



Australian Capital Territory

# **Land (Planning and Environment) Act 1991 No 100**

## **Republication No 10**

Republication date: 11 October 2002

Last amendment made by Act 2002 No 39

Amendments incorporated to 11 October 2002

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Land (Planning and Environment) Act 1991* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 11 October 2002. It also includes any amendment, repeal or expiry affecting the republished law to 11 October 2002.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
11 October 2002



Australian Capital Territory

# Land (Planning and Environment) Act 1991

## Contents

---

	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Dictionary 2
3	Notes 2
<b>Part 2</b>	<b>Planning</b>
<b>Division 2.1</b>	<b>Preliminary</b>
5	Definitions for pt 2 3

---

	Page
<b>Division 2.2</b>	<b>Territory plan—object and effect</b>
7	Object 5
8	Effect of plan 6
9	Effect of draft plan variation 6
10	Effect of interim heritage places register 7
11	Draft heritage places register and variations—lack of effect 8
12	Plan not to have retrospective effect 8
<b>Division 2.3</b>	<b>Territory plan—continuation and variation</b>
<b>Subdivision 2.3.1</b>	<b>Territory plan</b>
13	Continuation of plan 8
<b>Subdivision 2.3.2</b>	<b>Preparation of variations of Territory plan</b>
14	Application of sdiv 2.3.2 8
15	Preparation of variations 9
16	Consultation with conservator 9
17	Heritage 9
18	Environmental reports and inquiries 10
19	Public consultation—notification 11
19A	Public consultation—notice of interim effect etc 12
19B	Public consultation—availability of draft plan variation etc 12
19C	Draft plan variations to correct formal errors 13
20	Consultation with the national capital authority 14
21	Public inspection of comments 14
22	Revision, deferral or withdrawal of draft plan variations 14
<b>Subdivision 2.3.3</b>	<b>Executive approval and consideration by Legislative Assembly</b>
23	Application of sdiv 2.3.3 15
24	Submission of draft plan variation to Executive 16
25	Consideration by Legislative Assembly committee 17
26	Executive powers 17
27	Return of draft plan variation to authority 18
28	Notice of revival of deferred draft plan variation 19
29	Consideration of plan variation by Legislative Assembly 19
30	Rejection of plan variation by Legislative Assembly 21
30A	Partial rejection of plan variation by Legislative Assembly 22

	Page
30B Partial rejection of plan variation—newspaper publication etc	22
<b>Subdivision 2.3.4 Plan variations—defined land</b>	
31 Definition for sdiv 2.3.4	23
32 Plan variations in relation to defined land	23
<b>Division 2.4 Australian Capital Territory Planning Authority</b>	
33 Establishment of authority	24
35 Agent of the Crown	24
36 Functions	24
37 Executive policy directions	25
38 Power to enter into contracts	26
40 Delegation	26
41 Staff	27
<b>Division 2.5 Miscellaneous</b>	
51 Challenge to validity of provisions of plan	27
<b>Part 3 Heritage</b>	
<b>Division 3.1 Preliminary</b>	
52 Definitions for pt 3	28
53 Compliance with requirements for consultation or notification	29
<b>Division 3.2 Heritage places register</b>	
54 Content of heritage places register	30
<b>Division 3.3 Interim heritage places registers</b>	
<b>Subdivision 3.3.1 Effect</b>	
55 Effect of interim registers	31
<b>Subdivision 3.3.2 Preparation, notification and submission of registers</b>	
56 Criteria for preparation	32
57 Ministerial directions and declarations under div 3.5	32
58 Public consultation	32
59 Application for inclusion of places in interim register	33
60 Public notification	33
61 Notification of lessees and occupiers	34
62 Revision of interim register	35

## Contents

---

	Page
63 Submission of interim register to authority	36
<b>Division 3.4 Acquisition of heritage places and objects</b>	
64 Acquisition	38
<b>Division 3.5 Aboriginal heritage</b>	
<b>Subdivision 3.5.1 Preliminary</b>	
66 Definitions for div 3.5	39
<b>Subdivision 3.5.2 Reporting discoveries of unregistered Aboriginal places</b>	
67 Reports	39
68 Aboriginal heritage discoveries—consideration of reports	40
69 Aboriginal heritage discoveries—Ministerial directions and declarations	41
<b>Subdivision 3.5.3 Protection of unregistered Aboriginal heritage</b>	
70 Damaging unregistered Aboriginal places	42
71 Orders for protection of unregistered Aboriginal places—application of pt 6	43
72 Orders—reports by heritage council	44
73 Orders—Ministerial directions and declarations	44
<b>Subdivision 3.5.4 Compensation claims</b>	
74 Definitions for sdiv 3.5.4	45
75 Application of sdiv 3.5.4	45
76 Right to compensation	46
77 Loss for which compensation is recoverable	47
78 Amount of compensation	48
79 Consultation with applicants	48
80 Notice of decisions about compensation	49
<b>Subdivision 3.5.5 Consultation in relation to registers</b>	
81 Consultation with Aboriginal organisations	49
<b>Subdivision 3.5.6 Restricted information</b>	
82 Restricted information	49
83 Publication of restricted information by public officials	50
84 Publication of restricted information generally	51
85 Access to restricted information	52

	Page
<b>Division 3.6 Public access to heritage information</b>	
<b>Subdivision 3.6.1 Information about administrative action</b>	
87 Application of sdiv 3.6.1	52
88 Searching administrative records	53
<b>Subdivision 3.6.2 Access to heritage registers</b>	
89 Searching heritage registers	54
<b>Division 3.7 Australian Capital Territory Heritage Council</b>	
90 Definitions for div 3.7	54
91 Establishment of heritage council	55
92 Constitution	55
93 Functions of heritage council	55
94 Ministerial directions	56
95 Deputies of permanent members	57
96 Appointment of expert members	57
97 Term of appointment of expert members	58
98 Conditions of appointment of expert members generally	58
99 Chairperson, deputy chairperson and secretary	58
100 Leave of absence	58
101 Disclosure of interests	58
102 Ending of appointments	59
103 Calling meetings	59
104 Procedure at meetings	60
105 Delegation to secretary	60
<b>Part 4 Environmental assessments and inquiries</b>	
<b>Division 4.1 Preliminary</b>	
111 Definitions for pt 4	61
112 Proponents	63
<b>Division 4.2 Preliminary assessments</b>	
113 Directions	63
114 Mandatory preliminary assessments	63
115 Content	63
116 Submission to Minister	64
117 Public inspection	64

## Contents

---

	Page
118 Exclusion of material	65
<b>Division 4.3 Assessments</b>	
<b>Subdivision 4.3.1 Form and content</b>	
119 Form	66
120 Content of public environment reports and environmental impact statements	66
<b>Subdivision 4.3.2 Direction of assessments</b>	
121 Decisions to direct assessments	66
122 Environment Minister's power to direct assessments	67
123 Directions	67
<b>Subdivision 4.3.3 Preparation, evaluation and consideration by Legislative Assembly</b>	
124 Public environment reports—preparation	69
125 Environmental impact statements—consultation and public inspection	69
126 Environmental impact statements—consideration of relevant comments and reports	71
127 Submission of reports and statements to Environment Minister	71
128 Consultation	71
129 Further information	72
130 Further revision	73
131 Evaluation by Environment Minister	73
132 Tabling in Legislative Assembly and public inspection	74
133 Exclusion of material	75
134 Exemptions	75
<b>Division 4.4 Inquiries</b>	
<b>Subdivision 4.4.1 Establishment of panels and terms of reference</b>	
135 Constitution	76
136 Combined inquiries	76
138 Terms of reference	77
139 Notification	77
<b>Subdivision 4.4.2 Inquiry reports</b>	
140 Inquiry reports	78
141 Tabling in Legislative Assembly and public inspection	78



	Page
142 Exclusion of material	78
<b>Subdivision 4.4.3 Procedures and powers</b>	
143 Definitions for sdiv 4.4.3	79
144 Notice of inquiry hearings	79
145 Public hearings	80
146 General procedure	81
147 Special hearings—consultation with interested persons	81
148 Assessments for purpose of inquiries	82
149 Witnesses—summons to appear	83
150 Victimisation of witnesses	83
151 Inspection of books and documents	84
152 Power of entry	85
153 Search warrants	86
154 Powers of search and inspection	87
155 Obstructing or resisting authorised person	87
156 Contempt	88
157 Protection of panel members and witnesses	88
 <b>Part 5 Land administration</b>	
<b>Division 5.1 Preliminary</b>	
159 Definitions for pt 5	89
160 Application	90
<b>Division 5.2 Leases</b>	
160A Effect qualified	91
161 Granting of leases	91
163 Leases to community organisations	92
164 Special leases	93
166 Inquiries and assessments in relation to granting of leases	94
167 Eligibility for certain classes of leases	95
168 Executive not bound to grant lease	97
169 Payment for leases	97
170 Failure to accept and execute lease	97
171 Grant of further residential leases	98
171A Grant of further rural leases	99

## Contents

---

	Page	
172	Grant of further leases for purposes other than residential or rural	101
172A	Grant of further lease—unit titles	101
172B	Grant of further lease—community title	102
172C	No right to use, flow and control of water	103
173	Lessee's rights in respect of improvements	103
174	Determination of value of improvements	105
175	Use of land for leased purpose	107
176	Variation of rent	107
177	Review of variations of rent	107
178	Refund of amount paid for grant of lease	108
179	Certificates of compliance	109
180	Transfer of land subject to building and development provision	110
181	Mortgage of leasehold subject to building and development provision	111
182	Land leased to be held as undivided parcel	112
183	Power of lessee to sublet portion of building or land in certain cases	112
<b>Division 5.3            Variation of leases</b>		
183A	Effect qualified	113
184	Application to surrender and regrant of leases	113
184A	Variation of nominal rent lease—change of use charge	113
184C	Change of use charge for variations of nominal rent leases	115
184D	Variation of rental leases	115
185	Advice of rent payable on variation of a lease	116
186	Variation of lease to pay out rent	116
186A	No variations to extend term	117
<b>Division 5.4            Restrictions on rural leases</b>		
186B	Definitions for div 5.4	117
186C	Land management agreements	118
186D	Dealings with rural leases	119
186E	Discharge amount	120
186F	Discharge amount—special Pialligo leases	122
186G	Index numbers	123
186H	No subdivision or consolidation	123

	Page
<b>Division 5.5 Consolidation and subdivision</b>	
187AA Effect qualified	123
187 Application—nominal rent leases of Territory land	124
187A Consolidation and subdivision—change of use charge	124
187C Change of use charge for consolidations and subdivisions	125
<b>Division 5.6 Recovery of land</b>	
188 Termination of leases	125
189 Recovery of land on expiry, surrender or termination of lease or licence	127
190 Certificate of Minister to be evidence	127
<b>Division 5.7 Public land</b>	
<b>Subdivision 5.7.1 Preliminary</b>	
191 Definitions for div 5.7	127
<b>Subdivision 5.7.2 Public land</b>	
192 Recommendations to authority	128
<b>Subdivision 5.7.3 Management of public land</b>	
193 Reserved areas	128
194 Management	129
195 Management objectives	129
<b>Subdivision 5.7.4 Plans of management</b>	
196 Content	130
197 Preparation	130
198 Variations	130
199 Environmental assessments and inquiries	131
200 Public consultation	131
201 Revision	132
202 Submission to Minister	132
203 Consideration of plan of management by Legislative Assembly committee	132
204 Minister's powers	133
205 Referral back to conservator	133
206 Notice of revival of deferred draft plan of management	134
207 Notification, tabling, disallowance and date of effect	134

	Page
<b>Subdivision 5.7.5 Leases and licences</b>	
208 Leases—generally	135
209 Grant of leases	135
210 Licences	135
211 Miner's rights in respect of public land	136
<b>Division 5.8 Miscellaneous</b>	
214 Lessee may surrender lease wholly or in part	136
215 Reduction of rent and relief from provisions of lease	137
216 Access to leased land from roads and road related areas	137
216A Notification of certain leases to Legislative Assembly	138
217 Licences in respect of land that is not public land	139
218 Reservation of minerals	140
219 Rights to extract minerals	140
220 Access to lease documents and development agreements	140
221 False statements	141
<b>Part 6 Approvals and orders</b>	
<b>Division 6.1 Preliminary</b>	
222 Definitions for pt 6	142
223 Meaning of <i>variation</i> for pt 6	144
<b>Division 6.2 Approvals</b>	
<b>Subdivision 6.2.1 General</b>	
225 Offence—development	145
226 Application to undertake development	145
227 Register of applications, approvals, orders and lease and development conditions	147
228 Restrictions on inspection of applications	148
229 Notice of application	149
229A Who is to decide applications?	152
230 Approvals	153
231 Matters to be considered	154
232 Duty of applicants	155
233 More information	156
234 Effect of failure to furnish further information	156

	Page
236 Environmental assessments and inquiries	156
<b>Subdivision 6.2.2 Objections</b>	
237 Objections—general	157
238 Inspection of objections	157
239 Identity of objectors	157
<b>Subdivision 6.2.3 Approvals</b>	
242 Application approved—notification of decision	158
243 Notification of approval or refusal of application	158
244 Notification where more than 1 objector	159
245 Conditional approvals	159
247 Minor amendments	161
248 Corrections	162
249 Approval—when takes effect	162
250 Execution of approvals for variations of leases	163
251 Expiration of approvals	163
252 Extension of time	163
253 Revocation of approval	164
<b>Division 6.3 Orders</b>	
254 Pest animals and pest plants	164
255 Offences—orders	165
256 Application for order	165
256A Effect of certain orders	169
257 Notice of making of order	169
258 Effect of order in certain circumstances	170
259 Noncompliance	170
260 Future owners or occupiers	171
261 Powers of Supreme Court	171
<b>Division 6.4 Enforcement</b>	
<b>Subdivision 6.4.1 Preliminary</b>	
262 Definitions for div 6.4	172
263 Inspectors	173
264 Identity cards	173
265 Return of identity cards	173

---

	Page
<b>Subdivision 6.4.2 Inspection</b>	
266 Inspections etc	173
267 Consent to entry	174
268 Display of identity cards	175
269 Powers of inspection	175
270 Work carried out at direction of inspector	176
271 Taking samples	176
272 Disposal of seized items	176
273 Search warrants	177
274 Obstruction of inspectors	178
<b>Division 6.5 Commissioner for land and planning</b>	
274A Commissioner for land and planning	179
274B Term of office	179
274C Leave of absence	180
274G Suspension and removal of commissioner	180
274H Retirement	181
274I Delegation	181
274J Protection from suit	181
<b>Division 6.6 Miscellaneous</b>	
<b>Subdivision 6.6.1 Review of decisions</b>	
275 Review of decisions	181
276 Review—objectors and third parties	183
277 Review—orders	184
278 Notification of objectors	184
279 Notification of applicants	185
279A Challenge to validity of certain decisions	185
<b>Subdivision 6.6.2 General</b>	
282 Regulations	185
<b>Part 7 Administrative appeals</b>	
282A Review of decisions	187
<b>Part 8 Miscellaneous</b>	
283 Persons authorised to exercise the powers of Executive	191

---

---

	Page	
284	Power of administrative appeals tribunal and Supreme Court	191
286	Conduct of directors, servants and agents	192
287	Determination of fees	193
287A	Approved forms	193
288	Regulation-making power	194
<b>Part 9</b>	<b>Transitional</b>	
289	Status of leases and licences	195
290	Continued application of certain repealed Acts and provisions	195
291	Conversion of Commonwealth leases	197
<b>Schedule 1</b>	<b>Management objectives for public land</b>	198
<b>Schedule 2</b>	<b>Criteria for assessment of heritage significance of places</b>	200
<b>Schedule 3</b>	<b>Content of preliminary assessments</b>	202
<b>Schedule 5</b>	<b>Activities subject to orders</b>	204
<b>Dictionary</b>		206
<b>Endnotes</b>		
1	About the endnotes	214
2	Abbreviation key	214
3	Legislation history	215
4	Amendment history	221
5	Earlier republications	250





Amendments incorporated to  
11 October 2002



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 1 Preliminary

### 1 Name of Act

This Act is the *Land (Planning and Environment) Act 1991*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition ‘*order*, for part 6 (Approvals and orders)—see section 222.’ means that the expression ‘order’ is defined in that section and the definition applies to part 6 of this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

## **Part 2**                      **Planning**

### **Division 2.1**              **Preliminary**

#### **5**        **Definitions for pt 2**

In this part:

*background papers*, in relation to a draft plan variation or a plan variation means—

- (a) an explanatory statement; and
- (b) a copy of—
  - (i) any relevant direction of the Executive; and
  - (ii) any relevant direction of the Minister under section 93 (1) (b); and
  - (iii) any submission of the conservator referred to in section 16, including any preliminary draft plan of management (prepared under subdivision 5.7.4) accompanying such a submission; and
  - (iv) any interim heritage places register referred to in section 17; and
  - (v) any relevant environmental report; and
  - (vi) the report of any relevant inquiry; and
  - (vii) the report of any other inquiry relating to the variation; and
- (c) if the draft plan is inconsistent with—
  - (i) a direction referred to in paragraph (b) (i) or (ii); or
  - (ii) a submission referred to in paragraph (b) (iii); or

- (iii) any interim heritage places register referred to in section 17; or
- (iv) a recommendation included in a report referred to in paragraph (b) (v), (vi) and (vii);  
a statement of reasons by the authority for that inconsistency;  
and
- (d) in the case of a draft plan variation of the kind referred to in section 17 (3)—a copy of any written response of the heritage council submitted in accordance with section 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.

**consultation notice**—see section 19 (Public consultation—notification).

**development**, in relation to land, means—

- (a) the erection, alteration or demolition of a building on that land;  
or
- (b) the carrying on of work on that land; or
- (c) the use or change of use of that land; or
- (d) the use or change of use of a building or works on that land; or
- (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 sections 22 (1) (a) and 27, and includes a draft stage or part of the variation.

***environmental report*** means—

- (a) a preliminary assessment under division 4.2; or
- (b) a report under section 128; or
- (c) an assessment.

***land*** includes water.

***national capital plan*** means the plan approved under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 19.

*Note* A reference to an instrument under a law includes a reference to the instrument as amended from time to time (see *Legislation Act 2001*, s 102)

***variation***, in relation to the plan, includes the revocation of the plan and its substitution with a new plan.

## Division 2.2 Territory plan—object and effect

### 7 Object

- (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 ecologically sustainable, healthy, attractive, safe and efficient environment in which to live, work and have their recreation.
- (2) The plan shall set out the planning principles and policies for giving effect to its object.
- (3) For 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; and
  - (b) specify purposes for which land may be used; and

- (d) incorporate a register of heritage places known as the heritage places register; and
- (e) identify land for subdivision 2.3.4, specifying in addition the principles and policies for its development; and
- (f) for division 5.7—identify an area of land as public land and reserve it for a purpose specified in section 193; and
- (g) provide for other matters relevant to the exercise of the powers of the Territory, the Executive or a Territory authority under a Territory law, or the administrative review of the exercise of those powers; and
- (h) provide for other matters that are necessary or convenient.

## **8 Effect of plan**

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.

## **9 Effect of draft plan variation**

- (1) This section applies to a draft plan variation if a consultation notice states that it applies.
- (2) The Territory, the Executive, a Minister or a Territory authority must not, during the defined period or a period stated in the consultation notice, whichever is shorter, do or approve the doing of anything that—
  - (a) would be inconsistent with the plan if it were varied in accordance with the draft variation; or
  - (b) is inconsistent with the plan.
- (3) Subsection (2) is subject to section 11 (Draft heritage places register and variations—lack of effect).

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

(5) In this section:

*defined period* means the period beginning on the day when the draft plan variation is notified under the *Legislation Act 2001* (see section 19 (Public consultation—notification)) and ending at the end of the day before—

- (a) the date the draft variation comes into effect; or
- (b) the date the corresponding plan variation is rejected by the Legislative Assembly; or
- (d) the date the draft variation, or the corresponding plan variation, is withdrawn under section 22 (1) (c), 27 (a) or 29 (10) (b);

as the case requires.

## **10 Effect of interim heritage places register**

- (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 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.

**11 Draft heritage places register and variations—lack of effect**

- (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.

**12 Plan not to have retrospective effect**

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 2.3 Territory plan—continuation and variation**

**Subdivision 2.3.1 Territory plan**

**13 Continuation of plan**

The plan established under the *Interim Planning Act 1990*, part 3, 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 2.3.2 Preparation of variations of Territory plan**

**14 Application of sdiv 2.3.2**

This subdivision does not apply in relation to a variation to the plan under subdivision 2.3.4.



## **15 Preparation of variations**

- (1) The authority shall prepare the variations to the plan.
- (2) The authority may prepare plan variations in separate stages or parts.

## **16 Consultation with conservator**

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 5.7.4 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.

## **17 Heritage**

- (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 any of the proposals in the interim register—
  - (a) where it agrees with all the proposals—include the interim register in a draft plan variation; or
  - (b) where it does not agree with all the proposals—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 must give written notice to the heritage council no later than 28 days before the day (the *intended notification day*), stated in the notice, when the authority intends to notify the relevant draft plan variation under the *Legislation Act 2001* (see section 19 (Public consultation—notification)).

*Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.

- (4) In preparing a draft plan variation mentioned in subsection (3), the authority must consider any written response given by the heritage council within 7 days before the intended notification day.
- (5) In this section:

*relevant interim heritage places register* means an interim heritage places register which has effect under part 3, as revised under that part.

## **18 Environmental reports and inquiries**

- (1) In preparing a draft plan variation, the authority shall consider—
- (a) any relevant environmental report; and
  - (b) the report of any relevant inquiry; and
  - (c) any relevant report required to be prepared by the plan.

- (2) The Minister may direct that an assessment be made, or establish a panel to conduct an inquiry, about any aspect of a draft plan variation or a proposed draft plan variation.
- (3) The Minister may initiate action under subsection (2) or act on written request by the authority.

### **19 Public consultation—notification**

- (1) Before submitting a draft plan variation to the Executive, the authority must prepare a notice (a *consultation notice*)—
  - (a) stating that copies of the draft plan variation and the background papers are available for public inspection and purchase during a stated period of not less than 15 business days at stated places; and
  - (b) inviting interested people to give written comments about the draft variation to the authority at a stated address during a stated period of not less than 15 business days; and
  - (c) stating that copies of written comments about the draft variation, given in response to the invitation in paragraph (b) or otherwise, or received from the national capital authority, will be made available for public inspection for a period of 15 business days after the end of the period mentioned in paragraph (b), at stated places; and
  - (d) complying with section 19A (as applicable).
- (2) The authority may, in writing (by an *extension notice*), extend or further extend the consultation period mentioned in subsection (1) (a) or (b).
- (3) An extension notice may be given after the end of the period to be extended.
- (4) The following are notifiable instruments:
  - (a) the consultation notice;
  - (b) any extension notice.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (5) The authority must also publish the consultation notice and any extension notice in a daily newspaper.
- (6) This section does not apply in relation to a draft plan variation that has been revised by the authority in accordance with a direction under section 26 (1) (b) (Executive powers).

### **19A Public consultation—notice of interim effect etc**

- (1) A consultation notice must state—
  - (a) whether or not section 9 (Effect of draft plan variation) applies in relation to the draft variation; and
  - (b) either—
    - (i) if the draft variation would vary the heritage places register—that section 11 (Draft heritage places register and variations—lack of effect) applies; or
    - (ii) if the draft variation would not vary the heritage places register—that section 11 does not apply.
- (2) A consultation notice that states that section 9 applies must also state—
  - (a) for section 9 (2) (b), a period not longer than 1 year that is the maximum period during which the draft variation is to have interim effect; and
  - (b) the effect of section 9.
- (3) A consultation notice that states that section 11 applies must state the effect of that section.

### **19B Public consultation—availability of draft plan variation etc**

- (1) The authority must make copies of the draft plan variation and the background papers mentioned in a consultation notice available for

public inspection and purchase during office hours during the period, and at the places, stated in the notice.

- (2) The authority may, at the request of a person who has provided written comments in relation to a draft plan variation, exclude from each copy of the draft plan variation or background papers made available under subsection (1) information that would identify the person if, in the authority's opinion based on reasonable grounds, it would not be in the public interest for the information to be published.
- (3) If, in the authority's opinion, it would not be in the public interest for part of the draft plan variation or of any background paper to be published, the authority must exclude that part from each copy of the document made available under subsection (1).
- (4) If part of the draft plan variation or a background paper is excluded from the copies of the document made available for public inspection or purchase under subsection (1), each copy of the document must include a statement to the effect that an unspecified part of the document has been excluded in the public interest.

### **19C Draft plan variations to correct formal errors**

- (1) This section applies if, 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 anyone in a prejudicial way.
- (2) The Executive may, by written notice to the authority, exempt the authority from complying with section 19 (Public consultation—notification) and section 19B (Public consultation—availability of draft plan variation etc) in relation to the draft plan variation.
- (3) If the Executive gives notice to the authority under subsection (2), the authority must obtain such information about the public attitudes to the draft plan variation as is reasonable in the circumstances.

## **20 Consultation with the national capital authority**

Before submitting a draft plan variation to the Executive, the authority shall consult with the national capital authority about the draft.

