a) be in writing signed by the applicant;
- (b) specify—
 - (i) the land in respect of which the licence is sought;
 - (ii) the period for which the licence is sought; and

(iii) the purposes for which it is proposed that the land should be used under the licence; and

(c) be accompanied by the determined fee.

(3) On receiving an application under subsection (1) the Executive may grant the applicant a licence to occupy or use the land specified in the application for the purposes and period specified in the application.

(4) A licence under subsection (1) shall—

(a) be in writing;

(b) apply to the person to whom it is granted and to all other persons to whom it is expressed to apply;

(c) specify the period for which it is granted; and

(d) be subject to such conditions, if any, as are specified in the licence.

Reservation of minerals

218. A reservation of minerals contained in a lease of Territory Land shall be read as a reservation of all minerals and mineral substances in or on the land, including gold, silver, copper, tin, other metals, ores and substances containing metals, gems, precious stones, coal, limestone, shale, mineral oils, valuable earths and substances, stone, clay, gravel and sand.

Rights to extract minerals

219. (1) The Executive may, by a lease or other agreement, grant a person the right to extract minerals from specified Territory Land.

(2) The provisions of a lease or other agreement entered pursuant to subsection (1) shall be such provisions as are agreed between the parties.

Access to lease documents and development agreements

220. (1) Subsection 11 (2) of the *Freedom of Information Act 1989* does not apply to a document that is—

(a) a lease;

(b) a variation of a lease; or

(c) a renewal of a lease;

where the document became a document of a Commonwealth agency before 1 January 1977.

(2) A document that is—

- (a) a lease;
- (b) a variation of a lease; or
- (c) a renewal of a lease;

shall be deemed not to be an exempt document for the purposes of the *Freedom of Information Act 1989*.

(3) A reference in this section to a lease shall be read as a reference to a lease of Territory Land.

False statements

221. A person shall not make to—

- (a) the Executive;
- (b) a Minister;
- (c) a public servant; or
- (d) an agent of the Executive or a Minister;

a statement, either orally or in writing, in connection with an application for the grant, or a variation, of a lease of Territory Land that is, to the knowledge of the person, false or misleading in a material particular.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

PART VI—APPROVALS AND ORDERS

Division 1—Preliminary

Interpretation

222.² (1) In this Part, unless the contrary intention appears—

“application” means an application to conduct a controlled activity;

“approval” means—

- (a) an approval under section 230, 240 or 241; or
- (b) a decision under another Act that is declared by that Act to be an approval for the purposes of this Part;

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“building work” has the same meaning as in the *Building Act 1972*;

“lease” and “lessee” have the same respective meanings as in Part V;

“objection” means an objection under section 235 or 237, as the case requires;

“order” means—

- (a) an order under section 256; or
- (b) a decision under another Act that is declared by that Act to be an order for the purposes of this Part;

“prescribed period” means such period as is specified in, or ascertained in accordance with, the regulations.

(2) A reference in this Part to the Executive is to be read as including a reference to a Minister acting on behalf of the Executive.

(3) A reference in this Part to the variation of a lease is to be read as including a reference to the surrender of a lease and the grant of a new lease to the same lessee over land—

- (a) that is the whole or part of the land comprised in the surrendered lease; and
- (b) that is not defined land within the meaning of Subdivision D of Division 3 of Part II;

subject to provisions that differ from those of the surrendered lease.

(4) Division 4 does not apply in relation to a controlled activity specified in item 2 or 3 of Schedule 4.

Relationship—controlled activities and concurring authorities

223.² For the purposes of this Part, an authority specified as a concurring authority in an item in Schedule 4 is a concurring authority in respect of the controlled activity specified in that item.

Division 2—Approvals

Subdivision A—Preliminary²

Interpretation

224.² In this Division, a reference to a controlled activity is to be read as not including a reference to a controlled activity specified in Schedule 5 or declared under another Act to be a controlled activity for the purposes of that Schedule.

Subdivision B—General

Offence—controlled activities

225.² (1) A person who, without reasonable excuse, conducts—

- (a) a controlled activity specified in Schedule 4; or
- (b) an activity declared under another Act to be a controlled activity for the purposes of that Schedule;

other than in accordance with an approval, is guilty of an offence punishable, on conviction, by a fine not exceeding the amount specified in that Schedule in relation to that activity.

(2) A Territory authority shall not, without reasonable excuse, conduct a controlled activity except in accordance with an approval.

Application to conduct controlled activities

226.² (1) An application for approval to conduct a controlled activity shall—

- (a) be in a form made available by the Minister;
- (b) set out, or be accompanied by, such information relating to the controlled activity as is required by the form;
- (c) be executed by the applicant;
- (d) be lodged with the Minister; and
- (e) be accompanied by the determined fee.

(2) An application made by a person who is not the lessee of the place to which the application relates shall be executed by the lessee of that place.

(3) The Minister may, before giving notice under section 229—

- (a) at the request of the applicant—make an alteration to an application or correct a formal error; or
- (b) of his or her own motion—correct a formal error in an application.

(4) Where the Minister makes an alteration or a correction under subsection (3), the Minister may, if the applicant is not the lessee of the place to which the application relates, require the applicant to notify the lessee of the place to which the application relates of an alteration or correction made under that subsection and to make a declaration that notice has been given.

Register of applications, approvals and orders

227. (1) The Minister shall keep a register of—

- (a) each alteration or correction to an application made pursuant to subsection 226 (3);
- (b) each application that has not been withdrawn, or that is not to be taken to have been withdrawn and in respect of which the period for making an application under section 275 or 276 has not expired;
- (c) each approval in respect of which the period for making an application under section 275 or 276 has not expired;
- (d) each approval, for the period for which it remains in force; and
- (e) each order, for the period for which it remains in force.

(2) A person may, during office hours—

- (a) inspect the register; and
- (b) on payment of the determined fee, make copies of, or take extracts from, the register or any part of a document relevant to an application.

Restrictions on inspection of applications

228.² (1) An applicant for approval to conduct a controlled activity may apply in writing to the Minister for a part of any copy of the application to be excluded from being made available to the public or for public inspection.

(2) The Minister may approve or refuse to approve an application under subsection (1).

(3) If, on application being made under subsection (1), the Minister is satisfied that—

- (a) a part of an application to conduct a controlled activity contains information related to the personal or business affairs of a person, being information—
 - (i) supplied to the Minister in confidence;
 - (ii) the publication of which would disclose a trade secret; or
 - (iii) the disclosure of which would, or would reasonably be expected to, adversely affect a person in respect of the lawful business affairs of that person; and

- (b) it would not be in the public interest for that part to be published;

the Minister shall cause that part to be excluded from any copy of the application to conduct the controlled activity made available to the public or for public inspection.

(4) Where a part of an application is excluded from the copies of that application made available to the public or for public inspection, each copy shall include a statement to the effect that an unspecified part of the application has been excluded for the purpose of protecting the confidentiality of information included in that part.

Notice of application

229.² (1) The Minister shall—

- (a) if a place adjoining the place to which an application relates—
- (i) is occupied—give notice by post of the making of the application to the lessee of each adjoining place at the address of the adjoining place; or
 - (ii) is unoccupied—give notice by post to the lessee of the adjoining place at the address of the lessee last known to the Minister;
- (b) publish notice of the making of each application in a daily newspaper; and
- (c) forward a copy of the application to each concurring authority in relation to the controlled activity to which the application relates.

(2) Paragraphs (1) (a) and (b) do not apply if—

- (a) in the opinion of the Minister, the number of places adjoining the place to which the application relates is such that it would be impractical to give notice by post to the lessee of each place; or
- (b) the Plan specifies circumstances in which persons are not entitled to apply for review of decisions referred to in this Part.

(3) The Minister shall, if the application is to conduct a controlled activity specified in item 2 or 3 of Schedule 4, give notice in writing of the making of the application to each person having an estate or interest in the place to which the application relates (being an estate or interest that is registered under the *Land Titles Act 1925*).

(4) The Minister—

- (a) shall forward to the Heritage Council for comment a copy of each application affecting the requirements specified in the Heritage Places Register or an interim Heritage Places Register for the conservation of the heritage significance of places specified in the Register; and
- (b) may forward a copy of an application to any other person or body for comment.

(5) An applicant shall erect a sign in a conspicuous place in or on the place to which his or her application relates.

(5A) The validity of an approval is not to be taken to be affected by a failure by the applicant to comply with subsection (5).

(6) A sign erected under subsection (5) shall—

- (a) be in a form approved by the Minister; and
- (b) specify the nature of the controlled activity proposed to be conducted in or on that place.

(7) A reference in subsection (1) to a lessee is to be read as a reference to the person registered as lessee in the Register kept under the *Land Titles Act 1925* in relation to the place to which the application relates.

(8) The regulations may prescribe circumstances in which the provisions of—

- (a) subsection (1); or
- (b) paragraph (1) (a) or (b);

need not be complied with.

229A.² * * * * *

Approvals

230.² **(1)** The Minister may approve or refuse to approve an application to conduct a controlled activity.

(2) The Minister shall not give an approval in terms inconsistent with the lease of the land to which the application relates.

(3) The Minister shall not approve an application without first obtaining the concurrence of each concurring authority in respect of the controlled activity to which the application relates.

(4) If the Minister fails to make a decision on an application before the expiration of the prescribed period, the Minister is to be taken to have refused to approve the application.

(5) Notwithstanding subsection (4), the Minister may approve an application at any time during the period commencing on the expiration of the prescribed period and ending on the expiration of the last day on which application may be made to the Administrative Appeals Tribunal for a review of a decision to refuse to approve the application.

(6) Subsection (2) does not apply in relation to an approval to conduct a controlled activity specified in item 2 or 3 of Schedule 4.

Matters to be considered

231.² (1) Before approving or refusing to approve an application, the Minister shall—

- (a) consider—
 - (i) any comments of a person or body to which the application has been referred for comment;
 - (ii) each objection or other submission the Minister has received in relation to the application which has not been withdrawn;
 - (iii) a preliminary assessment under Division 2 of Part IV, or a report under section 128; and
 - (iv) any Assessment made, or the report of any Inquiry conducted, in relation to the controlled activity to which the application relates; and
- (b) in the case of an application to conduct a controlled activity affecting the requirements for the conservation of the heritage significance of an Aboriginal place included in the Heritage Places Register or an interim Heritage Places Register—take all reasonable steps to consult with, and consider the views of, any relevant Aboriginal organisation.

(2) In paragraph (1) (b)—

“Aboriginal place” and “relevant Aboriginal organisation” have the same respective meanings as in Part III.

Duty of applicants

232. (1) Instead of the Minister giving notice of an application in accordance with section 229 or another Act, the Minister may require the applicant—

- (a) to give such notice of the application as the Minister would, but for this subsection, be required to give in accordance with that section or other Act; and
- (b) to give notice to such other persons as are specified by the Minister.

(2) If an applicant fails to comply with a requirement made under subsection (1), the application is to be taken to have been withdrawn.

(3) The applicant shall pay the cost of a notice given in accordance with subsection (1).

(4) If the Minister publishes a notice under paragraph 229 (1) (b), the reasonable cost of the notice is a debt payable by the applicant to the Territory.

(5) A notice under subsection (1) shall be in a form approved by the Minister.

More information

233.² (1) The Minister may, by notice in writing, require an applicant to furnish to the Minister, within the period specified in the notice (being a period of not less than 28 days), either orally or in writing, such further information relating to the application as is specified in the notice.

(2) An applicant may, at any time before the expiration of the period specified in a notice under subsection (1), apply to the Minister for an extension of the period within which the applicant is to furnish information.

(3) On receipt of an application under subsection (2), the Minister may grant an extension of the period of not more than 6 months.

Effect of failure to furnish further information

234.² If a person fails to furnish information in accordance with a notice under subsection 233 (1), the applicant is to be taken to have withdrawn the

application on the expiration of the period specified in the notice or any extension of that period.

Duties of concurring authorities

235.² (1) A concurring authority to which an application is referred by the Minister shall, within the prescribed period, give notice in writing to the Minister that the concurring authority—

- (a) does not object to the approval of the application;
- (b) does not object to the approval of the application if the approval is given subject to conditions specified by the concurring authority in the notice; or
- (c) objects to the approval of the application.

(2) The Authority shall, before giving notice under subsection (1) in relation to a controlled activity specified in item 2 or 3 of Schedule 4, consider whether or not the controlled activity proposed to be conducted would be inconsistent with—

- (a) the planning principles set out in the Plan; or
- (b) any directions of the Executive in force under section 37.

(2A) The Gungahlin Development Authority shall, before giving notice under subsection (1) in relation to a controlled activity specified in item 2 or 3 of Schedule 4, consider whether or not the controlled activity proposed to be conducted would be inconsistent with—

- (a) the objectives of the Gungahlin Development Authority set out in the latest statement of intent a copy of which has been laid before the Legislative Assembly under section 36 of the *Gungahlin Development Authority Act 1996*; or
- (b) any directions in force under section 11 of the *Gungahlin Development Authority Act 1996* that are applicable to the lease.

(3) For the purposes of paragraph (1) (b), a concurring authority may include a condition that a controlled activity to which the application relates is to be done to the satisfaction of the concurring authority or a person or body specified by the concurring authority in the notice.

(4) If a concurring authority to which an application is referred fails to give notice to the Minister within the prescribed period the concurring authority is to

be taken to have given notice to the Minister that it does not object to the approval of the application.

Environmental Assessments and Inquiries

236. The Minister may—

- (a) direct that an Assessment be made; or
- (b) establish a panel to conduct an Inquiry;

about any aspect of an application.

Subdivision C—Objections

Objections—general

237.² (1) Any person who may be affected by the approval of an application may, within the prescribed period, object to the grant of the approval.

(2) An objection shall be made to the Minister in writing and shall set out the grounds of the objection.

(3) The Minister shall give an applicant for approval to conduct a controlled activity a copy of each objection to the application, and any other submission received by the Minister in relation to the application, which has not been withdrawn.

Inspection of objections

238. The Minister shall make a copy of each objection available for inspection by members of the public during office hours until the expiration of the period during which application may be made to the Administrative Appeals Tribunal for a review of a decision in relation to the application.

Identity of objectors

239. The Minister may, on request by a person making an objection, exclude the identity of the objector from being made available under subsection 237 (3) or section 238 if, in the Minister's opinion, based on reasonable grounds, it would not be in the public interest for that identity to be published.

Subdivision D—Approvals

Circumstances in which Executive approves applications, other than lease variations, subdivisions, consolidations

240.² (1) This section applies to an application to conduct a controlled activity, other than a controlled activity specified in item 2 or 3 of Schedule 4, made by—

- (a) the Executive; or
- (b) a Territory authority.

(2) Where, in respect of an application to which this section applies, a concurring authority has, under subsection 235 (1), notified the Minister that the concurring authority—

- (a) objects to the approval of the application; or
- (b) does not object to the approval of the application if it is given subject to conditions specified in the notice under that subsection;

the Executive may—

- (c) notwithstanding that the concurring authority has advised the Minister that the concurring authority objects to the approval of the application—approve the application; or
- (d) if the concurring authority has stated that it does not object if the approval is given subject to conditions—approve the application subject to conditions, whether or not all or any of those conditions are inconsistent with the conditions specified by the concurring authority in the notice under subsection 235 (1).

(3) Notwithstanding section 283 or the provisions of any other Act, the power to approve an application under subsection (2) may only be exercised by the Executive.

Circumstances in which Executive approves applications for lease variations, subdivisions, consolidations

241.² (1) This section applies to an application to conduct a controlled activity specified in items 2 and 3 of Schedule 4.

(2) Where, in relation to an application to which this section applies—

- (a) a concurring authority does not object and another concurring authority objects to the approval of the application; or

- (b) both concurring authorities do not object to the approval of the application subject to conditions, but those conditions are, in the opinion of the Minister, inconsistent;

the Executive may, notwithstanding that a concurring authority has advised the Minister that the concurring authority objects to the approval of the application, does not object to the approval or does not object to the approval subject to conditions—

- (c) approve or refuse to approve the application; or
- (d) approve the application subject to conditions, whether or not all or any of the conditions are inconsistent with the conditions specified by the concurring authority in the notice under subsection 235 (1).

(3) Notwithstanding section 283 or the provisions of any other Act, the power to approve or refuse to approve an application under paragraph (2) (c) or (d) may only be exercised by the Executive.

Application approved—notification of decision

242.² (1) If the Minister approves an application, the Minister shall give the applicant written notice of his or her decision, and the date on which the decision takes effect.

- (2) Where, under section 240 or 241, the Executive—
 - (a) approves or refuses to approve an application; or
 - (b) approves an application subject to conditions;

the Executive shall give the applicant written notice of the decision and the date on which the decision takes effect.

