



Australian Capital Territory

Planning and Development (Concessional Leases) Amendment Act 2010

A2010-37

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Australian Capital Territory

Planning and Development (Concessional Leases) Amendment Act 2010

A2010-37

An Act to amend the *Planning and Development Act 2007*, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Planning and Development (Concessional Leases) Amendment Act 2010*.

2 Commencement

This Act commences on the 7th day after its notification day.

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

3 Legislation amended

This Act amends the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008*.

Part 2 Planning and Development Act 2007

4 Section 235

substitute

235 Meaning of *lease*—Act

In this Act:

lease means a lease (other than a sublease) of territory land—

- (a) granted under this Act; or
- (b) granted or arising under the *Unit Titles Act 2001*.

Note Some leases are taken to have been granted under this Act and so come within this definition of *lease* (see s 456).

235A Meaning of *concessional lease*—Act

(1) In this Act:

concessional lease—

- (a) means a lease—
 - (i) granted for a consideration less than the full market value of the lease, whether paid as a lump sum or payable as rent, or for no consideration; and
 - (ii) for a lease granted before 31 March 2008—in relation to which neither of the following payments has been made:
 - (A) an amount in relation to the grant of the lease that is equal to the lease's market value at the time of payment or, if the amount is paid in parts, at the time of the last payment;

- (B) an amount to reduce the rent payable under the lease to a nominal rent under the *Land (Planning and Environment) Act 1991*, section 186 (Variation of lease to pay out rent); and

Note *Made*—see s (4).

- (b) includes the following leases:

- (i) a consolidated or subdivided concessional lease;
- (ii) a further concessional lease;
- (iii) a regranted concessional lease.

Note 1 A lease that is granted as a concessional lease must include a statement that the lease is concessional (see s 238 (2) (a)).

Note 2 The concessional status of a concessional lease may only be removed by a variation of the lease (see div 9.4.2).

Note 3 A consolidated or subdivided lease or further or regranted lease, other than a lease mentioned in par (b), is a market value lease (see sch 5, pt 5.2, item 1).

Note 4 A person may rely on a statement in a lease that the lease is concessional (see s 259C).

- (2) However, a lease is not a concessional lease if the lease is a market value lease.
- (3) A lease is not concessional only because the lease—
- (a) was granted under the *Leases (Special Purposes) Act 1925*; and
 - (b) was granted before 1 January 1971; and
 - (c) is a lease to which the *Leases (Special Purposes) Act 1925*, section 5AB (Rent) applies.

(4) In this section:

consolidated or subdivided concessional lease means a lease granted during a consolidation or subdivision involving the surrender of 1 or more previous leases if 1 or more of the previous leases was a concessional lease.

further concessional lease means a further lease if the surrendered lease was a concessional lease.

made—a payment has been ***made*** if the relevant amount—

- (a) was paid to the Territory, a territory entity, the Commonwealth, a Commonwealth entity or the entity that originally granted the lease; or
- (b) was waived by the Treasurer under the *Financial Management Act 1996*, section 131, or part of the amount was waived and the rest of the amount was paid.

regranted concessional lease means a regranted lease (whether the regrant is on the same or different conditions) if the surrendered lease was a concessional lease.

235B Meaning of *market value lease*—Act

In this Act:

market value lease—

- (a) means a lease other than a lease that—
 - (i) states, in the lease or a memorial to the lease, that the lease is concessional; or

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

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

- (ii) is possibly concessional; and
- (b) includes a lease mentioned in schedule 5, part 5.2.

235C Meaning of *possibly concessional*—Act

- (1) For this Act, a lease is *possibly concessional* if the lease—
- (a) was granted—
 - (i) before 31 March 2008; or
 - (ii) after 30 March 2008 and before the commencement of this section under the *Land (Planning and Environment) Act 1991*; and

Note A lease may be granted under the *Land (Planning and Environment) Act 1991* after 30 March 2008 in some circumstances (see s 458 and s 459A).

- (b) does not include a statement, in the lease or a memorial to the lease—
 - (i) that the lease is a concessional lease; or
 - (ii) to the effect that the lease is a market value lease; and

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

Examples—statement to effect that lease is market value lease

the lease is a market value lease or the lease is not concessional

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

- (c) is mentioned in schedule 5, part 5.3.
- (2) However, a lease is not *possibly concessional* if the lease is also mentioned in schedule 5, part 5.2.