## **21 Public inspection of comments**

- (2) The authority shall make copies of any comments referred to in section 19 (1) (c) available for public inspection during office hours during the period, and at the places, specified under that paragraph.
- (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.

## **22 Revision, deferral or withdrawal of draft plan variations**

- (1) After the expiration of the period specified in the notice under section 19 (1) (b) the authority may, in writing—
  - (a) revise the draft plan variation; or
  - (b) 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) withdraw the draft plan variation.
- (2) A deferral or withdrawal of a draft plan variation must include a statement of the effect of section 9 (Effect of draft plan variation) in relation to the deferral or withdrawal.
- (3) A deferral or withdrawal of a draft plan variation is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) The authority must also publish a deferral or withdrawal of a draft plan variation in a daily newspaper on the same day, or as soon as practicable after the day, the deferral or withdrawal is notified under the *Legislation Act 2001*.
- (5) 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 capital authority.
- (6) In addition to its power under subsection (1), the authority may, at any time before the submission or resubmission of a draft plan variation to the Executive, revise the draft variation to correct any formal error.
- (7) If the authority defers a draft plan variation, on the day stated in the deferral, or as soon as practicable after the event mentioned in the deferral, the authority must prepare a notice stating—
  - (a) that the draft plan variation is revived; and
  - (b) the effect of section 9 in relation to the revival.
- (8) The notice under subsection (7) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (9) The authority must also publish the notice in a daily newspaper as soon as practicable after preparing it.

### **Subdivision 2.3.3 Executive approval and consideration by Legislative Assembly**

#### **23 Application of sdiv 2.3.3**

This subdivision does not apply in relation to a plan variation under subdivision 2.3.4.

## **24 Submission of draft plan variation to Executive**

- (1) After the expiration of the period specified in the notice under section 19 (1) (b), the authority shall submit a draft plan variation (as revised, if at all, under section 22) to the Executive for approval, together with—
  - (a) the background papers; and
  - (b) a written report setting out the issues raised in any written comments concerning the draft variation submitted pursuant to the invitation in the notice under section 19 (1) or otherwise; and
  - (c) a written report about its consultation with the public and the national capital authority; and
  - (d) a written report about any consultation between the authority and the heritage council relating to the draft variation 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 capital authority or the heritage council in relation to the draft variation.
- (2) The authority must prepare a written notice stating that the documents mentioned in subsection (1) are available for public inspection.
- (3) The notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (4) The authority must also publish the notice in a daily newspaper.
- (5) The authority must make copies of the documents mentioned in subsection (1) available for public inspection during office hours during the period, and at the places, stated in the notice.



## **25 Consideration by Legislative Assembly committee**

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 section 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.

## **26 Executive powers**

- (1) On receipt of a draft plan variation submitted or resubmitted for approval, the Executive shall—
  - (a) approve the draft variation in the form in which it is submitted or resubmitted; 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, in writing, the resubmission of the draft variation to the Executive until a specified date or the occurrence of a specified event;
    - (vi) to withdraw the draft variation in writing.
- (2) Before exercising its powers under subsection (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 deferral or withdrawal directed under subsection (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 following are notifiable instruments:
  - (a) an Executive direction under subsection (1) (b);
  - (b) a deferral directed under subsection (1) (b) (v);
  - (c) a withdrawal directed under subsection (1) (b) (vi).

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (5) The authority must also publish a deferral or withdrawal directed under subsection (1) (b) (v) or (vi) in a daily newspaper on the same day, or as soon as practicable after, the deferral or withdrawal is notified under the *Legislation Act 2001*.
- (6) After approving a draft plan variation under subsection (1) (a), the Executive may, before the draft variation is presented to the Legislative Assembly, revoke the approval and return the draft variation to the authority under subsection (1) (b).

## **27 Return of draft plan variation to authority**

- (1) This section applies if the Executive returns a draft plan variation to the authority with directions under section 26 (1) (b).
- (2) The authority must comply with each Executive direction.
- (3) If a direction is given under section 26 (1) (b) (i), (ii) or (iii), the authority may revise the draft variation and resubmit it to the Executive for approval together with a written report about the authority's compliance with the Executive's direction and any further revision of the draft variation under section 22 (6).
- (4) If a direction is given under section 26 (1) (b) (iv), the authority must resubmit the draft variation (as revised) together with a written

report about any further revision of the draft variation under section 22 (6).

## **28 Notice of revival of deferred draft plan variation**

- (1) If the authority defers a draft plan variation as directed under section 26 (1) (b) (v) (Executive powers), on the day stated in the deferral, or as soon as practicable after the event mentioned in the deferral, the authority must—
  - (a) prepare a notice stating—
    - (i) that the draft plan variation is revived; and
    - (ii) the effect of section 9 (Effect of draft plan variation) in relation to the revival; and
    - (iii) the effect of any revision under section 22 (6) (Revision, deferral or withdrawal of draft plan variations); and
  - (b) resubmit the draft variation to the Executive; and
  - (c) advise the Legislative Assembly.
- (2) A notice under subsection (1) (a) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (3) The authority must also publish the notice in a daily newspaper.

## **29 Consideration of plan variation by Legislative Assembly**

- (1) A plan variation must be presented to the Legislative Assembly within 5 sitting days after the day it is approved by the Executive, together with copies of the following documents in relation to the variation:
  - (a) the background papers;
  - (b) the summaries and reports mentioned in section 24 (b), (c) and (d);
  - (c) any direction under section 26 (1) (b);

- (d) any report mentioned in section 26 (1) (b) (ii);
  - (e) any report mentioned in section 27 (c).
- (2) Subsection (1) is subject to section 26 (6) (Executive powers).
- (3) If a plan variation is not presented to the Legislative Assembly in accordance with subsection (1), it does not come into effect.
- (4) The Legislative Assembly may, pursuant to a motion of which notice has been given within 5 sitting days after a plan variation has been presented to it, by resolution reject the variation or any provision of it.
- (5) 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 presented to 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 is taken to have been rejected by the Legislative Assembly.
- (6) 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 presented to 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 is taken, for subsections (4) and (5), 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.

- (7) If, at the end of 5 sitting days after a plan variation is presented to the Legislative Assembly, the Assembly has not passed a resolution rejecting the variation or any provision of it and is not, under subsection (5), taken to have rejected the variation or any provision of it, the Minister must, in writing, fix a day when the plan variation is to commence.

*Note* An instrument under this subsection is a **commencement notice** (see *Legislation Act 2001*, s 11). A commencement notice must be notified under the *Legislation Act 2001*.

- (8) The Minister must publish in a daily newspaper details of—
- (a) the commencement notice under subsection (7); and
  - (b) where copies of the plan variation may be inspected or purchased.
- (9) The Minister must make copies of the plan variation available for inspection or purchase during office hours at the places, and during the period, published in the newspaper under subsection (8) (b).
- (10) A plan variation notified under subsection (7) commences on the day fixed by the notice.

### **30 Rejection of plan variation by Legislative Assembly**

- (1) This section applies if a plan variation is completely rejected under section 29 (4) (Consideration of plan variation by Legislative Assembly), or taken to be completely rejected under section 29 (5).
- (2) The plan variation does not come into force if this section applies.
- (3) The Minister must prepare a notice stating that the plan variation has been rejected.
- (4) The notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (5) The authority must also publish the notice in a daily newspaper.

### **30A Partial rejection of plan variation by Legislative Assembly**

- (1) This section applies if a plan variation is partly rejected under section 29 (4) (Consideration of plan variation by Legislative Assembly), or taken to be partly rejected under section 29 (5).
- (2) A provision of a plan variation does not come into force if—
- (a) it is rejected by the Legislative Assembly under section 29 (4) or (5); or
  - (b) it is withdrawn under subsection (3) (b).
- (3) The Minister must, in relation to each provision of the plan that is not rejected under section 29 (4) or (5), in writing—
- (a) fix a day when the provision (an ***approved provision***) is to commence; or
  - (b) withdraw the provision.

*Note* An instrument under par (a) is a ***commencement notice*** (see *Legislation Act 2001*, s 11). A commencement notice must be notified under the *Legislation Act 2001*.

- (4) A withdrawal under subsection (3) (b) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **30B Partial rejection of plan variation—newspaper publication etc**

- (1) The Minister must publish in a daily newspaper details of—
- (a) a commencement notice under section 30A (3) (a) for a provision (an ***approved provision***); or
  - (b) a withdrawal notice under section 30A (3) (b).
- (2) The details of a commencement notice published under subsection (1) (a) for an approved provision must include details of where, and

for what period, copies of the provision may be inspected or purchased.

- (3) The Minister must make copies of each approved provision available for inspection or purchase during office hours at the place or places, and during the period, mentioned in subsection (2).

### **Subdivision 2.3.4 Plan variations—defined land**

#### **31 Definition for sdiv 2.3.4**

In this subdivision:

*defined land* means land identified in the plan pursuant to section 7 (3) (e).

#### **32 Plan variations in relation to defined land**

- (1) Upon approval of the subdivision of a parcel or part of a parcel of defined land, the authority shall, in writing, vary the plan to specify the purposes for which that land may be used.
- (2) A variation of the plan 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) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (5) 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.
- (6) Within 7 days after a variation of the plan under subsection (1) is notified under the *Legislation Act 2001*, the authority must publish a notice in a daily newspaper that—
  - (a) specifies the variation made to the plan; and
  - (b) includes a copy of the map that was included in the variation; and
  - (c) specifies when the variation to the plan took effect or is to take effect.

## **Division 2.4 Australian Capital Territory Planning Authority**

### **33 Establishment of authority**

- (1) The Australian Capital Territory Planning Authority is established.
- (2) The chief executive must appoint a public servant as the chief executive of the authority.

*Note* For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

### **35 Agent of the Crown**

The authority is an agent of the Crown.

### **36 Functions**

- (1) The functions of the authority are—
  - (a) to administer the plan; and
  - (b) to keep the plan under constant review and to propose variations to it where necessary; and



- (c) to exercise other functions required under this Act, another Territory law or a Commonwealth law; and
- (d) with the written approval of the Minister, to carry out planning services for an entity in Australia or overseas.

*Note 1* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see *Legislation Act 2001*, s 196 and dict, pt 1, def of *entity*).

*Note 2* An entity includes a person, see *Legislation Act 2001*, dict, pt 1, def of *entity*.

- (2) The authority shall exercise its functions in accordance with any directions given under section 37 (1).
- (3) The authority shall comply with any directions given under section 37 (2).

### **37 Executive policy directions**

- (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 exercise of its functions;
  - (b) directions to review the plan, or any specified part of the plan;
  - (c) directions about any other aspect of the exercise 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.
- (4) A direction under subsection (1) is a notifiable instrument.
- Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (5) A direction under subsection (1) must be notified under the *Legislation Act 2001* within 14 days after it is made.
- (6) If a direction under subsection (1) is not notified as required by subsection (5), the direction is taken to be repealed.
- (7) This section does not apply in relation to a direction given under section 26.

### **38 Power to enter into contracts**

- (1) For the exercise of its functions, the authority may, on behalf of the Territory, enter into contracts.
- (2) However, the authority must not, except with the Minister's approval, enter into a contract involving the payment or receipt by the authority of more than \$100 000.
- (3) Also, subsection (1) does not give the authority power to enter into a contract of employment.

### **40 Delegation**

The authority may delegate the authority's functions under this Act to a public servant or to the holder of a position established under this or another Act.

*Note 1* For the making of delegations and the exercise of delegated functions, see *Legislation Act 2001*, pt 19.4.

*Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

**41 Staff**

The authority is to be assisted in the exercise of its functions by public servants.

**Division 2.5 Miscellaneous**

**51 Challenge to validity of provisions of plan**

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 3                      Heritage

### Division 3.1              Preliminary

#### 52      Definitions for pt 3

In this part:

*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 heritage places register* means a proposed heritage places register, or an interim variation to the heritage places register, notified under the *Legislation Act 2001* (see section 60 (Public

notification)), as revised, if at all, under section 62 (Revision of interim register).

*Note* The heritage places register means the register of heritage places incorporated in the plan (see the dict, def of *heritage places register*).

*interim variation*, in relation to the heritage places register, means a proposed variation to that register notified under the *Legislation Act 2001* (see section 60 (Public notification)).

*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 incorporated or unincorporated)—

- (a) comprised substantially of Aboriginal persons; and
- (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 section 82 (1).

*variation* includes revocation and substitution.

### **53 Compliance with requirements for consultation or notification**

If the Executive, the Minister or the heritage council is required under this part to consult or notify an entity, the requirement is taken to be complied with if the Executive, the Minister or the heritage council takes all reasonable steps to consult or notify the entity.

## **Division 3.2 Heritage places register**

### **54 Content of heritage places register**

The heritage places register must—

- (a) identify heritage places, specifying any that are Aboriginal places; and
- (b) identify—
  - (i) each structure or group of structures; or
  - (ii) each object or group of objects, specifying any that are Aboriginal objects; or
  - (iii) each landform or group of landforms; or
  - (iv) each plant or group of plants; or
  - (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; and
- (c) include a statement of the heritage significance of each identified heritage place; and
- (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.

---

## Division 3.3 Interim heritage places registers

### Subdivision 3.3.1 Effect

#### 55 Effect of interim registers

- (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:

*defined period* means the period beginning on the day the interim heritage places register is notified (other than in a newspaper) as required by section 60 (Public notification) and ending at the end of the earlier of—

- (a) the day before the heritage places register prepared in consideration of the interim register commences under section 29 (7) (Consideration of plan variation by Legislative Assembly) or section 30A (5) (Partial rejection of plan variation by Legislative Assembly); or
- (b) the last day of the period specified in the notification of the interim register as required by section 60 (1) (b).

### **Subdivision 3.3.2 Preparation, notification and submission of registers**

#### **56 Criteria for preparation**

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.

#### **57 Ministerial directions and declarations under div 3.5**

- (1) Where the Minister issues a direction under section 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 section 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.

#### **58 Public consultation**

- (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 section 57 (1) applies.

### **59 Application for inclusion of places in interim register**

- (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.

### **60 Public notification**

- (1) After preparing an interim heritage places register, the heritage council must prepare a written notice—
- (a) stating that copies of the interim register are available for public inspection at specified places; and
  - (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) A notice under subsection (1) is a notifiable instrument.
- Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (3) The heritage council must also publish the notice under subsection (1) in a daily newspaper.
- (4) The heritage council shall make copies of the interim register available for public inspection during office hours at the places specified in the notice under subsection (1).
- (5) A copy of an interim register made available for public inspection under subsection (4) shall not include any restricted information in relation to an Aboriginal place.
- (6) 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) (a) or (c), (4) or (5).

## **61 Notification of lessees and occupiers**

- (1) As soon as practicable after an interim heritage places register is notified (other than in a newspaper) as required by section 60 (Public notification), 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; and
  - (b) specifying, and identifying as such, any relevant restricted information about Aboriginal places on that land; and

- (c) including the statements referred to in section 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.

*Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.

- (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).

## **62 Revision of interim register**

- (1) After the notification of an interim heritage places register under section 60, the heritage council may, in writing, revise the interim register—
  - (a) to correct a formal error; or
  - (b) except where section 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.

- (2) A revision under subsection (1) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) The heritage council shall cause a copy of a revision under subsection (1) to be published in a daily newspaper.
- (4) A revision under subsection (1) (b) shall include—
  - (a) a statement that copies of the interim register, as revised, are available for public inspection at specified places; and
  - (b) a statement of the effect of section 55 in relation to the interim 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.

- (5) The heritage council shall make copies of the interim register, as revised, available for public inspection during office hours at the places specified in the revision under subsection (4).
- (6) Where subsection (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 (4).

*Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.

- (7) The validity of a decision of the heritage council to revise a provision of an interim heritage places register under subsection (1) (b) is not affected by a failure to comply with subsection (3), (4), (5) or (6).

### **63 Submission of interim register to authority**

- (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 (other than in a newspaper) as required by section 60 (Public notification), except where there is an application for review of a decision referred to in section 282A (1) (a) or (3) (b) in relation to the interim register.
- (3) Where there is an application for review of a decision referred to in section 282A (1) (a) or (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 (other than in a newspaper) as required by section 60 (Public notification); 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 section 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 section 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 3.4 Acquisition of heritage places and objects

### 64 Acquisition

- (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; and
  - (b) acquisition is the most prudent and feasible means to ensure the conservation of that significance; and
  - (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; and
  - (b) where an object is to be acquired—the owner and the possessor of the object; and
  - (c) the heritage council; and
  - (d) any relevant Aboriginal organisation;about the proposed acquisition.

## Division 3.5      Aboriginal heritage

### Subdivision 3.5.1      Preliminary

#### 66      Definitions for div 3.5

In this division:

*registered*, in relation to a place, means a place for which—

- (a) there is an entry in the heritage places register; or
- (b) there is a provision in an interim heritage places register that has the effect of including an entry for the place in the heritage places register.

*registration*, in relation to a place, means—

- (a) making an entry for the place in a heritage places register; or
- (b) including a provision in an interim heritage places register that has the effect of including an entry for the place in a heritage places register.

*unregistered*, in relation to a place, means a place that is not a registered place.

### Subdivision 3.5.2      Reporting discoveries of unregistered Aboriginal places

#### 67      Reports

- (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; and
  - (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).

Maximum penalty: 5 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; or
  - (b) believes on reasonable grounds that a declaration under section 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 subsection (4) (a), a person who, in accordance with Aboriginal tradition, has traditional affiliations with particular land may, for this subdivision, report the discovery of an Aboriginal place on that land in accordance with subsection (1).

## **68 Aboriginal heritage discoveries—consideration of reports**

- (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.

*Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.

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

## **69 Aboriginal heritage discoveries—Ministerial directions and declarations**

- (1) Within 14 days after receiving a report from the heritage council under section 68, the Minister must, in writing—
  - (a) direct the heritage council to notify an interim heritage places 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, and give written notice of the declaration to—
    - (i) the lessee and the occupier of the land where the place was discovered; and
    - (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 people mentioned in subsection (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 people consulted under subsection (2), consider the effect of registration on their interests.
- (4) Where the Minister makes a decision under subsection (1) (a), sections 60 and 61 apply in relation to a decision of the Minister under subsection (1) (a) as if the references in those sections to a decision of the heritage council to include a provision in an interim heritage places register were references to that decision of the Minister.
- (5) The following are notifiable instruments:
- (a) a direction under subsection (1) (a);
  - (b) a declaration under subsection (1) (b).
- Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (6) A direction or declaration must be notified under the *Legislation Act 2001* within 14 days after it is made.

### **Subdivision 3.5.3 Protection of unregistered Aboriginal heritage**

#### **70 Damaging unregistered Aboriginal places**

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.

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

**71 Orders for protection of unregistered Aboriginal places—  
application of pt 6**

- (1) In this section:  
*order* means an order referred to in subsection (2).
- (2) The Executive may make an order under division 6.3 in relation to the disturbance, damage or destruction of an unregistered Aboriginal place except where—
- (a) a declaration under section 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 6.3 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) Section 256 (5) does not apply in relation to an order for the purposes of this section.

## **72 Orders—reports by heritage council**

- (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; and
    - (ii) the person who reported the discovery; and
    - (iii) any relevant Aboriginal organisation.

## **73 Orders—Ministerial directions and declarations**

- (1) Within 14 days after receiving a report from the heritage council under section 72, the Minister must, in writing—
  - (a) direct the heritage council to notify an interim heritage places 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, and give written notice of the declaration to—
    - (i) the lessee and the occupier of the land where the place was discovered; and
    - (ii) any relevant Aboriginal organisation.
- (2) Before making a decision under subsection (1), the Minister shall consult with the persons referred to in subsection (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; and
  - (b) taking into account the views of the people consulted under subsection (2), consider the effect of registration on their 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 subsection (1) (a), sections 60 and 61 apply in relation to a decision of the Minister under subsection (1) (a) as if the references in those sections to a decision of the heritage council to include a provision in an interim heritage places register were references to that decision of the Minister.
- (5) The following are notifiable instruments:
- (a) a direction under subsection (1) (a);
  - (b) a declaration under subsection (1) (b).
- Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (6) A direction or declaration must be notified under the *Legislation Act 2001* within 14 days after it is made.

### **Subdivision 3.5.4 Compensation claims**

#### **74 Definitions for sdiv 3.5.4**

In this subdivision:

*compensation* means compensation under section 78.

#### **75 Application of sdiv 3.5.4**

This subdivision applies where—

- (a) a person reports the discovery of an unregistered place in accordance with section 67; or
- (b) an order referred to in section 71 (2) is made in relation to a place; or
- (c) a place is registered in an interim heritage places register under a direction under section 69 (1) (a) or 73 (1) (a) following a report or order mentioned in paragraph (a) or (b); or
- (d) a place is registered in the heritage places register because of its registration in an interim heritage places register under a direction under section 69 (1) (a) or 73 (1) (a).

## **76 Right to compensation**

- (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.

## **77 Loss for which compensation is recoverable**

- (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; and
  - (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; and
  - (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 the heritage places register; and
  - (ii) that use is consistent with the requirements of the register.

## **78 Amount of compensation**

- (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.

## **79 Consultation with applicants**

Before giving an applicant for compensation a notice in accordance with section 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.



## 80 Notice of decisions about compensation

- (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 section 282A (1) (b) shall be given within 60 days of receiving the application to which the notice relates.

### Subdivision 3.5.5 Consultation in relation to registers

#### 81 Consultation with Aboriginal organisations

- (1) This section applies if the heritage council is preparing an interim heritage places register, or a revision of such a register, that 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 3.5.6 Restricted information

#### 82 Restricted information

- (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 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.

*Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.

- (4) A copy of a declaration given under subsection (3) (a) to the lessee or occupier of any land must be accompanied by a notice under section 282A (1) (Review of decisions).
- (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).

### **83 Publication of restricted information by public officials**

- (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 this part or part 2; or
  - (b) in accordance with subsection (2); or
  - (c) in accordance with the prescribed procedures.

- (2) For subsection (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.

#### **84 Publication of restricted information generally**

- (1) A person (other than a person referred to in section 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 section 82 (4) (a).

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

- (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—
- (a) the nature of the restricted information; and
  - (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.

## **85 Access to restricted information**

- (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 subsection (1) (a)—specifying the capacity in which the applicant is applying; or
  - (b) in the case referred to in subsection (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 3.6 Public access to heritage information**

### **Subdivision 3.6.1 Information about administrative action**

#### **87 Application of sdiv 3.6.1**

This subdivision applies in relation to the following documents:

- (a) reports under section 67;

- (b) declarations under section 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 section 73 (1) (b), while the declarations are in force.

## **88 Searching administrative records**

- (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, 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).
- Note* A fee may be determined under s 287 (Determination of fees) for this subsection.
- (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 3.6.2 Access to heritage registers**

#### **89 Searching heritage registers**

- (1) Anyone may, during office hours, inspect the heritage places register or interim heritage places register, other than any part that contains restricted information.
- (2) On application, the heritage council must give the applicant a copy of, or of any part of, the heritage places register or interim heritage places register, other than a part that contains restricted information.

*Note* A fee may be determined under s 287 (Determination of fees) for this subsection and subsection (3).

- (3) On application to the heritage council in relation to a place mentioned in subsection (4), the heritage council must give the applicant a certificate stating—
- (a) whether a declaration in relation to the place is in force under section 69 (1) (a) or 73 (1) (a); or
- (b) whether the place has previously been so listed, or proposed to be so listed.
- (4) Subsection (3) applies to a place that—
- (a) is not listed in the heritage places register or an interim heritage places register; and
- (b) is not, in an interim heritage places register, proposed to be listed in the corresponding heritage places register.

### **Division 3.7 Australian Capital Territory Heritage Council**

#### **90 Definitions for div 3.7**

In this division:

*chairperson* means the chairperson of the heritage council appointed under section 99 (1).

*deputy chairperson* means the deputy chairperson of the heritage council appointed under section 99 (1).

*expert member* means a member appointed under section 96 (1).

*heritage objects register*—see the *Heritage Objects Act 1991*, section 4.

*member* means a member of the heritage council.

*permanent member* means a member mentioned in section 92 (a), and includes a deputy of a permanent member appointed under section 95 (1).

*secretary* means the secretary to the heritage council appointed under section 99 (2).

## **91 Establishment of heritage council**

The Australian Capital Territory Heritage Council is established.

## **92 Constitution**

The heritage council consists of—

- (a) the authority and the conservator as permanent members; and
- (b) not more than 9 expert members.

## **93 Functions of heritage council**

The heritage council has the following functions:

- (a) to advise the Minister about—
  - (i) the criteria for this part and the *Heritage Objects Act 1991* for deciding the heritage significance of places and objects; and

- (ii) incentives for the conservation of the heritage significance of heritage places and heritage objects; and
  - (iii) the promotion of public awareness of heritage places and heritage objects; and
  - (iv) other matters about heritage significance in the ACT;
- (b) at the request of a Territory authority, to advise the authority about the matters mentioned in paragraph (a) as they relate to the exercise of the authority's functions under this Act or another Territory law;
- (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;
- (d) any other function given to it under this Act or another Territory law.

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see *Legislation Act 2001*, s 196 and dict, pt 1, def of *entity*).