(3) If the Minister or the Executive approves an application to conduct a controlled activity specified in item 2 or 3 of Schedule 4, the Minister or the Executive, as the case may be, shall give written notice of the decision to the Registrar-General.

Notification of decision to approve or refuse to approve application

243.² (1) Notwithstanding section 242, if the Minister or the Executive approves an application against which decision a person may make application to the Administrative Appeals Tribunal under section 276, the Minister or the Executive, as the case requires, shall—

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- (a) if the approval is in relation to an application to which subsection 229 (8) applies—publish notice of the decision in a daily newspaper; and
- (b) give notice of the decision to—
 - (i) each concurring authority;
 - (ii) each person notified personally under paragraph 229 (1) (a); and
 - (iii) each person who objected under subsection 237 (1).

(2) Paragraph (1) (a) does not apply in relation to an approval if regulations are in force under subsection 229 (8) prescribing circumstances in which the provisions of paragraph 229 (1) (b) need not be complied with in respect of an application to which the approval relates.

(3) A notice under paragraph (1) (b) shall—

- (a) contain—
 - (i) a description of the place to which the decision relates; and
 - (ii) a brief description of the controlled activity the subject of the decision;
- (b) set out the decision and the reasons for the decision; and
- (c) specify—
 - (i) the place and times at which a copy of the application and the decision may be inspected; and
 - (ii) the manner in which application may be made to the Administrative Appeals Tribunal for a review of the decision.

(4) If the Minister or Executive refuses to approve an application, the Minister or Executive, as the case requires, shall give written notice of the decision to—

- (a) the applicant;
 - (b) each concurring authority;
 - (c) each person notified personally under paragraph 229 (1) (a); and
 - (d) each person who objected under subsection 237 (1).
- (5)** A notice under subsection (4) shall set out the reasons for the decision.

Notification where more than one objector

244.² Where a number of persons make 1 objection, the Minister or Executive is to be taken to have complied with subsection 243 (1) or (3), as the case may be, if the Minister or Executive (as the case requires) gives notice—

- (a) where the name and address of 1 of those persons has been given to the Minister as the person to whom notice of the decision is to be given—to that person; or
- (b) where no name and address has so been given—to 1 of the persons who made that objection.

Conditional approvals

245.² (1) Subject to this section and sections 240, 241 and 246, the Minister may approve an application subject to such conditions as are specified by the Minister, after taking into consideration the matters referred to in paragraph 231 (1) (a).

(2) The Minister—

- (a) shall include in an approval any condition which is required to be included by the Plan or by a concurring authority; and
- (b) shall not include in an approval a condition inconsistent with a condition included under paragraph (a).

(3) Without limiting the generality of subsection (1), the conditions subject to which an approval may be given may include a condition—

- (a) that a specified controlled activity is to be conducted to the satisfaction of the Minister or a specified person or body;
- (b) requiring a controlled activity to be carried out in stages within the periods specified in or under the approval;
- (c) specifying a period within which a controlled activity or any stage of the activity is to be conducted;
- (d) that an approval does not take effect unless a specified approval is revoked, amended or given;
- (e) in relation to an approval to conduct a controlled activity for a specified period, that—

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- (i) building works or other works carried out in or on a place the subject of the approval is to be removed at the expiration of that period; or
 - (ii) the place is to be restored to a specified state at the expiration of that period;
- (f) that a bond be entered into securing performance against the conditions of an approval;
- (g) that the applicant is to enter into an agreement with the Minister for the conservation of the heritage significance of places specified in the Heritage Places Register;
- (h) that controlled activities be conducted to a specified standard;
- (j) that specified works, services or facilities which the Minister considers reasonable in the circumstances—
- (i) be provided by the applicant on or to a place the subject of the approval, or on or to another place;
 - (ii) be paid for in whole or in part by the applicant; or
 - (iii) be provided on or to a place the subject of the approval by agreement between the applicant and the Minister responsible for the provision of the works, services or facilities;
- (k) that plans, drawings or other documents be prepared by the applicant and lodged with the Minister for approval before commencing to conduct the controlled activity (whether in whole or in part); or
- (l) requiring changes to be made to any plan, drawing or other document forming part of the application for approval.

(4) The Minister may approve an amendment to a plan, drawing or other document approved under paragraph (3) (k) if the amendment is not inconsistent with subsection 230 (2) or an approval under paragraph (3) (k).

Minister to resolve certain inconsistencies

246.² (1) If, in relation to an application (other than an application to which sections 240 and 241 apply), the Minister is of the opinion that there is an inconsistency between the conditions imposed by concurring authorities in respect of the controlled activity to which the application relates, the Minister

shall give each concurring authority written notice that the Minister is of that opinion.

(2) On receipt of a notice under subsection (1), each concurring authority the subject of the notice shall endeavour to resolve the inconsistency.

(3) The concurring authorities to which a notice has been given under subsection (1) shall, before the expiration of the prescribed period, notify the Minister in writing that—

- (a) the concurring authorities have resolved the inconsistency to which the notice relates; or
- (b) the concurring authorities are unable to resolve the inconsistency.

(4) A notice to the effect of paragraph (3) (a) shall specify the conditions (if any) which the concurring authorities have resolved to impose.

(5) If—

- (a) the Minister receives a notice under subsection (3) to the effect of paragraph (3) (b); or
- (b) the concurring authorities, to which a notice has been given under subsection (1), fail to give the Minister notice under subsection (3) within the prescribed period;

the Minister shall give such directions or make such alterations to the conditions as are necessary to resolve the inconsistency.

Minor amendments

247.² (1) The lessee or an occupier of a place in respect of which an approval (other than an approval in respect of a controlled activity specified in item 2 or 3 of Schedule 4) is in force may apply in writing to the Minister to amend the approval.

(2) The Minister may amend an approval, if satisfied that the amendment—

- (a) does not change the effect of a condition subject to which the approval was given;
- (b) does not adversely affect the interests of a concurring authority;
- (c) will not cause a significant increase in detriment to any person; and

- (d) does not change the controlled activity for which the approval was given, other than a change to the description of the controlled activity.
- (3) The Minister shall give notice of an amendment—
 - (a) to the person who made the application to amend;
 - (b) if that person is not the lessee or occupier of the place to which the approval relates—to the lessee; and
 - (c) to any relevant Territory authority.

Corrections

248.² If the Minister is satisfied that an approval contains a formal error, the Minister shall—

- (a) correct the approval; and
- (b) notify the applicant in writing.

Approval—when takes effect

249.² The approval of an application by the Minister, or by the Executive under section 240 or 241, takes effect—

- (a) if no objection to the application has been made under section 237 and whether or not a condition is imposed on the approval—on the day on which the approval is given;
- (b) if an objection to the application has been made under section 237 and no application is made to the Administrative Appeals Tribunal for a review of the decision within 28 days after the date of the decision—on the day following the expiration of that period of 28 days; or
- (c) if application is made to the Administrative Appeals Tribunal for a review of the decision to approve the application—on the day on which the Tribunal decision affirming or varying the decision is made.

Execution of certain approvals

250.² Subject to section 186, where an approval to conduct a controlled activity specified in item 2 or 3 of Schedule 4 takes effect pursuant to section 249, the Executive shall cause the variation of the lease or the subdivision or consolidation of land to be executed in accordance with the terms of the approval.

Expiration of approvals

251.² (1) An approval to conduct a controlled activity (other than a controlled activity specified in item 2 or 3 of Schedule 4) expires if—

- (a) the activity or any stage of the activity is not commenced within the period specified in the approval;
- (b) the activity or any stage of the activity is not completed within the period specified in the approval; or
- (c) if no period is specified in an approval for the commencement of an activity or any stage of an activity—the activity or any stage of the activity is not commenced within 2 years after the date of the approval.

(2) The expiry of an approval does not affect anything done under the approval before the expiry.

Extension of time

252.² (1) The lessee or occupier of a place in respect of which an approval to conduct a controlled activity (other than a controlled activity specified in item 2 or 3 of Schedule 4) applies (being an approval which specifies the date for the completion of the activity or any stage of the activity) may, before the expiration of the approval, apply to the Minister for an extension of the period within which to complete the activity or any stage of it.

(2) On receipt of an application under subsection (1), the Minister may extend the period within which the conduct of a controlled activity or any stage of it is to be commenced or it or any stage of it is to be completed.

Revocation of approval

253. The Minister may revoke an approval—

- (a) if satisfied that the approval was obtained by fraud or misrepresentation; or
- (b) where the approval is in respect of a place that is specified in the Heritage Places Register or interim Heritage Places Register—if the applicant is convicted of an offence under this Part.

Division 3—Orders

Interpretation

254.² In this Division, unless the contrary intention appears, a reference to a controlled activity is to be read as not including—

- (a) a reference to a controlled activity specified in Schedule 4; or
- (b) an activity declared under another Act to be a controlled activity for the purposes of that Schedule.

Offences—orders

255. (1) A person who, without reasonable excuse, contravenes an order is guilty of an offence punishable, on conviction, by a fine not exceeding the amount specified in Schedule 5 in relation to the activity in respect of which the order was made.

(2) A Territory authority shall not, without reasonable excuse, contravene an order.

Application for order

256.² (1) A person may apply to the Minister for an order against—

- (a) the lessee or occupier of a place on which a controlled activity is being, or is to be, conducted; or
- (b) any person by whom or on whose behalf the activity was, is being, or is to be, conducted.

(2) An application under subsection (1) shall set out the grounds on which the order is sought.

(3) On receiving an application under subsection (1), the Minister shall give notice in writing of the application—

- (a) to each person against whom an order is sought; and
- (b) in the case of an application relating to the parking of heavy vehicles on residential land pursuant to Division 4 of Part X of the *Motor Traffic Act 1936*—to the Minister administering that Act.

(4) A notice under subsection (3) shall—

- (a) contain a statement to the effect that the person to whom it is given may, within 7 days after the day on which he or she receives the

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notice, make submissions to the Minister in relation to the making of the order; and

- (b) have attached to it a copy of the application to which the notice relates.

(4A) Before deciding whether to make an order the Minister shall consider any submissions made—

- (a) by a person against whom the order is sought; and
- (b) in the case of an application for an order relating to the parking of heavy vehicles on residential land pursuant to Division 4 of Part X of the *Motor Traffic Act 1936*—by the Minister administering that Act.

(4B) The Minister shall determine an application under subsection (1) by—

- (a) making the order; or
- (b) refusing to make the order.

(4C) Where the Minister makes an order under subsection (4B) that relates to the parking of a heavy vehicle on residential land pursuant to Division 4 of Part X of the *Motor Traffic Act 1936*, the Minister shall, as soon as practicable after the order is made, cause a copy of the order to be given to the Minister administering that Act.

(4D) The Executive may, of its own motion, make an order under this section.

(4E) An order under subsection (4D) shall be tabled in the Legislative Assembly within 3 sitting days after the date of the order.

(5) An order—

- (a) shall specify—
 - (i) the grounds on which the order is made; and
 - (ii) its date of effect; and
- (b) may direct any person against whom it is made—
 - (i) to stop conducting a controlled activity specified in Schedule 4 without approval;

- (ii) to stop, or not to commence to conduct, a controlled activity that is not specified in Schedule 4;
- (iii) not to commence to conduct a controlled activity without approval;
- (iv) to comply with the terms of an approval to conduct a controlled activity; or
- (v) to stop conducting a controlled activity otherwise than in accordance with the conditions subject to which the approval to conduct the activity was given.

(6) If the Minister fails to make an order under subsection (4B) within the prescribed period, the Minister is, for the purposes of that subsection, to be taken to have refused to make an order.

Notice of making of order

257. (1) If the Minister makes an order under section 256, the Minister shall give notice of the making of the order to—

- (a) any person to whom the order is directed;
- (b) the applicant;
- (c) the lessee and occupier of the place to which the order relates;
- (d) the Registrar-General; and
- (e) any other person whose interests are, in the opinion of the Minister, adversely affected by the order.

(2) If the Executive makes an order under section 256 it shall cause notice of the making of the order to be given to—

- (a) any person to whom the order is directed;
- (b) the lessee and occupier of the place to which the order relates;
- (c) the Registrar-General; and
- (d) any other person whose interests are, in the opinion of the Executive, adversely affected by the order.

Effect of order in certain circumstances

258. (1) Where the Minister or the Executive, by order, directs a person to refrain from conducting a controlled activity, the person to whom the order is

directed is guilty of an offence under section 255 if the person contravenes the order at any time during the period between the date the order takes effect and the date on which it is revoked.

Non-compliance

259. (1) Whether or not proceedings are instituted for an offence against this Part, the Minister may—

- (a) direct that a person authorised by the Minister enter a place on which a controlled activity is being conducted and carry out work or conduct an activity to which an order relates which was not carried out within the period specified in the order; or
- (b) apply to the Supreme Court—
 - (i) for an injunction restraining any person from contravening an order; or
 - (ii) for an order requiring a person to do an act or thing in accordance with the terms of an approval.

(2) The reasonable cost of work carried out under paragraph (1) (a) is a debt payable by the person against whom the order was made to the Territory.

(3) The Minister shall not make a direction under paragraph (1) (a)—

- (a) if application is made to the Administrative Appeals Tribunal for a review of the decision to make the order to which the proposed direction relates—unless the decision to make the order is upheld; or
- (b) if no application is made to the Administrative Appeals Tribunal — until the expiration of the period within which such an application may be made.

Future owners or occupiers

260. (1) An order under this Division may be expressed to bind any subsequent lessee or occupier of land to the same extent as if the order had been made against that subsequent occupier or lessee.

(2) The Minister and the Executive shall, on making an order of the kind referred to in subsection (1), cause a copy of the order to be sent to the Registrar-General.

(3) The Minister and the Executive shall, on revoking an order of the kind referred to in subsection (1), cause written notice of the revocation to be given to the Registrar-General.

Powers of Supreme Court

261. (1) The Supreme Court may, on application being made under paragraph 259 (1) (b) or by any other person, grant an injunction restraining a person from engaging in conduct which would contravene an order and, if in the Court's opinion it is desirable to do so, requiring the person to do any act or thing.

(2) Where, in the opinion of the Court, it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(3) The Court may rescind or vary an injunction granted under subsection (1) or (2).

(4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—

- (a) 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; and
- (b) whether or not the person has previously engaged in conduct of that kind.

(5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised—

- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not the person has previously refused or failed to do that act or thing.

Division 4—Enforcement

Subdivision A—Preliminary

Things connected with offences

262. (1) For the purposes of this Division, a thing is connected with a particular offence if—

- (a) it is a thing with respect to which the offence has been committed;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or is or was intended to be used, for the purposes of committing the offence.

(2) A reference in this Division to an offence is to be read as including a reference to an offence that there are reasonable grounds for believing has been or will be committed.

(3) Where a person is authorised under section 263 or this Division to enter a place, and enters that place, a reference to the occupier of such a place shall include a reference to a person reasonably believed by the authorised person to be the occupier, or to be in charge, of that place.

Inspectors

263. (1) The Minister may, in writing, appoint a person to be an inspector for the purposes of this Part.

(2) An inspector shall, subject to this Part and the regulations, perform such duties as the Minister directs.

Identity cards

264. The Minister shall issue to each inspector an identity card that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.

Return of identity cards

265. A person appointed to be an inspector shall not, without reasonable excuse, fail to return his or her identity card to the Minister upon ceasing to be an inspector.

Penalty: 1 penalty unit.

Subdivision B—Inspection

Inspections etc.

266. For the purposes of ascertaining whether or not a controlled activity is being conducted in or on any place—

- (a) in accordance with an approval;
- (b) without an approval;

- (c) contrary to the conditions of an approval; or
- (d) in accordance with, or in contravention of, an order;

an inspector may enter the place—

- (e) with the consent of the occupier of the place;
- (f) pursuant to a warrant issued under section 273; or
- (g) with such assistance and by such force as is reasonable, where the inspector believes on reasonable grounds that the circumstances are of such seriousness and urgency as to require the immediate exercise of those powers without the authority of a warrant issued under section 273;

and, subject to section 268, exercise any power referred to in section 269 if the inspector believes on reasonable grounds that a controlled activity is, or is intended to be, conducted in or on that place.

Consent to entry

267. (1) Before seeking the consent of the occupier of a place for the purposes of section 266, an inspector shall inform the occupier that he or she may refuse to give that consent.

(2) If an inspector obtains the occupier's consent for those purposes, the inspector shall ask the occupier to sign a written acknowledgment—

- (a) that the occupier has been informed that he or she may refuse to give consent, for the purposes of section 266, for the inspector to enter the place and to exercise any power under section 269;
- (b) that the occupier has given the inspector that consent; and
- (c) of the day on which, and the time at which, the consent was given.