Note A lease mentioned in sch 5, pt 5.2 is a market value lease (see s 235B).

- (3) Schedule 5, part 5.3, item 12 and this subsection expire 3 years after this subsection commences.

5 Granting leases Section 238 (2) (a)

substitute

- (a) a statement—
- (i) if the lease is a concessional lease—that the lease is concessional; or
 - (ii) if the lease is not concessional—to the effect that the lease is a market value lease; and

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

Examples—statement to effect that lease is market value lease

the lease is a market value lease or the lease is not concessional

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

6 Restrictions on dealings with certain leases Section 251 (3) to (7)

substitute

- (3) If this section applies to a lease, the planning and land authority must tell the registrar-general that it applies.

Note If the planning and land authority tells the registrar-general that this section applies to a lease, the registrar-general must include a memorial in the register to that effect (see *Land Titles Act 1925*, s 72D).

- (4) If a memorial stating that this section applies to the lease is included in the register under the *Land Titles Act 1925*, the lessee, or anyone else with an interest in the lease, must not, during the restricted period for the lease, deal with the lease without the written consent of the planning and land authority under section 252.

Note **Memorial**—see the *Land Titles Act 1925*, dictionary.

- (5) However, a regulation may exempt a lease from this section, whether generally or in relation to a particular dealing.
- (6) A dealing in relation to a lease to which this section applies that is made or entered into without consent has no effect.
- (7) However, subsection (6) does not apply to a dealing registered under the *Land Titles Act 1925*.

Note The registration of an interest in land under the *Land Titles Act 1925* takes priority over any other interest in the land, subject to some exceptions (see that Act, s 58).

7 Grant of further leases Section 254 (3) and note

substitute

- (3) A further lease granted under this section must include a statement—
- (a) if the lease is a concessional lease—that the lease is concessional; or

- (b) if the lease is not concessional—to the effect that the lease is a market value lease.

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

Examples—statement to effect that lease is market value lease

the lease is a market value lease or the lease is not concessional

Note 1 A grant must be lodged with the registrar-general under the *Land Titles Act 1925* (see that Act, s 17 (2)).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

8 Decision about whether lease concessional Section 257 (1)

omit

or not

9 Section 257 (2) and (3)

substitute

- (2) However, if someone (other than the lessee) has a registered interest in the lease, the planning and land authority must not make a decision under subsection (1) unless the authority has—
- (a) given written notice (the *application notice*) of the application to the person; and
 - (b) in the application notice, invited the person to give written representations about the application to the authority at a stated address by not later than the end of a stated period of not less than 15 working days after the date the notice is given to the person; and
 - (c) considered any representations made in the time given in the application notice.

- (2A) If the planning and land authority is not satisfied that the lease is a concessional lease, the authority must decide that the lease is not concessional, in which case the lease is taken to be a market value lease.
- (3) However, the planning and land authority is taken to have decided (the *deemed decision*) that the lease is a concessional lease if the authority has not made a decision on the application at the end of the period of 15 working days after—
- (a) the day the application is made; or
 - (b) if someone (other than the lessee) has a registered interest in the lease—the day the period for making representations given in the application notice ends.

Note 1 A lessee has a right to apply for review of a decision under this provision (see ch 13 and sch 1).

Note 2 The time for making an application for review of a deemed decision is 20 working days after the end of the 20 working-day period mentioned in s (4) (see s 409A).

10 Section 257 (4)

substitute

- (4) If the planning and land authority is taken to have decided that a lease is a concessional lease under subsection (3), the authority may, within 20 working days after the deemed decision is taken to have been made, decide that the lease is a market value lease under subsection (1) despite the deemed decision.

Note Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the planning and land authority will not be able to decide that the lease is a market value lease if the ACAT has decided an application for review of the deemed decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

11 Section 257 (5)

omit

an interest

substitute

a registered interest

12 New section 257 (6)

after the note, insert

- (6) The *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision) does not apply to this section.

**13 Authority may decide whether lease concessional on own initiative
New section 258 (2A)**

insert

- (2A) If the planning and land authority is not satisfied that the lease is a concessional lease, the authority must decide that the lease is not concessional, in which case the lease is taken to be a market value lease.