## **94 Ministerial directions**

- (1) The Minister may give the heritage council written directions—
- (a) about the policy and objectives it should pursue in the exercise of its functions; or
  - (b) to review the heritage places register or the heritage objects register in consideration of any stated matters.
- (2) A direction is a notifiable instrument.
- Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (3) A direction must be notified under the *Legislation Act 2001* within 14 days after the day it is made.



## **95 Deputies of permanent members**

- (1) The Minister may appoint a person to be the deputy of a permanent member.

*Note 1* For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see *Legislation Act 2001*, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) If a permanent member is absent from a heritage council meeting, the member's deputy may exercise the member's functions.

## **96 Appointment of expert members**

- (1) The Minister may appoint a person to be an expert member of the heritage council.

*Note 1* For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see *Legislation Act 2001*, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) In making appointments under subsection (1), the Minister must endeavour to ensure that the following disciplines and areas of expertise are represented among the people appointed:

- (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;

- (i) archivism;
- (j) librarianship;
- (k) preservation of Australian material culture;
- (l) knowledge of objects in an Australian context.

### **97 Term of appointment of expert members**

An expert member must not be appointed for a term longer than 3 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Legislation Act 2001*, s 208 and dict, pt 1, def of *appoint*).

### **98 Conditions of appointment of expert members generally**

An expert member holds office on the conditions decided by the Minister.

### **99 Chairperson, deputy chairperson and secretary**

- (1) The Minister must appoint members of the heritage council as the chairperson and the deputy chairperson of the heritage council.
- (2) The Minister must appoint a public servant as the secretary to the heritage council.
- (3) However, a member must not be appointed as the secretary.

### **100 Leave of absence**

The Minister may give a member leave of absence on conditions about remuneration and other matters decided by the Minister.

### **101 Disclosure of interests**

- (1) A member who has a direct or indirect financial interest in a matter being considered or about to be considered by the heritage council must, 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 must be recorded in the minutes of the meeting and, unless the Minister otherwise decides, the member must not—
  - (a) be present during any deliberation of the heritage council about the matter; or
  - (b) take part in any decision of the heritage council about the matter.

## **102 Ending of appointments**

- (1) The Minister may end the appointment of a member for misbehaviour or physical or mental incapacity.
- (2) The Minister must end the appointment of a member if the member—
  - (a) is absent from 3 consecutive meetings of the committee, except on leave granted under section 100 (Leave of absence); or
  - (b) contravenes section 101 (Disclosure of interests) without reasonable excuse.

*Note* A person's appointment also ends if the person resigns (see *Legislation Act 2001*, s 210).

## **103 Calling meetings**

- (1) The chairperson, or if the chairperson cannot do so, the deputy chairperson—
  - (a) may at any time call a meeting of the heritage council; and
  - (b) must call a meeting of the heritage council if asked by the Minister.
- (2) The person who calls a meeting of the heritage council must, at least 5 days before the day of the meeting, give the other members written notice of—

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

#### **104 Procedure at meetings**

- (1) The chairperson presides at all heritage council meetings at which the chairperson is present.
- (2) If the chairperson is absent, the deputy chairperson presides.
- (3) If both the chairperson and deputy chairperson are absent from a meeting, the member chosen by the member's present presides.
- (4) The presiding member may give directions about the procedure to be followed in relation to the meeting.
- (5) Business may be carried out at a meeting only if a majority of members are present.
- (6) At a meeting each member has a vote on each question to be decided.
- (7) However, a permanent member must not vote on a question that relates to an interim heritage places register.
- (8) A question is to be decided by a majority of the votes of the members present and voting, but, if the votes are equal the member presiding has a casting vote.
- (9) The heritage council must keep minutes of its meetings.

#### **105 Delegation to secretary**

The heritage council may delegate the council's functions under this Act to the secretary.

*Note* For the making of delegations and the exercise of delegated functions, see *Legislation Act 2001*, pt 19.4.

## **Part 4**                      **Environmental assessments and inquiries**

### **Division 4.1**              **Preliminary**

#### **111**    **Definitions for pt 4**

In this part:

*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 2, 5 or 6, 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;
- (n) socioeconomic effect.

***environmental impact statement*** means an environmental impact statement prepared in accordance with division 4.3.

***land*** includes water.

***panel*** means a panel established to conduct an inquiry.

***preliminary assessment*** means an assessment made under division 4.2.

***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 4.3.

***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.

## **112 Proponents**

- (1) For 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 4.2 Preliminary assessments**

### **113 Directions**

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 on 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.

### **114 Mandatory preliminary assessments**

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.

### **115 Content**

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

### **116 Submission to Minister**

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

*Note* A fee may be determined under s 287 (Determination of fees) for this subsection.

- (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.

### **117 Public inspection**

- (1) After a preliminary assessment is submitted to the Environment Minister under section 116, the Environment Minister must prepare a written notice stating that copies of the preliminary assessment are available for public inspection during a specified period of not less than 15 business days at specified places.
- (2) The Environment Minister may, in writing, extend or further extend the period stated in the notice.
- (3) The power under subsection (2) may be exercised after the expiry of the period to be extended.
- (4) The following are notifiable instruments:
  - (a) a notice under subsection (1);
  - (b) an extension or further extension under subsection (2).

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (5) The authority must also publish a notice under subsection (1), or an extension or further extension under subsection (2), in a daily newspaper.
- (6) The Environment Minister shall, at the places, and within the period, specified in a notice under subsection (1)—



- (a) make copies of the preliminary assessment mentioned in the notice available for public inspection; and
- (b) cause a copy of the preliminary assessment to be given to any person on request.

*Note* A fee may be determined under s 287 (Determination of fees) for par (b).

- (7) The Environment Minister shall cause a copy of the preliminary assessment mentioned in the notice under subsection (1) to be sent, without charge, to the Conservation Council of the South-East Region and Canberra (Inc.).

## **118 Exclusion of material**

- (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; or
    - (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 4.3 Assessments**

### **Subdivision 4.3.1 Form and content**

#### **119 Form**

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.

#### **120 Content of public environment reports and environmental impact statements**

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

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

### **Subdivision 4.3.2 Direction of assessments**

#### **121 Decisions to direct assessments**

- (1) 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.

- (1A) A direction may only be given within the prescribed time after a proponent submits a preliminary assessment to the Environment Minister or such further time as the Minister administering this Act allows.
- (2) In making a decision under subsection (1), the relevant Minister shall consider—
- (a) the preliminary assessment; and
  - (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.

## **122 Environment Minister's power to direct assessments**

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.

## **123 Directions**

- (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.
- (2) 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 firstmentioned proposal to enable the proponent to assess the potential combined effects of the proposals.
- (3) The Environment Minister shall, in consultation with the relevant Minister, determine the matters to be specified under subsection (2).
- (4) Where a Minister gives detailed directions for an assessment under subsection (2), that Minister must prepare a written notice that sets out—
- (a) the name of the proponent; and
  - (b) the matters specified in the directions; and
  - (c) the name of any consultant nominated by the Minister pursuant to subsection (7) to assist in the preparation of the assessment.
- (5) The notice is a notifiable instrument.
- Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (6) The Minister who prepared the notice must also publish it in a daily newspaper.
- (7) A Minister who directs that an assessment be made may, under subsection (2) (c), 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 4.3.3 Preparation, evaluation and consideration by Legislative Assembly**

#### **124 Public environment reports—preparation**

- (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 2; or
  - (b) notified together with a draft plan of management under division 5.7.

#### **125 Environmental impact statements—consultation and public inspection**

- (1) The proponent in relation to an environmental impact statement must prepare a written 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 20 business days or such longer period as is directed in writing by the relevant Minister.

- (2) The notice approved by the Environment Minister is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) The proponent must also publish the notice approved by the Environment Minister in a daily newspaper.
- (4) 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).
- (5) 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 (4) 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.
- (6) 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.
- (7) A notice under section 282A (4) (Review of decisions) must 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.
- (8) 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 2; or
  - (b) notified together with a draft plan of management under division 5.7.

**126 Environmental impact statements—consideration of relevant comments and reports**

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.

**127 Submission of reports and statements to Environment Minister**

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; and
- (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.

**128 Consultation**

- (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; or

- (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 Environment 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 determined, in writing, by the Environment Minister.
- (4) The determination is a notifiable instrument.
- Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (5) The Environment Minister must also publish the determination in a daily newspaper.

## **129 Further information**

- (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.



### **130 Further revision**

- (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—resubmit 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.

### **131 Evaluation by Environment Minister**

- (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 section 130 (1), that Minister shall prepare a written report evaluating a public environment report or statement within the prescribed period after the proponent—
  - (a) resubmits the report or statement under section 130 (3) (a); or
  - (b) submits a report under section 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; and

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

### **132 Tabling in Legislative Assembly and public inspection**

- (1) Within 6 sitting days after the completion of a report referred to in section 131, the relevant Minister shall present to the Legislative Assembly a copy of—
  - (a) the relevant assessment; and
  - (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 finished, the relevant Minister must make copies of the assessment, together with copies of any documents mentioned in subsection (1) (c), available to the public during office hours at places stated in a written notice prepared by the relevant Minister.
- (3) The notice under subsection (2) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (4) The relevant Minister must also publish the notice under subsection (2) in a daily newspaper.

### 133 Exclusion of material

- (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 must exclude that part from the copy of the assessment presented to 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.

### 134 Exemptions

- (1) The Environment Minister may, in writing (by an *exemption*)—
  - (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 exemption is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (3) The *Legislation Act 2001*, chapter 7 (Presentation, amendment and disallowance of subordinate laws and disallowable instruments) applies to an exemption as if each reference in that chapter to 6 sitting days were a reference to 5 sitting days.
- (4) Subject to any disallowance under the *Legislation Act 2001*, chapter 7, the exemption commences—
  - (a) on the day after the 5th sitting day after the day it is presented to the Legislative Assembly under that chapter; or
  - (b) if the exemption provides for a later date or time of commencement—on that date or at that time.
- (5) The Environment Minister shall cause an exemption to be notified in a daily newspaper.
- (6) The validity of an exemption is not affected by a failure to comply with subsection (5).

## **Division 4.4 Inquiries**

### **Subdivision 4.4.1 Establishment of panels and terms of reference**

#### **135 Constitution**

- (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.

#### **136 Combined inquiries**

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.

### **138 Terms of reference**

- (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; and
    - (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, in writing, vary the terms of reference of the relevant inquiry.
- (4) A variation of terms of reference is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **139 Notification**

- (1) The relevant Minister for an inquiry must, in writing, determine—
  - (a) the members of the panel, and the presiding member; and
  - (b) the terms of reference of the inquiry; and

- (c) the period within which the panel is to report; and
  - (d) such other matters as that Minister considers necessary.
- (2) A determination is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **Subdivision 4.4.2 Inquiry reports**

#### **140 Inquiry reports**

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.

#### **141 Tabling in Legislative Assembly and public inspection**

- (1) The relevant Minister must present a copy of the report of a panel's findings and recommendations to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.
- (2) After a report is completed, the relevant Minister must make copies of the report available to the public during office hours at places stated in a written notice prepared by the relevant Minister.
- (3) The notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) The relevant Minister must also publish the notice in a daily newspaper.

#### **142 Exclusion of material**

- (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 exclude that part from the copy of the report presented to 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 presented to 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 4.4.3 Procedures and powers**

#### **143 Definitions for sdiv 4.4.3**

In this subdivision:

*authorised person* means—

- (a) a panel member; or
- (b) a person assisting a panel member in a way authorised in writing by the member.

*occupier*, of a place, includes—

- (a) a person believed, on reasonable grounds, to be an occupier of the place; and
- (b) a person apparently in charge of the place.

*place* includes premises, land, vehicle, aircraft or vessel.

#### **144 Notice of inquiry hearings**

- (1) At a reasonable time before the commencement of an inquiry, the presiding member of a panel must prepare a notice stating—

- (a) the subject matter of the inquiry; and
  - (b) the time and place at which the inquiry is to commence.
- (2) The notice is a notifiable instrument.
- Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (3) The presiding member must also publish the notice in a daily newspaper.

### **145 Public hearings**

- (1) A panel shall conduct its inquiry in public, except as provided by subsection (2).
- (2) A panel may—
- (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; or
  - (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 a special hearing under section 147.



## **146 General procedure**

- (1) At a hearing of an inquiry, the panel—
  - (a) shall not conduct the hearing in an unduly formal manner; and
  - (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; and
  - (c) may take evidence on oath, or affirmation, administered by a member of the panel; and

*Note* For the taking of an oath or the making of an affirmation, see the *Oaths and Affirmations Act 1984*.

- (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).

## **147 Special hearings—consultation with interested persons**

- (1) A panel may hold a special hearing of the inquiry in order to consult with—
  - (a) the proponent; and
  - (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.

*Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.

- (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.

#### **148 Assessments for purpose of inquiries**

- (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 section 132 (1), the relevant Minister must present a copy of an assessment under subsection (1), together with any notice, report,

comment or information mentioned in section 132 (1) (b) or (c), to the Legislative Assembly within 6 sitting days after—

- (a) receiving the assessment under section 127; or
- (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 section 129 (2); or
- (c) where he or she issues a notice under section 130—receiving the assessment or report under section 130 (3).

#### **149 Witnesses—summons to appear**

- (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.

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

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

#### **150 Victimisation of witnesses**

- (1) A person shall not—
  - (a) use violence to or inflict injury upon; or
  - (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.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (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.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (3) For subsection (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 subsection (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.

## **151 Inspection of books and documents**

- (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.

### **152 Power of entry**

- (1) For 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 subsection (1), an authorised person shall—
  - (a) if the authorised person is a panel member—produce written evidence of his or her appointment; and
  - (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; and
  - (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.

### **153 Search warrants**

- (1) Where a panel member believes on reasonable grounds that it is necessary, for the inquiry, for an authorised person to enter and inspect any place and to search for and inspect anything 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; and
  - (b) to search for any specified thing or anything 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; and

- (b) state the purpose for which it is issued; and
- (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; and
- (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.

#### **154 Powers of search and inspection**

- (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; or
  - (b) search for and inspect anything; 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 subsection (1) (c).

Maximum penalty: 50 penalty units.

#### **155 Obstructing or resisting authorised person**

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.

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

## **156 Contempt**

A person shall not, without reasonable excuse—

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

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

## **157 Protection of panel members and witnesses**

- (1) A panel member has, in the exercise of the member's functions, the same protection and immunity as a judge 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 5**                      **Land administration**

### **Division 5.1**              **Preliminary**

#### **159**    **Definitions for pt 5**

In this part:

*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.

*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.

*lease* means a lease (other than a sublease)—

- (a) granted under this Act; or
- (b) that is taken under section 289 (Status of leases and licences) to have been granted under this Act; or
- (c) granted or arising under the *Unit Titles Act 2001*.

*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.

*market value*, of a lease, means 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.

*nominal rent lease* means a lease of Territory land for nominal rent.

*provision*, of a lease, includes a provision incorporated in the lease by reference and any other provision to which the lease is subject.

**public car park** means a road related area within the meaning of section 42 (Regulations about parking) of the *Road Transport (Safety and Traffic Management) Act 1999* that is available for use by the public for parking without the payment of money.

**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.

**rental lease** means a lease of Territory land for rent in excess of nominal rent.

**residential lease** means a lease of Territory land granted for residential purposes only.

**rural lease** means a lease of Territory land granted for rural purposes or purposes including rural purposes.

**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.

**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 2001*.

## 160 Application

- (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 5.2 Leases**

### **160A Effect qualified**

This division has effect subject to division 5.4 (Restrictions on rural leases).

### **161 Granting of leases**

- (1) The Executive may, on behalf of the Commonwealth, grant a lease of Territory land by—
- (a) auctioning the lease; or
  - (b) calling tenders for the grant of the lease; or
  - (c) conducting a ballot for the right to the grant of the lease; or
  - (d) a direct grant to an applicant for a lease.

*Note* A fee may be determined under s 287 (Determination of fees) for this subsection.

- (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) The Executive may restrict the persons eligible for the grant of a lease under subsection (1) (a), (b) or (c) by specifying, in the relevant notice of auction, tender or ballot, a class of persons eligible or ineligible for the grant of a lease pursuant to the auction, tender or ballot.
- (4) Where, pursuant to a restriction imposed under subsection (3), only 1 person is eligible for the grant of a lease under subsection (1) (a), (b) or (c), the Executive may grant a lease to that person under

subsection (1) (d) without auctioning the lease, calling tenders or conducting a ballot (as the case may be).

- (5) A lease granted under subsection (1) (d) shall be granted subject to such provisions as are agreed between the Executive and the applicant for the lease.
- (6) The Executive shall not grant a lease of Territory land under subsection (1) (d) otherwise than in accordance with criteria specified pursuant to subsection (7).
- (7) The Executive may, for the purposes of this section, in writing—
  - (a) specify criteria for the granting of leases under subsection (1) (d); or
  - (b) amend or revoke criteria so specified.
- (8) An instrument under subsection (7) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### **163 Leases to community organisations**

- (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; and
  - (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, in writing—
- (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.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.
- (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) This section does not limit the power of the Executive to grant a lease of Territory land to a community organisation otherwise than under this section.

#### **164 Special leases**

- (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, in writing—
- (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.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (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; or
  - (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; or
  - (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.

## **166 Inquiries and assessments in relation to granting of leases**

- (1) Where it is proposed that a lease of Territory land be granted, the Executive may—

- (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.

## **167 Eligibility for certain classes of leases**

- (1) The Executive may, in writing—
- (a) declare a specified class of leases to be leases to which this section applies; or
  - (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.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (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 subsection (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, or any other person having an interest in such a lease, shall not—
- (a) assign or transfer the lease; or
  - (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, or to any other person having an interest in such a lease—
- (a) assigning or transferring the lease; or
  - (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 (1) (b) in respect of the class of leases in which the lease is included.

### **168 Executive not bound to grant lease**

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.

### **169 Payment for leases**

- (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 section 161 (1) (d), 163, 164, 171, 171A or 172.

### **170 Failure to accept and execute lease**

- (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; or
  - (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 money paid to the Executive in respect of the grant of the lease.

### **171 Grant of further residential leases**

- (1) Where—
  - (b) the holder of a residential lease of land applies to the Executive for the grant of a further residential lease of that land; and
  - (c) neither the Territory nor the Commonwealth requires the land for a public purpose; and
  - (d) the lessee pays the fee calculated pursuant to the determination under subsection (2); and
  - (e) the lessee surrenders the existing lease;

the Executive shall, on behalf of the Commonwealth, grant the lessee a further residential lease of that land for a term not

exceeding 99 years to commence on the day immediately following the date of surrender of the existing lease.

- (2) The Minister may make a determination, in writing, for subsection (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 subsection (1) (d) shall not exceed the cost of granting the lease.
- (4) A determination under subsection (2) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

#### **171A Grant of further rural leases**

- (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; and
  - (b) neither the Territory nor the Commonwealth requires the land for a public purpose; and
  - (c) all rent due under the existing lease is paid; and
- (ca) the lessee pays the determined fee; 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 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, in writing, for the purposes of subsection (1).
- (3) A determination under subsection (2) may—

- (a) include a condition that a lessee pays, for the grant of a further lease—
  - (i) an amount stated in, or worked out in accordance with, the determination (an *amount condition*); or
  - (ii) the market value of the lease; and
- (b) provide that an amount condition ceases to apply to a lessee if the lessee—
  - (i) has not applied for the grant of a further rural lease under subsection (1) within the period stated in the determination for applying for such a grant; and
  - (ii) has not accepted in writing an offer for the grant of such a lease within the period stated in the determination for accepting such an offer.
- (4) A provision mentioned in subsection (3) (b) may apply to an amount condition of a determination made before or after the commencement of that subsection.
- (5) If the national capital authority of the Commonwealth has set a maximum term for a rural lease of land in a designated area within the meaning of the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), a determination under subsection (2) relating to the land must set a term not longer than the term set by the authority as the maximum term for a further rural lease of the land.
- (6) If the term of a further lease granted under subsection (1) does not exceed the term of the existing lease, the fee payable under subsection (1) (ca) shall not exceed the cost of granting the lease.
- (7) A determination under subsection (2) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

**172 Grant of further leases for purposes other than residential or rural**

- (1) Where—
- (b) the holder of a lease of Territory land other than a residential lease or a rural lease applies to the Executive for the grant of a further lease of the land for the same purposes; and
  - (c) neither the Territory nor the Commonwealth requires the land for a public purpose; and
  - (f) all rent due under the existing lease is paid; and
  - (g) the lessee pays the fee calculated pursuant to the determination under subsection (2); and
  - (h) the lessee surrenders the existing lease;

the Executive shall grant the lessee a further lease of the land 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.

- (2) The Minister may make a determination, in writing, for subsection (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 subsection (1) (g) shall not exceed the cost of granting the lease.
- (4) A determination under subsection (2) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

**172A Grant of further lease—unit titles**

- (1) The Executive may grant a further lease of a unit, or the common property, under a units plan only on an application by the owners corporation.

- (2) The Executive may grant a further lease of a unit, or the common property, under a units plan only if—
  - (a) the Executive grants further leases for all such units and the common property; and
  - (b) the further leases are all granted for the same term.
- (3) An application must be supported by an ordinary resolution of the owners corporation.
- (4) A certificate under the *Unit Titles Act 2001*, section 109 about the resolution must be attached to the application.
- (5) In this section:

*further lease* means a lease under section 171, 171A or 172.

*units plan*—see the *Unit Titles Act 2001*, section 7.

### **172B Grant of further lease—community title**

- (1) The Executive may grant a further lease of a lot in a community title scheme only on an application by the body corporate of the scheme.
- (2) The Executive may grant a further lease of a lot in a community title scheme only if—
  - (a) the Executive grants further leases for all the lots in the scheme; and
  - (b) the further leases are all granted for the same term.
- (3) An application must be supported by an ordinary resolution of the body corporate.
- (4) An application must have attached to it a certificate under the seal of the body corporate that states that at a general meeting of the body corporate held on a stated day a resolution was passed for subsection (3) in the terms set out in the certificate.

### **172C No right to use, flow and control of water**

A lease or further lease of Territory land granted under this division after the commencement of this section shall not be taken to confer a right to the use, flow and control of water (including water containing impurities) under the land the subject of the lease.

### **173 Lessee's rights in respect of improvements**

(1) In this section:

*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.

*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.

*undertaken*, in relation to an improvement that is a building or structure, means the construction, erection or installation of the building or structure.

(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.
- (2) Where, upon the expiration of the term of a lease of Territory land upon which there are improvements to which this section applies, 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 to which this section applies, 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 to which this section applies 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.
- (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.
- (6) Subsection (5) or (5A) 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), (5) and (5A) 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.

## **174 Determination of value of improvements**

- (1) In this section:

*assessment day* means—

- (a) in relation to land a lease of which has expired—the day of expiry; or

- (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.

*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.

- (2) Where compensation is payable under section 173 in respect of improvements, the Minister shall, as soon as practicable after the assessment 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 assessment day.
- (3) Where compensation is payable under section 173 (3), the Minister shall, in valuing the improvements, assume that a further lease of the land had been granted subject to the same provisions, and for the same term, as the lease which has expired.
- (4) Where compensation is payable under section 173 (5), the Minister shall, in valuing the improvements, assume that the lease of the land had not been terminated or surrendered.
- (5) Where compensation is payable under section 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.

### **175 Use of land for leased purpose**

- (1) 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, subject to this section.
- (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 6.
- (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 6; or
  - (b) for any other activity prescribed by the regulations.

### **176 Variation of rent**

- (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.

### **177 Review of variations of rent**

- (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 section 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.

### **178 Refund of amount paid for grant of lease**

- (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 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, in writing—

- (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.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### **179 Certificates of compliance**

- (1) Subject to subsection (4), 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, issue a certificate of compliance to the effect that the provision has been so complied with.

*Note* A fee may be determined under s 287 (Determination of fees) for this subsection.

- (2) Subject to subsection (4), 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.
- (3) A certificate of compliance under subsection (2) 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.
- (4) The Minister shall not issue a certificate of compliance in respect of a building and development provision to which a lease under the *Unit Titles Act 2001* is subject unless the other requirements of this section are satisfied and the Minister is satisfied—
- (a) in the case of every other lease in respect of the same subdivision under the *Unit Titles Act 2001* 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; 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 2001* is subject.

**180 Transfer of land subject to building and development provision**

- (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; or
  - (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* (Cwlth); or
  - (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 the *City Area Leases Act 1936*, section 28 as in force at any time before 19 December 1973; or
    - (ii) a certificate of compliance under section 179; 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 may, 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.
- (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, in writing, for this section.
- (4) A determination under subsection (3) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### **181 Mortgage of leasehold subject to building and development provision**

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 of compliance under section 179; 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; or
  - (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.

**182 Land leased to be held as undivided parcel**

- (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.

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

- (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 5.3                      Variation of leases**

### **183A Effect qualified**

This division has effect subject to division 5.4 (Restrictions on rural leases).

### **184 Application to surrender and regrant of leases**

A reference in this division to the *variation* of a lease includes 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 2.3.4;

except where a lease is surrendered and a further lease is granted under section 171, 171A or 172.

