



AUSTRALIAN CAPITAL TERRITORY

Land Planning and Environment Amendment Act (No 2) 1999

No. 73 of 1999

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AUSTRALIAN CAPITAL TERRITORY

Land Planning and Environment Amendment Act (No 2) 1999

No. 73 of 1999

An Act to amend the *Land (Planning and Environment) Act 1991*

[Notified in ACT Gazette No. 50: 15 December 1999]

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

1 Name of Act

This Act is the *Land Planning and Environment Amendment Act (No 2) 1999*.

2 Commencement

This Act commences on the day it is notified in the *Gazette*.

3 Act amended

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

4 Interpretation

Section 4 is amended by inserting the following definition:

“*land management agreement* means an agreement under section 186C and includes the agreement as varied.”.

5 Insertion

Before section 161 the following section is inserted in Division 2 of Part 5:

“160A Effect qualified

This Division has effect subject to Division 3AA (Restrictions on rural leases).”.

6 Grant of further rural leases

Section 171A is amended—

- (a) by omitting from paragraph (1) (a) “for the same purposes”; and
- (b) by omitting paragraph (1) (c) and substituting the following paragraphs:
 - “(c) all rent due under the existing lease is paid; and
 - (ca) the lessee pays the determined fee; and”;
- (c) by omitting from subsection (1) “for the same purposes” (last occurring); and
- (d) by inserting after subsection (2) the following subsections:
 - “(2A) A determination may include a condition that the lessee pays an amount stated in, or calculated in accordance with, the determination (an *amount condition*).
 - “(2B) An amount condition in a determination ceases to have effect in relation to rural leases, because of this subsection, 18 months after this subsection commences (the *termination day*).
 - “(2C) Subsection (2B) applies to a determination made—
 - (a) before the commencement of subsection (2B); or
 - (b) within 18 months after that commencement;if the determination has effect before the termination day.
 - “(2D) Subsections (2B) and (2C) and this subsection cease to have effect on the day after the termination day.”.

7 Insertion

Before section 184 the following section is inserted in Division 3 of Part 5:

“183A Effect qualified

This Division has effect subject to Division 3AA (Restrictions on rural leases).”.

8 Insertion

After Division 3 of Part 5 the following Division is inserted:

“Division 3AA—Restrictions on rural leases

“186B Definitions

For 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 one-third 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 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.

“(5) A form approved for paragraph (2) (a) is a disallowable instrument for section 10 of the *Subordinate Law Act 1989*.

“186D Dealings with rural leases

“(1) This section applies to a rural lease granted under section 161 or 171A before the end of the period of 18 months after the commencement of this section, including a lease granted before the commencement of this section, other than a further lease granted in place of a lease in relation to which the discharge amount has been paid.

“(2) 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.

“(3) A dealing in relation to a lease made or entered into without consent has no effect.

“(4) 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.

“(5) 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).

“(6) 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 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—

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

“(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.”.

9 Insertion

Before section 187 the following section is inserted in Division 3A of Part 5:

“187A Effect qualified

This Division has effect subject to Division 3AA (Restrictions on rural leases).”.

10 Application to undertake development

Section 226 is amended by inserting after subsection (1) the following subsection:

“(1A) 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.”.

11 Application for order

Section 256 is amended by adding at the end of paragraph (5) (b) the following subparagraphs:

- “(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.”.

12 Review of decisions

Section 282A is amended—

- (a) by inserting after subsection (4) the following subsection:

“(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 subsection 186C (3), the Minister must give notice of the decision to the other party to the agreement.”; and
- (b) by omitting paragraph (5) (a) and substituting the following paragraph:

“(a) a decision referred to in subsection (1), (2), (3), (4) or (4A);”; and
- (c) by omitting subsection (6) and substituting the following subsection:

“(6) A notice under subsection (1), (2), (3), (4) or (4A) or paragraph 69 (1) (b) or 73 (1) (b) must be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.”.

13 Schedule 5

Schedule 5 is amended by adding at the end the following item:

- “12 Managing land held under a rural lease other than in accordance with the land management agreement that applies to it 50 penalty units”.
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Endnotes

Act amended

- 1 Republished as in force on 28 February 1999. See also Act 1999 No 40.

Penalty units

- 2 Section 33AA of the *Interpretation Act 1967* deals with the meaning of offence penalties that are expressed in penalty units.

[Presentation speech made in Assembly on 2 September 1999]