14 Section 258 (4)

omit

an interest

substitute

a registered interest

15 New sections 258A to 258C

insert

258A Application for decision about whether certain leases are concessional

- (1) This section applies to a lease if—
 - (a) the lease was granted before 31 March 2008; and
 - (b) the lease does not state in the lease that the lease is a concessional lease; and
 - (c) the planning and land authority made a decision (the *original decision*), whether before or after 31 March 2008, that the lease is a concessional lease; and
 - (d) the original decision is stated in a memorial to the lease.

Note **Memorial**—see the *Land Titles Act 1925*, dictionary.

- (2) The lessee of the lease may apply to the planning and land authority for a decision about whether the lease is a concessional lease.

258B Making other decisions about concessional status of certain leases

- (1) On application by the lessee under section 258A, the planning and land authority may decide whether the lease is a concessional lease.
- (2) However, the planning and land authority must not make a decision under subsection (1) unless—
 - (a) the authority is satisfied that—
 - (i) there is additional relevant information about the concessional status of the lease; or

- (ii) there is information to indicate that the authority made a formal error when it made the original decision; and

Note **Formal error**—see the dictionary.

- (b) if someone (other than the lessee) has a registered interest in the lease, the authority has—
 - (i) given written notice (the **application notice**) of the application to the person; and
 - (ii) in the application notice, invited the person to give written representations about the application to the authority at a stated address by not later than the end of a stated period of not less than 15 working days after the day the notice is given to the person; and
 - (iii) considered any representations made in the time given in the application notice.
- (3) If the planning and land authority is not satisfied that the lease is a concessional lease, the authority must decide that the lease is not concessional, in which case the lease is taken to be a market value lease.
- (4) However, the planning and land authority is taken to have decided (the **deemed decision**) that the lease is a concessional lease if the authority has not made a decision on the application at the end of the period of 15 working days after—
 - (a) the day the application is made; or

- (b) if someone (other than the lessee) has a registered interest in the lease—the day the period for making representations given in the application notice ends.

Note 1 A lessee has a right to apply for review of a decision under this provision (see ch 13 and sch 1).

Note 2 The time for making an application for review of a deemed decision is 20 working days after the end of the 20 working-day period mentioned in s (5) (see s 409A).

- (5) If the planning and land authority is taken to have decided that a lease is a concessional lease under subsection (4), the authority may, within 20 working days after the day the deemed decision is taken to have been made, decide that the lease is a market value lease despite the deemed decision.

Note Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the planning and land authority will not be able to decide that the lease is a market value lease if the ACAT has decided an application for review of the deemed decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

- (6) The planning and land authority must give written notice of the decision under subsection (1) to the applicant and anyone else with a registered interest in the lease to which the decision relates.

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

- (7) The *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision) does not apply to this section.

- (8) In this section:

original decision—see section 258A (1) (c).

258C Authority may make another decision about whether certain leases concessional on own initiative

- (1) This section applies to a lease if—

- (a) the lease was granted before 31 March 2008; and
- (b) the lease does not state in the lease that the lease is a concessional lease; and
- (c) the planning and land authority made a decision (the *original decision*) that the lease is concessional, whether before or after 31 March 2008; and
- (d) the decision is stated in a memorial to the lease.

Note **Memorial**—see the *Land Titles Act 1925*, dictionary.

- (2) The planning and land authority may, on its own initiative, decide whether the lease is a concessional lease.
- (3) However, the planning and land authority must not make a decision under subsection (2) unless—
 - (a) the authority is satisfied that—
 - (i) there is additional relevant information about the concessional status of the lease; or
 - (ii) there is information to indicate that the authority made a formal error when it made the original decision; and

Note **Formal error**—see the dictionary.

- (b) the authority has—
 - (i) given written notice (the *lease decision notice*) of the authority's intention to make a decision under subsection (2) to each person with a registered interest in the lease; and
 - (ii) in the lease decision notice, invited the person to give written representations about the proposed decision to the authority at a stated address by not later than the end of a stated period of not less than 15 working days after the day the notice is given to the person; and

- (iii) considered any representations made in the time given in the lease decision notice.
- (4) If the planning and land authority is not satisfied that the lease is a concessional lease, the authority must decide that the lease is not concessional, in which case the lease is taken to be a market value lease.
- (5) Also, if the planning and land authority gives a lease decision notice in relation to a lease, the authority must make a decision under subsection (2) in relation to the lease not later than 15 working days after the day the period for making representations given in the lease decision notice ends.
- (6) The planning and land authority must give written notice of the decision under subsection (2) to each person with a registered interest in the lease to which the decision relates.