### **184A Variation of nominal rent lease—change of use charge**

- (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—

$$\text{CUC} = (V_1 - V_2) \times 75\%$$

where:

*CUC* is the change of use charge payable for the variation of the lease.

$V_1$  is the capital sum that the lease might be expected to realise if—

- (a) the lease were to be varied as proposed; and
- (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.

$V_2$  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; and
- (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  $V_1$  under subsection (2) is equal to or less than the capital value assessed as  $V_2$  under that subsection, no change of use charge is payable under subsection (1).
- (4) So far 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 the definition of  $V_1$ , paragraph (c) in subsection (2) to the term of the lease is a reference to the term of the new lease; and

- (b) the reference in the definition of  $V_2$ , paragraph (c) in subsection (2) to the term of the lease is 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.

### **184C Change of use charge for variations of nominal rent leases**

- (1) On application by the lessee of a nominal rent lease who applies for a variation of the lease, the Minister must remit a change of use charge under section 184A (Variation of nominal rent lease—change of use charge) in circumstances prescribed under the regulations.
- (2) The Minister must increase a change of use charge under section 184A in circumstances prescribed under the regulations.

### **184D Variation of rental leases**

- (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.

### **185 Advice of rent payable on variation of a lease**

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); and
  - (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).

### **186 Variation of lease to pay out rent**

- (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; and
  - (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; and
  - (d) the lessee has paid the Territory an amount determined by the Minister by reference to any policy direction made under subsection (1A).

(1A) The Minister may, in writing, make policy directions for subsection (1) (d).

(1B) A policy direction under subsection (1A) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

(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 No variations to extend term**

The Executive shall not execute a variation of a lease of Territory land to extend the term of the lease.

## **Division 5.4 Restrictions on rural leases**

### **186B Definitions for div 5.4**

In this division:

*dealing*, in relation to a lease, means—

- (a) assigning or transferring the lease; or
- (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.

*discharge amount*—

- (a) in relation to a special Pialligo lease—means an amount determined in accordance with section 186F; or

- (b) in any other case—means an amount determined in accordance with section 186E.

*earlier index number*, for a lease, means the last index number issued before the lease was granted under section 161 or 171A.

*holding period* is a period ending—

- (a) in relation to a long lease—10 years after the lease is granted; or  
(b) in relation to a short lease—at the end of  $\frac{1}{3}$  the term of the lease.

*index number*—see section 186G.

*later index number* means—

- (a) for a special Pialligo lease—means the last index number issued before the discharge amount is to be paid; or  
(b) for any other lease—the last index number issued before the last amount is worked out under section 186E.

*long lease* means a lease for a term of at least 21 years.

*short lease* means a lease for a term less than 21 years.

*special Pialligo lease* means a lease comprising land in block 6, 12, 13, 14, 15, 19, 20 or 52 of section 2 of the district of Majura.

## 186C Land management agreements

- (1) The Executive may—
- (a) grant a rural lease; or  
(b) grant a further rural lease; or  
(c) vary a rural lease; or  
(d) consent to the assignment or transfer of a rural lease;

only if the person to whom the lease is to be granted, assigned or transferred, or the person whose lease is to be varied, (the *relevant*

*person*) has entered into an agreement that complies with this section with the Territory about managing the rural land subject to the lease.

- (2) An agreement complies with this section if it is—
  - (a) in accordance with a form approved by the Minister under section 287A (Approved forms) for this section; and
  - (b) signed by—
    - (i) the Minister or someone authorised by the Minister; and
    - (ii) the relevant person.
- (3) An agreement may contain a provision allowing the agreement to be varied other than by agreement between the parties.
- (4) The Minister may, in writing, authorise people to sign agreements.

### **186D Dealings with rural leases**

- (1) This section applies to—
  - (a) a rural lease granted under section 161 (Granting of leases) after 15 December 1999 for consideration less than the market value of the lease; and
  - (b) a lease granted under section 171A (Grant of further rural leases) after 15 December 1999 on the payment of an amount worked out on the application of an amount condition mentioned in section 171A (3) (a).
- (2) However, this section does not apply to a lease mentioned in subsection (1) (b) that was granted on the surrender of a lease for which a discharge amount had been paid.
- (3) A lessee, or other person with an interest in the lease, may deal with a lease to which this section applies within the holding period only with the written consent of the Executive.
- (4) A dealing in relation to a lease made or entered into without consent has no effect.

- (5) The Executive must consent under this section to a dealing if—
- (a) the person to whom—
    - (i) the lease is being assigned or transferred; or
    - (ii) the land comprised in the lease, or part of it, is sublet; or
    - (iii) possession of the land comprised in the lease, or part of it, is being given;is the lessee's partner or child; or
  - (b) the discharge amount has been paid in relation to the lease; but may not consent otherwise.

- (6) The validity of—
- (a) an assignment or transfer of a lease; or
  - (b) a sublease of land the subject of a lease; or
  - (c) parting with possession of land comprised in a lease;
- is not affected by the Executive's contravention of subsection (4).

- (7) In this section:

*child*, in relation to a lessee, includes a son or daughter of the lessee's partner.

*de facto relationship* means the relationship between 2 people (whether of a different or the same sex) who, although not married to each other, live in a relationship like the relationship between a married couple.

*partner*, in relation to a lessee, means the lessee's spouse or a person with whom the lessee is in a de facto relationship.

### **186E Discharge amount**

- (1) The discharge amount for a lease (other than a special Pialligo lease) is the amount determined in accordance with the formula—



$((\text{last amount} - (\text{first amount} \times \frac{\text{later index no}}{\text{earlier index no}})) \times 50\%) + \text{owed amount}$

(2) In this section:

**first amount** means—

- (a) in relation to a nominal rent lease—the consideration for the lease when granted under section 161 or 171A; or
- (b) in relation to a short lease—the value of the lease determined when the lease was granted under section 161 or 171A; or
- (c) in relation to any other lease—any consideration for the lease when granted under section 161 or 171A plus any amount to be paid under the lease;

other than an amount attributable to lessee-owned improvements to the land comprised in the lease.

**last amount**, in relation to a lease, means—

- (a) the consideration for the dealing with the lease, not including any amount attributable to lessee-owned improvements to the land comprised in the lease; or
- (b) if—
  - (i) there is no consideration; or
  - (ii) the dealing relates to only part of the land comprised in the lease; or
  - (iii) the consideration is less than the market value of the lease;

the market value of the lease, not including any amount attributable to the lessee-owned improvements to the land comprised in the lease.

**owed amount** means—

- (a) in relation to a long lease—any amount remaining to be paid under the lease, even if the amount is not due; or
- (b) in relation to a short lease—any rent and additional rent payable under the lease up to the day of the dealing with the lease.

### 186F Discharge amount—special Pialligo leases

- (1) The discharge amount for a special Pialligo lease granted less than 1 year before the discharge amount is to be paid is an amount equal to the total of the amount paid and the owed amount for the lease.
- (2) The discharge amount for a special Pialligo lease granted at least 1 year before the discharge amount is to be paid is the amount determined in accordance with the formula—

$$\text{amount paid} - \left( \text{cpi adjusted amount} \times \frac{\text{years since grant}}{10} \right) + \text{owed amount}$$

- (3) The cpi adjusted amount in relation to a lease is the amount determined in accordance with the formula—

$$\text{amount paid} \times \frac{\text{later index number}}{\text{earlier index number}}$$

- (4) In this section:

**amount paid** means—

- (a) in relation to a nominal rent lease—the consideration for the lease when granted under section 161 or 171A; or
- (b) in relation to any other lease—any consideration for the lease when granted under section 161 or 171A plus any amount to be paid under the lease;

other than an amount attributable to lessee-owned improvements to the land comprised in the lease.

**years since grant**, in relation to a lease, means the number of whole years since the lease was granted under section 161 or 171A.

*owed amount*, in relation to a lease, means any amount remaining to be paid under the lease, even if the amount is not due.

### **186G Index numbers**

(1) In this division:

*index number* means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician from time to time.

(2) However, in determining index numbers for this division—

- (a) if the Australian Statistician revises the calculation of an index number for a reason other than a change in the reference base for the All Groups Consumer Price Index and, as a result of the calculation, publishes an index number for a period in substitution for the previous index number—the later index number is disregarded; and
- (b) if the Australian Statistician changes the reference base for the consumer price index after the lease is granted but before the calculation of the later index number—the earlier index number is the index number that would have been applicable if the new reference base had been in effect when the lease was granted.

### **186H No subdivision or consolidation**

The Executive may not consent to the consolidation or subdivision of a lease to which section 186D applies during the holding period.

## **Division 5.5 Consolidation and subdivision**

### **187AA Effect qualified**

This division has effect subject to division 5.4 (Restrictions on rural leases).

## 187 Application—nominal rent leases of Territory land

This division applies only in relation to the consolidation and subdivision of nominal rent leases.

### 187A Consolidation and subdivision—change of use charge

- (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—

$$CUC = (V_1 - V_2) \times 75\%$$

where:

*CUC* is the change of use charge payable for the consolidation or subdivision.

$V_1$  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; and
- (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
- (c) the rent payable throughout the term of the new lease or leases were a nominal rent.

$V_2$  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; and
  - (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  $V_1$  under subsection (2) is equal to or less than the capital value assessed as  $V_2$  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.

### **187C Change of use charge for consolidations and subdivisions**

- (1) On application by a lessee who applies for a consolidation or subdivision of a lease or leases, the Minister must remit a change of use charge under section 187A (Consolidation and subdivision—change of use charge) in circumstances prescribed under the regulations.
- (2) The Minister must increase a change of use charge under section 187A in circumstances prescribed under the regulations.

## **Division 5.6 Recovery of land**

### **188 Termination of leases**

- (1) Subject to subsection (5), where a lessee of Territory land contravenes this part or the 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.
- (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.
- (3) Subject to subsection (5), where a person who occupies Territory land under a licence from the Commonwealth or the Territory contravenes this part or the 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; and
    - (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).

- (6) The validity of the termination of a lease is not affected by a failure to comply with subsection (2A).

**189 Recovery of land on expiry, surrender or termination of lease or licence**

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.

**190 Certificate of Minister to be evidence**

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 5.7 Public land**

**Subdivision 5.7.1 Preliminary**

**191 Definitions for div 5.7**

In this division:

*plan of management* means a plan of management prepared under subdivision 5.7.4, 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 5.7.2 Public land**

### **192 Recommendations to authority**

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 to reduce or increase the size or the area, or to alter the shape of the area; or
  - (ii) the variation of the purpose for which it is reserved; or
  - (iii) the cessation of its designation as public land.

## **Subdivision 5.7.3 Management of public land**

### **193 Reserved areas**

Public land may be reserved by the plan under section 7 (3) (f) for any of the following purposes:

- (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.

## **194 Management**

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.

## **195 Management objectives**

- (1) For 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, in writing, determine management objectives for an area of public land reserved for a purpose mentioned in schedule 1.

*Note* A power given under an Act to make a statutory instrument (including a determination of management objectives) includes power to amend or repeal the instrument (see *Legislation Act 2001*, s 46 (1)).

- (3) A determination of management objectives is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

*Note 2* An amendment or repeal of a determination of management objectives is also a disallowable instrument (see *Legislation Act 2001*, s 46 (2)).

- (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 appearing later in the 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 5.7.4 Plans of management**

##### **196 Content**

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 section 195 (1) are to be implemented or promoted in that area.

##### **197 Preparation**

- (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.

##### **198 Variations**

- (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.

### **199 Environmental assessments and inquiries**

- (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 section 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.

### **200 Public consultation**

- (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 firstmentioned 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 written notice prepared by the conservator.
- (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.

- (5) A notice under subsection (3) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (6) The conservator must also publish the notice in a daily newspaper.

### **201 Revision**

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.

### **202 Submission to Minister**

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.

### **203 Consideration of plan of management by Legislative Assembly committee**

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; and
- (b) a copy of the reports referred to in section 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.

## **204 Minister's powers**

- (1) 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) in writing, 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, in writing, until a specified date or the occurrence of a specified event, the resubmission of the draft to the Minister;
    - (v) to withdraw the draft in writing.
- (2) The following are notifiable instruments:
  - (a) a deferral directed under subsection (1) (b) (iv);
  - (b) a withdrawal directed under subsection (1) (b) (v).

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **205 Referral back to conservator**

If the Minister refers a draft plan of management to the conservator under section 204 (1) (b), the conservator shall—

- (a) comply with the Minister's directions; and
- (b) if the Minister gives a direction under section 204 (1) (b) (i) or (ii)—if the conservator thinks fit, revise the draft plan; and

- (c) revise the draft to correct any formal error; and
- (d) resubmit 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).

### **206 Notice of revival of deferred draft plan of management**

- (1) If the conservator defers a draft plan of management as directed under section 204 (1) (b) (iv) (Minister's powers), on the day stated in the deferral, or as soon as possible after the event mentioned in the deferral, the conservator must prepare a written notice stating that the draft plan of management is revived.
- (2) A notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (3) The conservator must also publish the notice in a daily newspaper.

### **207 Notification, tabling, disallowance and date of effect**

- (1) A plan of management, as approved by the Minister under section 204, is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The *Legislation Act 2001*, chapter 7 (Presentation, amendment and disallowance of subordinate laws and disallowable instruments) applies to a plan of management as if each reference in that chapter to 6 sitting days were a reference to 5 sitting days.
- (3) Subject to any disallowance under the *Legislation Act 2001*, chapter 7, the plan of management commences—
  - (a) on the day after the 5th sitting day after the day it is presented to the Legislative Assembly under that chapter; or
  - (b) if the plan provides for a later date or time of commencement—on that date or at that time.

## **Subdivision 5.7.5 Leases and licences**

### **208 Leases—generally**

- (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 2, of that draft variation.

### **209 Grant of leases**

- (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 section 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.

### **210 Licences**

- (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; and
- (b) specify—
  - (i) the land in respect of which the licence is sought; and
  - (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.

*Note* A fee may be determined under s 287 (Determination of fees) for this subsection.

- (3) A licence under subsection (1) shall—
  - (a) be in writing; and
  - (b) apply to the person to whom it is granted and to all other persons to whom it is expressed to apply; and
  - (c) specify the period for which it is granted; and
  - (d) be subject to such conditions (if any) as are specified in the licence.

## **211 Miner's rights in respect of public land**

A miner's right must not be granted in respect of public land.

## **Division 5.8 Miscellaneous**

### **214 Lessee may surrender lease wholly or in part**

- (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.

### **215 Reduction of rent and relief from provisions of lease**

- (1) The Executive may approve—
- (a) a reduction of the rent payable under a lease of Territory land, or of the amount payable, in relation to any occupation of Territory land; or
  - (b) the grant of relief, to a lessee or occupier of Territory land, from compliance, completely or partly, with any provision to which the person's lease or occupation is subject.
- (2) The reduction or grant of relief may be for any period (including a period before the commencement of this section or any other period before the approval).
- (3) If the Executive gives an approval under subsection (1), the liability or obligation of the lessee or occupier under the lease, or in relation to the person's occupation, is discharged for the period approved, to the extent of the reduction or grant of relief approved.
- (4) An approval under subsection (1) may be made subject to conditions.
- (5) If the Executive approves a grant of relief to a lessee or occupier under subsection (1), it must give to the lessee or occupier notice of the reduction of rent or other grant of relief approved.

*Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.

### **216 Access to leased land from roads and road related areas**

- (1) If the Executive grants a lease of Territory land on behalf of the Commonwealth, it must during the term of the lease give the lessee—
- (a) direct access to the leased land from a road or road related area; or

- (b) access to the leased land from a road or road related area by way of an access road or track, or in another way, that the lessee may use without charge and for all purposes at any hour of the day or night.
- (2) A way of access to leased land provided by the Executive because of subsection (1) (b)—
  - (a) must not interfere with a building, garden or stockyard on the land at the time the way of access is provided; and
  - (b) must be located in a way that causes as little damage or inconvenience to the lessee as possible.
- (3) In this section:

*road*—see the *Road Transport (General) Act 1999*, dictionary.

*road related area*—see the *Road Transport (General) Act 1999*, dictionary.

### **216A Notification of certain leases to Legislative Assembly**

- (1) This section applies if the Executive grants a lease under any of the following provisions:
  - (a) section 161 (1) (d) (which is about the direct grant to an applicant of a lease);
  - (b) section 163 (Leases to community organisations);
  - (c) section 164 (Special leases);
  - (d) section 209 (which is about the grant of leases over certain areas of public land or land designated to become public land).
- (2) The Minister must present to the Legislative Assembly, within 5 sitting days after the end of the quarter in which the lease was granted, a statement that sets out for the lease—
  - (a) the name of the lessee; and

- (b) a description of the land comprised in the lease that is in accordance with the *Districts Act 2002*; and
  - (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 the lease is not affected by a failure to comply with subsection (2).

### **217 Licences in respect of land that is not public land**

- (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; and
  - (b) specify—
    - (i) the land in respect of which the licence is sought; and
    - (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.

*Note* A fee may be determined under s 287 (Determination of fees) for this subsection.

- (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; and
  - (b) apply to the person to whom it is granted and to all other persons to whom it is expressed to apply; and
  - (c) specify the period for which it is granted; and

- (d) be subject to such conditions (if any) as are specified in the licence.

### **218 Reservation of minerals**

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.

### **219 Rights to extract minerals**

- (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.

### **220 Access to lease documents and development agreements**

- (1) The *Freedom of Information Act 1989*, section 11 (2) does not apply to a document that is—
- (a) a lease; or
  - (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; or
  - (b) a variation of a lease; or
  - (c) a renewal of a lease;

shall be deemed not to be an exempt document for the *Freedom of Information Act 1989*.

- (3) A reference in this section to a *lease* is a reference to a lease of Territory land.

## **221 False statements**

A person shall not make to—

- (a) the Executive; or
- (b) a Minister; or
- (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.

Maximum penalty: 50 penalty units.

## Part 6 Approvals and orders

### Division 6.1 Preliminary

#### 222 Definitions for pt 6

In this part:

**application** means an application for approval to undertake a development.

**approval** means—

- (a) an approval under section 230; or
- (b) a decision under another Act that is declared by that Act to be an approval for this part.

**building** includes—

- (a) an addition to a building; and
- (b) a structure attached to a building; and
- (c) a part of a building.

**building work**—see the *Building Act 1972*, section 5.

**consolidation**—see section 159.

**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 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 section 175 (3) (a); 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.

***Executive*** includes a Minister acting on behalf of the Executive.

***lease***—see section 159.

***lessee***—see section 159.

***objection*** means an objection under section 237.

***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 of this part.

**prescribed period** means such period as is specified in, or ascertained in accordance with, the regulations.

**relevant authority**, in relation to an application, means—

- (a) if the Minister has, under section 229A (3) or (4), referred the application to the commissioner for determination and that reference has not been revoked—the commissioner; or
- (b) in any other case—the Minister.

**structure** includes a fence, mast, antenna, aerial, road, footpath, driveway, carpark, culvert or service conduit or cable.

**subdivision**—see section 159.

**variation**, of a lease—see section 223.

## **223 Meaning of *variation* for pt 6**

- (1) In this part, **variation**, of a lease, includes—
  - (a) the surrender of a lease and the granting of a new lease subject to different provisions to the same lessee over all or part of the land comprised in the surrendered lease; and
  - (b) a consolidation; and
  - (c) a subdivision.
- (2) However, the **variation** of a lease does not include the surrender of a lease and the granting of a new lease to the same lessee over all or part of the land comprised in the surrendered lease if—
  - (a) the land is defined land within the meaning of section 31; or
  - (b) the new lease is granted under any of the following provisions:
    - (i) section 171 (Grant of further residential leases);



- (ii) section 171A (Grant of further rural leases);
- (iii) section 172 (Grant of further leases for purposes other than residential or rural).

## **Division 6.2 Approvals**

### **Subdivision 6.2.1 General**

#### **225 Offence—development**

- (1) A person shall not, without reasonable excuse, undertake a development otherwise than in accordance with an approval.

Maximum penalty: 50 penalty units.

- (2) A Territory authority shall not, without reasonable excuse, undertake a development except in accordance with an approval.

#### **226 Application to undertake development**

- (1) An application for approval must—
  - (a) be signed by the applicant; and
  - (b) if the application is for approval of a variation of a lease—be accompanied by an assessment by an accredited valuer that sets out the amounts of the values represented by  $V_1$  and  $V_2$  in—
    - (i) for a variation that is not a consolidation or subdivision—section 184A; or
    - (ii) for a variation consisting of a consolidation or subdivision—section 187C.

*Note 1* A fee may be determined under s 287 (Determination of fees) for this subsection.

*Note 2* If a form is approved under s 287A (Approved forms) for an application or a declaration, the form must be used.

- (2) If the development to which the application relates requires construction work to be carried out on land that has previously been developed, and that is not leased for rural purposes, the application must be accompanied by a survey certificate given by a registered surveyor that shows—
  - (a) the boundaries of the land where the development is to be undertaken; and
  - (b) the location of each building or structure on the land; and
  - (c) the existing contours of the land.
- (3) A person is not entitled to apply to undertake a development of a rural lease if—
  - (a) the development is a variation of the lease that is a consolidation or subdivision; and
  - (b) the Executive may not consent to the consolidation or subdivision under section 186H.
- (4) 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 signed by the person by whom it is made, be signed 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.
- (5) A lessee or the Minister may, by writing, appoint a person to act on his or her behalf in relation to an application.
- (6) A person who signs an application under subsection (4) (a) shall be taken to be an applicant in relation to the application.
- (7) The Minister may—
  - (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.
- (8) Where the Minister makes an alteration or a correction under subsection (7), 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.
- (9) An application may be made under this section in respect of a development that has been undertaken without approval.
- (10) The Minister may, in writing, exempt developments mentioned in subsection (2) from the application of the subsection.
- (11) An exemption is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.
- (12) In this section:
- accredited valuer*** means a person who is—
- (a) registered, licensed or approved under the law of the Commonwealth or a State to carry out valuations of property; or
- (b) accredited as a certified practising valuer by the body known as the Australian Property Institute.

## **227 Register of applications, approvals, orders and lease and development conditions**

- (1) The Minister shall keep a register of—
- (a) each alteration or correction to an application made pursuant to section 226 (7); and

- (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; and
  - (c) each approval in respect of which the period for making an application under section 275 or 276 has not expired; and
  - (d) each approval, for the period for which it remains in force; and
  - (e) each order, for the period for which it remains in effect; and
  - (f) the lease and development conditions (if any) applicable to a lease granted after the commencement of this paragraph.
- (2) The Minister may enter in the register details of lease and development conditions applicable to a lease granted before the commencement of subsection (1) (f).
- (3) A person may, during office hours—
- (a) inspect the register; and
  - (b) make copies of, or take extracts from, the register or any part of a document relevant to an application.

*Note* A fee may be determined under s 287 (Determination of fees) for par (b).

- (4) In this section:

***lease and development condition***, for a lease, means a condition, other than a condition contained in the lease, that—

- (a) was approved by the Territory when the lease was granted; and
- (b) regulates the development or use of the land that is subject to the lease.

## **228 Restrictions on inspection of applications**

- (1) An applicant for approval to undertake a development 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 for approval to undertake a development contains information related to the personal or business affairs of a person, being information—
    - (i) supplied to the Minister in confidence; or
    - (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 for approval to undertake the development 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.

## **229 Notice of application**

- (1) The Minister shall—
  - (a) if a place other than unleased land 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 the 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; and
  - (b) publish notice of the making of each application in a daily newspaper.
- (2) Subsection (1) (a) does not apply—
- (a) 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; or
  - (b) in relation to a place adjoining the place to which the application relates that is leased by the applicant or a person for whom the applicant has been appointed to act as agent.
- (3) The Minister shall, if the application relates to a development that is or includes a variation of a lease, give notice in writing of the making of the application to each person having an estate or interest in the land subject to the lease to be varied (being an estate or interest that is registered under the *Land Titles Act 1925*).
- Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.
- (4) The Minister—
- (a) shall forward to the heritage council for comment a copy of each application that relates to a place specified in the heritage places register, or an interim heritage places register, as a heritage place; and
  - (aa) must give to the conservator a copy of each application that involves, or is likely to involve, damage to a significant tree under the *Tree Protection (Interim Scheme) Act 2001*; and

- (ab) shall forward to the conservator for comment a copy of each application that relates to public land; and
  - (ac) must give to the Gungahlin Development Authority for comment a copy of each application that relates to land within the Gungahlin central area; and
  - (b) may forward a copy of an application to any other person or body for comment.
- (4A) The Minister shall give the environment management authority notice in writing of an application in respect of a development—
- (a) listed in the *Environment Protection Act 1997*, schedule 1; or
  - (b) that has the potential to cause serious or material environmental harm within the meaning of that Act.
- (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).
- Maximum penalty: 5 penalty units.
- (6A) A person shall not, without reasonable excuse, prevent or restrict access to a sign erected under subsection (5).
- Maximum 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).
- (7) A reference in subsection (1) to a *lessee* is 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.

## 229A Who is to decide applications?

(1) For this section, the Minister may, in writing, determine classes of applications that are to be referred to the commissioner for decision.

(2) A determination under subsection (1) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

(3) The Minister shall refer all applications included in a determined class of applications to the commissioner for decision.