(3) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented for the purposes of section 266 and an acknowledgment, in accordance with subsection (2), signed by the occupier, is not produced in evidence, it shall be presumed that the occupier did not consent, but that presumption is rebuttable.

Display of identity cards

268. An inspector who enters a place under section 266 is not entitled to remain in or on the place if, on request by the occupier, the inspector does not show his or her identity card to the occupier.

Powers of inspection

269. (1) Subject to this Part, an inspector who enters a place under section 266 may—

- (a) inspect, examine, take measurements of, or conduct tests concerning, the premises or a controlled activity conducted in or on that place;
- (b) take such photographs, video recordings, or make such sketches or other recordings, as the inspector believes on reasonable grounds to be necessary;
- (c) take samples of any thing that the inspector believes on reasonable grounds is connected with an offence against this Part;
- (d) seize any thing that the inspector believes on reasonable grounds to be connected with an offence against this Part;
- (e) inspect, make copies of, or take extracts from, any document in or on that place that the inspector believes on reasonable grounds is connected with an offence against this Part;
- (f) require any person in or on the place—
 - (i) to give the inspector such information; or
 - (ii) to produce to the inspector any document containing such information;

relating to the use of the place in connection with the conduct of a controlled activity;

- (g) require any person in or on the place to answer questions; and
- (h) require any person on the premises to give the inspector such assistance as is reasonable to enable the inspector to exercise his or her powers under this section.

(2) A person shall not, without reasonable excuse, fail to comply with a requirement made of the person under paragraph (1) (f), (g) or (h).

Penalty: 50 penalty units.

Work carried out at direction of inspector

270. Where an authorised person enters land pursuant to paragraph 259 (1) (a), the authorised person shall not carry out the work or conduct the controlled activity otherwise than in accordance with the directions of an inspector.

Taking samples

271. An inspector who takes samples under paragraph 269 (1) (c) shall—

- (a) ensure that the sample is such as to permit paragraph (c) to be complied with;
- (b) give a receipt for the sample to the occupier of the place from which the sample was taken;
- (c) divide the sample into 2 parts as nearly as practicable identical in size and composition to each other and each suitable for the purpose of analysis;
- (d) place each of those parts in a separate container and seal each container;
- (e) attach to each container a label bearing the signature of the inspector and particulars of the date and time when, and the place at which, the sample was taken; and
- (f) give 1 container to the occupier of the place.

Disposal of seized items

272. (1) Where a thing has been seized under paragraph 269 (1) (d) and—

- (a) a prosecution for an offence against this Part in connection with that thing has not been instituted within 90 days after the day of seizure; or
- (b) a person is so charged but is not convicted;

subject to subsection (2), the Minister shall take all reasonably practical steps to give the thing to the person to whom the Minister reasonably believes to be entitled to it.

(2) Where a person is—

- (a) convicted of an offence against this Part; or
- (b) dealt with under section 556A of the Crimes Act, 1900 of the State of New South Wales in its application in the Territory in respect of an offence against this Act;

the court may order that any thing seized under paragraph 269 (1) (d) and connected with the offence—

- (c) be given to the person who appears to the court to be entitled to it; or
- (d) be forfeited to the Territory.

Search warrants

273. (1) Where an inspector suspects on reasonable grounds that there is in or on any place a thing of a particular kind connected with a particular offence against this Part or the regulations, the inspector may—

- (a) lay before a magistrate an information on oath setting out those grounds; and
- (b) apply for the issue of a warrant to search the place for things of that kind.

(2) Where an application is made under subsection (1) for a warrant to search a place, a magistrate may, subject to subsection (3), issue a warrant authorising an inspector named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the place;
- (b) to ascertain whether or not a controlled activity is being conducted in or on the place;
- (c) to search the place for things of the kind specified in the warrant; and
- (d) to seize any thing found in the course of the search that the inspector believes on reasonable grounds to be a thing of that kind connected with the relevant offence.

(3) A magistrate shall not issue a warrant under subsection (2) unless—

- (a) the informant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(4) A warrant shall—

- (a) state the purpose for which it is issued;

- (b) specify the nature of the relevant offence;
- (c) specify particular hours during which the entry is authorised, or state that the entry is authorised at any time of the day or night;
- (d) include a description of the kinds of things in relation to which the powers under the warrant may be exercised; and
- (e) specify the date, being a date not later than 28 days after the date of issue of the warrant, on which the warrant ceases to have effect.

Obstruction of inspectors

274. A person shall not, without reasonable excuse, obstruct or hinder an inspector in the exercise of his or her powers under this Part.

Penalty:

- (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

Division 4A—Commissioner for Land and Planning²

274A-274J.² * * * * *

Division 5—Miscellaneous

Subdivision A—Review of decisions

Review of decisions

275.² (1) Where the Minister makes a decision—

- (a) refusing to approve an application under subsection 228 (2);
- (b) refusing to approve an application under section 230;
- (c) refusing to grant an extension of a period under subsection 233 (3);
- (d) refusing to exclude the identity of an objector under section 239;
- (e) giving an approval subject to conditions under subsection 245 (1);
- (f) refusing to approve an amendment under subsection 245 (4);
- (g) refusing to amend an approval under subsection 247 (2);
- (h) refusing to extend time under subsection 252 (2); or
- (j) revoking an approval under section 253;

the Minister shall cause notice of the decision to be given to a person whose interests are affected by the decision.

(2) Where the Executive makes a decision refusing to approve an application or approving an application subject to conditions under section 240 or 241, the Executive shall cause notice of the decision to be given to a person whose interests are affected by the decision.

(3) Where—

- (a) an approval that is in force contains a condition that a specified controlled activity is to be conducted to the satisfaction of the Minister or a specified person or body; and
- (b) the Minister or that specified person or body makes a decision that the activity has not been conducted to the satisfaction of the Minister or that person or body;

the Minister or specified person or body shall cause notice of the decision to be given to the applicant to whom the decision relates.

(4) An application may be made to the Administrative Appeals Tribunal for review of a decision referred to in subsection (1), (2) or (3).

(5) A notice under subsection (1), (2) or (3) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

Review—objectors, third parties

276.² (1) Application for a review of—

- (a) a decision of the Minister to approve an application under section 230 or 245; or
- (b) a decision of the Executive to approve an application under section 240 or 241;

may be made by a person to the Administrative Appeals Tribunal within 28 days after the day on which the person was notified of the decision if—

- (c) the person making the application is a person who objected under section 237; or
- (d) the Tribunal has reasonable grounds for believing that the applicant was, in the circumstances, unable to object to the making of the decision within the prescribed period.

(2) A notice given under section 243 to a person who objected under section 237 shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

(4) If regulations are made for the purposes of subsection 229 (8) then, in respect of a decision in respect of which those regulations apply (other than in respect of a matter to which subsection (5) of this section applies), subsection (1) of this section does not apply, and any person whose interests are affected by the decision may apply to the Administrative Appeals Tribunal for a review of the decision.

(5) A person is not entitled to make an application under this section if—

- (a) the Minister has issued a certificate that, an Environmental Impact Statement made, or an Inquiry conducted, under Part IV, has substantially dealt with matters forming the basis of the Minister's decision to give the applicant approval to conduct a controlled activity; or
- (b) circumstances are specified in the Plan pursuant to paragraph 7 (3) (c).

(6) At the hearing of a proceeding before the Administrative Appeals Tribunal, the Tribunal shall have regard to—

- (a) any decisions or recommendations of a Committee of the Legislative Assembly in relation to; and
- (b) any Environmental Impact Statement made, or Inquiry conducted into;

a matter which is in issue in the hearing.

(7) A certificate under paragraph (5) (a) shall be tabled in the Legislative Assembly on the first sitting day of the Assembly after the date of the certificate.

Review—orders

277. (1) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister—

- (a) making an order under section 256;
- (b) refusing to make an order under section 256; or
- (c) making an order subject to a direction of a kind referred to in paragraph 256 (5) (b).

(2) A notice given to a person in accordance with paragraph 257 (1) (a), (b), (c) or (e) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

Notification of objectors

278.² (1) Where an applicant makes an application under section 275 for the review of a decision referred to in subsection 275 (1) or (2), the Minister shall, as soon as practicable after being notified of the application, give notice that the applicant has so applied to—

- (a) each person who objected under section 237 to the application in relation to which the decision was made; and
- (b) any concurring authority to whom the application in relation to which the decision was made was referred.

(2) A notice under subsection (1) shall include a statement to the effect that the person to whom it is given is entitled, on application to the Administrative Appeals Tribunal, to be made a party to the proceedings for the review.

Notification of applicants

279.² (1) Where an objector makes an application under section 276 for the review of a decision, the objector shall, at the same time, give notice to the person who made the application for approval of the decision in relation to which the objector has applied for review.

(2) A notice under subsection (1) shall include a statement to the effect that the person to whom it is given is entitled, on application to the Administrative Appeals Tribunal, to be made a party to the proceedings for the review.

(3) In subsection (1)—

“objector” means a person referred to in paragraph 276 (1) (c) or (d) and includes a person who has made application under subsection 276 (4).

Subdivision B—General

Regulations—Part VI

282.² The regulations may make provision in relation to—

- (a) the lodging of applications;

- (b) the form and conditions of a bond referred to in paragraph 245 (3) (f), including the method of calculating the amount of the bond and the conditions of payment under the bond;
- (c) the exemption of the Territory or a Territory authority from the requirements of all or any of the provisions of this Part;
- (d) the circumstances, whether generally or in a particular case, in which an exemption under paragraph (c) applies;
- (e) exempting the conduct of a specified controlled activity, or a controlled activity included in a specified class of controlled activities, either absolutely or subject to conditions, from the application of all or any of the provisions of this Part or the regulations; and
- (f) the extension of any period within which action is to be taken by the Executive, a person, a concurring authority or the Minister, under this Part or the regulations.

PART VIA—ADMINISTRATIVE APPEALS

Review of decisions

282A.² (1) Where the Minister makes a decision—

- (a) directing the Heritage Council to notify an interim Heritage Places Register under paragraph 69 (1) (a) or 73 (1) (a);
- (b) refusing to grant compensation under Subdivision D of Division 5 of Part III;
- (c) making a declaration under subsection 82 (1);
- (d) determining the value of improvements under section 174;
- (e) confirming a variation of rent, or setting a variation of rent aside and substituting another variation under subsection 177 (3);
- (f) refusing to authorise the payment of an amount in respect of the surrender or termination of a lease under subsection 178 (1);
- (g) refusing to issue a certificate that a building and development provision of a lease has been fully complied with under subsection 179 (1); or
- (h) refusing to consent to a legal or equitable assignment or transfer of a lease or an interest in a lease under subsection 180 (2);

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the Minister shall cause notice of the decision to be given to a person whose interests are affected by the decision.

- (2) Where the Executive makes a decision—
- (a) acquiring a place or object under section 64;
 - (b) for the purposes of subsection 167 (3) that a person is not eligible to be a lessee under a lease included in a class of leases specified under paragraph 167 (1) (a);
 - (c) refusing to consent under subsection 167 (5) to—
 - (i) the assignment or transfer of a lease;
 - (ii) the subletting of the land comprised in a lease or any part of it;
or
 - (iii) a lessee parting with possession of the land comprised in a lease or any part of it;
 - (d) terminating the right of a person to the grant of a lease under subsection 170 (1);
 - (e) refusing to grant a further lease of Territory Land under section 171 or 172;
 - (f) determining the amount payable in respect of the increase in value of a lease that would result from a proposed variation of the lease under section 184;
 - (g) terminating a lease under subsection 188 (1);
 - (h) terminating a licence under subsection 188 (3);
 - (j) refusing to consent to the surrender of a lease or part of the land comprised in a lease under subsection 214 (1), or consenting subject to a condition;
 - (k) refusing to grant a person the right to extract minerals from specified Territory Land under subsection 219 (1);

the Executive shall cause notice of the decision to be given to a person whose interests are affected by the decision.

- (3) Where the Heritage Council makes a decision—

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- (a) refusing an application for the inclusion of a provision in an interim Heritage Places Register under subsection 59 (3);
- (b) including a provision in an interim Heritage Places Register notified under section 60;
- (c) revising an interim Heritage Places Register under paragraph 62 (1) (b); or
- (d) refusing to grant approval to publish restricted information under subsection 84 (2);

the Heritage Council shall cause notice of the decision to be given to a person whose interests are affected by the decision.

- (4) Where the Environment Minister makes a decision—
 - (a) under section 117 fixing the maximum price at which a proponent may sell a copy of a preliminary assessment; or
 - (b) under section 125 fixing the maximum price at which a proponent may sell a copy of a draft environmental impact statement;

the Environment Minister shall cause notice of the decision to be given to the proponent.

(5) An application may be made to the Administrative Appeals Tribunal for review of the following decisions:

- (a) a decision referred to in subsection (1), (2), (3) or (4);
- (b) a decision not to register a place under paragraph 69 (1) (b) or 73 (1) (b).

(6) A notice under subsection (1), (2), (3) or (4) or paragraph 69 (1) (b) or 73 (1) (b) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

PART VII—MISCELLANEOUS

Persons authorised to exercise the powers of the Executive

283. (1) Subject to subsection (3), the Executive may, by instrument, authorise—

- (a) in relation to land in the Gungahlin Central Area—the Gungahlin Development Authority to act on its behalf in the exercise of a power in accordance with Part V; or

- (b) in relation to any other land—any other person to act on its behalf in the exercise of a power in accordance with Part II or V.

(2) Where the exercise of a power by the Executive in accordance with this Part is dependent upon the opinion, belief or state of mind of the Executive in relation to a matter and a person has, pursuant to subsection (1), been authorised to exercise that power, the power may be exercised by the person so authorised upon his, her or its opinion, belief or state of mind in relation to the matter.

(3) Subsection (1) does not apply in respect of the exercise of a power of the Executive under subsection 163 (4), 164 (3), 167 (1) or 178 (3).

Power of Administrative Appeals Tribunal and Supreme Court

284. Where a person appeals, or purports to appeal, under this Act—

- (a) to the Administrative Appeals Tribunal; or
- (b) against a determination or decision of the Administrative Appeals Tribunal to the Supreme Court;

and it appears to the Tribunal or Court, as the case may be—

- (c) that the appeal, or purported appeal, or the decision, or the purported decision, against which the appeal, or purported appeal, has been brought is affected by a failure to comply with a requirement of this Act; and
- (d) that to exercise the powers conferred by this section would not be unjust or inequitable;

the Tribunal or Court may order that, subject to any specified conditions, the requirement concerned be dispensed with to the necessary extent.

Corporations—penalties

285. Except where otherwise expressly provided, where a body corporate is convicted of an offence against this Act or the regulations, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

Conduct of directors, servants and agents

286. (1) Where, for the purposes of a prosecution for an offence against this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and

(b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

(2) A reference in subsection (1) to the state of mind of a body or person includes a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body's or person's reasons for the intention, opinion, belief or purpose.

(3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

Power of Minister to determine fees

287. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

Regulations

288. The Executive may make regulations, not inconsistent with this Act, prescribing—

- (a) matters required or permitted by this Act to be prescribed;
- (b) matters necessary or convenient to be prescribed for carrying out or giving effect to this Act; or
- (c) penalties, for offences against the regulations, not exceeding—

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- (i) if the offender is a natural person—a fine of 10 penalty units;
or
- (ii) if the offender is a body corporate—a fine of 50 penalty units.

SCHEDULE 1

Section 195

MANAGEMENT OBJECTIVES FOR PUBLIC LAND

Reserve	Management objectives
Wilderness area	<ol style="list-style-type: none">1. To conserve the natural environment in a manner ensuring that disturbance to that environment is minimal.2. To provide for the use of the area (other than by vehicles or other mechanised equipment) for recreation by limited numbers of people, so as to ensure that opportunities for solitude are provided.
National park	<ol style="list-style-type: none">1. To conserve the natural environment.2. To provide for public use of the area for recreation, education and research.
Nature reserve	<ol style="list-style-type: none">1. To conserve the natural environment.2. To provide for public use of the area for recreation, education and research.
Special purpose reserve	<ol style="list-style-type: none">1. To provide for public and community use of the area for recreation and education.
Cemetery or burial ground	<ol style="list-style-type: none">1. To provide for the burial of the dead and the storage of the ashes of the dead.2. To conserve the natural environment.
Sport and recreation reserve	<ol style="list-style-type: none">1. To provide for public and community use of the area for sport and recreation.
Urban open space	<ol style="list-style-type: none">1. To provide for public and community use of the area.2. To develop the area for public and community use.
Lake	<ol style="list-style-type: none">1. To prevent and control floods by providing a reservoir to receive flows from rivers, creeks and urban run-offs.2. To prevent and control pollution of waterways.