Note 1 If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

Note 2 A lessee has a right to apply for review of a decision under this provision (see ch 13 and sch 1).

16 Section 259

substitute

259 Lodging notice of decision about concessional status of lease

- (1) This section applies if—
- (a) the planning and land authority makes a decision that a lease is a concessional lease or not; and
- (b) for a decision that the lease is a concessional lease—either—
- (i) no application is made to the ACAT for review of the decision within the time allowed for applications; or

- (ii) an application for review of the decision is made and the ACAT—
 - (A) confirms, varies or substitutes the decision; or
 - (B) remits the matter for reconsideration by the planning and land authority and the authority decides that the lease is a concessional lease or not.

Note The planning and land authority may decide whether a lease is a concessional lease or market value lease under s 257, s 258, s 258B or s 258C.

- (2) The planning and land authority must lodge notice with the registrar-general for registration under the *Land Titles Act 1925* that—
 - (a) if the planning and land authority decides that the lease is a concessional lease—the lease is concessional; or
 - (b) if the planning and land authority decides that the lease is not concessional—the lease is a market value lease.

Note The registrar-general must register an instrument lodged in registrable form (see *Land Titles Act 1925*, s 48 (1)).

259A Lodging notice of deemed decision about concessional status of lease

- (1) This section applies if—
 - (a) the planning and land authority is taken to have made a decision that a lease is concessional under section 257 (3) or section 258B (4); and
 - (b) the 20 working-day period mentioned in section 257 (4) or section 258B (5) for the decision has ended; and
 - (c) either—

- (i) no application is made to the ACAT for review of the decision that the lease is a concessional lease within the time allowed for applications; or
 - (ii) an application for review of the decision is made and the ACAT—
 - (A) confirms, varies or substitutes the decision; or
 - (B) remits the matter for reconsideration by the planning and land authority and the authority decides that the lease is a concessional lease or not.
- (2) The planning and land authority must lodge notice with the registrar-general for registration under the *Land Titles Act 1925* that—
- (a) if the planning and land authority decides that the lease is a concessional lease—the lease is concessional; or
 - (b) if the planning and land authority decides that the lease is not concessional—the lease is a market value lease.

Note The registrar-general must register an instrument lodged in registrable form (see *Land Titles Act 1925*, s 48 (1)).

259B Non-concessional status of leases

- (1) This section applies to a lease if—
- (a) the lease includes a statement, in the lease or a memorial to the lease, to the effect that the lease is a market value lease; or

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

Examples—statement to effect that lease is market value lease

the lease is a market value lease or the lease is not concessional

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

- (b) the planning and land authority has lodged a notice that the lease is a market value lease with the registrar-general for registration under the *Land Titles Act 1925*.
- (2) A person may rely on the statement and deal with the lease as a market value lease.
- (3) The planning and land authority must not make a decision that would change the lease's status as a market value lease.
- (4) This section is subject to an order of a court or tribunal.

259C Concessional status of leases

- (1) This section applies to a lease if—
 - (a) the lease states, in the lease or a memorial to the lease, that the lease is a concessional lease; or

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

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

- (b) the planning and land authority has lodged a notice that the lease is a concessional lease with the registrar-general for registration under the *Land Titles Act 1925*.
- (2) A person may rely on the statement and deal with the lease as a concessional lease.
- (3) The planning and land authority must not make a decision that would change the lease's status as a concessional lease.
- (4) This section is subject to—
 - (a) a decision about whether a lease is a concessional lease under section 258B or section 258C; or

- (b) a variation of the lease to remove the concessional status of the lease under division 9.4.2; or
- (c) an order of a court or tribunal.

259D Concessional status guidelines

- (1) The planning and land authority may make guidelines (the *concessional lease guidelines*) setting out information to assist people to decide whether a lease is a concessional lease, market value lease or possibly concessional.
- (2) A person who is deciding whether a lease is a concessional lease, market value lease or possibly concessional may have regard to the concessional lease guidelines but is not bound by the guidelines.
- (3) A concessional lease guideline is a notifiable instrument.

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

**17 Application—div 9.4.2
Section 260**

after

the application

insert

is for or

18 New section 260A

insert

260A Removal of concessional status by variation of lease

- (1) The concessional status of a lease may only be removed by a variation of the lease.

- (2) This section does not apply to a decision under section 258B or section 258C.