(4) The Minister may refer an application that is not included in a determined class of applications to the commissioner for decision.

(5) Subject to subsection (6), the commissioner shall decide all applications referred to him or her under subsection (3) or (4) and the Minister shall decide all other applications.

(6) If the Minister considers that an application that has been referred to the commissioner for decision under subsection (3) or (4)—

(a) raises a major issue of policy; or

(b) seeks approval for a development that may have a substantial effect on the achievement or development of objectives of the Territory plan; or

(c) allows a decision that would give rise to a substantial public benefit;

the Minister may, at any time before the application is decided by the commissioner, by written notice given to the commissioner, revoke the reference.

(7) If the Minister revokes a reference of an application to the commissioner, the Minister must—

(a) give to the applicants written notice of the revocation and the grounds on which the reference has been revoked; and



- (b) present to the Legislative Assembly, within 3 sitting days after the reference is revoked, a statement containing—
  - (i) a description of the development to which the application relates; and
  - (ii) particulars of the land on which the development would take place; and
  - (iii) the names of the applicants; and
  - (iv) particulars of the ground on which the reference was revoked; and
- (c) decide the application.

- (8) A notice under subsection (6) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (9) The notice must be notified under the *Legislation Act 2001* within 21 days after it is made.
- (10) Subsections (5) and (7) (a) do not limit the power of the Minister to delegate his or her power to decide an application.

## **230 Approvals**

- (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 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 section 222 (1), definition of *development*, paragraph (c); or
  - (b) an activity included in a development of a type prescribed for section 175 (3) (a); or
  - (c) an activity prescribed for section 175 (3) (b).

### **231 Matters to be considered**

- (1) Before approving or refusing to approve an application, the relevant authority shall—
- (a) consider—
    - (i) any comments of a person or body to which the application has been referred for comment; and
    - (ii) each objection or other submission the Minister has received in relation to the application which has not been withdrawn; and
    - (iii) a preliminary assessment under division 4.2, or a report under section 128; and
    - (iv) any assessment made, or the report of any inquiry conducted, in relation to the development to which the application relates; and

(b) in the case of an application for approval to undertake a development that would be affected by requirements relating to 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 subsection (1) (b):

*Aboriginal place*—see section 52.

*relevant Aboriginal organisation*—see section 52.

### 232 Duty of applicants

(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.

*Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.

(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 section 229 (1) (b), the reasonable cost of the notice is a debt payable by the applicant to the Territory.

*Note* If a form is approved under s 287A (Approved forms) for a notice under par (a) or (b), the form must be used.

### **233 More information**

- (1) The relevant authority may, by notice in writing, require an applicant to furnish to the authority, 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 relevant authority for an extension of the period within which the applicant is to furnish information.
- (3) On receipt of an application under subsection (2), the relevant authority may grant an extension of the period of not more than 6 months.

### **234 Effect of failure to furnish further information**

If a person fails to furnish information in accordance with a notice under section 233 (1), 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.

### **236 Environmental assessments and inquiries**

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 6.2.2 Objections

### 237 Objections—general

- (1) Any person who may be affected by the approval of an application may, within the prescribed period (or that period as extended under this section), object to the grant of the approval.
- (1A) The Minister may, by notice published in a daily newspaper, extend or further extend the period allowed under subsection (1) for the objection to the grant of an approval of an application.
- (1B) The power under subsection (1A) may be exercised after the expiry of the period to be extended.
- (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 undertake a development 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.
- (4) In this section:  
*person* includes an unincorporated association.

### 238 Inspection of objections

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.

### 239 Identity of objectors

The Minister may, on request by a person making an objection, exclude the identity of the objector from being made available under section 237 (3) or 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 6.2.3 Approvals**

#### **242 Application approved—notification of decision**

- (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.

#### **243 Notification of approval or refusal of application**

- (1) If a relevant authority approves an application, the Minister must cause notice of the approval to be given to each person who objected under section 237 (1).
- (2) Subsection (1) does not apply to an approval for which the relevant authority has issued a certificate that an environmental impact statement made, or an inquiry conducted, under part 4 has substantially dealt with the matters forming the basis of the decision to approve the application.
- (3) A notice under subsection (1) must—
  - (a) contain—
    - (i) a description of the place to which the decision relates; and
    - (ii) a brief description of the development the subject of the decision; and
  - (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 a relevant authority refuses an application, the Minister must cause notice of the refusal to be given to the applicant and to each person who objected under section 237 (1).
- (5) A notice under subsection (4) shall set out the reasons for the decision.
- (6) A notice under subsection (1) or (4) must comply with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

#### **244 Notification where more than 1 objector**

Where a number of persons make 1 objection, the Minister is to be taken to have complied with section 243 (1) or (3), as the case may be, if he or she 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.

#### **245 Conditional approvals**

- (1) Subject to this section, the relevant authority may approve an application subject to such conditions as are specified by the authority, after taking into consideration the matters referred to in section 231 (1) (a).
- (2) The relevant authority—

- (a) shall include in an approval any condition which is required to be included by the plan; 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 development is to be carried out to the satisfaction of a specified person or body; or
  - (b) requiring a development to be carried out in stages within the periods specified in or under the approval; or
  - (c) specifying a period in which a development or any stage of a development is to be carried out; or
  - (d) that an approval does not take effect unless a specified approval is revoked, amended or given; or
  - (e) in relation to an approval to carry out a development for a specified period—that—
    - (i) building works or other works carried out in or on a place the subject of the approval are 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; or
  - (f) that a bond be entered into securing performance against the conditions of an approval; or
  - (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; or
  - (h) that a development be carried out to a specified standard; or
  - (j) that specified works, services or facilities which the relevant authority 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; or
  - (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; or
  - (k) that plans, drawings or other documents be prepared by the applicant and lodged with the Minister for approval by him or her before the development or a specified part of it is commenced; or
  - (l) requiring changes to be made to any plan, drawing or other document forming part of the application for approval; or
  - (m) that the applicant give to the Minister a further assessment by a valuer that complies with section 226 (1) (b).
- (4) The Minister may approve an amendment to a plan, drawing or other document approved under subsection (3) (k) if the amendment is not inconsistent with section 230 (2) or an approval under subsection (3) (k).

#### **247 Minor amendments**

- (1) The lessee or an occupier of a place in respect of which an approval is in force may apply in writing to the relevant authority who gave the approval for an amendment of it.
- (2) The relevant authority 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; and
  - (b) will not cause a significant increase in detriment to any person; and

- (c) does not change the kind of development approved but only the activity permitted.
- (3) The relevant authority shall give notice of an amendment—
  - (a) to the person who made the application to amend; and
  - (b) if that person is not the lessee or occupier of the place to which the approval relates—to the lessee; and
  - (c) to each person who had objected under section 237 (Objections—general) to the grant of the approval; and
  - (d) to any relevant Territory authority.

*Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.

## **248 Corrections**

If the relevant authority who gave an approval is satisfied that the approval contains a formal error, the authority shall—

- (a) correct the approval; and
- (b) notify the applicant in writing.

## **249 Approval—when takes effect**

Subject to sections 230 (4) and 245 (3) (d), the approval of an application by the relevant authority 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; or
- (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 the tribunal decision affirming or varying the decision is given.

## **250 Execution of approvals for variations of leases**

Subject to division 5.3, 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.

## **251 Expiration of approvals**

- (1) An approval to undertake a development (other than a development that consists wholly of a variation of a lease) expires if—
  - (a) the development or any stage of the development is not commenced within the period specified in the approval; or
  - (b) the development or any stage of the development is not completed within the period specified in the approval; or
  - (c) if no period is specified in an approval for the commencement of the development or any stage of the development—the development or stage of development 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.

## **252 Extension of time**

- (1) The lessee or occupier of a place in respect of which an approval to undertake a development (other than a development that consists wholly of a variation of a lease) applies (being an approval which specifies the date for the completion of the development or any stage of the development) may, before the expiration of the approval, apply to the Minister for an extension of the period within which to complete the development or any stage of it.

- (2) On receipt of an application under subsection (1), the Minister may extend the period within which the development, or the stage of the development, is to be completed.

### 253 Revocation of approval

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 6.3 Orders

### 254 Pest animals and pest plants

- (1) The Minister may, in writing—
- (a) declare a class of animals to be pest animals; or
- (b) declare a class of plants to be pest plants;
- either generally or in a specified area.
- (2) In subsection (1):
- animal* means any live vertebrate, but does not include a human being.
- (3) The Minister shall not make a declaration under subsection (1) unless the Minister has consulted with—
- (a) the flora and fauna committee established under the *Nature Conservation Act 1980*; and
- (b) in relation to a declaration proposed to be made under subsection (1) (a)—the animal welfare advisory committee established under the *Animal Welfare Act 1992*.
- (4) After making a declaration under subsection (1), the Minister—

- (a) shall cause to be prepared a plan for the control of the propagation of animals or plants of the relevant class; and
  - (b) if the declaration was made under subsection (1) (a)—may cause to be prepared a code of practice under the *Animal Welfare Act 1992* in relation to the animals of the relevant class.
- (5) A declaration under subsection (1) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### **255 Offences—orders**

- (1) A person who, without reasonable excuse, contravenes an order commits 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.

### **256 Application for order**

- (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 was, 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) must state the grounds on which the order is sought.

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

- (3) 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

- (ab) in the case of an application for an order relating to a pest animal or pest plant—the conservator; and
- (b) for an application relating to the parking of heavy vehicles on residential land under the regulations under the *Road Transport (Safety and Traffic Management) Act 1999*—to the Minister administering that Act.

*Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.

- (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 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
  - (ab) in the case of an application for an order relating to a pest animal or pest plant—the conservator; and
  - (b) for an application for an order relating to the parking of heavy vehicles on residential land under the regulations under the *Road Transport (Safety and Traffic Management) Act 1999*—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.
- (4BA) The Minister shall refuse to make an order under subsection (4B) in relation to the controlled activity of using or managing land in a way

that fails to control the propagation of a pest animal or pest plant if—

- (a) there is a written agreement between the lessee or occupier of the land and the Minister relating to control of the propagation of the relevant pest animal or pest plant; and
  - (b) the Minister is satisfied that the lessee or occupier is giving effect to the agreement.
- (4C) If the Minister makes an order under subsection (4B) that relates to the parking of a heavy vehicle on residential land under the *Road Transport (Safety and Traffic Management) Act 1999*, the Minister must, as soon as practicable after the order is made, give a copy of the order 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) not to commence a development without approval; or
    - (ii) to stop carrying out a development without approval; or
    - (iii) to stop, or not commence, a controlled activity other than a development; or
    - (iv) to comply with the terms of an approval to undertake a development; or

- (v) to stop undertaking a development otherwise than in accordance with the conditions subject to which an approval to conduct the development was given; or
- (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; or
- (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; or
- (viii) to restore any land, building or structure that has been altered without approval or permission required by an Act or regulations; or
- (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; or
- (x) to clean up a leasehold; or
- (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; or
    - (D) within 20m of a bank of a watercourse; or



- (E) on land having a slope of more than 18° from the horizontal; or
  - (xiii) to manage land held under a rural lease in accordance with the land management agreement that applies to it; or
  - (xiv) to comply with the relevant land management agreement by acting as directed by the order.
- (6) If the Minister fails to make an order under subsection (4B) within the prescribed period, the Minister is, for that subsection, to be taken to have refused to make an order.

#### **256A Effect of certain orders**

An order under section 256 that relates to a pest animal or a pest plant is to be taken to be a licence under the *Nature Conservation Act 1980* for any action in relation to the animal or plant required to comply with the order.

#### **257 Notice of making of order**

- (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; and
  - (b) the applicant; and
  - (c) the lessee and occupier of the place to which the order relates; and
  - (d) the registrar-general; and
  - (e) any other person whose interests are, in the opinion of the Minister, adversely affected by the order.

*Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.

- (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; and

- (b) the lessee and occupier of the place to which the order relates; and
- (c) the registrar-general; and
- (d) any other person whose interests are, in the opinion of the Executive, adversely affected by the order.

### **258 Effect of order in certain circumstances**

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.

### **259 Noncompliance**

- (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 subsection (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 subsection (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.

### **260 Future owners or occupiers**

- (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.

### **261 Powers of Supreme Court**

- (1) The Supreme Court may, on application being made under section 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 6.4 Enforcement

### Subdivision 6.4.1 Preliminary

#### 262 Definitions for div 6.4

In this division:

**connected**—a thing is **connected** with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

**occupier**, of premises, includes—

- (a) a person believed, on reasonable grounds, to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

**offence** includes an offence that there are reasonable grounds for believing has been, is being, or will be committed.

### **263 Inspectors**

- (1) The Minister may, in writing, appoint a person to be an inspector for this part.
- (2) An inspector shall, subject to this part and the regulations, perform such duties as the Minister directs.

### **264 Identity cards**

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.

### **265 Return of identity cards**

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.

Maximum penalty: 1 penalty unit.

## **Subdivision 6.4.2 Inspection**

### **266 Inspections etc**

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; or
- (b) without an approval; or
- (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; or
- (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.

### **267 Consent to entry**

- (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; and
  - (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.

## **268 Display of identity cards**

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.

## **269 Powers of inspection**

- (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; and
  - (b) take such photographs, video recordings, or make such sketches or other recordings, as the inspector believes on reasonable grounds to be necessary; and
  - (c) take samples of anything that the inspector believes on reasonable grounds is connected with an offence against this part; and
  - (d) seize anything that the inspector believes on reasonable grounds to be connected with an offence against this part; and
  - (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; and
  - (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; and
  - (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 subsection (1) (f), (g) or (h).

Maximum penalty: 50 penalty units.

### **270 Work carried out at direction of inspector**

Where an authorised person enters land pursuant to section 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.

### **271 Taking samples**

An inspector who takes samples under section 269 (1) (c) shall—

- (a) ensure that the sample is such as to permit paragraph (c) to be complied with; and
- (b) give a receipt for the sample to the occupier of the place from which the sample was taken; and
- (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; and
- (d) place each of those parts in a separate container and seal each container; and
- (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.

### **272 Disposal of seized items**

- (1) Where a thing has been seized under section 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 the *Crimes Act 1900*, section 402 in respect of an offence against this Act;
- the court may order that anything seized under section 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.

### **273 Search warrants**

- (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; and
  - (b) to ascertain whether or not a controlled activity is being conducted in or on the place; and
  - (c) to search the place for things of the kind specified in the warrant; and
  - (d) to seize anything 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; and
  - (b) specify the nature of the relevant offence; and
  - (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; and
  - (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.

## **274 Obstruction of inspectors**

A person shall not, without reasonable excuse, obstruct or hinder an inspector in the exercise of his or her powers under this part.

---

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

## **Division 6.5**                      **Commissioner for land and planning**

### **274A Commissioner for land and planning**

- (1) The Minister must appoint a person to be the Commissioner for Land and Planning.

*Note 1* For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

*Note 2* Appointments under subsection (1) require consultation with an Assembly committee and are disallowable (see *Legislation Act 2001*, div 19.3.3).

- (2) The commissioner holds office on the conditions (if any) in relation to matters not provided for by this Act decided by the Minister.
- (3) The *Legislation Act 2001*, division 19.3.3 (Appointments—Assembly consultation) applies to the appointment of a public servant as commissioner.

*Note* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see *Legislation Act 2001*, div 19.3.3).

- (4) Subsection (3) has effect despite the *Legislation Act 2001*, section 227 (2) (a) (Application of div 19.3.3).

### **274B Term of office**

The commissioner must not be appointed for a term longer than 5 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Legislation Act 2001*, s 208 and dict, pt 1, def of **appoint**).

### **274C Leave of absence**

The Minister may give leave of absence to the commissioner on conditions about remuneration or otherwise decided by the Minister.

### **274G Suspension and removal of commissioner**

- (1) The Executive may remove the commissioner from office on an address praying for his or her removal on the ground of misbehaviour or 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 must present to the Legislative Assembly a statement of the grounds of the suspension within 7 sitting days of the Legislative Assembly after the suspension.
- (4) Where such a statement has been presented to 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 presented to 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.

*Note* A person's appointment also ends if the person resigns (see *Legislation Act 2001*, s 210).

### **274H Retirement**

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.

### **274I Delegation**

The commissioner may delegate the commissioner's function under this Act to a public servant.

*Note* For the making of delegations and the exercise of delegated functions, see *Legislation Act 2001*, pt 19.4.

### **274J Protection from suit**

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 function under this Act.

## **Division 6.6 Miscellaneous**

### **Subdivision 6.6.1 Review of decisions**

#### **275 Review of decisions**

- (1) Where the Minister makes a decision—

- (a) refusing to approve an application under section 228 (2); or
- (d) refusing to exclude the identity of an objector under section 239; or
- (f) refusing to approve an amendment under section 245 (4); or
- (h) refusing to extend time under section 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 relevant authority makes a decision—

- (a) refusing to approve an application under section 230; or
- (b) refusing to grant an extension of a period under section 233 (3); or
- (c) giving an approval subject to conditions under section 245 (1); or
- (d) refusing to amend an approval under section 247 (2);

the relevant authority 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 development is to be carried out to the satisfaction of a specified person or body; and
- (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.

(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 the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

## **276 Review—objectors and third parties**

- (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; and
  - (c) the application is made within 28 days after the day on which the person was notified of the decision.
- (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 the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (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.
- (8) In this section:
- person*** includes an unincorporated association.

- (9) For this section, an organisation or association of persons, whether incorporated or not, shall be taken to have interests that are affected by a decision if the decision relates to a matter included in the objects or purposes of the organisation or association.

### **277 Review—orders**

- (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; or
  - (b) refusing to make an order under section 256; or
  - (c) making an order subject to a direction of a kind referred to in section 256 (5) (b).
- (2) A notice given to a person in accordance with section 257 (1) (a), (b), (c) or (e) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

### **278 Notification of objectors**

- (1) Where an applicant makes an application under section 275 for the review of a decision referred to in section 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 each person who objected under section 237 to the application in relation to which the decision was made.

*Note* For how documents may be given, see *Legislation Act 2001*, pt 19.5.

- (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.



## **279 Notification of applicants**

- (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 section 276 (1) (a) (i) or (ii), and includes a person who has made application under section 276 (4).

## **279A Challenge to validity of certain decisions**

- (1) The validity of a decision made by the Minister on an application to which section 229A (7) applies may not be questioned in any legal proceedings except those commenced within 28 days after the date of the decision.
- (2) In this section:  
*legal proceedings* does not include an application to the administrative appeals tribunal.

## **Subdivision 6.6.2 General**

### **282 Regulations**

- (1) The regulations may make provision for—
  - (a) the lodging of applications; and
  - (b) the form and conditions of a bond referred to in section 245 (3) (f), including the method of calculating the amount of the bond and the conditions of payment under the bond; and

- (c) the exemption of the Territory or a Territory authority from the requirements of all or any of the provisions of this part; and
  - (d) the circumstances, whether generally or in a particular case, in which an exemption under paragraph (c) applies; and
  - (da) exempting a development of a kind specified in the regulations, either absolutely or subject to conditions, from the application of this part or any provision of this part; and
  - (e) exempting a controlled activity of a kind specified in the regulations, either absolutely or subject to conditions, from the application of this part or any provision of this part; and
  - (f) the extension of any period within which action is to be taken by the Executive, a person or the Minister, under this part or the regulations.
- (2) The regulations may authorise the Minister to exempt from this part or any provision of this part a development that consists of the erection, fixing or displaying of a sign or advertising material 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.
- (3) An exemption under a regulation mentioned in subsection (2) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (4) An exemption under subsection (1) or (2) that relates to a development mentioned in subsection (2) may be conditional.

## Part 7 Administrative appeals

### 282A Review of decisions

- (1) Where the Minister makes a decision—
- (a) directing the heritage council to notify an interim heritage places register under section 69 (1) (a) or 73 (1) (a); or
  - (b) refusing to grant compensation under subdivision 3.5.4; or
  - (c) making a declaration under section 82 (1); or
  - (d) determining the value of improvements under section 174; or
  - (e) confirming a variation of rent, or setting a variation of rent aside and substituting another variation under section 177 (3); or
  - (f) refusing to authorise the payment of an amount in respect of the surrender or termination of a lease under section 178 (1); or
  - (g) refusing to issue a certificate of compliance that a building and development provision of a lease has been fully complied with under section 179 (1); or
  - (ga) on application for a certificate of compliance under section 179 (1)—issuing a certificate of compliance that a building and development provision of a lease has been partially complied with under section 179 (2); or
  - (gb) refusing to issue a certificate of compliance under section 179 (2); or
  - (gc) issuing a certificate of compliance under section 179 (2) subject to a condition under section 179 (3); or
  - (h) refusing to consent to a legal or equitable assignment or transfer of a lease or an interest in a lease under section 180 (2); or

- (i) determining a change of use charge for the variation of a lease under section 184A (2); or
- (j) refusing to remit a change of use charge for the variation of a lease under section 184C (1); or
- (k) remitting a change of use charge for the variation of a lease by an amount less than that applied for under section 184C (1); or
- (l) increasing a change of use charge for the variation of a lease under section 184C (3); or
- (m) reappraising the rent payable under a lease under section 184D (2); or
- (n) determining an amount for the variation of a rental lease to reduce the rent payable to a nominal rent under section 186 (1) (d); or
- (o) determining a change of use charge for a consolidation or subdivision under section 187A (2); or
- (p) refusing to remit a change of use charge for a consolidation or subdivision under section 187C (1); or
- (q) remitting a change of use charge for a consolidation or subdivision by an amount less than that applied for under section 187C (1); or
- (r) increasing a change of use charge for a consolidation or subdivision under section 187C (3);

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; or
  - (b) for section 167 (3) that a person is not eligible to be a lessee under a lease included in a class of leases specified under section 167 (1) (a); or

- (c) refusing to consent under section 167 (5) to—
  - (i) the assignment or transfer of a lease; or
  - (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; or
- (d) terminating the right of a person to the grant of a lease under section 170 (1); or
- (e) refusing to grant a further lease of Territory land under section 171, 171A or 172; or
- (g) terminating a lease under section 188 (1); or
- (h) terminating a licence under section 188 (3); or
- (j) refusing to consent to the surrender of a lease or part of the land comprised in a lease under section 214 (1), or consenting subject to a condition; or
- (k) refusing to grant a person the right to extract minerals from specified Territory land under section 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—
  - (a) refusing an application for the inclusion of a provision in an interim heritage places register under section 59 (3); or
  - (b) including a provision in an interim heritage places register notified under section 60; or
  - (c) revising an interim heritage places register under section 62 (1) (b); or
  - (d) refusing to grant approval to publish restricted information under section 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, 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.
- (4A) Where a decision is made on behalf of the Territory to vary a land management agreement under a provision of a kind referred to in section 186C (3), the Minister must give notice of the decision to the other party to the agreement.
- (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), (4) or (4A);
  - (b) a decision not to register a place under section 69 (1) (b) or 73 (1) (b).
- (6) A notice under subsection (1), (2), (3), (4) or (4A) or section 69 (1) (b) or 73 (1) (b) must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).



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.

### **286 Conduct of directors, servants and agents**

- (1) Where, for 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 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 includes 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 includes a reference to failing or refusing to engage in conduct.

## **287 Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## **287A Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) A form approved for section 186C (Land management agreements) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (4) Any other approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **288 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## Part 9 Transitional

### 289 Status of leases and licences

- (1) Subject to section 290, a lease or licence granted or continued, or purported to have been granted or continued, under a repealed Act and in force immediately before 2 April 1992 is taken, on and after that day, to have been granted under this Act.
- (2) In this section:  
*repealed Act* means any of the following Acts:
  - (a) the *Leases Act 1918* No 2;
  - (b) the *Leases (Special Purposes) Act 1925* No 11;
  - (c) the *City Area Leases Act 1936* No 31.

### 290 Continued application of certain repealed Acts and provisions

- (1) Despite the repeal of the *Australian National University (Leases) Act 1967*, that Act continues to apply in relation to a lease granted under, or continued in force by, that Act and in force immediately before 2 April 1992.
- (2) Despite the repeal of the *Canberra College of Advanced Education (Leases) Act 1977* and subject to subsection (3), that Act continues to apply in relation to a lease granted under that Act and in force immediately before 2 April 1992.
- (3) For subsection (2), the *Canberra College of Advanced Education (Leases) Act 1977*, section 5 is taken to apply as if that section had been amended by omitting ‘in perpetuity’.
- (4) Despite the repeal of the *Church Lands Leases Act 1924*, sections 5, 6, 8 and 10 of that Act continue to apply in relation to a lease

granted under that Act and in force immediately before 2 April 1992.