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SCHEDULE 1—continued

Reserve	Management objectives
	3. To provide for public use of the lake for recreation.
	4. To provide a habitat for fauna and flora.

SCHEDULE 2

Section 56

CRITERIA FOR THE ASSESSMENT OF THE HERITAGE SIGNIFICANCE OF PLACES

1. Under section 56 of the *Land (Planning and Environment) Act 1991* the criteria for the assessment of the heritage significance of places are:
 - (i) a place which demonstrates a high degree of technical and/or creative achievement, by showing qualities of innovation or departure or representing a new achievement of its time;
 - (ii) a place which exhibits outstanding design or aesthetic qualities valued by the community or a cultural group;
 - (iii) a place which demonstrates a distinctive way of life, taste, tradition, religion, land use, custom, process, design or function which is no longer practised, is in danger or being lost, or is of exceptional interest;
 - (iv) a place which is highly valued by the community or a cultural group for reasons of strong or special religious, spiritual, cultural, educational or social associations;
 - (v) a place which is the only known or only comparatively intact example of its type;
 - (vi) a place which is a notable example of a class of natural or cultural places or landscapes and which demonstrates the principal characteristics of that class;
 - (vii) a place which has strong or special associations with person, group, event, development or cultural phase which played a significant part in local or national history;
 - (viii) a place which represents the evolution of a natural landscape, including significant geological features, landforms, biota or natural processes;
 - (ix) a place which is a significant habitat or locality for the life cycle of native species; for rare, endangered or uncommon species; for species at the limits of their natural range; or for distinct occurrences of species;
 - (x) a place which exhibits unusual richness, diversity or significant transitions of flora, fauna or natural landscapes and their elements; or
 - (xi) a place which demonstrates a likelihood of providing information which will contribute significantly to a wider understanding of natural or cultural history, by virtue of its use as a research site, teaching site, type locality or benchmark site.

SCHEDULE 3

Section 115

CONTENT OF PRELIMINARY ASSESSMENTS

1. The following format is to be used for a preliminary assessment required under section 115.
 1. **GENERAL INFORMATION**
 - 1.1 **Name and Address of Proponent.** This is to include the details of any ACT government authority or agency.
 - 1.2 **Details of the Contact.** This is to include the contact officer within any ACT government authority or agency.
 - 1.3 **Status of the Project.** Advise the current position on the planning of the project, studies commenced or planned and the proposed targets for planning, development or construction.
 - 1.4 **Location of the Project.**
 - (a) project site description sufficient for precise location on a map or a map included to show the exact site location.
 - (b) information on possible future extensions.
 - 1.5 **Description of the Project.**
 - (a) the type and form of the project including supporting developments including those not the responsibility of the proponent;
 - (b) the purpose and need for the project, intended utilisation and operation of the facilities;
 - (c) the relationship of the project with surrounding development, to connected facilities and services or to other proposed projects.
 2. **EXISTING ENVIRONMENTAL CONDITIONS**
 - 2.1 **Description of Project Site.** A brief description of the overall appearance and current land use with mention made of any special features including the built and natural heritage factors, if any of the site.
 - 2.2 **Description of Region Surrounding the Project Site.** Significant differences between the site and surrounding areas should be noted—eg. variation in population density, watershed, proximity to watercourses and water bodies.
 - 2.3 **Current Land Use Policy and Lease Conditions of the Site.**
 3. **POTENTIAL IMPACT OF THE PROJECT ON THE ENVIRONMENT.**
 - 3.1 **On the Physical Environment.**
 - 3.2 **On the Human Environment.**
 - 3.3 **On the Non-human Biological Environment**
 - 3.4 **Potentially Beneficial Impacts.**
 4. **SUMMARY AND CONCLUSIONS**
 - 4.1 A summary of the potential benefits and disadvantages of the project. Can the benefits to the community be said to offset any unavoidable permanent or temporary adverse effects?

Land (Planning and Environment) Act 1991

SCHEDULE 4²

Sections 4, 222, 223,
225, 230, 235, 240, 241,
247, 250-252 and 254

CONTROLLED ACTIVITIES: CONCURRING AUTHORITIES:
PENALTIES

Column 1 Item	Column 2 Controlled activity	Column 3 Concurring authority	Column 4 Penalty
1	Work affecting the requirements for the conservation of the heritage significance of places included in the Heritage Places Register or an interim Heritage Places Register	The Planning Authority, the Conservator and, in relation to a place that is in the Gungahlin Central Area, the Gungahlin Development Authority	\$20,000
2	The execution of a variation of a lease of Territory Land	The Minister, the Planning Authority and, in relation to a lease of land that is in the Gungahlin Central Area, the Gungahlin Development Authority	\$1,000
3	The execution of a new lease for the purpose of effecting the subdivision or consolidation of Territory Land	The Minister, the Planning Authority and, in relation to a lease of land that is in the Gungahlin Central Area, the Gungahlin Development Authority	\$1,000
4	Subject to the Plan, the use of residential land for carrying on a profession, trade, occupation or calling on the land	The Minister and the Planning Authority	\$5,000
5	An activity specified pursuant to paragraph 7 (3) (c) to be a controlled activity for the purposes of this Act	The authority specified in the Plan whose permission is required	\$5,000
6	Encroachment onto, over or under public land within the meaning of Part V, or a public road within the meaning of that Part	The Minister, the Planning Authority and the Conservator	\$5,000
7	Mining	The Minister and the Planning Authority	\$5,000

SCHEDULE 5²

Sections 4, 224 and 255

ACTIVITIES SUBJECT TO ORDERS

Column 1	Column 2	Column 3
Item	Activities	Penalty
1	Work affecting the requirements for the conservation of the heritage significance of places included in the Heritage Places Register or an interim Heritage Places Register conducted otherwise than in accordance with an approval	\$20,000
2	Using residential land for the carrying on of a profession, trade, occupation or calling otherwise than in accordance with an approval, or the Plan	\$5,000
3	Using land otherwise than in accordance with— (a) the lease; or (b) if the lease is granted subject to the lessee entering into a development agreement and the lessee has entered into that agreement—the development agreement	\$5,000
4	Failure to keep a leasehold clean	\$5,000
5	Activities specified pursuant to paragraph 7 (3) (c) conducted otherwise than in accordance with an approval	\$5,000
6	Encroachment onto, over or under public land otherwise than in accordance with an approval	\$5,000
7	Mining otherwise than in accordance with an approval	\$20,000
9	Permitting a tree, sapling, plant or shrub to overhang a public place so as to obstruct or inconvenience a person in that place	\$500
10	An activity which is likely to cause soil erosion, or an activity that involves destroying, damaging, removing or otherwise interfering with vegetation (living or dead) or soil between the banks, or within 20 metres of the bank, of a watercourse, or on land with a slope of more than 18° from the horizontal	\$10,000

Land (Planning and Environment) Act 1991

NOTES

1. The *Land (Planning and Environment) Act 1991* as shown in this reprint comprises Act No. 100, 1991 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Land (Planning and Environment) Act 1991</i>	100, 1991	15 Jan 1992	Ss. 1 and 2: 15 Jan 1992 Remainder: 2 Apr 1992	
<i>Land (Planning and Environment) (Amendment) Act 1992</i>	32, 1992	3 July 1992	3 July 1992	S. 5 (2)
<i>Land (Planning and Environment) (Amendment) Act 1993</i>	11, 1993	1 Mar 1993	1 Mar 1993	—
<i>Acts Revision (Position of Crown) Act 1993</i>	44, 1993	27 Aug 1993	27 Aug 1993 (see s. 2)	—
<i>Registrar-General (Consequential Provisions) Act 1993</i>	64, 1993	6 Sept 1993	Ss. 1 and 2: 6 Sept 1993 Remainder: 1 Oct 1993 (see s. 2 (2) and <i>Gazette</i> 1993, No. S207)	Part III (ss. 6-13)
<i>Land (Planning and Environment) (Amendment) Act (No. 2) 1993</i>	75, 1993	2 Nov 1993	Ss. 1 and 2: 2 Nov 1993 Remainder: 1 Dec 1993 (see <i>Gazette</i> 1993, No. S247. p. 2)	—
<i>Land (Planning and Environment) (Amendment) Act (No. 3) 1993</i>	77, 1993	2 Nov 1993	Ss. 1 and 2: 2 Nov 1993 Remainder: 1 Dec 1993 (see <i>Gazette</i> 1993, No. S243)	—
<i>Real Property (Consequential Provisions) Act 1993</i>	90, 1993	17 Dec 1993	Ss. 1 and 2: 17 Dec 1993 Remainder: 1 Jan 1994 (see s. 2 (2) and <i>Gazette</i> 1993, No. S270)	—
<i>Statute Law Revision Act 1994</i>	26, 1994	31 May 1994	31 May 1994	—

Land (Planning and Environment) Act 1991

NOTES—continued

Table of Acts—continued

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i>	38, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July 1994 (see <i>Gazette</i> 1994, No. S142, p. 2)	Ss. 3, 5-12, 15 and 19
<i>Administrative Appeals (Consequential Amendments) Act 1994</i>	60, 1994	11 Oct 1994	Ss. 1 and 2: 11 Oct 1994 Remainder: 14 Nov 1994 (see s. 2 (2) and <i>Gazette</i> 1994, No. S250)	—
<i>Statute Law Revision (Penalties) Act 1994</i>	81, 1994	29 Nov 1994	Ss. 1 and 2: 29 Nov 1994 Remainder: 29 Nov 1994 (see <i>Gazette</i> 1994, No. S269, p. 2)	—
<i>Statutory Offices (Miscellaneous Provisions) Act 1994</i>	97, 1994	15 Dec 1994	Ss. 1 and 2: 15 Dec 1994 Remainder: 15 Dec 1994 (see <i>Gazette</i> 1994, No. S293)	Part III (ss. 4-9)
(Reprinted as at 28 February 1995)				
<i>Land (Planning and Environment) (Amendment) Act 1995</i>	20, 1995	5 Sept 1995	5 Sept 1995	—
<i>Land (Planning and Environment) (Amendment) Act (No. 2) 1995</i>	21, 1995	5 Sept 1995	Ss. 1-3: 5 Sept 1995 Remainder: 1 Jan 1996 (see <i>Gazette</i> 1995, No. S316)	—
<i>Annual Reports (Government Agencies) (Consequential Provisions) Act 1995</i>	25, 1995	5 Sept 1995	5 Sept 1995	—
<i>Land Titles (Consequential Amendments) Act 1995</i>	54, 1995	20 Dec 1995	20 June 1996 (see s. 2)	—
<i>Remuneration Tribunal (Consequential and Transitional Provisions) Act 1995</i>	56, 1995	20 Dec 1995	21 Dec 1995 (see s. 2 and <i>Gazette</i> 1995, No. S315, p. 2)	S. 3
<i>Gungahlin Development Authority (Consequential Provisions) Act 1996</i>	39, 1996	10 July 1996	19 Aug 1996 (see s. 2 and <i>Gazette</i> 1996, No. S212)	—

Land (Planning and Environment) Act 1991

NOTES—continued

Table of Acts—continued

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Land (Planning and Environment) (Amendment) Act 1996</i>	62, 1996	3 Dec 1996	3 Dec 1996	—
<i>Land (Planning and Environment) (Amendment) Act (No. 2) 1996</i>	71, 1996	20 Dec 1996	Ss. 1-3: 20 Dec 1996 Remainder: 1 Jan 1997 (see <i>Gazette</i> 1996, No. S352)	Part IV (ss. 21-29)
<i>Motor Traffic (Amendment) Act (No. 3) 1996</i>	83, 1996	20 Dec 1996	Ss. 1-3: 20 Dec 1996 Remainder: 1 Jan 1997 (see <i>Gazette</i> 1996, No. S353)	—
<i>Land (Planning and Environment) (Amendment) Act (No. 3) 1996</i>	85, 1996	24 Dec 1996	Part I (ss. 1 and 2): 24 Dec 1996 Remainder (ss. 3-130): (see Note 2)	Part V (ss. 114-130)

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 3	rep. No. 44, 1993
S. 4	am. Nos. 75 and 77, 1993; No. 97, 1994; Nos. 39 and 71, 1996
S. 5	am. No. 71, 1996
S. 8	am. No. 77, 1993
S. 19	am. No. 75, 1993
S. 37	am. No. 25, 1995
S. 38	am. No. 38, 1994
S. 39	rep. No. 25, 1995
S. 45	am. No. 38, 1994 rep. No. 56, 1995
Ss. 59, 60	am. No. 77, 1993; No. 71, 1996
Ss. 62, 63	am. No. 77, 1993; No. 71, 1996
S. 65	am. No. 77, 1993 rep. No. 71, 1996
S. 67	am. No. 81, 1994
S. 69	am. No. 77, 1993; No. 71, 1996
S. 70	am. No. 81, 1994
S. 71	am. No. 77, 1993

Land (Planning and Environment) Act 1991

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 73	am. No. 77, 1993; No. 71, 1996
S. 79	am. No. 71, 1996
S. 80	am. No. 77, 1993 rs. No. 71, 1996
S. 82	am. No. 77, 1993; No. 71, 1996
S. 84	am. No. 77, 1993; No. 81, 1994; No. 71, 1996
S. 85	am. No. 71, 1996
Div. 6 of Part III (s. 86)	rep. No. 71, 1996
S. 86	am. No. 77, 1993 rep. No. 71, 1996
S. 93	am. No. 25, 1995
S. 95	rep. No. 25, 1995
S. 111	am. No. 71, 1996
S. 117	am. No. 77, 1993; No. 71, 1996
S. 125	am. No. 77, 1993; No. 71, 1996
Ss.149, 150.....	am. No. 81, 1994
Ss.154-156	am. No. 81, 1994
Div. 5 of Part IV (s. 158)	rep. No. 71, 1996
S. 158	am. No. 77, 1993 rep. No. 71, 1996
S. 159	am. No. 90, 1993; No. 54, 1995
S. 161	am. No. 11, 1993
Ss. 163, 164.....	am. No. 11, 1993
S. 165	am. No. 11, 1993; No. 39, 1996
S. 183	am. No. 20, 1995
S. 184	am. No. 62, 1996
S. 187	rep. No. 75, 1993
S. 209	am. No. 11, 1993
S. 210	am. No. 32, 1992; No. 71, 1996
Div. 6 of Part V (ss. 212, 213, 213A, 213B)	rep. No. 71, 1996
S. 212	am. No. 77, 1993 rep. No. 71, 1996
S. 213	rs. No. 77, 1993 rep. No. 71, 1996
S. 213A	ad. No. 77, 1993 am. No. 60, 1994 rep. No. 71, 1996
S. 213B	ad. No. 77, 1993 rep. No. 71, 1996
S. 216A	ad. No. 11, 1993
S. 221	am. No. 81, 1994
S. 229	am. No. 90, 1993; No. 54, 1995; No. 71, 1996

Land (Planning and Environment) Act 1991

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 230	am. No. 77, 1993; No. 71, 1996
S. 235	am. No. 39, 1996
S. 238	am. No. 77, 1993; No. 71, 1996
S. 242	am. No. 32, 1992; No. 64, 1993
S. 243	am. No. 77, 1993; No. 71, 1996
S. 249	rs. No. 77, 1993 am. No. 71, 1996
S. 256	am. No. 77, 1993; Nos. 71 and 83, 1996
S. 257	am. Nos. 64 and 77, 1993; No. 71, 1996
Ss. 258, 259.....	am. No. 77, 1993; No. 71, 1996
S. 260	am. Nos. 64 and 77, 1993; No. 71, 1996
S. 265	am. No. 81, 1994
S. 269	am. No. 81, 1994
S. 274	am. No. 81, 1994
S. 275	am. No. 77, 1993 rs. No. 71, 1996
S. 276	am. No. 77, 1993; No. 71, 1996
S. 277	am. No. 77, 1993 rs. No. 71, 1996
Ss. 278, 279.....	am. No. 77, 1993; No. 71, 1996
S. 280	rs. No. 77, 1993 rep. No. 71, 1996
S. 281	rep. No. 71, 1996
S. 282	am. No. 32, 1992
Part VIA (ss. 282A-282Z, 282ZA-282ZV)	ad. No. 77, 1993 rep. No. 71, 1996
Part VIA (s. 282A).....	ad. No. 71, 1996
S. 282A.....	ad. No. 77, 1993 rs. No. 71, 1996
Ss. 282B-282Z.....	ad. No. 77, 1993 rep. No. 71, 1996
Ss. 282ZA-282ZT	ad. No. 77, 1993 rep. No. 71, 1996
S. 282ZU.....	ad. No. 77, 1993 am. No. 38, 1994 rep. No. 71, 1996
S. 282ZV	ad. No. 77, 1993 rep. No. 71, 1996
S. 283	am. No. 39, 1996
S. 284	rs. No. 77, 1993; No. 71, 1996
S. 285	am. No. 26, 1994
S. 288	am. No. 81, 1994
Schedule 4.....	am. No. 75, 1993; No. 39, 1996

Land (Planning and Environment) Act 1991

NOTES—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
Schedule 5.....	am. No. 75, 1993; No. 21, 1995

Land (Planning and Environment) Act 1991

NOTES—continued

2. Sections 4, 5, 7-9, 15, 16, 19, 21, 22, 24, 26, 29, 32, heading to Subdivision A of Division 4 of Part II, sections 33, 34, 37, 42, Subdivision B of Division 4 of Part II (ss. 43, 44, 46-50), sections 97, 113, 116, 117, 123, 159, 161, 165, 167, 171, 171A, 172, 172A, 173-175, 179-181, 184, 184A-184D, 186, 186A, Division 3A of Part V (ss. 187, 187A-187C), sections 188, 192, 193, 216, 216A, 222, 223, Subdivision A of Division 2 of Part VI (s. 224), sections 225, 226, 228, 229, 229A, 230, 231, 233-235, 237, 240-252, 254, 256, Division 4A of Part VI (ss. 274A-274J), sections 275, 276, 278, 279, 282, 282A and Schedules 4 and 5 are amended by Part II (sections 3-86) of the *Land (Planning and Environment) (Amendment) Act (No. 3) 1996*, subsections 2 (2) and (3) of which provide as follows:

“(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

“(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.”.