Example

surrender of a concessional lease and regrant of a new market value lease

Note 1 A variation of a lease is a development (see s 7).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**19 Development approval of application about concessional lease subject to condition
Section 262**

after

the Territory

insert

or a territory entity

20 New section 262 (2)

after the notes, insert

- (2) A payout amount is taken to be paid to the Territory or a territory entity if the amount is waived by the Treasurer under the *Financial Management Act 1996*, section 131, or part of the amount is waived and the rest of the amount is paid.

**21 Working out amount payable to discharge concessional leases
Section 263 (1)**

after

the Territory

insert

or a territory entity

**22 Restrictions on dealings with concessional leases
New section 265 (3)**

insert

- (3) However, subsection (2) does not apply to a dealing registered under the *Land Titles Act 1925*.

Note The registration of an interest in land under the *Land Titles Act 1925* takes priority over any other interest in the land, subject to some exceptions (see that Act, s 58).

**23 No variation of certain leases for 5 years
New section 275 (4) and (5)**

insert

- (4) However, the planning and land authority may consent to the variation if the variation does not limit, add or remove an authorised use of the land.

- (5) In this section:

authorised use, of land—

- (a) means a use authorised (whether expressly or by implication) by a lease; and

- (b) includes a use authorised by a lease that expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry.

24 **Transfer of land subject to building and development provision**
Section 298 (6)

omit

25 **New section 409A**

insert

409A **ACAT review—time for making application for deemed decisions**

- (1) This section applies to a reviewable decision under section 257 (Decision about whether lease concessional) or section 258B (Making other decisions about concessional status of certain leases).
- (2) The application for review must be made not later than 20 working days after—
- (a) for a decision to which section 257 applies—the 20 working-day period mentioned in section 257 (4); or
 - (b) for a decision to which section 258B applies—the 20 working-day period mentioned in section 258B (5).

26 **Transitional effect—Legislation Act, s 88**
Section 430

after

This chapter

insert

(other than section 446 or section 467)

**27 Expiry—ch 15
Section 431**

after

part 15.5

insert

, section 458

**28 Power to make lease and development conditions
Section 446 (5)**

omit

**29 Transitional—application for development approval if
lease and development condition
Section 446A (3)**

omit

**30 Transitional—extended application of s 275
Section 453 (2)**

omit

31 New sections 456B and 456C

insert

456B Transitional—certain City Area Leases Act 1936 leases

- (1) This section applies to a lease—
 - (a) granted or continued, or purported to be granted or continued, under the *City Area Leases Act 1936*; and
 - (b) in force immediately before 2 April 1992; and

- (c) to which the *City Area Leases Act 1936*, section 18 (Rent) applies.
- (2) Despite the repeal of the *City Areas Leases Act 1936*, that Act, section 18 applies to the lease from 2 April 1992.

456C Transitional—certain Leases (Special Purposes) Act 1925 leases

- (1) This section applies to a lease—
- (a) granted or continued, or purported to be granted or continued, under the *Leases (Special Purposes) Act 1925*; and
- (b) in force immediately before 2 April 1992; and
- (c) to which the *Leases (Special Purposes) Act 1925*, section 5AB (Rent) applies.
- (2) Despite the repeal of the *Leases (Special Purposes) Act 1925*, that Act, section 5AB applies to the lease from 2 April 1992.

**32 Transitional—applications for certain grants before commencement day
New section 458 (3) (aa)**

before paragraph (a), insert

- (aa) must include a statement—
- (i) if the lease is a concessional lease—that the lease is concessional; or
- (ii) if the lease is not concessional—to the effect that the lease is a market value lease; and

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

Examples—statement to effect that lease is market value lease

the lease is a market value lease or the lease is not concessional

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

33 Section 458 (4)

omit

**34 Transitional—contracts before commencement day to grant leases
New section 459A (3) (aa)**

before paragraph (a), insert

(aa) must include a statement—

- (i) if the lease is a concessional lease—that the lease is concessional; or
- (ii) if the lease is not concessional—to the effect that the lease is a market value lease; and

Examples—statement in lease

a condition of the lease or a notation or stamp on the lease

Examples—statement to effect that lease is market value lease

the lease is a market value lease or the lease is not concessional

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

**35 Transitional—plans of management
Section 467 (5)**

omit

**36 Reviewable decisions, eligible entities and interested entities
Schedule 1, item 19**

substitute

19	decision under s 257 or s 258 that lease is a concessional lease	planning and land authority	lessee	
19A	decision under s 258B or s 258C that lease is a concessional lease	planning and land authority	lessee	

37 New schedule 5

insert

Schedule 5 Market value leases and leases that are possibly concessional

(see s 235B and s 235C)

Part 5.1 Interpretation

5.1 Definitions—sch 5

In this schedule:

deal—see section 234.

incorporated association means an association incorporated under the *Associations Incorporation Act 1991* or a law of another jurisdiction corresponding, or substantially corresponding, to that Act.

rental lease—see section 234.

residential lease—see section 234.

rural lease—see section 234.