- (5) In a continuing lease, a reference to *improvements* is a reference to improvements other than improvements by way of clearing, draining, grading, filling, excavating or levelling made by the Territory or the Commonwealth or the cost of which the Territory or the Commonwealth has paid.
- (6) Despite the repeal of the *City Area Leases Act 1936*, the following sections of that Act continue to apply:
- (a) so far as the section relates to a continuing lease in which provision is made for the land comprised in the lease to be used for a purpose specified in section 8A (1) of that Act—section 8A;
  - (b) so far as the section relates to a variation of a continuing lease in respect of which notice under section 18A of that Act was given before the commencement day—section 18B;
  - (c) so far as the section relates to a continuing lease in respect of which notice under the section was given before the commencement day—section 22;
  - (d) so far as the section relates to a continuing lease specified in section 28A (1) of that Act—section 28A;
  - (e) so far as the section relates to a continuing lease specified in section 28DA (1) of that Act—section 28DA;
  - (f) so far as the section relates to a sublease specified in section 30A (2) of that Act and in force immediately before 2 April 1992—section 30A.
- (7) Despite the repeal of the *Leases (Special Purposes) Act 1925*, sections 5AC, 5AD, 5A and 5B of that Act continue to apply in relation to a lease of Territory Land—
- (a) granted under subsection 3 (2) of that Act as in force immediately before 11 May 1989; and

- (b) in force immediately before 2 April 1992.
- (8) Despite the repeal of the *Leases (Special Purposes) Act 1925*, section 5BA (6) of that Act continues to apply in relation to a lease granted under that Act and in force immediately before 2 April 1992.
- (9) In this section:

*continuing lease* means a lease granted or continued, or purported to have been granted or continued, under the *City Area Leases Act 1936* and to which section 289 of this Act applies.

## 291 Conversion of Commonwealth leases

- (1) This section applies if—
- (a) a declaration under the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), section 27 (1) has been rescinded, revoked, amended or varied and as a consequence land that had been national land has ceased to be national land; and
- (b) a lease had been granted under a prescribed law over all or part of that land and the lease was in force immediately before the rescission, revocation, amendment or variation of the declaration.
- (2) The lease is taken to have been granted under this Act from the day of the rescission, revocation, amendment or variation of the declaration.
- (3) In this section:

*prescribed law* means any of the following laws:

- *Leases Ordinance 1918*
- *Leases (Special Purposes) Ordinance 1925*
- *City Area Leases Ordinance 1936*.

## Schedule 1 Management objectives for public land

(see s 195)

column 1 item	column 2 reserve	column 3 management objectives
1	wilderness area	<p>1 to conserve the natural environment in a manner ensuring that disturbance to that environment is minimal</p> <p>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</p>
2	national park	<p>1 to conserve the natural environment</p> <p>2 to provide for public use of the area for recreation, education and research</p>
3	nature reserve	<p>1 to conserve the natural environment</p> <p>2 to provide for public use of the area for recreation, education and research</p>
4	special purpose reserve	<p>1 to provide for public and community use of the area for recreation and education</p>

<b>column 1 item</b>	<b>column 2 reserve</b>	<b>column 3 management objectives</b>
5	cemetery or burial ground	<p>1 to provide for the burial of the dead and the storage of the ashes of the dead</p> <p>2 to conserve the natural environment</p>
6	sport and recreation reserve	1 to provide for public and community use of the area for sport and recreation
7	urban open space	<p>1 to provide for public and community use of the area</p> <p>2 to develop the area for public and community use</p>
8	lake	<p>1 to prevent and control floods by providing a reservoir to receive flows from rivers, creeks and urban run-offs</p> <p>2 to prevent and control pollution of waterways</p> <p>3 to provide for public use of the lake for recreation</p> <p>4 to provide a habitat for fauna and flora</p>

## Schedule 2 Criteria for assessment of heritage significance of places

(see s 56)

- 1 Under the *Land (Planning and Environment) Act 1991*, section 56 the criteria for the assessment of the heritage significance of places are:
  - (a) a place which demonstrates a high degree of technical, creative achievement, or both by showing qualities of innovation or departure or representing a new achievement of its time; or
  - (b) a place which exhibits outstanding design or aesthetic qualities valued by the community or a cultural group; or
  - (c) 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; or
  - (d) 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; or
  - (e) a place which is the only known or only comparatively intact example of its type; or
  - (f) 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; or
  - (g) 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; or



- 
- (h) a place which represents the evolution of a natural landscape, including significant geological features, landforms, biota or natural processes; or
  - (i) 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 district occurrences of species; or
  - (j) a place which exhibits unusual richness, diversity or significant transitions of flora, fauna or natural landscapes and their elements; or
  - (k) 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 Content of preliminary assessments

(see s 115)

**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?

## Schedule 5 Activities subject to orders

(see s 4, s 255)

column 1 item	column 2 activities	column 3 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	200 penalty units
2	failure to comply with— (a) a lease; or (b) if a lease is granted subject to the lessee entering into a development agreement and the lessee has entered into such an agreement—the development agreement	50 penalty units
4	failure to keep a leasehold clean	50 penalty units
5	undertaking a development	50 penalty units
6	having a building or structure that was constructed or erected without approval required by— (a) division 6.2 of this Act; or (b) the <i>Buildings (Design and Siting) Act 1964</i> .	50 penalty units

column 1 item	column 2 activities	column 3 penalty
9	permitting a tree, sapling, plant or shrub to overhang a public place so as to obstruct or inconvenience a person in that place	5 penalty units
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 20m of the bank, of a watercourse, or on land with a slope of	100 penalty units
11	more than 18 <sup>0</sup> from the horizontal using or managing land in a way that fails to control the propagation of a pest animal or pest plant	50 penalty units
12	parking a heavy vehicle on residential land in contravention of a code of practice in relation to the parking of heavy vehicles under the <i>Road Transport (Safety and Traffic Management) Regulations 1999</i>	20 penalty units
13	managing land held under a rural lease other than in accordance with the land management agreement that applies to it	50 penalty units

## Dictionary

(see s 2)

*Note 1* The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- administrative appeals tribunal
- amend
- appoint
- change
- conservator of flora and fauna
- contravene
- document
- exercise
- function
- month
- national capital authority
- penalty unit
- the Territory.

***Aboriginal object***, for part 3 (Heritage)—see section 52.

***Aboriginal place***, for part 3 (Heritage)—see section 52.

***Aboriginal tradition***, for part 3 (Heritage)—see section 52.

***application***, for part 6 (Approvals and orders)—see section 222.

***approval***, for part 6 (Approvals and orders)—see section 222.

***assessment*** means an assessment made under division 4.3 (Assessments).

***authorised person***, for subdivision 4.4.3 (Procedures and powers)—see section 143.

***authority*** means the Australian Capital Territory Planning Authority established under section 33.

**background papers**, for part 2 (Planning)—see section 5.

**building**, for part 6 (Approvals and orders)—see section 222.

**building and development provision**, for part 5 (Land administration)—see section 159.

**building work**, for part 6 (Approvals and orders)—see section 222.

**chairperson**, for division 3.7 (Australian Capital Territory Heritage Council)—see section 90.

**commissioner** means the Commissioner for Land and Planning appointed under section 274A.

**compensation**, for subdivision 3.5.4 (Compensation claims)—see section 74.

*Note* Sdiv 3.5.4 is about compensation claims in relation to Aboriginal heritage discoveries and places.

**connected**, with an offence, for division 6.4 (Enforcement)—see section 262.

**conservation**, for part 3 (Heritage)—see section 52.

**conservator** means the conservator of flora and fauna.

**consolidation**—

(a) for part 5 (Land administration)—see section 159; and

(b) for part 6 (Approvals and orders)—see section 222.

**consultation notice**, for part 2 (Planning)—see section 19.

**controlled activity** means—

(a) an activity of a kind mentioned in schedule 5; or

(b) an activity under another Act that is declared by that Act to be a controlled activity for schedule 5.

**dealing**, for division 5.4 (Restrictions on rural leases)—see section 186B.

***defined decision***, for part 4 (Environmental assessments and inquiries)—see section 111.

***deputy chairperson***, for division 3.7 (Australian Capital Territory Heritage Council)—see section 90.

***development***, in relation to land—

(a) for part 2 (Planning)—see section 5; and

(b) for part 6 (Approvals and orders)—see section 222.

***discharge amount***, for division 5.4 (Restrictions on rural leases)—see section 186B.

***draft plan variation***, for part 2 (Planning)—see section 5.

***earlier index number***, for division 5.4 (Restrictions on rural leases)—see section 186B.

***environmental impact***, for part 4 (Environmental assessments and inquiries)—see section 111.

***environmental impact statement***, for part 4 (Environmental assessments and inquiries)—see section 111.

***environmental report***, for part 2 (Planning)—see section 5.

***Environment Minister*** means the Minister administering part 4 (Environmental assessments and inquiries).

***Executive***, for part 6 (Approvals and orders)—see section 222.

***expert member***, for division 3.7 (Australian Capital Territory Heritage Council)—see section 90.

***formal error*** means—

(a) a clerical error; or

(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 plan.

***heritage council*** means the Australian Capital Territory Heritage Council established under section 91.

***heritage object***, for part 3 (Heritage)—see section 52.

***heritage objects register***, for division 3.7 (Australian Capital Territory Heritage Council)—see section 90.

***heritage place***, for part 3 (Heritage)—see section 52.

***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.

***holding period***, for division 5.4 (Restrictions on rural leases)—see section 186B.

***index number***, for division 5.4 (Restrictions on rural leases)—see section 186G.

***inquiry*** means an inquiry conducted under division 4.4 (Inquiries).

***interim heritage places register***—see section 52.

***interim variation***, in relation to the heritage places register, for part 3 (Heritage)—see section 52.

***land***—

- (a) for part 2 (Planning)—see section 5; and
- (b) for part 4 (Environmental assessments and inquiries)—see section 111.

**land management agreement** means an agreement under section 186C.

*Note* A reference to an instrument (including a land management agreement) includes a reference to the instrument as originally made and as amended (see *Legislation Act 2001*, s 102).

**later index number**, for division 5.4 (Restrictions on rural leases)—see section 186B.

**lease**—

- (a) for part 5 (Land administration)—see section 159; and
- (b) for part 6 (Approvals and orders)—see section 222.

**lessee**—

- (a) for part 5 (Land administration)—see section 159; and
- (b) for part 6 (Approvals and orders)—see section 222.

**long lease**, for division 5.4 (Restrictions on rural leases)—see section 186B.

**market value**, for part 5 (Land administration)—see section 159.

**member**, for division 3.7 (Australian Capital Territory Heritage Council)—see section 90.

**national capital plan**, for part 2 (Planning)—see section 5.

**natural environment**, for schedule 1 (Management objectives for public land)—see section 195 (6).

**newspaper** means a newspaper published and circulating in the ACT.

**nominal rent lease**, for part 5 (Land administration)—see section 159.

**objection**, for part 6 (Approvals and orders)—see section 222.

**occupier**—

(a) for subdivision 4.4.3 (Procedures and powers)—see section 143; and

(b) for division 6.4 (Enforcement)—see section 262.

**offence**, for division 6.4 (Enforcement)—see section 262.

**order**, for part 6 (Approvals and orders)—see section 222.

**panel**, for part 4 (Environmental assessments and inquiries)—see section 111.

**permanent member**, for division 3.7 (Australian Capital Territory Heritage Council)—see section 90.

**pest animal** means an animal in a class of animals declared to be pest animals under section 254 (1).

**pest plant** means a plant in a class of plants declared to be pest plants under section 254 (1).

**place**, for subdivision 4.4.3 (Procedures and powers)—see section 143.

**plan** means the Territory plan.

*Note* A reference to an instrument (including the plan) includes a reference to the instrument as originally made and as amended (see *Legislation Act 2001*, s 102).

**plan of management**, for division 5.7 (Public land)—see section 191.

**preliminary assessment**, for part 4 (Environmental assessments and inquiries)—see section 111.

**prescribed period**, for part 6 (Approvals and orders)—see section 222.

**proponent**, for part 4 (Environmental assessments and inquiries)—see section 111.

**provision**, of a lease, for part 5 (Land administration)—see section 159.

**public car park**, for part 5 (Land administration)—see section 159.

**public environment report**, for part 4 (Environmental assessments and inquiries)—see section 111.

**public land** means land identified by the plan as public land.

**registered**, for division 3.5 (Aboriginal heritage)—see section 66.

**registered lease**, for part 5 (Land administration)—see section 159.

**registered proprietor**, for part 5 (Land administration)—see section 159.

**registration**, for division 3.5 (Aboriginal heritage)—see section 66.

**relevant Aboriginal organisation**, for part 3 (Heritage)—see section 52.

**relevant authority**, for part 6 (Approvals and orders)—see section 222.

**relevant Minister**, for part 4 (Environmental assessments and inquiries)—see section 111.

**rental lease**, for part 5 (Land administration)—see section 159.

**residential lease**, for part 5 (Land administration)—see section 159.

**restricted information**, for part 3 (Heritage)—see section 52.

**rural lease**, for part 5 (Land administration)—see section 159.

**secretary**, for division 3.7 (Australian Capital Territory Heritage Council)—see section 90.

**short lease**, for division 5.4 (Restrictions on rural leases)—see section 186B.

**special Pialligo lease**, for division 5.4 (Restrictions on rural leases)—see section 186B.

---

**structure**, for part 6 (Approvals and orders)—see section 222.

**subdivision**—

- (a) for part 5 (Land administration)—see section 159; and
- (b) for part 6 (Approvals and orders)—see section 222.

**sublease**, for part 5 (Land administration)—see section 159.

**sublessee**, for part 5 (Land administration)—see section 159.

**Territory authority** means—

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

**unregistered**, for division 3.5 (Aboriginal heritage)—see section 66.

**variation**, for part 3 (Heritage)—see section 52.

**variation**, of a lease—

- (a) for division 5.3 (Variation of leases)—see section 184; and
- (b) for part 6 (Approvals and orders)—see section 223.

**variation**, of the plan, for part 2 (Planning)—see section 5.

**variation**, of a plan of management, for division 5.7 (Public land)—see section 191.

## Endnotes

1 About the endnotes

---

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

---

### 3 Legislation history

**Land (Planning and Environment) Act 1991 No 100**

notified 15 January 1992

s 1 and s 2 commenced 15 January 1992

remainder commenced 2 April 1992

as amended by

**Land (Planning and Environment) (Amendment) Act 1992 No 32**

notified 3 July 1992

commenced 3 July 1992

**Land (Planning and Environment) (Amendment) Act 1993 No 11**

notified 1 March 1993

commenced 1 March 1993

**Acts Revision (Position of Crown) Act 1993 No 44 sch 2**

notified 27 August 1993 (Gaz 1993 No S165)

sch 2 commenced 27 August 1993 (s 2)

**Registrar-General (Consequential Provisions) Act 1993 No 64**

notified 6 September 1993

s 1, s 2 commenced 6 September 1993

remainder commenced 1 October 1993 (s 2 (2) and Gaz 1993 No S207)

**Land (Planning and Environment) (Amendment) Act (No 2) 1993 No 75**

notified 2 November 1993

s 1, s 2 commenced 2 November 1993

remainder commenced 1 December 1993 (Gaz 1993 No S247)

**Land (Planning and Environment) (Amendment) Act (No 3) 1993 No 77**

notified 2 November 1993

s 1, s 2 commenced 2 November 1993

remainder commenced 1 December 1993 (Gaz 1993 No S243)

## Endnotes

3 Legislation history

---

### **Real Property (Consequential Provisions) Act 1993 No 90**

notified 17 December 1993

s 1, s 2 commenced 17 December 1993

remainder commenced 1 January 1994 (s 2 (2) and Gaz 1993 No S270)

### **Statute Law Revision Act 1994 No 26**

notified 31 May 1994

commenced 31 May 1994

### **Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38**

notified 30 June 1994

s 1, s 2 commenced 30 June 1994

remainder commenced 1 July 1994 (Gaz 1994 No S142)

### **Administrative Appeals (Consequential Amendments) Act 1994 No 60**

notified 11 October 1994

s 1, s 2 commenced 11 October 1994

remainder commenced 14 November 1994 (s 2 (2) and Gaz 1994 No S250)

### **Statute Law Revision (Penalties) Act 1994 No 81**

notified 29 November 1994

s 1, s 2 commenced 29 November 1994

remainder commenced 29 November 1994 (Gaz 1994 No S269)

### **Statutory Offices (Miscellaneous Provisions) Act 1994 No 97**

notified 15 December 1994

s 1, s 2 commenced 15 December 1994

remainder commenced 15 December 1994 (Gaz 1994 No S293)

### **Land (Planning and Environment) (Amendment) Act 1995 No 20**

notified 5 September 1995

commenced 5 September 1995

### **Land (Planning and Environment) (Amendment) Act (No 2) 1995 No 21**

notified 5 September 1995

ss 1-3 commenced 5 September 1995

remainder commenced 1 January 1996 (Gaz 1995 No S316)



**Annual Reports (Government Agencies) (Consequential Provisions) Act 1995 No 25**

notified 5 September 1995  
commenced 5 September 1995

**Land Titles (Consequential Amendments) Act 1995 No 54**

notified 20 December 1995  
commenced 20 June 1996 (s 2)

**Remuneration Tribunal (Consequential and Transitional Provisions) Act 1995 No 56**

notified 20 December 1995  
commenced 21 December 1995 (s 2 and Gaz 1995 No S315)

**Gungahlin Development Authority (Consequential Provisions) Act 1996 No 39**

notified 10 July 1996  
commenced 19 August 1996 (s 2 and Gaz 1996 No S212)

**Land (Planning and Environment) (Amendment) Act 1996 No 62**

notified 3 December 1996  
commenced 3 December 1996

**Land (Planning and Environment) (Amendment) Act (No 2) 1996 No 71**

notified 20 December 1996  
ss 1-3 commenced 20 December 1996  
remainder commenced 1 January 1997 (Gaz 1996 No S352)

**Motor Traffic (Amendment) Act (No 3) 1996 No 83**

notified 20 December 1996  
ss 1-3 commenced 20 December 1996  
remainder commenced 1 January 1997 (Gaz 1996 No S353)

**Land (Planning and Environment) (Amendment) Act (No 3) 1996 No 85**

notified 24 December 1996  
s 1, s 2 commenced 24 December 1996  
remainder commenced 24 June 1997

## Endnotes

3 Legislation history

---

**Land (Planning and Environment) (Amendment) Act 1997 No 7**

notified 22 April 1997

ss 1-3 commenced 22 April 1997

remainder commenced 24 June 1997 (s 2 (2))

**Remuneration Tribunal (Consequential Amendments) Act 1997 No 41**

notified 19 September 1997

s 1, s 2 commenced 19 September 1997

remainder commenced 23 September 1997 (Gaz 1997 No S280)

**Environment Protection (Consequential Provisions) Act 1997 No 93**

notified 1 December 1997

s 1, s 2 commenced 1 December 1997

remainder commenced 1 June 1998

**Land (Planning and Environment) (Amendment) Act (No 2) 1997  
No 116**

notified 24 December 1997

commenced 24 December 1997

**Statute Law Revision (Penalties) Act 1998 No 54**

notified 27 November 1998

s 1, s 2 commenced 27 November 1998

remainder commenced 9 December 1998 (Gaz 1998 No 49)

**Water Resources Act 1998 No 63 s 83**

notified 11 December 1998 (Gaz 1998 No S209)

s 83 commenced 11 December 1998

**Land (Planning and Environment) (Amendment) Act 1998 No 65**

notified 23 December 1998

commenced 23 December 1998

**Land (Planning and Environment) (Amendment) Act 1999 No 40**

notified 16 July 1999

commenced 16 July 1999

**Land Planning and Environment Amendment Act (No 2) 1999 No 73**

notified 15 December 1999

commenced 15 December 1999

**Road Transport Legislation Amendment Act 1999 No 79**

notified 23 December 1999

commenced 1 March 2000 (s 2 and Gaz 2000 No S5)

**Land (Planning and Environment) Amendment Act (No 3) 1999 No 87**

notified 23 December 1999

commenced 23 December 1999

**Land (Planning and Environment) Amendment Act 2000 No 14**

notified 31 March 2000

commenced 31 March 2000

**Land (Planning and Environment) Amendment Act 2000 (No 2)  
2000 No 15**

notified 20 April 2000

commenced 20 April 2000

**Land (Planning and Environment) Amendment Act 2000 (No 3)  
2000 No 37**

notified 20 July 2000

s 1, s 2 commenced 20 July 2000

remainder commenced 24 July 2000 (Gaz 2000 No S39)

**Land (Planning and Environment) Amendment Act 2000 (No 4)  
2000 No 49**

notified 28 September 2000

commenced 28 September 2000

**Statute Law Amendment Act 2000 No 80**

notified 21 December 2000

commenced 21 December 2000

**Land (Planning and Environment) Amendment Act 2001 No 1**

notified 19 February 2001 (Gaz 2001 No S7)

s 1, s 2 commenced 19 February 2001 (IA s 10B)

remainder commenced 31 May 2001 (Gaz 2001 No 22)

**Unit Titles Consequential Amendments Act 2001 No 17 sch 2**

notified 5 April 2001 (Gaz 2001 No 14)

s 1, s 2 commenced 5 April 2001 (IA s 10B)

sch 2 commenced 5 October 2001 (s 2)

## Endnotes

3 Legislation history

---

**Tree Protection (Interim Scheme) Act 2001 No 20 s 54**

notified 3 April 2001 (Gaz 2001 No S16)  
s 1, s 2 commenced 3 April 2001 (IA s 10B)  
s 54 taken to have commenced 29 March 2001 (s 2)

**Land (Planning and Environment) Amendment Act 2001 (No 2) 2001 No 32**

notified 21 June 2001 (Gaz 2001 No S33)  
taken to have commenced 15 June 2001 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 207**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 207 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

**Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.29**

notified 5 September 2001 (Gaz 2001 No S65)  
amdt 3.436 taken to have commenced 21 December 2000 (s 2 (2))  
pt 3.29 remainder commenced 5 September 2001 (s 2 (1))

**Community Title Act 2001 No 58 s 101, s 102**

notified 10 September 2001 (Gaz 2001 No S66)  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
s 101, s 102 commenced 10 March 2002 (s 2 and LA s 79)

**Land (Planning and Environment) Amendment Act 2001 (No 3) 2001 No 73**

notified LR 12 September 2001  
commenced 12 September 2001 (s 2)

**Land (Planning and Environment) Amendment Act 2001 (No 4) 2001 No 80**

notified 10 September 2001 (Gaz 2001 No S66)  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
s 3, s 4 commenced 10 September 2001 (s 2 (1))  
remainder commenced 12 September 2001 (s 2 (2))

**Legislation Amendment Act 2002 No 11 pt 2.32**

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.32 commenced 28 May 2002 (s 2 (1))

**Statute Law Amendment Act 2002 No 30 pt 3.38**

notified LR 16 September 2002

s 1, s 2 commenced 16 September 2002 (LA s 75)

pt 3.38 commenced 17 September 2002 (s 2 (1))

**Land (Planning and Environment) Amendment Act 2002 No 37**

notified LR 10 October 2002

s 1, s 2 commenced 10 October 2002 (LA s 75 (1))

remainder commenced 11 October 2002 (s 2)

**Districts Act 2002 No 39 pt 1.4**

notified LR 10 October 2002

s 1, s 2 commenced 10 October 2002 (LA s 75 (1))

pt 1.4 commenced 11 October 2002 (s 2)

**4 Amendment history****Name of Act**

s 1 sub 2002 No 30 amdt 3.404

**Dictionary**s 2 om 2001 No 44 amdt 1.2333  
ins 2002 No 30 amdt 3.404**Notes**s 3 om 1993 No 44  
ins 2002 No 30 amdt 3.404**Definitions for Act**s 4 om 2002 No 30 amdt 3.404  
def **appeals board** ins 1993 No 77 s 4  
def **commissioner** ins 1996 No 85 s 4  
def **conservator** am 1994 No 97 sch  
def **controlled activity** am 1996 No 85 s 4  
def **determined fee** om 2001 No 44 amdt 1.2334  
def **Environment Minister** ins 1996 No 71 s 4  
def **Gungahlin central area** ins 1996 No 39 s 8  
def **land management agreement** ins 1999 No 73 s 4  
sub 2001 No 44 amdt 1.2335  
def **pest animal** ins 1997 No 7 s 4  
def **pest plant** ins 1997 No 7 s 4  
def **plan** sub 2001 No 44 amdt 1.2335  
def **public land** ins 1996 No 85 s 4  
def **public street** ins 1996 No 85 s 4  
om 1999 No 79 sch 3  
def **registrar** ins 1993 No 77 s 4

## Endnotes

4 Amendment history

---

def **public works** om 1993 No 75 s 4

### **Preliminary**

div 2.1 hdg (prev pt 2 div 1 hdg) renum R6 LA

### **Definitions for pt 2**

s 5 am 1996 Nos 71 and 85  
def **Commonwealth Planning Act** om 2002 No 30 amdt 3.405  
def **consultation notice** ins 2002 No 30 amdt 3.406  
def **draft plan variation** sub 2002 No 30 amdt 3.407  
def **national authority** om 2002 No 30 amdt 3.408  
def **national capital plan** sub 2002 No 30 amdt 3.409

### **Stages and parts of the plan**

s 6 om 2002 No 30 amdt 3.410

### **Territory plan—object and effect**

div 2.2 hdg (prev pt 2 div 2 hdg) renum R6 LA

### **Object**

s 7 am 1996 No 85; 2002 No 30 amdt 3.411

### **Effect of plan**

s 8 am 1993 No 77; 1996 No 85

### **Effect of draft plan variation**

s 9 am 1996 No 85; 2000 No 37 s 4; 2001 No 44 amdt 1.2336;  
R6 LA (see 2001 No 44 amdt 1.2337); 2002 No 30  
amdt 3.412, amdt 3.413; ss renum R9 LA (see 2002 No 30  
amdt 3.414)