As at 1 January 1997 no date had been fixed for the commencement of Part II (sections 3-86) and the amendments are not incorporated in this reprint. They are set out below under the heading “EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT (No. 3) 1996”.

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**

PART II—LAND (PLANNING AND ENVIRONMENT) ACT 1991

Interpretation

3. In this Part—

“Principal Act” means the *Land (Planning and Environment) Act 1991*.¹

Interpretation

4. Section 4 of the Principal Act is amended—

(a) by omitting “4 or” from paragraphs (a) and (b) of the definition of “controlled activity”; and

(b) by inserting the following definitions:

“ ‘Commissioner’ means the Commissioner for Land and Planning appointed under section 274A;

‘public land’ means land identified by the Plan as public land;

‘public street’ has the same meaning as in the *Motor Traffic Act 1936*.”.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996— continued**

Interpretation

5. Section 5 of the Principal Act is amended by omitting the definition of “Chief Planner”.

Object

6. Section 7 of the Principal Act is amended—

- (a) by inserting in subsection (1) “ecologically sustainable, healthy,” before “attractive”;
- (b) by omitting subsection (2) and substituting the following subsection:
“*(2)* The Plan shall set out the planning principles and policies for giving effect to its object.”;
- (c) by omitting paragraph (3) (c); and
- (d) by omitting from paragraph (3) (f) “that Part” and substituting “section 193”.

Effect of Plan

7. Section 8 of the Principal Act is amended—

- (a) by omitting from subsection (1) “(1) Subject to subsection (2), the Territory” and substituting “The Territory”; and
- (b) by omitting subsection (2).

Effect of draft Plan variations

8. Section 9 of the Principal Act is amended—

- (a) by adding “or” at the end of paragraph (b) of the definition of “defined period” in subsection (3); and
- (b) by omitting paragraph (c) from the definition of “defined period” in subsection (3).

Preparation of variations

9. Section 15 of the Principal Act is amended by omitting subsection (3).

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Substitution

10. Section 16 of the Principal Act is repealed and the following section substituted:

Consultation with Conservator

“16. In preparing a draft Plan variation, the Authority shall—

- (a) consider any recommendation or submission made by the Conservator in relation to the draft variation, including any preliminary draft Plan of Management under Subdivision D of Division 5 of Part V accompanying the recommendation or submission; and
- (b) if the draft variation is to identify or affect public land—consult with the Conservator, unless the draft gives effect to a recommendation of the Conservator under section 192.”.

Public consultation

11. Section 19 of the Principal Act is amended by inserting after paragraph (1) (b) the following paragraph:

“(ba) stating that copies of written comments about the draft variation submitted pursuant to the invitation in paragraph (b) or otherwise, or received from the National Authority, are to be made available for public inspection for a period of 21 days following the expiration of the period referred to in paragraph (b), at specified places;”.

Public inspection of comments

12. Section 21 of the Principal Act is amended—

- (a) by omitting subsection (1);
- (b) by omitting from subsection (2) “subsection (1)” and substituting “paragraph 19 (1) (ba)”; and
- (c) by omitting from subsection (2) “in the notice” and substituting “under that paragraph”.

Revision, deferral or withdrawal of draft Plan variations

13. Section 22 of the Principal Act is amended—

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (a) by omitting from subsection (1) “subsection 19 (1)” and substituting “paragraph 19 (1) (b)”;
- (b) by inserting after subsection (2) the following subsection:

“(2A) The Authority shall cause to be published a notice under paragraph (1) (b) or (c) in a daily newspaper on the same day, or as soon as possible after, the publication of the notice in the *Gazette*.”;
- (c) by inserting in subsection (5) “, and in a daily newspaper,” after “*Gazette*”; and
- (d) by omitting subsection 22 (6).

Submission of draft Plan variation to Executive

14. Section 24 of the Principal Act is amended—

- (a) by omitting from subsection (1) “subsection 19 (1)” and substituting “paragraph 19 (1) (b)”;
- (b) by inserting in subsection (1) “(as revised, if at all, under section 22)” after “variation” (first occurring);
- (c) by omitting from paragraph (1) (b) “relevant”; and
- (d) by omitting from subsection (2) “by advertising”.

Executive powers

15. Section 26 of the Principal Act is amended by omitting subsections (4) and (5) and substituting the following subsections:

“(4) The Executive shall cause any directions given under paragraph (1) (b) to be published in the *Gazette*.

“(5) The Authority shall cause to be published a notice under subparagraph (1) (b) (v) or (vi) in a daily newspaper on the same day, or as soon as possible after, the publication of the notice in the *Gazette*.

“(6) After approving a draft Plan variation under paragraph (1) (a), the Executive may, before the draft variation is laid before the Legislative Assembly, revoke the approval and return the draft variation to the Authority under paragraph (1) (b).”.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Consideration of Plan variation by Legislative Assembly

16. Section 29 of the Principal Act is amended—

- (a) by omitting from subsection (1) “A Plan variation” and substituting “Subject to subsection 26 (6), a Plan variation”;
- (b) by inserting in subsections (6) and (8) and paragraph (9) (a) “, and in a daily newspaper,” after “*Gazette*”; and
- (c) by inserting after subsection (9) the following subsection:

“(9A) The Minister shall cause to be published a notice under paragraph (9) (b) in a daily newspaper on the same day, or as soon as possible after, the publication of the notice in the *Gazette*.”.

Plan variations in relation to defined land

17. Section 32 of the Principal Act is amended—

- (a) by inserting in subsection (1) “or part of a parcel” after “parcel”; and
- (b) by inserting after subsection (4) the following subsection:

“(4A) A variation of the Plan under subsection (1) has the effect of the parcel, or part of a parcel, of land which is subdivided ceasing to be defined land.”.

Subdivision heading

18. The heading to Subdivision A of Division 4 of Part II of the Principal Act is omitted.

Establishment

19. Section 33 of the Principal Act is amended by adding at the end the following subsections:

“(2) The Chief Executive shall create and maintain an Executive office in the Government Service the duties of which include performing the functions of the Authority.

“(3) The Authority shall be the public servant for the time being performing the duties of the Government Service office referred to in subsection (2).”.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Repeal

20. Section 34 of the Principal Act is repealed.

Executive policy directions

21. Section 37 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

“(1) The Executive or the Minister may give the Authority the following written directions:

- (a) directions about the policies and objectives it should pursue in the performance of its functions;
- (b) directions to review the Plan, or any specified part of the Plan;
- (c) directions about any other aspect of the performance of its functions.

“(2) The Legislative Assembly may, by resolution, recommend that the Executive give the Authority specified directions under subsection (1).

“(3) If the Legislative Assembly recommends, under subsection (2), that the Executive give directions to the Authority, the Executive shall consider the recommended directions and shall, by instrument tabled in the Legislative Assembly—

- (a) give the Authority directions under subsection (1) as recommended, or in a modified form; or
- (b) refuse to give the Authority the recommended directions.”.

Repeal

22. Section 42 of the Principal Act is repealed.

Repeal

23. Subdivision B of Division 4 of Part II of the Principal Act is repealed.

Constitution

24. Section 97 of the Principal Act is amended by omitting from paragraph (1) (a) “Chief Planner” and substituting “Authority”.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Directions

25. Section 113 of the Principal Act is amended by inserting “on” after “day”.

Submission to Minister

26. Section 116 of the Principal Act is amended by adding at the end of subsection (1) “, together with the determined fee”.

Substitution

27. Section 117 of the Principal Act is repealed and the following section substituted:

Public inspection

“117. (1) After a preliminary assessment is submitted to the Environment Minister under section 116, he or she shall cause to be published in the *Gazette*, and in a daily newspaper, a notice stating that copies of the preliminary assessment are available for public inspection during a specified period of not less than 21 days at specified places.

“(2) The Environment Minister shall, at the places, and within the period, specified in the notice—

- (a) make copies of the preliminary assessment available for public inspection; and
- (b) cause a copy of the preliminary assessment to be given to any person on payment by the person of the determined fee.

“(3) The Environment Minister shall cause a copy of the preliminary assessment to be sent, without charge, to the Conservation Council of the South-East Region and Canberra (Inc.)”.

Directions

28. Section 123 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsections:

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

“(1) A direction by a Minister that an Assessment be made in relation to a defined decision shall be in writing given to the proponent.

“(1A) Within 14 days after a direction by a Minister under subsection (1) that an Assessment is to be made in relation to a defined decision, the Minister shall give the proponent detailed directions specifying the following:

- (a) the form of the Assessment;
 - (b) the matters to be included in the public environment report or the environmental impact statement (as the case requires) and the relative emphasis to be given to each such matter;
 - (c) subject to section 124 or sections 125 and 126, as the case requires—the manner in which the report or statement is to be prepared;
 - (d) where, in the opinion of the Environment Minister based on reasonable grounds, the environmental impact of a proposal which is the subject of another defined decision is relevant to the environmental impact of the relevant proposal—sufficient details of the first-mentioned proposal to enable the proponent to assess the potential combined effects of the proposals.”;
- (b) by omitting from subsection (2) “paragraph (1) (b)” and substituting “subsection (1A)”;
- (c) by omitting from subsection (3) “a direction that an Assessment be made” and substituting “detailed directions for an Assessment under subsection (1A)”;
- (d) by omitting from paragraph (3) (b) “direction pursuant to paragraph (1) (b)” and substituting “directions”; and
- (e) by omitting from subsection (4) “subparagraph (1) (b) (iii)” and substituting “paragraph (1A) (c)”.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Interpretation

29. Section 159 of the Principal Act is amended—

- (a) by inserting in paragraph (c) of the definition of “lease” in subsection (1) “or arising” after “granted”;
- (b) by omitting from subsection (1) the definitions of “public land”, “public road” and “Territory Land”;
- (c) by inserting in subsection (1) the following definitions:

“ ‘consolidation’ means the surrender of 2 or more leases held by the same lessee and the grant of a new lease or leases to that lessee for the purpose of consolidating the parcels of land comprised in the surrendered leases;

‘nominal rent lease’ means a lease of Territory land for nominal rent;

‘rental lease’ means a lease of Territory Land for rent in excess of nominal rent;

‘rural lease’ means a lease of Territory Land granted for rural purposes or purposes including rural purposes;

‘subdivision’ means the surrender of 1 lease, or the surrender of more than 1 lease, held by the same lessee, and the grant of new leases to that lessee for the purpose of subdividing the parcel or parcels of land comprised in the surrendered lease or leases, but does not include the subdivision of land under the *Unit Titles Act 1970*;”;

- (d) by omitting subsection (3).

Granting of leases

30. Section 161 of the Principal Act is amended by inserting after subsection (2) the following subsections:

“(2A) The Executive may restrict the persons eligible for the grant of a lease under paragraph (1) (a), (b) or (c) by specifying, in the relevant notice of

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

auction, tender or ballot, a class of persons eligible or ineligible for the grant of a lease pursuant to the auction, tender or ballot.

“(2B) Where, pursuant to a restriction imposed under subsection (2A), only 1 person is eligible for the grant of a lease under paragraph (1) (a), (b) or (c), the Executive may grant a lease to that person under paragraph (1) (d) without auctioning the lease, calling tenders or conducting a ballot (as the case may be).”.

Repeal

31. Section 165 of the Principal Act is repealed.

Eligibility for certain classes of leases

32. Section 167 of the Principal Act is amended—

- (a) by inserting in subsection (5) “, or any other person having an interest in such a lease,” after “applies”; and
- (b) by inserting in subsection (6) “, or to any other person having an interest in such a lease” after “applies”.

Grant of further residential leases

33. Section 171 of the Principal Act is amended—

- (a) by omitting paragraph (a);
- (b) by omitting from paragraph (b) “the lessee of the land” and substituting “the holder of a residential lease of land”;
- (c) by omitting from paragraph (c) “and”;
- (d) by omitting paragraph (d) and substituting the following paragraphs:
 - “(d) the lessee pays the fee calculated pursuant to the determination under subsection (2); and
 - (e) the lessee surrenders the existing lease;”;
- (e) by omitting all the words after “land” (last occurring) and substituting “for a term not exceeding 99 years to commence on the day immediately following the date of surrender of the existing lease”; and

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

(f) by adding at the end the following subsections:

“(2) The Minister may make a determination for the purposes of paragraph (1) (d).

“(3) If the term of a further lease granted under subsection (1) does not exceed the term of the existing lease, the fee payable under paragraph (1) (d) shall not exceed the cost of granting the lease.

“(4) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Insertion

34. After section 171 of the Principal Act the following section is inserted:

Grant of further rural leases

“171A. (1) Where—

- (a) the holder of a rural lease applies to the Executive for the grant of a further rural lease of the same land for the same purposes;
- (b) neither the Territory nor the Commonwealth requires the land for a public purpose;
- (c) the lessee pays the fee calculated pursuant to the determination under subsection (2); and
- (d) the lessee surrenders the existing lease;

the Executive shall, on behalf of the Commonwealth, grant the lessee a further rural lease of that land for the same purposes for a term not exceeding the maximum set out in the determination under subsection (2), and subject to any conditions set out in that determination, to commence on the day immediately following the date of surrender of the existing lease.

“(2) The Minister may make a determination for the purposes of subsection (1).

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

“(3) If the term of a further lease granted under subsection (1) does not exceed the term of the existing lease, the fee payable under paragraph (1) (c) shall not exceed the cost of granting the lease.

“(4) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Grant of further leases for purposes other than residential or rural

35. Section 172 of the Principal Act is amended—

- (a) by omitting paragraph (a);
- (b) by omitting from paragraph (b) “the lessee” and substituting “the holder of a lease of Territory Land other than a residential lease or a rural lease”;
- (c) by adding at the end of paragraph (b) “for the same purposes”;
- (d) by omitting paragraphs (d) and (e);
- (e) by omitting from paragraph (f) “and”;
- (f) by omitting paragraph (g) and substituting the following paragraphs:
 - “(g) the lessee pays the fee calculated pursuant to the determination under subsection (2); and
 - (h) the lessee surrenders the existing lease;”;
- (g) by omitting all the words after “land” (last occurring) and substituting “for the same purposes for a term not exceeding 99 years to commence on the day immediately following the date of surrender of the existing lease”; and
- (h) by adding at the end the following subsections:
 - “(2) The Minister may make a determination for the purposes of paragraph (1) (g).
 - “(3) If the term of a further lease granted under subsection (1) does not exceed the term of the existing lease, the fee payable under paragraph (1) (g) shall not exceed the cost of granting the lease.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

“(4) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Insertion

36. After section 172 of the Principal Act the following section is inserted:

Grant of further lease—unit titles

“172A. (1) The Executive shall not, under section 171, 171A or 172, grant a further lease of any unit, or the common property, forming part of a registered units plan otherwise than upon a joint application by the corporation on behalf of the lessees of all the units and on its own behalf.

“(2) On an application as referred to in subsection (1), the Executive shall grant a further lease of a unit, or of common property, forming part of a registered units plan only if—

- (a) the Executive also grants a further lease of each other unit, and the common property, forming part of the units plan; and
- (b) the term of each such further lease is the same.

“(3) Words and phrases used in this section have the same meaning as in the *Unit Titles Act 1970*.”.