Part 5.2 Market value leases

Note A lease is not a market value lease if the lease states, in the lease or a memorial to the lease, that the lease is a concessional lease or the lease is possibly concessional (see s 235B and s 235C).

column 1 item	column 2 lease
1	a consolidated or subdivided lease or a further or regranted lease, other than a lease mentioned in section 235A (1)
2	a rural lease
3	a lease over land that, immediately before the grant of the lease, was owned, controlled or held by the housing commissioner under the <i>Housing Assistance Act 2007</i>
4	a lease granted to the Territory or a territory entity <i>Note</i> Territory entity —see the dictionary.
5	a residential lease
6	a rental lease granted for commercial purposes after 1 January 1974 if the rent was paid out— (a) in accordance with a law in force in the Territory; or (b) by agreement between the Commonwealth or the Territory and the lessee Examples—commercial purposes 1 industrial 2 business
7	a lease (the <i>individual lease</i>) granted for no consideration if— (a) the individual lease is granted following the subdivision of a lease (the <i>head lease</i>) held by the person to whom the individual lease is granted; and (b) the person has provided infrastructure on the land leased under the head lease

column 1 item	column 2 lease
8	<p>a lease granted under the <i>City Area Leases Act 1936</i>—</p> <ul style="list-style-type: none"> (a) before 1 January 1971; and (b) to which that Act, section 18 (Rent) applies; and (c) that does not state, in the lease or a memorial to the lease, that the lease is subject to a restriction on dealing with the lease <p><i>Note</i> If a lease states that it is subject to a restriction on dealing, the lease is possibly concessional (see sch 5, pt 5.3, item 4).</p>
9	<p>a lease that includes a statement, in the lease or a memorial to the lease, to the effect that the lease is a market value lease</p> <p>Examples—statement in lease a condition of the lease or a notation or stamp on the lease</p> <p>Examples—statement to effect that lease is market value lease the lease is a market value lease or the lease is not concessional</p>
10	<p>a lease granted to an entity, other than the Territory or a territory entity, if—</p> <ul style="list-style-type: none"> (a) the lease states that the lease commenced, or is taken to have commenced, on a day (the <i>lease commencement day</i>) earlier than the day the lease was granted; and (b) the land comprised in the lease was occupied by the Territory or a territory entity on the lease commencement day <p><i>Note</i> Territory entity—see the dictionary.</p>
11	<p>a lease granted to the Commonwealth or a Commonwealth entity</p>

column 1 item	column 2 lease
12	<p>a lease granted to an entity, other than the Commonwealth or a Commonwealth entity, if—</p> <ul style="list-style-type: none"> (a) the lease states that the lease commenced, or is taken to have commenced, on a day (the <i>lease commencement day</i>) earlier than the day the lease was granted; and (b) the land comprised in the lease was occupied by the Commonwealth or a Commonwealth entity on the lease commencement day <p><i>Note</i> Commonwealth entity—see the dictionary.</p>
13	<p>a lease granted under the <i>City Area Leases Act 1936</i> if, on 1 July 2009—</p> <ul style="list-style-type: none"> (a) the lessee of the lease is the holder of a club licence under the <i>Liquor Act 1975</i>; and (b) at least 75% of the area of the land comprising the lease is located in 1 or both of the following: <ul style="list-style-type: none"> (i) a commercial zone under the territory plan; (ii) a designated area under the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> (Cwlth); and <p>Example 30% of land comprised in a lease is located in a commercial zone and 50% of land is located in a designated area</p> <ul style="list-style-type: none"> (c) the lease does not state that there is a restriction on dealing with the lease; and (d) the lease authorises the land comprised in the lease to be used for both— <ul style="list-style-type: none"> (i) a licensed club under the <i>Liquor Act 1975</i>; and (ii) a commercial purpose unrelated to the club <p>Examples—commercial purpose</p> <ol style="list-style-type: none"> 1 a shop under the territory plan 2 a non-retail commercial use under the territory plan 3 a commercial accommodation use under the territory plan