### **Territory plan—continuation and variation**

div 2.3 hdg (prev pt 2 div 3 hdg) renum R6 LA

### **Territory plan**

sdiv 2.3.1 hdg (prev pt 2 div 3 sdiv A hdg) renum R6 LA

### **Preparation of variations of Territory plan**

sdiv 2.3.2 hdg (prev pt 2 div 3 sdiv B hdg) renum R6 LA

### **Preparation of variations**

s 15 am 1996 No 85

### **Consultation with conservator**

s 16 sub 1996 No 85

### **Heritage**

s 17 am 2001 No 44 amdt 1.2338, amdt 1.2339; 2002 No 30 amdt  
3.415, amdt 3.508

### **Environmental reports and inquiries**

s 18 am 2002 No 30 amdt 3.416

**Public consultation—notification**

s 19 am 1993 No 75; 1996 No 85; 2000 No 37 s 5  
sub 2001 No 44 amdt 1.2340  
am 2002 No 30 amdt 3.417

**Public consultation—notice of interim effect etc**

s 19A ins 2001 No 44 amdt 1.2340  
am 2002 No 30 amdt 3.418

**Public consultation—availability of draft plan variation etc**

s 19B ins 2001 No 44 amdt 1.2340  
am 2002 No 30 amdt 3.419

**Draft plan variations to correct formal errors**

s 19C ins 2001 No 44 amdt 1.2340

**Consultation with the national capital authority**

s 20 am 2002 No 30 amdt 3.420

**Public inspection of comments**

s 21 am 1996 No 85; 2002 No 30 amdt 3.421

**Revision, deferral or withdrawal of draft plan variations**

s 22 am 1996 No 85; 2001 No 44 amdts 1.2341-1.2345; R6 LA (see  
2001 No 44 amdt 1.2346); 2002 No 30 amdt 3.422

**Executive approval and consideration by Legislative Assembly**

sdiv 2.3.3 hdg (prev pt 2 div 3 sdiv C hdg) renum R6 LA

**Submission of draft plan variation to Executive**

s 24 am 1996 No 85; 2001 No 44 amdt 1.2347; 2002 No 30  
amdt 3.422, amdt 3.423

**Executive powers**

s 26 am 1996 No 85; 2001 No 44 amdts 1.2348-1.2350; 2002 No 30  
amdt 3.424

**Return of draft plan variation to authority**

s 27 sub 2002 No 30 amdt 3.425

**Notice of revival of deferred draft plan variation**

s 28 am 2001 No 44 amdt 1.2351, amdt 1.2352

**Consideration of plan variation by Legislative Assembly**

s 29 am 1996 No 85; 2001 No 44 amdts 1.2353-1.2356, amdt  
1.2358; R6 LA (see 2001 No 44 amdt 1.2357); 2002 No 30  
amdts 3.426-3.430; ss renum R9 LA (see 2002 No 30 amdt  
3.431)

**Rejection of plan variation by Legislative Assembly**

s 30 om 2001 No 44 amdt 1.2359  
ins 2001 No 44 amdt 1.2358

## Endnotes

4 Amendment history

---

### **Partial rejection of plan variation by Legislative Assembly**

s 30A ins 2001 No 44 amdt 1.2358  
am 2002 No 30 amdt 3.432

### **Partial rejection of plan variation—newspaper publication etc**

s 30B ins 2001 No 44 amdt 1.2358

### **Plan variations—defined land**

sdiv 2.3.4 hdg (prev pt 2 div 3 sdiv D hdg) renum R6 LA

### **Plan variations in relation to defined land**

s 32 am 1996 No 85; 2001 No 44 amdts 1.2360-1.2366; R6 LA (see  
2001 No 44 amdt 1.2367)

### **Australian Capital Territory Planning Authority**

div 2.4 hdg (prev pt 2 div 4 hdg) renum R6 LA

### **Establishment, constitution, functions and powers**

div 4 subdiv A hdg om 1996 No 85

### **Establishment of authority**

s 33 am 1996 No 85  
sub 2002 No 30 amdt 3.433

### **Constitution**

s 34 om 1996 No 85

### **Functions**

s 36 am 2002 No 30 amdt 3.434, amdt 3.435

### **Executive policy directions**

s 37 am 1995 No 25; 1996 No 85; 2001 No 44 amdt 1.2368; R6 LA  
(see 2001 No 44 amdt 1.2369); 2002 No 30 amdt 3.436

### **Power to enter into contracts**

s 38 am 1994 No 38  
sub 2002 No 30 amdt 3.437

### **Annual report**

s 39 om 1995 No 25

### **Delegation**

s 40 sub 2002 No 30 amdt 3.437

### **Staff**

s 41 am 2002 No 30 amdt 3.438

### **Effect of irregularity of appointment of chief planner**

s 42 om 1996 No 85

### **Chief planner**

div 4 subdiv B hdg om 1996 No 85



**Chief planner**

s 43 om 1996 No 85

**Acting chief planner**

s 44 om 1996 No 85

**Remuneration and allowances**

s 45 am 1994 No 38  
om 1995 No 56

**Leave of absence**

s 46 om 1996 No 85

**Disclosure of interests**

s 47 om 1996 No 85

**Other employment, remuneration, business etc**

s 48 om 1996 No 85

**Resignation**

s 49 om 1996 No 85

**Termination of appointment**

s 50 om 1996 No 85

**Miscellaneous**

div 2.5 hdg (prev pt 2 div 5 hdg) renum R6 LA

**Preliminary**

div 3.1 hdg (prev pt 3 div 1 hdg) renum R6 LA

**Definitions for pt 3**

s 52 hdg sub 2002 No 30 amdt 3.439  
s 52 am 2002 No 30 amdt 3.440, amdt 3.442  
def *interim heritage places register* ins 2001 No 44 amdt  
1.2370  
am 2002 No 30 amdt 3.441  
def *interim variation* ins 2001 No 44 amdt 1.2371

**Compliance with requirements for consultation or notification**

s 53 om 2001 No 44 amdt 1.2372  
ins 2002 No 30 amdt 3.443

**Heritages places register**

div 3.2 hdg (prev pt 3 div 2 hdg) renum R6 LA

**Content of heritage places register**

s 54 am 2002 No 30 amdt 3.444, amdt 3.445

**Interim heritage places registers**

div 3.3 hdg (prev pt 3 div 3 hdg) renum R6 LA

**Effect**

sdiv 3.3.1 hdg (prev pt 3 div 3 sdiv A hdg) renum R6 LA

## Endnotes

4 Amendment history

---

### **Effect of interim registers**

s 55 am 2001 No 44 amdt 1.2373; 2002 No 30 amdt 3.446

### **Preparation, notification and submission of registers**

sdiv 3.3.2 hdg (prev pt 3 div 3 sdiv B hdg) renum R6 LA

### **Application for inclusion of places in interim register**

s 59 am 1993 No 77; 1996 No 71

### **Public notification**

s 60 am 1993 No 77; 1996 No 71; 2001 No 44 amdt 1.2374, amdt 1.2375; R6 LA (see 2001 No 44 amdt 1.2376); 2002 No 30 amdt 3.447, amdt 3.448

### **Notification of lessees and occupiers**

s 61 am 2001 No 44 amdt 1.2377; 2002 No 30 amdt 3.508

### **Revision of interim register**

s 62 am 1993 No 77; 1996 No 71; 2001 No 44 amdts 1.2378-1.2381; R6 LA (see 2001 No 44 amdt 1.2382); 2002 No 30 amdt 3.449, amdt 3.508

### **Submission of interim register to authority**

s 63 am 1993 No 77; 1996 No 71; 2001 No 44 amdt 1.2383

### **Acquisition of heritage places and objects**

div 3.4 hdg (prev pt 3 div 4 hdg) renum R6 LA

### **Notice of acquisition**

s 65 am 1993 No 77  
om 1996 No 71

### **Aboriginal heritage**

div 3.5 hdg (prev pt 3 div 5 hdg) renum R6 LA

### **Preliminary**

sdiv 3.5.1 hdg (prev pt 3 div 5 sdiv A hdg) renum R6 LA

### **Definitions for div 3.5**

s 66 sub 2002 No 30 amdt 3.450

### **Reporting discoveries of unregistered Aboriginal places**

sdiv 3.5.2 hdg (prev pt 3 div 5 sdiv B hdg) renum R6 LA

### **Reports**

s 67 am 1994 No 81

### **Aboriginal heritage discoveries—consideration of reports**

s 68 am 2002 No 30 amdt 3.508

### **Aboriginal heritage discoveries—Ministerial directions and declarations**

s 69 am 1993 No 77; 1996 No 71; 2001 No 44 amdts 1.2384-1.2386; 2002 No 30 amdts 3.451-3.454

**Protection of unregistered Aboriginal heritage**

subdiv 3.5.3 hdg (prev pt 3 div 5 subdiv C hdg) renum R6 LA

**Damaging unregistered Aboriginal places**

s 70 am 1994 No 81

**Orders for protection of unregistered Aboriginal places—application of pt 6**

s 71 am 1993 No 77

**Orders—Ministerial directions and declarations**

s 73 am 1993 No 77; 1996 No 71; 2001 No 44 amdts 1.2387-1.2389;  
2002 No 30 amdt 3.455, 3.456

**Compensation claims**

sdiv 3.5.4 hdg (prev pt 3 div 5 sdiv D hdg) renum R6 LA

**Application of sdiv 3.5.4**

s 75 am 2002 No 30 amdt 3.457

**Loss for which compensation is recoverable**

s 77 am 2002 No 30 amdt 3.458

**Consultation with applicants**

s 79 am 1996 No 71

**Notice of decisions about compensation**

s 80 am 1993 No 77  
sub 1996 No 71

**Consultation in relation to registers**

sdiv 3.5.5 hdg (prev pt 3 div 5 sdiv E hdg) renum R6 LA

**Consultation with Aboriginal organisations**

s 81 am 2002 No 30 amdt 3.459

**Restricted information**

sdiv 3.5.6 hdg (prev pt 3 div 5 sdiv F hdg) renum R6 LA

**Restricted information**

s 82 am 1993 No 77; 1996 No 71; 2001 No 56 amdt 3.432; 2002 No  
30 amdt 3.508

**Publication of restricted information generally**

s 84 am 1993 No 77; 1994 No 81; 1996 No 71

**Access to restricted information**

s 85 am 1996 No 71

**Administrative review**

pt 3 div 6 hdg om 1996 No 71

**Review of decisions**

s 86 am 1993 No 77  
om 1996 No 71

## Endnotes

### 4 Amendment history

---

#### **Public access to heritage information**

div 3.6 hdg (prev pt 3 div 7 hdg) renum R6 LA

#### **Information about administrative action**

sdiv 3.6.1 hdg (prev pt 3 div 7 sdiv A hdg) renum R6 LA

#### **Searching administrative records**

s 88 am 2001 No 44 amdt 1.2390, amdt 1.2391

#### **Access to heritage registers**

sdiv 3.6.2 hdg (prev pt 3 div 7 sdiv B hdg) renum R6 LA

#### **Searching heritage registers**

s 89 am 2001 No 44 amdt 1.2392, amdt 1.2393  
sub 2002 No 30 amdt 3.460

#### **Australian Capital Territory Heritage Council**

div 3.7 hdg (prev pt 3 div 8 hdg) renum R6 LA  
sub 2002 No 30 amdt 3.461

#### **Preliminary**

sdiv 3.7.1 hdg (prev pt 3 div 8 sdiv A hdg) renum R6 LA  
om 2002 No 30 amdt 3.461

#### **Definitions for div 3.7**

s 90 sub 2002 No 30 amdt 3.461

#### **Establishment, functions and powers**

sdiv 3.7.2 hdg (prev pt 3 div 8 sdiv B hdg) renum R6 LA  
om 2002 No 30 amdt 3.461

#### **Establishment of heritage council**

s 91 sub 2002 No 30 amdt 3.461

#### **Constitution**

s 92 sub 2002 No 30 amdt 3.461

#### **Functions of heritage council**

s 93 am 1995 No 25; 2001 No 44 amdt 1.2394  
sub 2002 No 30 amdt 3.461

#### **Ministerial directions**

s 94 sub 2002 No 30 amdt 3.461

#### **Deputies of permanent members**

s 95 om 1995 No 25  
ins 2002 No 30 amdt 3.461

#### **Appointment of expert members**

s 96 sub 2002 No 30 amdt 3.461

#### **Constitution and meetings**

sdiv 3.7.3 hdg (prev pt 3 div 8 sdiv C hdg) renum R6 LA  
om 2002 No 30 amdt 3.461

**Term of appointment of expert members**

s 97 am 1996 No 85  
sub 2002 No 30 amdt 3.461

**Conditions of appointment of expert members generally**

s 98 sub 2002 No 30 amdt 3.461

**Chairperson, deputy chairperson and secretary**

s 99 sub 2002 No 30 amdt 3.461

**Leave of absence**

s 100 sub 2002 No 30 amdt 3.461

**Disclosure of interests**

s 101 sub 2002 No 30 amdt 3.461

**Ending of appointments**

s 102 om 1997 No 41  
ins 2002 No 30 amdt 3.461

**Calling meetings**

s 103 am 1997 No 41  
sub 2002 No 30 amdt 3.461

**Procedure at meetings**

s 104 sub 2002 No 30 amdt 3.461

**Delegation to secretary**

s 105 sub 2002 No 30 amdt 3.461

**Termination of appointment**

s 106 om 2002 No 30 amdt 3.461

**Acting members**

s 107 om 2002 No 30 amdt 3.461

**Convening meetings**

s 108 om 2002 No 30 amdt 3.461

**Procedure at meetings**

s 109 om 2002 No 30 amdt 3.461

**Quorum**

s 110 om 2002 No 30 amdt 3.461

**Preliminary**

div 4.1 hdg (prev pt 4 div 1 hdg) renum R6 LA

**Definitions for pt 4**

s 111 am 1996 No 71

**Preliminary assessments**

div 4.2 hdg (prev pt 4 div 2 hdg) renum R6 LA

## Endnotes

### 4 Amendment history

---

#### **Directions**

s 113 am 1996 No 85

#### **Submission to Minister**

s 116 am 1996 No 85; 2001 No 44 amdt 1.2395, amdt 1.2396

#### **Public inspection**

s 117 am 1993 No 77; 1996 No 71  
sub 1996 No 85  
am 2000 No 37 s 6; 2001 No 44 amdts 1.2397-1.2400; R6 LA  
(see 2001 No 44 amdt 1.2401)

#### **Assessments**

div 4.3 hdg (prev pt 4 div 3 hdg) renum R6 LA

#### **Form and content**

sdiv 4.3.1 hdg (prev pt 4 div 3 sdiv A hdg) renum R6 LA

#### **Direction of assessments**

sdiv 4.3.2 hdg (prev pt 4 div 3 sdiv B hdg) renum R6 LA

#### **Decisions to direct assessments**

s 121 am 2000 No 37 s 7

#### **Directions**

s 123 am 1996 No 85; 2001 No 44 amdt 1.2402, amdt 1.2403; R6 LA  
(see 2001 No 44 amdt 1.2404)

#### **Preparation, evaluation and consideration by Legislative Assembly**

sdiv 4.3.3 hdg (prev pt 4 div 3 sdiv C hdg) renum R6 LA

#### **Environmental impact statements—consultation and public inspection**

s 125 am 1993 No 77; 1996 No 71; 2000 No 37 s 8; 2001 No 44 amdt  
1.2405, amdt 1.2406; 2001 No 56 amdt 3.433; R6 LA (see  
2001 No 44 amdt 1.2407)

#### **Consultation**

s 128 am 2001 No 44 amdts 1.2408-1.2410

#### **Tabling in Legislative Assembly and public inspection**

s 132 am 2001 No 44 amdt 1.2411; 2002 No 30 amdt 3.462

#### **Exclusion of material**

s 133 am 2002 No 30 amdt 3.463

#### **Exemptions**

s 134 am 2001 No 44 amdts 1.2412-1.2414

#### **Inquiries**

div 4.4 hdg (prev pt 4 div 4 hdg) renum R6 LA

#### **Establishment of panels and terms of reference**

sdiv 4.4.1 hdg (prev pt 4 div 4 sdiv A hdg) renum R6 LA

**Remuneration**

s 137 om 1997 No 41

**Terms of reference**

s 138 am 2001 No 44 amdt 1.2415, amdt 1.2416

**Notification**

s 139 am 2001 No 44 amdt 1.2417, amdt 1.2418

**Inquiry reports**

sdiv 4.4.2 hdg (prev pt 4 div 4 sdiv B hdg) renum R6 LA

**Tabling in Legislative Assembly and public inspection**

s 141 am 2001 No 44 amdt 1.2419; 2002 No 30 amdt 3.464

**Exclusion of material**

s 142 am 2002 No 30 amdt 3.465, amdt 3.466

**Procedures and powers**

sdiv 4.4.3 hdg (prev pt 4 div 4 sdiv C hdg) renum R6 LA

**Definitions for sdiv 4.4.3**

s 143 sub 2002 No 30 amdt 3.467  
def **authorised person** sub 2002 No 30 amdt 3.467  
def **occupier** ins 2002 No 30 amdt 3.467  
def **place** sub 2002 No 30 amdt 3.467

**Notice of inquiry hearings**

s 144 am 2001 No 44 amdt 1.2420-1.2422

**General procedure**

s 146 am 2002 No 30 amdt 3.468

**Special hearings—consultation with interested persons**

s 147 am 2002 No 30 amdt 3.508

**Assessments for purpose of inquiries**

s 148 am 2002 No 30 amdt 3.469

**Witnesses—summons to appear**

s 149 am 1994 No 81

**Victimisation of witnesses**

s 150 am 1994 No 81

**Powers of search and inspection**

s 154 am 1994 No 81

**Obstructing or resisting authorised person**

s 155 am 1994 No 81

**Contempt**

s 156 am 1994 No 81; 2002 No 30 amdt 3.470

## Endnotes

4 Amendment history

---

### **Protection of panel members and witnesses**

s 157 am 2002 No 30 amdt 3.471

### **Administrative review**

pt 4 div 5 hdg om 1996 No 71

### **Review of decisions**

s 158 am 1993 No 77  
om 1996 No 71

### **Preliminary**

div 5.1 hdg (prev pt 5 div 1 hdg) renum R6 LA

### **Definitions for pt 5**

s 159 hdg sub 2002 No 30 amdt 3.472  
s 159 am 1993 No 90; 1995 No 54; 1996 No 85; 1999 No 79 sch 3;  
2001 No 17 amdt 2.9; 2002 No 30 amdt 3.473, amdt 3.477  
def **lease** sub 2002 No 30 amdt 3.474  
def **market value** ins 2002 No 30 amdt 3.475  
def **provision** ins 2002 No 30 amdt 3.475  
def **repealed Act** om 2002 No 30 amdt 3.476

### **Leases**

div 5.2 hdg (prev pt 5 div 2 hdg) renum R6 LA

### **Effect qualified**

s 160A ins 1999 No 73 s 5

### **Granting of leases**

s 161 am 1993 No 11; 1996 No 85; 2001 No 44 amdts 1.2423-1.2425;  
R6 LA (see 2001 No 44 amdt 1.2426)

### **Fees for granting leases**

s 162 om 2001 No 44 amdt 1.2427

### **Leases to community organisations**

s 163 am 1993 No 11; 2001 No 44 amdt 1.2428, amdt 1.2429; 2002  
No 30 amdt 3.478

### **Special leases**

s 164 am 1993 No 11; 2001 No 44 amdt 1.2428, amdt 1.2429

### **Authority to consider proposed leases**

s 165 am 1993 No 11; 1996 No 39  
om 1996 No 85

### **Eligibility for certain classes of leases**

s 167 am 1996 No 85; 2001 No 44 amdt 1.2428, amdt 1.2429

### **Payment for leases**

s 169 am 2000 No 37 s 9



**Failure to accept and execute lease**

s 170 am 2002 No 30 amdt 3.479

**Grant of further residential leases**

s 171 am 1996 No 85; 2001 No 44 amdt 1.2429, amdt 1.2430

**Grant of further rural leases**

s 171A ins 1996 No 85  
am 1999 No 73 s 6; 2001 No 32 s 4, s 5; 2001 No 44 amdt  
1.2429, amdt 1.2430; R6 LA (see 2001 No 32 s 6)

**Grant of further leases for purposes other than residential or rural**

s 172 am 1996 No 85; 2001 No 44 amdt 1.2429; amdt 1.2430

**Grant of further lease—unit titles**

s 172A ins 1996 No 85  
sub 2001 No 17 amdt 2.10

**Grant of further lease—community title**

s 172B ins 2001 No 58 s 102

**No right to use, flow and control of water**

s 172C (prev s 172B) ins 1998 No 63  
renum 2001 No 58 s 101

**Lessee's rights in respect of improvements**

s 173 am 1996 No 85

**Determination of value of improvements**

s 174 am 1996 No 85

**Use of land for leased purpose**

s 175 am 1996 No 85

**Refund of amount paid for grant of lease**

s 178 am 2001 No 44 amdt 1.2428, amdt 1.2429

**Certificates of compliance**

s 179 am 1996 No 85; 2001 No 17 amdt 2.11; 2001 No 44 amdt  
1.2431, amdt 1.2432; R6 LA (see 2001 No 44 amdt 1.2433)

**Transfer of land subject to building and development provision**

s 180 am 1996 No 85; 2001 No 44 amdt 1.2434, amdt 1.2435

**Mortgage of leasehold subject to building and development provision**

s 181 am 1996 No 85

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

s 183 am 1995 No 20

**Variation of leases**

div 5.3 hdg (prev pt 5 div 3 hdg) renum R6 LA

## Endnotes

4 Amendment history

---

### **Effect qualified**

s 183A ins 1999 No 73 s 7

### **Application to surrender and regrant of leases**

s 184 am 1996 No 62  
sub 1996 No 85

### **Variation of nominal rent lease—change of use charge**

s 184A ins 1996 No 85  
am 2001 No 1 s 4

### **New change of use charge formula**

s 184B ins 1996 No 85  
am 1998 No 65; 1999 No 40 s 4; 2000 No 14 s 4; 2000 No 49 s  
4  
om 2001 No 1 s 5

### **Change of use charge for variations of nominal rent leases**

s 184C ins 1996 No 85  
am 2000 No 49 s 5; 2001 No 1 s 6  
sub 2001 No 80 s 3

### **Variation of rental leases**

s 184D ins 1996 No 85

### **Variation of lease to pay out rent**

s 186 am 1996 No 85; 2001 No 44 amdt 1.2436, amdt 1.2437

### **No variations to extend term**

s 186A ins 1996 No 85

### **Restrictions on rural leases**

div 5.4 hdg (prev pt 5 div 3AA hdg) ins 1999 No 73 s 8  
renum R6 LA

### **Definitions for div 5.4**

s 186B ins 1999 No 73 s 8

### **Land management agreements**

s 186C ins 1999 No 73 s 8  
am 2001 No 44 amdt 1.2438, amdt 1.2439

### **Dealings with rural leases**

s 186D ins 1999 No 73 s 8  
am 2001 No 32 s 7; R6 LA (see 2001 No 32 s 8)

### **Discharge amount**

s 186E ins 1999 No 73 s 8

### **Discharge amount—special Pialligo leases**

s 186F ins 1999 No 73 s 8  
am 2001 No 56 amdt 3.434

**Index numbers**

s 186G ins 1999 No 73 s 8

**No subdivision or consolidation**

s 186H ins 1999 No 73 s 8

**Consolidation and subdivision**

div 5.5 hdg (prev pt 5 div 3A hdg) ins 1996 No 85  
renum R6 LA

**Effect qualified**

s 187AA ins as s 187A 1999 No 73 s 9  
renum 2000 No 80 amdt 3.8

**Application—nominal rent leases of Territory land**

s 187 om 1993 No 75  
ins 1996 No 85

**Consolidation and subdivision—change of use charge**

s 187A ins 1996 No 85  
am 2001 No 1 s 7

**New change of use charge formula**

s 187B ins 1996 No 85  
am 1998 No 65; 1999 No 40 s 5; 2000 No 14 s 5; 2000 No 49 s  
6  
om 2001 No 1 s 8