Lessee’s rights in respect of improvements

37. Section 173 of the Principal Act is amended—

- (a) by omitting from subsection (1) the definition of “improvement” and substituting the following definition:

“ ‘improvement’, in relation to land, means—

- (a) a building or a structure on the land; or
- (b) in relation to land held under a rural lease—
 - (i) a building or structure on or under the land; or
 - (ii) any improvement to the land reasonably undertaken for rural purposes;”;

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (b) by inserting in subsection (1) the following definition:
- “ ‘undertaken’, in relation to an improvement that is a building or structure, means the construction, erection or installation of the building or structure;”;
- (c) by inserting after subsection (1) the following subsection:
- “(1A) This section applies only to the following improvements to land:
- (a) an improvement undertaken in a manner consistent with the law of the Territory, and with any lease over the land, except—
 - (i) an improvement undertaken by the Territory or the Commonwealth (subject to paragraph (b)); or
 - (ii) an improvement acquired by the Territory or the Commonwealth (subject to paragraph (c));
 - (b) an improvement undertaken by the Territory or the Commonwealth, where the Territory or the Commonwealth has received, or is entitled to receive, payment for that improvement;
 - (c) an improvement acquired by the Territory or the Commonwealth, where the Territory or the Commonwealth has received, or is entitled to receive, payment for the improvement.”;
- (d) by inserting in subsection (2) “to which this section applies” after “improvements” (first occurring);
- (e) by inserting in subsection (3) “to which this section applies” after “improvements” (first occurring);
- (f) by inserting in paragraph (3) (b) “to which this section applies” after “improvements”;
- (g) by inserting after subsection (5) the following subsection:

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

“(5A) Subject to subsections (6) and (8), if, prior to the expiration of the term of a lease of Territory land, the Executive withdraws all or part of the leased land from the lease pursuant to a provision of the lease, the provisions of this section relating to the payment to the lessee of the value of the improvements on the land upon the expiration of the term shall (so far as applicable) apply as if the term of the lease had expired on the day of the withdrawal.”;

- (h) by inserting in subsection (6) “or (5A)” after “(5)”; and
- (i) by omitting from subsection (8) “and (5)” and substituting “, (5) and (5A)”.

Determination of value of improvements

38. Section 174 of the Principal Act is amended—

- (a) by omitting the definition of “prescribed day” in subsection (1);
 - (b) by inserting in subsection (1) the following definition:
 - “ ‘assessment day’ means—
 - (a) in relation to land a lease of which has expired—the day of expiry;
 - (b) in relation to land a lease of which has been terminated or surrendered—the day of termination or surrender, as the case may be; or
 - (c) in relation to land which has been withdrawn from a lease—the day of withdrawal;”;
- (c) by omitting from subsection (2) “the day that is the prescribed day” and substituting “the assessment day”;
- (d) by omitting from subsection (2) “prescribed” (last occurring) and substituting “assessment”;
- (e) by omitting from subsection (3) “the lease of the land had been renewed” and substituting “a further lease of the land had been granted”; and

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

(f) by adding at the end the following subsection:

“(5) Where compensation is payable under subsection 173 (5A), the Minister shall, in valuing the improvements, assume that the leased land or part of the leased land (as the case may be) had not been withdrawn from the lease.”.

Use of land for leased purpose

39. Section 175 of the Principal Act is amended—

(a) by adding at the end “, subject to this section”; and

(b) by adding at the end the following subsections:

“(2) Notwithstanding the lease of Territory Land for residential purposes, such land may also be used—

- (a) for a home occupation within the meaning of the Plan; or
- (b) for a home business within the meaning of the Plan, in accordance with an approval under Part VI.

“(3) Notwithstanding the purpose permitted by a lease of Territory Land, the land may be used—

- (a) for a development of a type prescribed by the regulations, in accordance with an approval under Part VI; or
- (b) for any other activity prescribed by the regulations.”.

Certificates of compliance

40. Section 179 of the Principal Act is amended—

(a) by omitting from subsection (1) “certificate” and substituting “certificate of compliance to the effect”;

(b) by inserting after subsection (1) the following subsections:

“(1A) Subject to subsection (2), where a building and development provision of a lease of Territory Land has been partially complied with, the Minister may issue a certificate of compliance to that effect.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

“(1B) A certificate of compliance under subsection (1A) may be issued subject to a condition (specified in the certificate) that the lessee provide security in a specified form against failure to complete specified outstanding work.”;

- (c) by omitting from subsection (2) “certificate under subsection (1)” and substituting “certificate of compliance”;
- (d) by omitting from subsection (2) “requirements of that subsection” and substituting “other requirements of this section”; and
- (e) by omitting from paragraph (2) (a) all the words after “subdivision” and substituting “under the *Unit Titles Act 1970* that is subject to a building and development provision, that the provision has been complied with, or a certificate of compliance has been issued under this section in respect of that provision”.

Transfer of land subject to building and development provision

41. Section 180 of the Principal Act is amended—

- (a) by omitting subparagraph (1) (d) (ii) and substituting the following subparagraph:
 - “(ii) a certificate of compliance under section 179; or”;
- (b) by omitting from subsection (2) “shall” and substituting “may”; and
- (c) by adding at the end the following subsections:

“(3) In deciding under subsection (2) whether to consent to an assignment or transfer of a lease, the Minister shall take into consideration any matters determined by the Minister for the purposes of this section.

“(4) A determination under subsection (3) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996—continued**

Mortgage of leasehold subject to building and development provision

42. Section 181 of the Principal Act is amended by omitting from paragraph (a) “certificate under subsection 179 (1)” and substituting “certificate of compliance under section 179”.

Substitution

43. Section 184 of the Principal Act is repealed and the following sections are substituted:

Application to surrender and regrant of leases

“184. A reference in this Division to the variation of a lease shall be read as including a reference to the surrender of a lease and the grant of a new lease to the same lessee, subject to different provisions, over land—

- (a) that is the whole or part of the land comprised in the surrendered lease; and
- (b) that is not defined land within the meaning of Subdivision D of Division 3 of Part II;

except where a lease is surrendered and a further lease is granted under section 171, 171A or 172.

Variation of nominal rent lease—change of use charge

“184A. (1) The Executive shall not execute a variation of a nominal rent lease unless the lessee has paid the Territory any change of use charge determined by the Minister under subsection (2), subject to any remission or increase under section 184C.

“(2) The Minister shall determine the change of use charge for a variation of a nominal rent lease in accordance with the formula—

$$\text{CUC} = (\text{V}_1 - \text{V}_2) \times 75\%$$

where:

CUC is the change of use charge payable for the variation of the lease;

V₁ is the capital sum that the lease might be expected to realise if—

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (a) the lease were to be varied as proposed;
- (b) the lease were offered for sale in good faith immediately after the variation on such reasonable terms and conditions as a genuine seller would require; and
- (c) the rent payable throughout the term of the lease were a nominal rent;

V₂ is the capital sum that the lease might be expected to realise if—

- (a) the lease were not to be varied during the remainder of its term;
- (b) the lease were offered for sale in good faith immediately before the variation on such reasonable terms and conditions as a genuine seller would require; and
- (c) the rent payable throughout the term of the lease were a nominal rent.

“(3) Where the capital value assessed as ‘**V₁**’ under subsection (2) is equal to or less than the capital value assessed as ‘**V₂**’ under that subsection, no change of use charge is payable under subsection (1).

“(4) Insofar as this section applies, by virtue of section 184, to the surrender of a lease and the grant of a new lease—

- (a) the reference in paragraph (c) of the definition of ‘**V₁**’ in subsection (2) to the term of the lease is to be read as a reference to the term of the new lease; and
- (b) the reference in paragraph (c) of the definition of ‘**V₂**’ in subsection (2) to the term of the lease is to be read as a reference to the term of the lease to be surrendered.

“(5) A variation of a lease has no effect if the change of use charge payable under subsection (1) for the variation is not paid.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

New change of use charge formula

“184B. (1) 18 months after the day on which section 184A commences, the formula in subsection 184A (2) is to be omitted and the following formula substituted:

$$\text{CUC} = V_1 - V_2$$

“(2) The formula in subsection 184A (2), as in force immediately before the day on which the substitution of the formula takes effect under subsection (1) of this section, continues to apply in relation to the variation of a lease if the variation had been applied for, but the lease had not been varied, immediately before that day.

Variation of nominal rent leases—remission or increase of change of use charge

“184C. (1) The Minister may, on application by the lessee, remit a change of use charge under section 184A for the variation of a nominal rent lease in circumstances prescribed by the regulations.

“(2) The Minister may make regulations for the purposes of subsection (1) providing for the remission of change of use charges for the variation of specified leases, for leases of specified classes, or for specified types of lease variation.

“(3) The Minister may increase a change of use charge under section 184A for the variation of a nominal rent lease in circumstances prescribed by the regulations.

“(4) The Minister may make regulations for the purposes of subsection (3) providing for the increase of change of use charges for the variation of specified leases, for leases of specified classes, or for specified types of lease variation.

“(5) Regulations under subsection (2) or (4) take effect—

- (a) on the day immediately following the last day on which they could have been disallowed under section 6 of the *Subordinate Laws Act 1989*; or
- (b) on any later date specified in the regulations;

unless they are disallowed under section 6 of that Act.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Variation of rental leases

“184D. (1) The Executive shall not execute a variation of a rental lease unless any rent and additional rent payable under the lease up to the day of variation has been paid.

“(2) Where the Executive executes a variation of a rental lease, the Minister shall reappraise the rent payable under the lease, following (to the extent possible) the method provided by the rental provisions of the lease.

“(3) Where the Executive executes a variation of a rental lease, the rent payable under the lease is to be adjusted in accordance with the reappraisal under subsection (2) with effect from the date of variation.

“(4) Subsections (2) and (3) do not apply to a variation of a rental lease—

- (a) to reduce the rent payable to a nominal rent; or
- (b) otherwise affecting the rental provisions of the lease.”.

Variation of lease to pay out rent

44. Section 186 of the Principal Act is amended—

(a) by omitting from paragraph (1) (b) “and” (last occurring);

(b) by adding at the end of paragraph (1) (c) “; and”;

(c) by adding at the end of subsection (1) the following paragraph:

“(d) the lessee has paid the Territory an amount determined by the Minister by reference to any policy direction made under subsection (1A).”; and

(d) by inserting after subsection (1) the following subsections:

“(1A) The Minister may make policy directions for the purpose of paragraph (1) (d).

“(1B) A policy direction under subsection (1A) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Insertion

45. After section 186 of the Principal Act the following section and Division are inserted:

No variations to extend term

“186A. The Executive shall not execute a variation of a lease of Territory Land to extend the term of the lease.

“Division 3A—Consolidation and subdivision

Application—nominal rent leases of Territory Land

“187. This Division applies only in relation to the consolidation and subdivision of nominal rent leases.

Consolidation and subdivision—change of use charge

“187A. (1) The Executive shall not execute a consolidation or a subdivision unless the lessee has paid the Territory any change of use charge determined by the Minister under subsection (2), subject to any remission or increase under section 187C.

“(2) The Minister shall determine the change of use charge for a consolidation or a subdivision in accordance with the formula—

$$\text{CUC} = (\mathbf{V}_1 - \mathbf{V}_2) \times 75\%$$

where:

CUC is the change of use charge payable for the consolidation or subdivision;

V₁ is the capital sum that the new lease or leases to be granted pursuant to the consolidation or subdivision might be expected to realise if—

- (a) the consolidation or subdivision were to take place as proposed;
- (b) the new lease or leases were offered for sale in good faith immediately after the variation on such reasonable terms and conditions as a genuine seller would require; and

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996—continued**

- (c) the rent payable throughout the term of the new lease or leases were a nominal rent;

V₂ is the capital sum that the lease or leases to be surrendered pursuant to the consolidation or subdivision might be expected to realise if—

- (a) no consolidation or subdivision were to take place during the remainder of the term of the surrendered lease or leases;
- (b) the lease or leases were offered for sale in good faith immediately before the consolidation or subdivision on such reasonable terms and conditions as a genuine seller would require; and
- (c) the rent payable throughout the term of the lease or leases to be surrendered were a nominal rent.

“(3) Where the capital value assessed as ‘V₁’ under subsection (2) is equal to or less than the capital value assessed as ‘V₂’ under that subsection, no change of use charge is payable under subsection (1).

“(4) A consolidation or subdivision has no effect if the change of use charge payable under subsection (1) for the consolidation or subdivision is not paid.

New change of use charge formula

“187B. (1) 18 months after the day on which section 187A commences, the formula in subsection 187A (2) is to be omitted and the following formula substituted:

$$\text{CUC} = \text{V}_1 - \text{V}_2$$

“(2) The formula in subsection 187A (2), as in force immediately before the day on which the substitution of the formula takes effect under subsection (1) of this section, continues to apply in relation to a consolidation or subdivision if the consolidation or subdivision had been applied for, but had not been effected, immediately before that day.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996—continued**

Consolidation and subdivision—remission or increase of change of use charge

“187C. (1) The Minister may, on application by a lessee applying for a consolidation or subdivision, remit a change of use charge under section 187A for the consolidation or subdivision in circumstances prescribed by the regulations.

“(2) The Minister may make regulations for the purposes of subsection (1) providing for the remission of change of use charges for specified consolidations, subdivisions or leases, or for specified types of consolidation, subdivision or lease.

“(3) The Minister may increase a change of use charge under section 187A for a consolidation or subdivision in circumstances prescribed by the regulations.

“(4) The Minister may make regulations for the purposes of subsection (3) providing for the increase of change of use charges for specified consolidations, subdivisions or leases, or for specified types of consolidation, subdivision or lease.

“(5) Regulations under subsection (2) or (4) take effect—

- (a) on the day immediately following the last day on which they could have been disallowed under section 6 of the *Subordinate Laws Act 1989*; or
- (b) on any later date specified in the regulations;

unless they are disallowed under section 6 of that Act.”.

Termination of leases

46. Section 188 of the Principal Act is amended—

- (a) by omitting from subsection (1) “the provisions of this Part or the provisions of his or her lease” and substituting “this Part or the lease”;
- (b) by inserting after subsection (2) the following subsection:

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

“(2A) The Minister shall cause a copy of a notice of the termination of a lease of Territory Land under subsection (1) to be served on—

- (a) the Registrar-General; and
- (b) any person having an interest in the land, being an interest registered under the *Land Titles Act 1925*;

at the same time as, or as soon as practicable after, the notice under subsection (1) is served.”;

- (c) by omitting from subsection (3) “the provisions of this Part or the provisions of his or her licence” and substituting “this Part or the licence”; and

- (d) by adding at the end the following subsection:

“(6) The validity of the termination of a lease is not affected by a failure to comply with subsection (2A).”.

Recommendations to Authority

47. Section 192 of the Principal Act is amended by adding at the end of subparagraph (b) (i) “to reduce or increase the size or the area, or to alter the shape of the area”.

Reserved areas

48. Section 193 of the Principal Act is amended by omitting all the words from and including “The purposes” to and including “paragraph 192 (a) are for” and substituting “Public land may be reserved by the Plan under paragraph 7 (3) (f) for any of the following purposes:”.

Access to leased land from public streets and carparks

49. Section 216 of the Principal Act is amended by omitting from paragraphs (1) (a) and (b) “public road” and substituting “public street”.

Notification of certain leases to Legislative Assembly

50. Section 216A of the Principal Act is amended—

- (a) by omitting subsection (2);

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (b) by omitting from subsection (3) “or (2)”; and
- (c) by omitting from subsection (4) the definition of “unrecommended lease”.

Interpretation

51. Section 222 of the Principal Act is amended—

- (a) by omitting “to conduct a controlled activity” from the definition of “application” in subsection (1) and substituting “for approval to undertake a development”;
- (b) by omitting “, 240 or 241” from paragraph (a) of the definition of “approval” in subsection (1);
- (c) by omitting “235 or” and “, as the case requires” from the definition of “objection” in subsection (1);
- (d) by inserting in subsection (1) the following definitions:

“ ‘building’ includes—

- (a) an addition to a building;
- (b) a structure attached to a building; and
- (c) a part of a building;

‘consolidation’ has the same meaning as in Part V;

‘development’ means activity in relation to land that consists of 1 or more of the following activities:

- (a) the erection, alteration or demolition of a building or structure on or under the land;
- (b) the carrying out of earthworks or other construction work on or under the land;
- (c) the carrying out of work that would affect the landscape of the land except where the land is leased for residential purposes only and is not specified in the

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Heritage Places Register, or an Interim Heritage Places Register, as a heritage place;

- (d) a use of the land for a business—
 - (i) that is a home business within the meaning of the Plan; and
 - (ii) that is not expressly authorised by a current lease;
- (e) a use of the land for an activity—
 - (i) that is prescribed for the purposes of paragraph 175 (3) (b); and
 - (ii) that is not expressly authorised by a current lease;
- (f) if the land is unleased Territory Land—a use of the land that is not authorised by a current licence or permit granted in respect of the land under an Act or regulations;
- (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 or a current lease;
- (h) a variation of a lease of the land;
- (j) an activity declared by another Act to be a development activity for the purposes of this Part;

but does not include a use of unleased Territory Land by or on behalf of the Territory for a purpose for which it was used before the commencement of this Act;

‘relevant authority’, in relation to an application, means—

- (a) if the Minister has, under subsection 229A (1), referred the application to the Commissioner for

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

determination and that reference has not been
revoked—the Commissioner; or

(b) in any other case—the Minister;

‘subdivision’ has the same meaning as in Part V;

‘structure’ includes a fence, mast, antenna, aerial, road, footpath,
driveway, carpark, culvert or service conduit or cable.”; and

(e) by omitting subsections (3) and (4) and substituting the following
subsections:

“(3) A reference in this Part to the variation of a lease shall be
read as including a reference to—

(a) the surrender of a lease and the granting of a new lease,
subject to different provisions, to the same lessee over
land—

(i) that is the whole or part of the land comprised in the
surrendered lease; and

(ii) that is not defined land within the meaning of
Subdivision D of Division 3 of Part II;

except where a lease is surrendered and a further lease is
granted under section 171, 171A or 172;

(b) a consolidation; and

(c) a subdivision.