column 1 item	column 2 lease
14	a lease granted to the Australian National University established under the <i>Australian National University Act 1991</i> (Cwlth)
15	a lease granted under the <i>Land (Planning and Environment) Act 1991</i> , section 164 (Special leases)
16	a lease granted under the <i>City Area Leases Act 1936</i> for commercial purposes
17	<p>a lease granted after 30 March 2008 other than a lease—</p> <ul style="list-style-type: none"> (a) that states, in the lease or a memorial to the lease, that the lease is a concessional lease; or (b) that satisfies the requirements under section 235C (1) <p><i>Note</i> Certain leases granted after 30 March 2008 under the <i>Land (Planning and Environment) Act 1991</i> are possibly concessional (see s 235C).</p>
18	<p>a lease granted before 31 March 2008 if—</p> <ul style="list-style-type: none"> (a) the lease was granted for a consideration less than the full market value of the lease, or for no consideration; but (b) 1 of the following payments was made to the Territory, a territory entity, the Commonwealth, a Commonwealth entity or the entity that originally granted the lease: <ul style="list-style-type: none"> (i) an amount in relation to the grant of the lease that was equal to the lease's market value at the time of payment or, if the amount was paid in parts, at the time of the last payment; (ii) an amount to reduce the rent payable under the lease to a nominal rent under the <i>Land (Planning and Environment) Act 1991</i>, section 186 (Variation of lease to pay out rent)

column 1 item	column 2 lease
19	<p>a lease granted before 1 July 2007 if—</p> <ul style="list-style-type: none"> (a) the lessee applied in writing to the planning and land authority or the Minister to remove the concessional status of the lease; and (b) the planning and land authority or the Minister— <ul style="list-style-type: none"> (i) approved the application in writing before 31 March 2008, subject to payment of an amount (the <i>application amount</i>), decided by the planning and land authority or the Minister, equal to the lease’s market value; and (ii) decided the application amount in writing, after 1 July 2007 and before 31 March 2008; and (c) the lessee did not pay the application amount before 31 March 2008; and (d) the lessee pays the application amount within 6 months after the commencement of this schedule
20	a lease prescribed by regulation

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

Part 5.3 Possibly concessional leases

Note A lease is not possibly concessional if the lease states that the lease is concessional or the lease is mentioned in part 5.2 (see s 235C).

column 1 item	column 2 lease
1	a lease granted to a property trust or other corporation established by or in relation to a religious organisation that may hold property in accordance with an Act
2	a lease granted under the <i>Leases (Special Purposes) Act 1925</i>

column 1 item	column 2 lease
3	a lease that states, in the lease or a memorial to the lease, that the <i>Land (Planning and Environment) Act 1991</i> , section 167 applies to the lease
4	a lease that states, in the lease or a memorial to the lease, that the lease is subject to a restriction on dealing with the lease
5	a lease that was granted under the <i>Leases Act 1918</i>
6	a lease that states, in the lease or a memorial to the lease, that the lease is subject to a requirement that 1 or more stated uses of the land may only be exercised by the lessee
7	a lease granted to an incorporated association if— <ul style="list-style-type: none"> (a) the incorporated association is still the lessee; and (b) the lease states that the lease is subject to a requirement that the incorporated association occupy a minimum area of land
8	a lease— <ul style="list-style-type: none"> (a) granted to a club, whether or not the club is still the lessee; or (b) that authorises the land comprised in the lease to be used for a club
9	a lease granted to a community organisation that states that the lease was granted under the <i>Land (Planning and Environment) Act 1991</i> , section 163, whether or not the community organisation is still the lessee <i>Note</i> Community organisation —see the dictionary.

column 1 item	column 2 lease
10	<p>a lease granted to an incorporated association or community organisation over a unit in a units plan under the <i>Unit Titles Act 2001</i> if—</p> <ul style="list-style-type: none"> (a) the lease (the <i>original lease</i>) that ended on registration of the units plan was granted to the incorporated association or community organisation; and (b) the incorporated association or community organisation occupies the unit— <ul style="list-style-type: none"> (i) for its own purposes; and (ii) in accordance with a condition in the original lease <p><i>Note</i> On registration of a units plan, the lease of the parcel of land over which the units plan is registered ends (see <i>Unit Titles Act 2001</i>, s 33).</p>
11	a lease, other than a rural lease, granted for a term less than 99 years
12	<p>a lease prescribed by regulation, other than a lease in relation to which a dealing was registered after the commencement of this item and before the commencement of the regulation</p> <p><i>Note</i> This item expires 3 years after s 235C (3) commences (see s 235C (3)).</p>