**Change of use charge for consolidations and subdivisions**

s 187C ins 1996 No 85  
am 2000 No 49 s 7; 2001 No 1 s 9  
sub 2001 No 80 s 4

**Recovery of land**

div 5.6 hdg (prev pt 5 div 4 hdg) renum R6 LA

**Termination of leases**

s 188 am 1996 No 85

**Public land**

div 5.7 hdg (prev pt 5 div 5 hdg) renum R6 LA

**Preliminary**

sdiv 5.7.1 hdg (prev pt 5 div 5 sdiv A hdg) renum R6 LA

**Definitions for div 5.7**

s 191 hdg sub 2002 No 30 amdt 3.480

**Public land**

sdiv 5.7.2 hdg (prev pt 5 div 5 sdiv B hdg) renum R6 LA

**Recommendations to authority**

s 192 am 1996 No 85

## Endnotes

4 Amendment history

---

### **Management of public land**

sdiv 5.7.3 hdg (prev pt 5 div 5 sdiv C hdg) renum R6 LA

### **Reserved areas**

s 193 am 1996 No 85

### **Management objectives**

s 195 am 2001 No 44 amdt 1.2440; 2002 No 30 amdt 3.481

### **Plans of management**

sdiv 5.7.4 hdg (prev pt 5 div 5 sdiv D hdg) renum R6 LA

### **Public consultation**

s 200 am 2001 No 44 amdt 1.2441, amdt 1.2442

### **Minister's powers**

s 204 am 2001 No 44 amdts 1.2443-1.2446

### **Referral back to conservator**

s 205 am 2001 No 44 amdt 1.2447, amdt 1.2448

### **Notice of revival of deferred draft plan of management**

s 206 sub 2001 No 44 amdt 1.2449

### **Notification, tabling, disallowance and date of effect**

s 207 am 2001 No 44 amdt 1.2450, amdt 1.2451

### **Leases and licences**

sdiv 5.7.5 hdg (prev pt 5 div 5 sdiv E hdg) renum R6 LA

### **Grant of leases**

s 209 am 1993 No 11

### **Licences**

s 210 am 1992 No 32; 1996 No 71; 2001 No 44 amdts 1.2452-1.2454

### **Miner's rights in respect of public land**

s 211 am 2002 No 30 amdt 3.482

### **Administrative review**

pt 5 div 6 hdg om 1996 No 71

### **Notice of decisions**

s 212 am 1993 No 77  
om 1996 No 71

### **Review by appeals board**

s 213 sub 1993 No 77  
om 1996 No 71

### **Notice of decisions under s 174, s 177, s 178 or s 184**

s 213A ins 1993 No 77  
am 1994 No 60  
om 1996 No 71

**Review by administrative appeals tribunal**

s 213B ins 1993 No 77  
om 1996 No 71

**Miscellaneous**

div 5.8 hdg (prev pt 5 div 7 hdg) renum R6 LA

**Reduction of rent and relief from provisions of lease**

s 215 sub 2002 No 30 amdt 3.483

**Access to leased land from roads and road related areas**

s 216 am 1996 No 85  
sub 1999 No 79 sch 3

**Notification of certain leases to Legislative Assembly**

s 216A ins 1993 No 11  
am 1996 No 85  
sub 2002 No 30 amdt 3.484  
am 2002 No 39 amdt 1.4

**Licences in respect of land that is not public land**

s 217 am 2001 No 44 amdts 1.2455-1.2457

**False statements**

s 221 am 1994 No 81

**Preliminary**

div 6.1 hdg (prev pt 6 div 1 hdg) renum R6 LA

**Definitions for pt 6**

s 222 hdg sub 2002 No 30 amdt 3.485  
s 222 am 1996 No 85; 1997 No 116; 2000 No 37 s 10; 2002 No 30  
amdt 3.486, amdt 3.491  
def **building work** sub 2002 No 30 amdt 3.487  
def **consolidation** sub 2002 No 30 amdt 3.487  
def **Executive** ins 2002 No 30 amdt 3.488  
def **lease** sub 2002 No 30 amdt 3.489  
def **lessee** sub 2002 No 30 amdt 3.489  
def **subdivision** sub 2002 No 30 amdt 3.489  
def **variation** ins 2002 No 30 amdt 3.490

**Meaning of variation for pt 6**

s 223 om 1996 No 85  
ins 2002 No 30 amdt 3.492

**Approvals**

div 6.2 hdg (prev pt 6 div 2 hdg) renum R6 LA

**Preliminary**

pt 6 div 2 sdiv A hdg om 1996 No 85

**Interpretation**

s 224 om 1996 No 85

## Endnotes

4 Amendment history

---

### General

sdiv 6.2.1 hdg (prev pt 6 div 2 sdiv B hdg) renum R6 LA

### Offence—development

s 225 am 1996 No 85

### Application to undertake development

s 226 am 1996 No 85; 1999 No 73 s 10; 2001 No 44 amdts 1.2458-1.2460; 2001 No 73 s 4, s 5; 2001 No 80 ss 5-7; R6 LA (see 2001 No 44 amdt 1.2461 and 2001 No 73 s 6)

### Register of applications, approvals, orders and lease and development conditions

s 227 hdg sub 2000 No 37 s 11

s 227 am 2000 No 37 s 11; 2001 No 44 amdt 1.2462, amdt 1.2463; R6 LA (see 2001 No 44 amdt 1.2464)

### Restrictions on inspection of applications

s 228 am 1996 No 85

### Notice of application

s 229 am 1993 No 90; 1995 No 54; 1996 No 71; 1996 No 85; 1997 No 93; 2000 No 37 s 12; 2001 No 20 s 54; 2002 No 30 amdt 3.508

### Who is to decide applications?

s 229A hdg sub 2001 No 44 amdt 1.2465

s 229A ins 1996 No 85

am 1999 No 87 s 3; 2001 No 44 amdts 1.2466-1.2472; R6 LA (see 2001 No 44 amdt 1.2473); 2002 No 30 amdt 3.493, amdt 3.494

### Approvals

s 230 am 1993 No 77; 1996 No 71

sub 1996 No 85

am 2000 No 37 s 13

### Matters to be considered

s 231 am 1996 No 85; 2002 No 30 amdt 3.495

### Duty of applicants

s 232 am 2001 No 44 amdt 1.2474, amdt 1.2475; 2002 No 30 amdt 3.508

### More information

s 233 am 1996 No 85

### Effect of failure to furnish further information

s 234 am 1996 No 85

### Duties of concurring authorities

s 235 am 1996 No 39

om 1996 No 85

**Objections**

sdiv 6.2.2 hdg (prev pt 6 div 2 sdiv C hdg) renum R6 LA

**Objections—general**

s 237 am 1996 No 85; 1997 No 116; 2000 No 37 s 14

**Inspection of objections**

s 238 am 1993 No 77; 1996 No 71

**Circumstances in which Executive approves applications, other than lease variations, subdivisions, consolidations**

s 240 om 1996 No 85

**Circumstances in which Executive approves applications for lease variations, subdivisions, consolidations**

s 241 om 1996 No 85

**Approvals**

sdiv 6.2.3 hdg (prev pt 6 div 2 sdiv D hdg) renum R6 LA

**Application approved—notification of decision**

s 242 am 1992 No 32; 1993 No 64  
sub 1996 No 85

**Notification of approval or refusal of application**

s 243 am 1993 No 77; 1996 Nos 71 and 85; 2000 No 37 s 15

**Notification where more than 1 objector**

s 244 am 1996 No 85

**Conditional approvals**

s 245 am 1996 No 85; 2001 No 80 s 8, s 9

**Minister to resolve certain inconsistencies**

s 246 om 1996 No 85

**Minor amendments**

s 247 am 1996 No 85; 2002 No 30 amdt 3.508; 2002 No 37 ss 4-6;  
ss (4), (5) om R10 LA; pars renum R10 LA

**Corrections**

s 248 am 1996 No 85

**Approval—when takes effect**

s 249 sub 1993 No 77  
am 1996 No 71; 1996 No 85; 2002 No 30 amdt 3.496

**Execution of approvals for variations of leases**

s 250 sub 1996 No 85

**Expiration of approvals**

s 251 am 1996 No 85

## Endnotes

4 Amendment history

---

### Extension of time

s 252 am 1996 No 85

### Orders

div 6.3 hdg (prev pt 6 div 3 hdg) renum R6 LA

### Pest animals and pest plants

s 254 om 1996 No 85  
ins 1997 No 7  
am 2001 No 44 amdt 1.2476-1.2478

### Application for order

s 256 am 1993 No 77; 1996 No 71; 1996 No 83; 1996 No 85; 1997 No 7; 1999 No 73 s 11; 1999 No 79 sch 3; 2001 No 44 amdt 1.2479; 2002 No 30 amdt 3.508

### Effect of certain orders

s 256A ins 1997 No 7

### Notice of making of order

s 257 am 1993 Nos 64 and 77; 1996 No 71; 2002 No 30 amdt 3.508

### Effect of order in certain circumstances

s 258 am 1993 No 77; 1996 No 71

### Noncompliance

s 259 am 1993 No 77; 1996 No 71

### Future owners or occupiers

s 260 am 1993 Nos 64 and 77; 1996 No 71

### Enforcement

div 6.4 hdg (prev pt 6 div 4 hdg) renum R6 LA

### Preliminary

sdiv 6.4.1 hdg (prev pt 6 div 4 sdiv A hdg) renum R6 LA

### Definitions for div 6.4

s 262 sub 2002 No 30 amdt 3.497  
def **connected** ins 2002 No 30 amdt 3.497  
def **occupier** ins 2002 No 30 amdt 3.497  
def **offence** ins 2002 No 30 amdt 3.497

### Return of identity cards

s 265 am 1994 No 81

### Inspection

sdiv 6.4.2 hdg (prev pt 6 div 4 sdiv B hdg) renum R6 LA

### Powers of inspection

s 269 am 1994 No 81

### Obstruction of inspectors

s 274 am 1994 No 81



**Commissioner for land and planning**

div 6.5 hdg (prev pt 6 div 4A hdg) ins 1996 No 85  
renum R6 LA

**Commissioner for land and planning**

s 274A ins 1996 No 85  
am 2002 No 11 amdt 2.66  
sub 2002 No 30 amdt 3.498

**Term of office**

s 274B ins 1996 No 85  
sub 2002 No 30 amdt 3.498

**Leave of absence**

s 274C ins 1996 No 85  
sub 2002 No 30 amdt 3.498

**Leave of absence**

s 274D ins 1996 No 85  
om 2002 No 30 amdt 3.498

**Acting appointments**

s 274E ins 1996 No 85  
om 2002 No 30 amdt 3.498

**Resignation**

s 274F ins 1996 No 85  
om 2002 No 30 amdt 3.498

**Suspension and removal of commissioner**

s 274G ins 1996 No 85  
am 2002 No 30 amdt 3.499-3.501

**Retirement**

s 274H ins 1996 No 85

**Delegation**

s 274I ins 1996 No 85  
sub 2002 No 30 amdt 3.502

**Protection from suit**

s 274J ins 1996 No 85  
am 2002 No 30 amdt 3.503

**Miscellaneous**

div 6.6 hdg (prev pt 6 div 5 hdg) renum R6 LA

**Review of decisions**

sdiv 6.6.1 hdg (prev pt 6 div 5 sdiv A hdg) renum R6 LA

**Review of decisions**

s 275 am 1993 No 77  
sub 1996 No 71

## Endnotes

4 Amendment history

---

am 1996 No 85

### **Review—objectors and third parties**

s 276 am 1993 No 77; 1996 No 71; 1996 No 85; 1997 No 116; 2000 No 15 s 4; 2000 No 37 s 16

### **Review—orders**

s 277 am 1993 No 77  
sub 1996 No 7

### **Notification of objectors**

s 278 am 1993 No 77; 1996 No 71; 1996 No 85; 2002 No 30 amdt 3.508

### **Notification of applicants**

s 279 am 1993 No 77; 1996 No 71; 1996 No 85

### **Challenge to validity of certain decisions**

s 279A ins 1999 No 87 s 4

### **Applicants and objectors may be made parties to proceedings**

s 280 sub 1993 No 77  
om 1996 No 71

### **Failure to comply with certain notification requirements**

s 281 om 1996 No 71

### **General**

sdiv 6.6.2 hdg (prev pt 6 div 5 sdiv B hdg) renum R6 LA

### **Regulations**

s 282 am 1992 No 32; 1996 No 85; 2000 No 37 s 17; 2001 No 44 amdts 1.2480-1.2482

### **Administrative appeals**

pt 7 hdg (prev pt 6A hdg) ins 1993 No 77  
sub 1996 No 71  
renum R6 LA

### **Preliminary**

pt 6A div 1 hdg ins 1993 No 77  
om 1996 No 71

### **Review of decisions**

s 282A ins 1993 No 77  
sub 1996 No 71  
am 1996 No 85; 1999 No 73 s 12; 2000 No 15 s 5; 2001 No 56 amdt 3.435

### **Establishment of land planning and appeals board**

pt 6A div 2 hdg ins 1993 No 77  
om 1996 No 71

**Establishment of board**

s 282B ins 1993 No 77  
om 1996 No 71

**Appointment of members**

s 282C ins 1993 No 77  
om 1996 No 71

**Remuneration and allowances**

s 282D ins 1993 No 77  
om 1996 No 71

**Acting appointments**

s 282E ins 1993 No 77  
om 1996 No 71

**Deputy chairperson to act for chairperson**

s 282F ins 1993 No 77  
om 1996 No 71

**Delegation**

s 282G ins 1993 No 77  
om 1996 No 71

**Leave of absence**

s 282H ins 1993 No 77  
om 1996 No 71

**Other terms and conditions**

s 282I ins 1993 No 77  
om 1996 No 71

**Resignation**

s 282J ins 1993 No 77  
om 1996 No 71

**Removal from office**

s 282K ins 1993 No 77  
om 1996 No 71

**Organisation of appeals board**

pt 6A div 3 hdg ins 1993 No 77  
om 1996 No 71

**Disclosure of interests**

s 282L ins 1993 No 77  
om 1996 No 71

**Arrangement of business**

s 282M ins 1993 No 77  
om 1996 No 71

## Endnotes

4 Amendment history

---

### **Constitution of appeals board**

s 282N ins 1993 No 77  
om 1996 No 71

### **Member presiding**

s 282P ins 1993 No 77  
om 1996 No 71

### **Member of appeals board ceasing to be available**

s 282Q ins 1993 No 77  
om 1996 No 71

### **Places of sitting**

s 282R ins 1993 No 77  
om 1996 No 71

### **Review by the appeals board of decisions**

pt 6A div 4 hdg ins 1993 No 77  
om 1996 No 71

### **Reviewable decisions**

s 282S ins 1993 No 77  
om 1996 No 71

### **Persons who may apply to appeals board**

s 282T ins 1993 No 77  
om 1996 No 71

### **Manner of applying for review**

s 282U ins 1993 No 77  
om 1996 No 71

### **Parties to proceedings before appeals board**

s 282V ins 1993 No 77  
om 1996 No 71

### **Representation before appeals board**

s 282W ins 1993 No 77  
om 1996 No 71

### **Procedure of appeals board**

s 282X ins 1993 No 77  
om 1996 No 71

### **Conferences**

s 282Y ins 1993 No 77  
om 1996 No 71

### **Hearings to be in public**

s 282Z ins 1993 No 77  
om 1996 No 71

**Lodging of material documents with appeals board**

s 282ZA ins 1993 No 77  
om 1996 No 71

**Power of appeals board to obtain additional statements**

s 282ZB ins 1993 No 77  
om 1996 No 71

**Opportunity to make submissions**

s 282ZC ins 1993 No 77  
om 1996 No 71

**Powers of appeals board**

s 282ZD ins 1993 No 77  
om 1996 No 71

**Operation and implementation of a decision that is subject to review**

s 282ZE ins 1993 No 77  
om 1996 No 71

**Power of appeals board to dismiss application or strike out party**

s 282ZF ins 1993 No 77  
om 1996 No 71

**Review by appeals board**

s 282ZG ins 1993 No 77  
om 1996 No 71

**Return of documents etc at completion of proceeding**

s 282ZH ins 1993 No 77  
om 1996 No 71

**Appeals to Supreme Court from decisions of the appeals board**

s 282ZI ins 1993 No 77  
om 1996 No 71

**Operation and implementation of a decision that is subject to appeal**

s 282ZJ ins 1993 No 77  
om 1996 No 71

**Reference of questions of law to Supreme Court**

s 282ZK ins 1993 No 77  
om 1996 No 71

**Sending of documents to, and disclosure of documents by, the Supreme Court**

s 282ZL ins 1993 No 77  
om 1996 No 71

**Miscellaneous**

pt 6A div 5 hdg ins 1993 No 77  
om 1996 No 71

## Endnotes

4 Amendment history

---

### **Protection of members, representatives and witnesses**

s 282ZM ins 1993 No 77  
om 1996 No 71

### **Failure of witness to attend**

s 282ZN ins 1993 No 77  
om 1996 No 71

### **Refusal to answer questions**

s 282ZP ins 1993 No 77  
om 1996 No 71

### **False or misleading evidence**

s 282ZQ ins 1993 No 77  
om 1996 No 71

### **Contempt of appeals board**

s 282ZR ins 1993 No 77  
om 1996 No 71

### **Registry**

s 282ZS ins 1993 No 77  
om 1996 No 71

### **Registrar**

s 282ZT ins 1993 No 77  
om 1996 No 71

### **Giving of notices**

s 282ZU ins 1993 No 77  
am 1994 No 38  
om 1996 No 71

### **Lodging of documents**

s 282ZV ins 1993 No 77  
om 1996 No 71

### **Miscellaneous**

pt 8 hdg (prev pt 7 hdg) renum R6 LA

### **Persons authorised to exercise the powers of Executive**

s 283 am 1996 No 39; 2002 No 30 amdt 3.504

### **Power of administrative appeals tribunal and Supreme Court**

s 284 sub 1993 No 77; 1996 No 71

### **Corporations—penalites**

s 285 am 1994 No 26  
om R5 (LRA s 15 (1) (o) (iv))

### **Determination of fees**

s 287 sub 2001 No 44 amdt 1.2483

**Approved forms**

s 287A ins 2001 No 44 amdt 1.2483  
am 2002 No 30 amdt 3.505

**Regulation-making power**

s 288 am 1994 No 81  
sub 2001 No 44 amdt 1.2483

**Transitional**

pt 9 hdg (prev pt 8 hdg) ins 2000 No 80 amdt 3.9  
renum R6 LA

**Status of leases and licences**

s 289 ins 2000 No 80 amdt 3.9  
am 2002 No 30 amdt 3.506

**Continued application of certain repealed Acts and provisions**

s 290 ins 2000 No 80 amdt 3.9

**Conversion of Commonwealth leases**

s 291 ins 2001 No 56 amdt 3.436

**Controlled activities: concurring authorities: penalties**

sch 4 am 1993 No 75; 1996 No 39  
om 1996 No 85

**Activities subject to orders**

sch 5 am 1993 No 75; 1995 No 21; 1996 No 85; 1997 No 7; 1998 No  
54; 1999 No 73 s 13; 1999 No 79 sch 3; 2000 No 37 s 18; R6  
LA

**Dictionary**

dict ins 2002 No 30 amdt 3.507  
def **Aboriginal project** ins 2002 No 30 amdt 3.507  
def **Aboriginal place** ins 2002 No 30 amdt 3.507  
def **Aboriginal tradition** ins 2002 No 30 amdt 3.507  
def **application** ins 2002 No 30 amdt 3.507  
def **approval** ins 2002 No 30 amdt 3.507  
def **assessment** ins 2002 No 30 amdt 3.507  
def **authorised person** ins 2002 No 30 amdt 3.507  
def **authority** ins 2002 No 30 amdt 3.507  
def **background papers** ins 2002 No 30 amdt 3.507  
def **building** ins 2002 No 30 amdt 3.507  
def **building and development provision** ins 2002 No 30 amdt  
3.507  
def **building work** ins 2002 No 30 amdt 3.507  
def **chairperson** ins 2002 No 30 amdt 3.507  
def **commissioner** ins 2002 No 30 amdt 3.507  
def **compensation** ins 2002 No 30 amdt 3.507  
def **connected** ins 2002 No 30 amdt 3.507  
def **conservation** ins 2002 No 30 amdt 3.507

## Endnotes

### 4 Amendment history

---

def **conservator** ins 2002 No 30 amdt 3.507  
def **consolidation** ins 2002 No 30 amdt 3.507  
def **consultation notice** ins 2002 No 30 amdt 3.507  
def **controlled activity** ins 2002 No 30 amdt 3.507  
def **dealing** ins 2002 No 30 amdt 3.507  
def **defined decision** ins 2002 No 30 amdt 3.507  
def **deputy chairperson** ins 2002 No 30 amdt 3.507  
def **development** ins 2002 No 30 amdt 3.507  
def **discharge amount** ins 2002 No 30 amdt 3.507  
def **draft plan variation** ins 2002 No 30 amdt 3.507  
def **earlier index number** ins 2002 No 30 amdt 3.507  
def **environmental impact** ins 2002 No 30 amdt 3.507  
def **environmental impact statement** ins 2002 No 30 amdt 3.507  
def **environmental report** ins 2002 No 30 amdt 3.507  
def **Environment Minister** ins 2002 No 30 amdt 3.507  
def **Executive** ins 2002 No 30 amdt 3.507  
def **expert member** ins 2002 No 30 amdt 3.507  
def **formal error** ins 2002 No 30 amdt 3.507  
def **Gungahlin central area** ins 2002 No 30 amdt 3.507  
def **heritage council** ins 2002 No 30 amdt 3.507  
def **heritage object** ins 2002 No 30 amdt 3.507  
def **heritage objects register** ins 2002 No 30 amdt 3.507  
def **heritage place** ins 2002 No 30 amdt 3.507  
def **heritage places register** ins 2002 No 30 amdt 3.507  
def **heritage significance** ins 2002 No 30 amdt 3.507  
def **holding period** ins 2002 No 30 amdt 3.507  
def **index number** ins 2002 No 30 amdt 3.507  
def **inquiry** ins 2002 No 30 amdt 3.507  
def **interim heritage places register** ins 2002 No 30 amdt 3.507  
def **interim variation** ins 2002 No 30 amdt 3.507  
def **land** ins 2002 No 30 amdt 3.507  
def **land management agreement** ins 2002 No 30 amdt 3.507  
def **later index number** ins 2002 No 30 amdt 3.507  
def **lease** ins 2002 No 30 amdt 3.507  
def **lessee** ins 2002 No 30 amdt 3.507  
def **long lease** ins 2002 No 30 amdt 3.507  
def **market value** ins 2002 No 30 amdt 3.507  
def **member** ins 2002 No 30 amdt 3.507  
def **national capital plan** ins 2002 No 30 amdt 3.507  
def **natural environment** ins 2002 No 30 amdt 3.507  
def **newspaper** ins 2002 No 30 amdt 3.507  
def **nominal rent lease** ins 2002 No 30 amdt 3.507  
def **objection** ins 2002 No 30 amdt 3.507  
def **occupier** ins 2002 No 30 amdt 3.507  
def **offence** ins 2002 No 30 amdt 3.507



---

def **order** ins 2002 No 30 amdt 3.507  
def **panel** ins 2002 No 30 amdt 3.507  
def **permanent member** ins 2002 No 30 amdt 3.507  
def **pest animal** ins 2002 No 30 amdt 3.507  
def **pest plant** ins 2002 No 30 amdt 3.507  
def **place** ins 2002 No 30 amdt 3.507  
def **plan** ins 2002 No 30 amdt 3.507  
def **plan of management** ins 2002 No 30 amdt 3.507  
def **preliminary assessment** ins 2002 No 30 amdt 3.507  
def **prescribed period** ins 2002 No 30 amdt 3.507  
def **proponent** ins 2002 No 30 amdt 3.507  
def **provision** ins 2002 No 30 amdt 3.507  
def **public car park** ins 2002 No 30 amdt 3.507  
def **public environment report** ins 2002 No 30 amdt 3.507  
def **public land** ins 2002 No 30 amdt 3.507  
def **registered** ins 2002 No 30 amdt 3.507  
def **registered lease** ins 2002 No 30 amdt 3.507  
def **registered proprietor** ins 2002 No 30 amdt 3.507  
def **registration** ins 2002 No 30 amdt 3.507  
def **relevant Aboriginal organisation** ins 2002 No 30 amdt  
3.507  
def **relevant authority** ins 2002 No 30 amdt 3.507  
def **relevant Minister** ins 2002 No 30 amdt 3.507  
def **rental lease** ins 2002 No 30 amdt 3.507  
def **residential lease** ins 2002 No 30 amdt 3.507  
def **restricted information** ins 2002 No 30 amdt 3.507  
def **rural lease** ins 2002 No 30 amdt 3.507  
def **secretary** ins 2002 No 30 amdt 3.507  
def **short lease** ins 2002 No 30 amdt 3.507  
def **special Pialligo lease** ins 2002 No 30 amdt 3.507  
def **structure** ins 2002 No 30 amdt 3.507  
def **subdivision** ins 2002 No 30 amdt 3.507  
def **sublease** ins 2002 No 30 amdt 3.507  
def **sublessee** ins 2002 No 30 amdt 3.507  
def **Territory authority** ins 2002 No 30 amdt 3.507  
def **unregistered** ins 2002 No 30 amdt 3.507  
def **variation** ins 2002 No 30 amdt 3.507

## Endnotes

5 Earlier republications

---

### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1993 No 90	31 January 1994
2	Act 1994 No 97	28 February 1995
3	Act 1997 No 7	24 June 1997
4	Act 1998 No 65	28 February 1999
5	Act 2000 No 15	30 May 2000
6*	Act 2001 No 80	5 October 2001
7	Act 2001 No 80	11 March 2002
8	Act 2002 No 11	28 May 2002
9	Act 2002 No 30	17 September 2002

Authorised when accessed at [www.legislation.act.gov.au](http://www.legislation.act.gov.au) or in authorised printed form

© Australian Capital Territory 2002