“(4) The regulations may prescribe activity of a kind referred to
in the definition of ‘development’ in subsection (1) that shall be taken
not to be development for the purposes of this Part.”.

Repeal

52. Section 223 of the Principal Act is repealed.

Repeal

53. Subdivision A of Division 2 of Part VI is repealed.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Offence—development

54. Section 225 of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsection:

“(1) A person shall not, without reasonable excuse, undertake a development otherwise than in accordance with an approval.

Penalty: 50 penalty units.”; and

(b) by omitting from subsection (2) “conduct a controlled activity” and substituting “undertake a development”.

Application to undertake development

55. Section 226 of the Principal Act is amended—

(a) by omitting from subsection (1) “conduct a controlled activity” and substituting “undertake a development”;

(b) by omitting from paragraph (1) (b) “controlled activity” and substituting “development”;

(c) by omitting subsection (2) and substituting the following subsections:

“(2) Where an application is made by a person who is not the lessee of the place to which the application relates, the application shall, in addition to being executed by the person by whom it is made, be executed by—

(a) if the place to which the application relates is subject to a lease—the lessee of the place; or

(b) in any other case—the Minister.

“(2A) A lessee or the Minister may, by writing, appoint a person to act on his or her behalf in relation to an application.

“(2B) A person who executes an application under paragraph (2) (a) shall be taken to be an applicant in relation to the application.”;

(d) by omitting from subsection (3) “, before giving notice under section 229”; and

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (e) by omitting subsection (4) and substituting the following subsections:
- “(4) Where the Minister makes an alteration or a correction under subsection (3), he or she shall—
- (a) advise the applicant, or if there is more than 1, each applicant, that the alteration or correction has been made; and
 - (b) if notice has been given under section 229 of the making of the application, give notice in accordance with that section of the application as so altered or corrected.
- “(5) An application may be made under this section in respect of a development that has been undertaken without approval.”.

Restrictions on inspection of applications

- 56.** Section 228 of the Principal Act is amended—
- (a) by omitting from subsection (1) “to conduct a controlled activity” and substituting “for approval to undertake a development”;
 - (b) by omitting from paragraph (3) (a) “to conduct a controlled activity” and substituting “for approval to undertake a development”; and
 - (c) by omitting from subsection (3) “to conduct the controlled activity” and substituting “for approval to undertake the development”.

Notice of application

- 57.** Section 229 of the Principal Act is amended—
- (a) by omitting from subparagraph (1) (a) (i) “each” and substituting “the”;
 - (b) by adding at the end of paragraph (1) (a) “and”;
 - (c) by omitting from the end of paragraph (1) (b) “and”;
 - (d) by omitting paragraph (1) (c);
 - (e) by omitting subsection (2) and substituting the following subsection:

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

“(2) Paragraph (1) (a) does not apply if, in the opinion of the Minister, the number of places adjoining the place to which the application relates is such that it would be impractical to give notice by post to the lessee of each place.”;

- (f) by omitting from subsection (3) “is to conduct a controlled activity specified in item 2 or 3 of Schedule 4” and substituting “relates to a development that is or includes a variation of a lease”;
- (g) by omitting from subsection (3) “place to which the application relates” and substituting “land subject to the lease to be varied”;
- (h) by omitting from paragraph (4) (a) all the words after “application” and substituting “that relates to a place specified in the Heritage Places Register, or an Interim Heritage Places Register, as a heritage place.”;
- (i) by inserting after paragraph (4) (a) the following paragraph:

“(ab) shall forward to the Conservator for comment a copy of each application that relates to public land; and”;
- (j) by omitting subsections (5), (5A) and (6) and substituting the following subsections:

“(5) The Minister shall cause to be erected on the place to which an application relates a sign that specifies the development proposed to be undertaken in relation to that place.

“(6) A person shall not, without lawful excuse, move, deface, damage, obscure or otherwise interfere with a sign erected under subsection (5).

Penalty: 5 penalty units.

“(6A) A person shall not, without reasonable excuse, prevent or restrict access to a sign erected under subsection (5).

Penalty: 5 penalty units.

“(6B) The validity of an approval is not to be taken to be affected by a failure by the Minister to comply with subsection (5).”; and

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (k) by omitting from subsection (8) all the words after “which” and substituting “provisions of subsections (1) to (5) (inclusive) are not to apply”.

Substitution

58. Section 230 of the Principal Act is repealed and the following sections are substituted:

Determination of applications

“229A. (1) The Minister may, for the purposes of this section, by instrument prescribe classes of applications that are to be referred to the Commissioner for determination.

“(2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

“(3) The Minister shall refer all applications included in a prescribed class of applications to the Commissioner for determination.

“(4) The Minister may refer an application that is not included in a prescribed class of applications to the Commissioner for determination.

“(5) Subject to subsection (6), the Commissioner shall determine all applications referred to him or her under subsection (3) or (4) and the Minister shall determine all other applications.

“(6) Where an application has been referred to the Commissioner for determination under subsection (3) or (4), the Minister may, at any time before the application is determined by the Commissioner, by notice in writing given to the Commissioner, revoke the reference.

“(7) Where the Minister revokes a reference of an application to the Commissioner, the Minister shall—

- (a) determine the application; and
- (b) cause a copy of the notice of revocation given to the Commissioner under subsection (6) to be published in the *Gazette* within 21 days after the day on which the notice is given to the Commissioner.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

“(8) Subsection (5) and paragraph (7) (a) shall not be taken to derogate from the power of the Minister to delegate his or her power to determine an application.

Approvals

“230. (1) The relevant authority may approve or refuse to approve an application.

“(2) The relevant authority is to be taken to have refused to approve an application if he or she fails to make a decision in relation to the application before the expiration of the prescribed period.

“(3) Notwithstanding subsection (2), the relevant authority may approve an application at any time after the expiration of the period prescribed for the purposes of that subsection in relation to the application until the earliest of the following dates:

- (a) the date on which the Administrative Appeals Tribunal has finally dealt with an application under section 275 to review the relevant authority’s deemed refusal under subsection (2) of this section;
- (b) 6 months after the date of the application, unless paragraph (c) applies;
- (c) if an Assessment or a variation to the Plan is required in relation to the application—12 months after the date of the application.

“(4) Subject to subsection (5), where the relevant authority approves an application to undertake a development that includes an activity that is not permitted by a lease of the land on which the activity is to be carried out, the approval shall not take effect in relation to that activity until the lease is varied so as to permit the activity.

“(5) Subsection (4) does not apply in relation to—

- (a) an activity referred to in paragraph (c) of the definition of ‘development’ in subsection 222 (1);
- (b) an activity included in a development of a type prescribed for the purposes of paragraph 175 (3) (a); or
- (c) an activity prescribed for the purposes of paragraph 175 (3) (b).”.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Matters to be considered

59. Section 231 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Minister” (first occurring) and substituting “relevant authority”;
- (b) by omitting from subparagraph (1) (a) (iv) “controlled activity” and substituting “development”; and
- (c) by omitting from paragraph (1) (b) “to conduct a controlled activity affecting the requirements for” and substituting “for approval to undertake a development that would be affected by requirements relating to”.

More information

60. Section 233 of the Principal Act is amended—

- (a) by omitting from subsection (1) “Minister” (first occurring) and substituting “relevant authority”;
- (b) by omitting from subsection (1) “Minister” (second occurring) and substituting “authority”; and
- (c) by omitting from subsections (2) and (3) “Minister” and substituting “relevant authority”.

Effect of failure to furnish further information

61. Section 234 of the Principal Act is amended by omitting all the words after “subsection 233 (1),” and substituting “the relevant authority shall, for the purposes of enabling an application to be made to the Administrative Appeals Tribunal under section 275, be taken to have made a decision refusing the application for approval to undertake the development.”.

Repeal

62. Section 235 of the Principal Act is repealed.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Objections—general

63. Section 237 of the Principal Act is amended by omitting from subsection (3) “conduct a controlled activity” and substituting “undertake a development”.

Repeal

64. Sections 240 and 241 of the Principal Act are repealed.

Substitution

65. Section 242 of the Principal Act is repealed and the following section substituted:

Application approved—notification of decision

“242. (1) If an application is approved by the relevant authority, the Minister shall give the applicant written notice of the approval.

“(2) The notice shall specify the date on which the approval takes effect.

“(3) If approval is given to an application that relates to a variation of a lease, the Minister shall give written notice of the approval to the Registrar-General.”.

Notification of approval or refusal of application

66. Section 243 of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsection:

“(1) Notwithstanding section 242, if a decision is made by a relevant authority to approve an application, being a decision in respect of which an application for review may be made to the Administrative Appeals Tribunal under section 276, the Minister shall—

(a) if the approval is in relation to an application to which subsection 229 (8) applies—publish notice of the decision in a daily newspaper; and

(b) give notice of the decision to—

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (i) each person notified under paragraph 229 (1) (a); and
- (ii) each person who objected under section 237 (1).”;
- (b) by omitting from subparagraph (3) (a) (ii) “controlled activity” and substituting “development”;
- (c) by omitting subsection (4) and substituting the following subsection:
 - “(4) If a decision is made by a relevant authority to refuse an application, the Minister shall give written notice of the decision to—
 - (a) the applicant;
 - (b) each person notified under paragraph 229 (1) (a); and
 - (c) each person who objected under subsection 237 (1).”;
- (d) by adding at the end the following subsection:
 - “(6) A notice under paragraph (1) (b) or subsection (4) shall comply with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.”.

Notification where more than 1 objector

- 67.** Section 244 of the Principal Act is amended—
- (a) by omitting “or Executive” (first occurring); and
 - (b) by omitting “the Minister or Executive (as the case requires)” and substituting “he or she”.

Conditional approvals

- 68.** Section 245 of the Principal Act is amended—
- (a) by omitting from subsection (1) “and sections 240, 241 and 246, the Minister” and substituting “, the relevant authority”;
 - (b) by omitting from subsection (1) “Minister” (second occurring) and substituting “authority”;
 - (c) by omitting from subsection (2) “Minister” and substituting “relevant authority”;

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (d) by omitting from paragraph (2) (a) “or by a concurring authority”;
- (e) by omitting paragraph (3) (a) and substituting the following paragraph:
 - “(a) that a development is to be carried out to the satisfaction of a specified person or body;”;
- (f) by omitting from paragraph (3) (b) “controlled activity” and substituting “development”;
- (g) by omitting paragraph (3) (c) and substituting the following paragraph:
 - “(c) specifying a period in which a development or any stage of a development is to be carried out;”;
- (h) by omitting from paragraph (3) (e) “conduct a controlled activity” and substituting “carry out a development”;
- (i) by omitting from subparagraph (3) (e) (i) “is” and substituting “are”;
- (j) by omitting from paragraph (3) (h) “controlled activities be conducted” and substituting “a development be carried out”;
- (k) by omitting from paragraph (3) (j) “Minister” (first occurring) and substituting “relevant authority”; and
- (l) by omitting from paragraph (3) (k) “before commencing to conduct the controlled activity (whether in whole or in part)” and substituting “by him or her before the development or a specified part of it is commenced”.

Repeal

- 69.** Section 246 of the Principal Act is repealed.

Minor amendments

- 70.** Section 247 of the Principal Act is amended—

- (a) by omitting from subsection (1) all the words after “approval” (first occurring) and substituting “is in force may apply in writing to the relevant authority who gave the approval for an amendment of it.”;

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (b) by omitting from subsection (2) “Minister” and substituting “relevant authority”;
- (c) by omitting paragraph (2) (b);
- (d) by omitting paragraph (2) (d) and substituting the following paragraph:
 - “(d) does not change the kind of development approved but only the activity permitted.”; and
- (e) by omitting from subsection (3) “Minister” and substituting “relevant authority”.

Corrections

71. Section 248 of the Principal Act is amended by omitting “Minister is satisfied that an approval contains a formal error, the Minister” and substituting “relevant authority who gave an approval is satisfied that the approval contains a formal error, the authority”.

Approval—when takes effect

72. Section 249 of the Principal Act is amended by omitting “The approval of an application by the Minister, or by the Executive under section 240 or 241,” and substituting “Subject to subsection 230 (4) and paragraph 245 (3) (d), the approval of an application by the relevant authority”.

Substitution

73. Section 250 of the Principal Act is repealed and the following section substituted:

Execution of approvals for variations of leases

“250. Subject to Division 3 of Part V, where an approval to undertake a development takes effect pursuant to section 249, being a development that consists of or includes a variation of a lease, the Executive shall cause the lease to be varied in accordance with the terms of the approval.”.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Expiration of approvals

74. Section 251 of the Principal Act is amended—

- (a) by omitting from subsection (1) “conduct a controlled activity (other than a controlled activity specified in item 2 or 3 of Schedule 4)” and substituting “undertake a development (other than a development that consists wholly of a variation of a lease)”;
- (b) by omitting from paragraphs (1) (a) and (b) “activity” (wherever occurring) and substituting “development”; and
- (c) by omitting from paragraph (1) (c) “an activity or any stage of an activity—the activity or any stage of the activity” and substituting “the development or any stage of the development—the development or stage of development”.

Extension of time

75. Section 252 of the Principal Act is amended—

- (a) by omitting from subsection (1) “conduct a controlled activity (other than an activity specified in item 2 or 3 of Schedule 4)” and substituting “undertake a development (other than a development that consists wholly of a variation of a lease)”;
- (b) by omitting from subsection (1) “the activity” (wherever occurring) and substituting “the development”; and
- (c) by omitting from subsection (2) all the words after “which” and substituting “the development, or the stage of the development, is to be completed.”.

Repeal

76. Section 254 of the Principal Act is repealed.

Application for order

77. Section 256 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (a) “was,” after “activity”;
- (b) by omitting subsection (2) and substituting the following subsection:

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- “(2) An application under subsection (1) shall—
- (a) be in a form made available by the Minister;
 - (b) set out, or be accompanied by, such information relating to the application as is required by the form; and
 - (c) set out the grounds on which the order is sought.”; and
- (c) by omitting subparagraphs (5) (b) (i) to (v) (inclusive) and substituting the following subparagraphs:
- “(i) not to commence a development without approval;
 - (ii) to stop carrying out a development without approval;
 - (iii) to stop, or not commence, a controlled activity other than a development;
 - (iv) to comply with the terms of an approval to undertake a development;
 - (v) to stop undertaking a development otherwise than in accordance with the conditions subject to which an approval to conduct the development was given;
 - (vi) 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 by an Act or regulations;
 - (vii) 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 an Act;
 - (viii) to restore any land, building or structure that has been altered without approval or permission required by an Act or regulations;
 - (ix) to replace with an identical building or structure any building or structure that has been demolished without approval or permission required by an Act or regulations;
 - (x) to clean-up a leasehold;

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (xi) to prune in a manner specified in the order so much of a tree, sapling, plant or shrub as overhangs a public place; or
- (xii) to cease carrying out an activity that is likely to cause soil erosion or that involves—
 - (A) destroying, damaging, removing or otherwise interfering with vegetation (living or dead); or
 - (B) removing or otherwise interfering with soil;that is—
 - (C) between the banks of a watercourse;
 - (D) within 20 metres of a bank of a watercourse; or
 - (E) on land having a slope of more than 18° from the horizontal.”.

Insertion

78. After section 274 of the Principal Act the following Division is inserted:

“Division 4A—Commissioner for Land and Planning

Commissioner for Land and Planning

“274A. (1) There shall be a Commissioner for Land and Planning appointed by the Minister by instrument.