38 Dictionary, new definitions

insert

Commonwealth entity means—

- (a) a body established under a Commonwealth Act; or
- (b) a Commonwealth authority under the *Commonwealth Authorities and Companies Act 1997* (Cwlth); or
- (c) a Commonwealth company under the *Commonwealth Authorities and Companies Act 1997* (Cwlth); or

(d) a company in which a controlling interest is held by either of the following, or by both of the following together:

- (i) the Commonwealth;
- (ii) a Commonwealth company under the *Commonwealth Authorities and Companies Act 1997* (Cwlth).

community organisation means a corporation that—

- (a) has, as its principal purpose, the provision of a service, or a form of assistance, to people living or working in the ACT; and
- (b) is not carried on for the financial benefit of its members; and
- (c) does not hold a club licence under the *Liquor Act 1975*.

39 Dictionary, definition of *concessional lease*

substitute

concessional lease—see section 235A.

40 Dictionary, definition of *market value lease*

substitute

market value lease—see section 235B.

41 Dictionary, new definitions

insert

memorial—see the *Land Titles Act 1925*, dictionary.

possibly concessional, in relation to a lease—see section 235C.

territory entity means—

- (a) a territory authority; or
- (b) a territory instrumentality; or

(c) a territory-owned corporation.

Note ***Territory authority, territory instrumentality*** and ***territory-owned corporation***—see the Legislation Act, dictionary, pt 1.

Part 3 Planning and Development Regulation 2008

42 Concessional leases Part 5.1A

omit

43 Definitions—pt 5.1 Section 100, definition of *Commonwealth entity*

omit

44 Section 100, definition of *territory entity*

substitute

territory entity does not include the housing commissioner.

45 Direct sales requiring approval by Executive— Act, s 240 (1) (a) Section 105 (a) (i), note

substitute

Note *Territory entity*—see the Act, dictionary.

46 Section 105 (a) (ii), note

substitute

Note *Commonwealth entity*—see the Act, dictionary.

47 Section 105 (e), note

substitute

Note *Community organisation*—see the Act, dictionary.

**48 Direct sale criteria for territory entities—
Act, s 240 (1) (a) (i)
Section 106, note**

substitute

Note **Territory entity**—see the Act, dictionary.

**49 Direct sale criteria for Commonwealth entities—
Act, s 240 (1) (a) (i)
Section 107 (1), note**

substitute

Note **Commonwealth entity**—see the Act, dictionary.

**50 Direct sale criteria for community organisations—
Act, s 240 (1) (a) (i)
Section 112 (1), note**

substitute

Note **Community organisation**—see the Act, dictionary.

**51 Direct sale criteria for supportive accommodation—
Act, s 240 (1) (a) (i)
Section 113 (1) (a), note**

substitute

Note **Community organisation**—see the Act, dictionary.

52 Section 142 heading

substitute

**142 Exemptions from restrictions on dealings with certain
leases—Act, s 251 (5)**

53 **Increase of change of use charge for concessional leases—Act, s 279 (1) and (2)**
Section 181 (3), definition of *consolidated or subdivided concessional lease*

omit

235 (3)

substitute

235A (4)

54 **Increase of change of use charge for recently commenced leases—Act, s 279 (1) and (2)**
Section 182 (1) (b), note

omit

235

substitute

235A

55 **Amount of refund on surrender or termination of certain leases—Act, s 300 (2)**
Section 210 (1) (b), note

substitute

Note *Community organisation*—see the Act, dictionary.

56 **Dictionary, note 3**

insert

- community organisation
- concessional lease (see s 235A)
- territory entity

**57 Dictionary, definitions of *Commonwealth entity*,
community organisation and *territory entity***

omit

Endnotes

- 1 Presentation speech**
Presentation speech made in the Legislative Assembly on 1 July 2010.
 - 2 Notification**
Notified under the Legislation Act on 30 September 2010.
 - 3 Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
-

I certify that the above is a true copy of the Planning and Development (Concessional Leases) Amendment Bill 2010, which was passed by the Legislative Assembly on 21 September 2010.

Acting Clerk of the Legislative Assembly

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