“(2) The Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by instrument.

“(3) Notwithstanding paragraph 6 (a) of the *Statutory Appointments Act 1994*, sections 4 and 5 of that Act apply to the appointment of a public servant as Commissioner of Land and Planning.

Term of office

“274B. Subject to this Act, the Commissioner holds office for the period (not exceeding 5 years) specified in the instrument of appointment, but is eligible for reappointment.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Remuneration and allowances

“274C. The Commissioner shall be paid the remuneration and allowances determined by the Remuneration Tribunal under subsection 10 (1) of the *Remuneration Tribunal Act 1995*.

Leave of absence

“274D. The Minister may grant leave of absence to the Commissioner upon terms and conditions as to remuneration or otherwise determined by the Minister by instrument.

Acting appointments

“274E. (1) The Minister may, in writing, appoint a person to act as Commissioner—

- (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Commissioner is for any reason unable to perform the functions of the office.

“(2) A person appointed to act as the Commissioner during a vacancy in the office of Commissioner shall not so act continuously for more than 12 months.

“(3) Anything done by or in relation to a person purporting to act pursuant to an appointment under subsection (1) is not invalid on the ground that—

- (a) the appointment was ineffective or had ceased to have effect; or
- (b) the occasion to act had not arisen or had ceased.

Resignation

“274F. The Commissioner may resign from office by signed notice given to the Minister.

Suspension and removal of Commissioner

“274G. (1) The Executive may remove the Commissioner from office on an address praying for his or her removal on the ground of misbehaviour or

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

physical or mental incapacity being presented to the Executive by the Legislative Assembly.

“(2) The Executive may suspend the Commissioner from office on the ground of misbehaviour or physical or mental incapacity.

“(3) Where the Executive suspends the Commissioner from office, the Minister shall cause a statement of the grounds of the suspension to be laid before the Legislative Assembly within 7 sitting days of the Legislative Assembly after the suspension.

“(4) Where such a statement has been laid before the Legislative Assembly, the Legislative Assembly may, within 15 sitting days of the Legislative Assembly after the day on which the statement has been laid before it, by resolution, declare that the Commissioner should be removed from office and, if the Legislative Assembly so passes such a resolution, the Executive shall remove the Commissioner from office.

“(5) If, at the end of 15 sitting days of the Legislative Assembly after the day on which the statement has been laid before it, the Legislative Assembly has not passed such a resolution, the suspension terminates.

“(6) If the Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Executive shall remove the Commissioner from office.

“(7) The Commissioner shall not be removed or suspended from office except as provided by this section.

“(8) The suspension of the Commissioner from office does not affect any entitlement of the Commissioner to be paid remuneration and allowances.

Retirement

“274H. The Minister may, by instrument and with the consent of the Commissioner retire the Commissioner on the grounds of physical or mental incapacity from the date and upon any terms and conditions specified in the instrument.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Delegation

“274I. The Commissioner may, by signed instrument, delegate to a public servant all or any of his or her powers under this Act.

Protection from suit

“274J. Neither the Commissioner, a person to whom the Commissioner has delegated any or all of his or her powers, nor a person acting under the Commissioner’s direction or authority is liable to an action, suit or proceeding in relation to any act done or omitted to be done in good faith in the exercise or purported exercise of any power or authority conferred by this Act.”.

Review of decisions

79. Section 275 of the Principal Act is amended—

- (a) by omitting paragraphs (1) (b), (c), (e) and (g);
- (b) by omitting subsection (2) and substituting the following subsection:
 - “(2) Where the relevant authority makes a decision—
 - (a) refusing to approve an application under section 230;
 - (b) refusing to grant an extension of a period under subsection 233 (3);
 - (c) giving an approval subject to conditions under subsection 245 (1); or
 - (d) refusing to amend an approval under subsection 247 (2);the relevant authority shall cause notice of the decision to be given to a person whose interests are affected by the decision.”; and
- (c) by omitting subsection (3) and substituting the following subsection:
 - “(3) Where—
 - (a) an approval that is in force contains a condition that a development is to be carried out to the satisfaction of a specified person or body; and

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (b) the specified person or body makes a decision that the development has not been carried out to the satisfaction of the person or body;

the person or body shall cause notice of the decision to be given to the applicant to whom the decision relates.”.

Review—objectors, third parties

80. Section 276 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) A person may apply to the Administrative Appeals Tribunal for a review of a decision of the relevant authority to approve an application under section 230 or 245 if—

- (a) the person making the application is—
 - (i) a person who objected under section 237; or
 - (ii) a person who the Administrative Appeals Tribunal has reasonable grounds for believing was, in the circumstances, unable to object within the prescribed period;
 - (b) the rights of the person are substantially and adversely affected by the decision; and
 - (c) the application is made within 28 days after the day on which the person was notified of the decision.”;
- (b) by inserting in subsection (4) “substantially and adversely” before “affected”;
 - (c) by omitting subsection (5) and substituting the following subsection:

“(5) A person is not entitled to make an application under this section if the relevant authority has issued a certificate that an Environmental Impact Statement made, or an Inquiry conducted, under Part IV has substantially dealt with the matters forming the basis of the relevant authority’s decision to give the applicant approval to undertake the development.”; and

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996—continued**

- (d) by omitting from subsection (7) “paragraph (5) (a)” and substituting “subsection (5)”.

Notification of objectors

81. Section 278 of the Principal Act is amended by omitting from subsection (1) all the words after “so applied” and substituting “to each person who objected under section 237 to the application in relation to which the decision was made.”.

Notification of applicants

82. Section 279 of the Principal Act is amended by omitting from the definition of “objector” in subsection (3) “paragraph 276 (1) (c) or (d)” and substituting “subparagraph 276 (1) (a) (i) or (ii).”.

Regulations

83. Section 282 of the Principal Act is amended—

- (a) by inserting after paragraph (d) the following paragraph:

“(da) exempting the carrying out of a specified development, or a development included in a specified class of developments, either absolutely or subject to conditions, from the application of all or any of the provisions of this Part, or the regulations;” and

- (b) by omitting from paragraph (f) “, a concurring authority”.

Review of decisions

84. Section 282A of the Principal Act is amended—

- (a) by inserting in paragraph (1) (g) “of compliance” after “certificate”;

- (b) by omitting from paragraph (1) (g) “or”;

- (c) by inserting after paragraph (1) (g) the following paragraphs:

“(ga) on application for a certificate of compliance under subsection 179 (1)—issuing a certificate of compliance that a building and development provision of a lease has been partially complied with under subsection 179 (1A);

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (gb) refusing to issue a certificate of compliance under subsection 179 (1A);
- (gc) issuing a certificate of compliance under subsection 179 (1A) subject to a condition under subsection 179 (1B);”;
- (d)** by inserting after paragraph (1) (h) the following paragraphs:
 - “(i) determining a change of use charge for the variation of a lease under subsection 184A (2);
 - (j) refusing to remit a change of use charge for the variation of a lease under subsection 184C (1);
 - (k) remitting a change of use charge for the variation of a lease by an amount less than that applied for under subsection 184C (1);
 - (l) increasing a change of use charge for the variation of a lease under subsection 184C (3);
 - (m) reappraising the rent payable under a lease under subsection 184D (2);
 - (n) determining an amount for the variation of a rental lease to reduce the rent payable to a nominal rent under paragraph 186 (1) (d);
 - (o) determining a change of use charge for a consolidation or subdivision under subsection 187A (2);
 - (p) refusing to remit a change of use charge for a consolidation or subdivision under subsection 187C (1);
 - (q) remitting a change of use charge for a consolidation or subdivision by an amount less than that applied for under subsection 187C (1); or
 - (r) increasing a change of use charge for a consolidation or subdivision under subsection 187C (3);”;
- (e)** by inserting in subsection (1) “substantially and adversely” before “affected”;

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (f) by inserting in paragraph (2) (e) “, 171A” after “171”;
- (g) by omitting paragraph (2) (f);
- (h) by inserting in subsections (2) and (3) “substantially and adversely” before “affected”; and
- (i) by omitting paragraph (4) (a).

Repeal of Schedule

85. Schedule 4 to the Principal Act is repealed.

Schedule 5

86. Schedule 5 to the Principal Act is amended—

- (a) by omitting items 2 and 3; and
- (b) by omitting items 5, 6 and 7 and substituting the following items:

5	Undertaking a development	\$5,000
6	Having a building or structure that was constructed or erected without approval required by—	\$5,000
	(a) Division 2 of Part VI of this Act; or	
	(b) the <i>Buildings (Design and Siting) Act 1964</i> .	

PART V—TRANSITIONAL

Interpretation

114. (1) In this Part—

“Principal Act” means the *Land (Planning and Environment) Act 1991*;

“commencement day”, in relation to a provision in this Part, means the day on which the provision commences under section 2 of this Act.

(2) A reference in this Part to a provision of Part VI of the Principal Act as in force at any time before the commencement day includes a reference to that provision as applied at that time by section 5 of the *Buildings (Design and Siting) Act 1964*.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Variation of the Territory Plan

115. (1) If, before the commencement day, notice had been given of a draft Plan variation under subsection 19 (1) of the Principal Act, sections 9, 19, 21, 22 and 26 of the Principal Act as in force immediately before that day continue to apply in relation to the draft Plan variation as if this Act had not been made.

(2) If, before the commencement day, notice had been given of a draft Plan variation under subsection 19 (1) of the Principal Act, section 29 of the Principal Act as in force immediately before that day continues to apply in relation to any corresponding Plan variation as if this Act had not been made.

Change in nature of the Authority

116. (1) The amendments to the Principal Act effected by sections 19 and 20 of this Act are not to be taken to affect the continuing validity on or after the commencement day of—

- (a) any delegation by the Authority under section 40 of the Principal Act executed before that day; or
- (b) anything done by or in relation to the Authority before that day.

(2) Section 42 of the Principal Act as in force immediately before the commencement day continues to apply in relation to anything done or omitted to be done by or in relation to the Authority before that day as if this Act had not been made.

(3) The amendment to the Principal Act effected by section 23 of this Act is not to be taken to affect the continuing validity on or after the commencement day of anything done by or in relation to the Chief Planner or the Authority before that day.

Preliminary assessments

117. If, before the commencement day, a preliminary assessment had been prepared pursuant to a notice given under section 113 of the Principal Act, sections 116 and 117 of the Principal Act as in force immediately before that day continue to apply in relation to the preliminary assessment as if this Act had not been made.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

Grant of further leases

118. If, immediately before the commencement day, an application had been made in accordance with section 171 or 172 of the Principal Act for the grant of a further lease of Territory Land, but the Executive had not granted the applicant a further lease—

- (a) in the case of an application for the grant of a further residential lease—section 171 as amended by this Act applies in relation to the grant of the lease;
- (b) in the case of an application for the grant of a rural lease—section 171A as amended by this Act applies in relation to the grant of the lease; or
- (c) in any other case—section 172 as amended by this Act applies in relation to the grant of the lease.

Lessee's rights in respect of improvements

119. If, before the commencement day, a lease of Territory Land had expired or been terminated or surrendered, sections 173 and 174 of the Principal Act as in force immediately before that day continue to apply in relation to the expiry, termination or surrender as if this Act had not been made.

Use of land for leased purpose

120. (1) If, before the commencement day, the use of Territory Land for a home business had been approved under a law of the Territory, that approval is to be taken to be an approval for the purposes of paragraph 175 (2) (b) of the Principal Act as amended by this Act.

(2) Section 175 of the Principal Act as in force at any time before the commencement day is not to be taken to have rendered unlawful the use of Territory Land for a home business where that use was approved under the Principal Act as so in force.

Certificates of compliance

121. If, immediately before the commencement day, an application had been made in accordance with subsection 179 (1) of the Principal Act for a certificate under section 179 of the Principal Act, but no decision had been

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

made in relation to the application, that section as amended by this Act applies in relation to the application.

Lease variations

122. (1) If, before the commencement day, the variation of a lease of Territory Land had been approved under Part VI of the Principal Act but the variation had not been executed—

- (a) section 184 of the Principal Act as in force immediately before that day continues to apply in relation to the execution of the variation as if this Act had not been made;
- (b) sections 184A, 184C and 184D of the Principal Act as amended by this Act do not apply in relation to the execution of the variation; and
- (c) in the case of a variation of a rental lease to reduce the rent payable to a nominal rent—section 186 of the Principal Act as in force immediately before that day continues to apply in relation to the execution of the variation as if this Act had not been made.

(2) In subsection (1), a reference to the variation of a lease includes a reference to a surrender of a lease and the grant of a new lease as referred to in subsection 159 (3) of the Principal Act as in force immediately before the commencement day.

Termination of leases and licences

123. If, before the commencement day, a notice of termination had been served on a lessee, section 188 of the Principal Act as in force immediately before that day continues to apply in relation to the notice as if this Act had not been made.

Applications for approval to conduct controlled activities

124. (1) In this section—

“transitional application” means an application for approval to conduct a controlled activity made in accordance with section 226 of the Principal Act in relation to which no decision had been made, or had been deemed to have been made, immediately before the commencement day.

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

(2) The Principal Act as amended by this Act applies in relation to a transitional application, and any decision made in relation to a transitional application, as if—

- (a) the application were an application for approval to undertake a development;
- (b) the reference to the prescribed period in subsection 230 (2) of the Principal Act as amended by this Act were a reference to the period prescribed in relation to the application under subsection 230 (4) of the Principal Act as in force on the day the application was made, as extended (if at all) pursuant to the Land (Planning and Environment) Regulations;
- (c) subsection 230 (3) did not apply in relation to the application; and
- (d) anything done or omitted to be done in relation to the application before the commencement day had been done or omitted to be done (as the case may be) in relation to the application as an application for approval to undertake a development.

(3) Notwithstanding subsection 230 (2) of the Principal Act as it applies to a transitional application, the relevant authority may approve a transitional application at any time after the expiration of the period applying to the application by virtue of paragraph (2) (b) of this section until the expiration of the last day on which application may be made to the Administrative Appeals Tribunal for a review of a decision to refuse to approve the application.

(4) If, immediately before the commencement day, an application for approval to conduct a controlled activity under section 226 of the Principal Act had been refused, or had been deemed to have been refused, subsection 230 (5) of the Principal Act as in force immediately before the commencement day continues to apply in relation to the application as if this Act had not been made.

Register of applications, approvals and orders

125. Section 227 of the Principal Act applies on and after the commencement day as if a reference in that section to an application under section 226 of the Principal Act included a reference to an application for

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996—continued**

approval to conduct a controlled activity made under section 226 of the Principal Act before that day.

Approvals to conduct controlled activities

126. For the purposes of Part VI of the Principal Act as amended by this Act, an approval to conduct a controlled activity given under section 230, 240 or 241 of the Principal Act that had not expired or been revoked immediately before the commencement day is, on and after that day, to be taken to be an approval to undertake a development.

Orders made before commencement

127. If, before the commencement day, an order had been made under section 256 of the Principal Act, the Principal Act as in force immediately before that day continues to apply in relation to the order as if this Act had not been made.

Review of decisions (approvals and orders)—general

128. If, before the commencement day, the Minister made a decision—

- (a) refusing to approve an application under section 230 of the Principal Act;
- (b) refusing to grant an extension of a period under subsection 233 (3) of the Principal Act;
- (c) giving an approval subject to conditions under subsection 245 (1) of the Principal Act; or
- (d) refusing to amend an approval under subsection 247 (2) of the Principal Act;

section 275 of the Principal Act as in force immediately before that day continues to apply in relation to the decision as if this Act had not been made.

Review of decisions (approvals and orders)—objectors and third parties

129. If, before the commencement day—

- (a) the Minister made a decision to approve an application under section 230 or 245 of the Principal Act; or

NOTES—continued

**EXTRACT FROM LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) ACT
(No. 3) 1996**—continued

- (b) the Executive made a decision to approve an application under section 240 or 241 of the Principal Act;

section 276 of the Principal Act as in force immediately before that day continues to apply in relation to the decision as if this Act had not been made.

Review of decisions (general)

130. (1) If the Environment Minister—

- (a) before the commencement day—made a decision in relation to a preliminary assessment under section 117 of the Principal Act; or
- (b) on or after the commencement day—makes a decision in relation to a preliminary assessment under that section as continued in force by virtue of section 117 of this Act;

section 282A of the Principal Act as in force immediately before that day continues to apply in relation to the decision as if this Act had not been made.

(2) If the Executive—

- (a) before the commencement day—made a decision to determine an amount under section 184 of the Principal Act; or
- (b) on or after the commencement day—makes a decision to determine an amount under section 184 of the Principal Act as continued in force by virtue of section 122 of this Act;

section 282A of the Principal Act as in force immediately before that day continues to apply in relation to the decision as if this Act had not been made.