



Australian Capital Territory

Planning and Development Amendment Act 2010

A2010-4

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Australian Capital Territory

Planning and Development Amendment Act 2010

A2010-4

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 Amendment Act 2010*.

2 Commencement

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

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

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

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

Part 2 Planning and Development Act 2007

3 Legislation amended—pt 2

This part amends the *Planning and Development Act 2007*.

4 Minister's powers in relation to draft plan variations Section 76 (5) and (6)

substitute

- (5) If the Minister directs the withdrawal of a draft plan variation by the planning and land authority under subsection (3) (b) (v), the authority must prepare a notice stating that the draft plan variation is withdrawn.
- (6) The following are notifiable instruments:
- (a) an approval under subsection (3) (a);
 - (b) a direction under subsection (3) (b);
 - (c) a notice under subsection (5).

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

- (7) The planning and land authority must also publish the notice under subsection (5) in a daily newspaper.

5 Definitions—pt 5.4 Section 86, definition of *limited consultation*

substitute

limited consultation—see section 90.

**6 What are *technical amendments* of territory plan?
Section 87 (e)**

substitute

- (e) a variation required to bring the territory plan into line with the national capital plan;
- (f) a variation to omit something that is obsolete or redundant in the territory plan;

Examples—obsolete or redundant things

- 1 a structure plan that is no longer relevant because all the land that the structure plan applies to ceases to be in a future urban area
- 2 a provision of the territory plan that has become redundant because of the enactment of a law that applies in the Territory

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).

- (g) a variation to clarify the language in the territory plan if it does not change the substance of the plan.

**7 Is consultation needed for technical amendments?
New section 88 (1) (c)**

insert

- (c) a variation to clarify the language in the territory plan if it does not change the substance of the plan.

**8 Making technical amendments
Section 89 (2)**

substitute

- (2) The planning and land authority may put the plan variation (incorporating any amendments made to the variation following the limited consultation) in writing.

9 New section 116A*insert***116A Code track—effect of s 134 on development approval**

- (1) This section applies if—
 - (a) an authorised use of the land, or an existing building or structure on the land, is exempt under section 134 (1) (Exempt development—authorised use); and
 - (b) there is a development proposal in relation to the land; and
 - (c) if the proposed development were carried out, the authorised use of the land, or an existing building or structure on the land, would stop being exempt under section 134 (2) or (3); and
 - (d) if a development application were made for both the development proposal and a use mentioned in subsection (2) (b), the application would be assessed in the code track.
- (2) The person proposing the development proposal must apply for development approval for—
 - (a) the development proposal; and
 - (b) any use (the *proposed use*) of the land, or a building or structure on the land, that—
 - (i) is an authorised use of land, or a building or structure on the land that is exempt under section 134 (1); and
 - (ii) is intended to continue to apply to the land after the development proposal is carried out.

- (3) In deciding the development application in the code track, the decision-maker—
- (a) must not refuse to approve the application only on the ground that, if the application were an application only for the proposed use the application would be refused; and
 - (b) must not approve the application on a condition only because, if the application were an application only for the proposed use the application would be approved on the condition.

Example

Bernice is the lessee of land for which the authorised use is residential and on which there is a house. The authorised use is exempt under s 134 (1). Bernice wants to build a double garage on the land which will require development approval. If the double garage was built, the authorised use of the land would stop being exempt under s 134 (3). In addition to applying for development approval to build and use the double garage, Bernice must also apply for development approval to use the land and house for residential purposes.

The decision-maker cannot refuse to approve the application, or approve it on a condition, only on the ground that, if the application were only for the use of the land for residential purposes, or use of the house, the decision-maker would refuse the application or approve it on conditions.

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).

10 New section 120A

insert

120A Merit track—effect of s 134 on development approval

- (1) This section applies if—
- (a) an authorised use of the land, or an existing building or structure on the land, is exempt under section 134 (1) (Exempt development—authorised use); and
 - (b) there is a development proposal in relation to the land; and

- (c) if the proposed development were carried out, the authorised use of the land, or an existing building or structure on the land, would stop being exempt under section 134 (2) or (3); and
 - (d) if a development application were made for both the development proposal and a use mentioned in subsection (2) (b), the application would be considered in the merit track.
- (2) The person proposing the development proposal must apply for development approval for—
- (a) the development proposal; and
 - (b) any use (the *proposed use*) of the land, or a building or structure on the land, that—
 - (i) is an authorised use of land, or a building or structure on the land that is exempt under section 134 (1); and
 - (ii) is intended to continue to apply to the land after the development proposal is carried out.
- (3) In deciding the development application in the merit track, the decision-maker—
- (a) must not refuse to approve the application only on the ground that, if the application were an application only for the proposed use the application would be refused; and

- (b) must not approve the application on a condition only because, if the application were an application only for the proposed use the application would be approved on the condition.

Example

Donald is the lessee of land for which the authorised uses are residential, retail and commercial, and on which there is a building that is mixed residential and retail, and another building that is used for commercial. Donald wants to demolish the commercial building, which will require a development approval. Donald does not want to use the land for commercial purposes any more. If the commercial building was demolished, the authorised uses of the land would stop being exempt under s 134 (3). In addition to applying for development approval to demolish the commercial building, Donald must also apply for development approval to use the land for residential and retail purposes, but need not apply for approval for use for commercial purposes.

The decision-maker cannot refuse to approve the application, or approve it on a condition, only on the ground that, if the application were only for the use of the land and for residential purposes or retail purposes, or use of the mixed residential and retail building, the decision-maker would refuse the application or approve it on conditions.

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).

11 New section 129A

insert

129A Impact track—effect of section 134 on development approval

- (1) This section applies if—
- (a) an authorised use of the land, or an existing building or structure on the land, is exempt under section 134 (1) (Exempt development—authorised use); and
 - (b) there is a development proposal in relation to the land; and

- (c) if the proposed development were carried out, the authorised use of the land, or an existing building or structure on the land, would stop being exempt under section 134 (2) or (3); and
 - (d) if a development application were made for both the development proposal and a use mentioned in subsection (2) (b), the application would be assessed in the impact track.
- (2) The person proposing the development proposal must apply for development approval for—
- (a) the development proposal; and
 - (b) any use (the *proposed use*) of the land, or a building or structure on the land, that—
 - (i) is an authorised use of land, or a building or structure on the land that is exempt under section 134 (1); and
 - (ii) is intended to continue to apply to the land after the development proposal is carried out.
- (3) In deciding the development application in the impact track, the decision-maker—
- (a) must not refuse to approve the application only on the ground that, if the application were an application only for the proposed use the application would be refused; and

- (b) must not approve the application on a condition only because, if the application were an application only for the proposed use the application would be approved on the condition.

Example

Barbara is the lessee of land for which the authorised uses are retail and commercial and on which there are office buildings and shops. Barbara wants to undertake earthworks to clear an area of vegetation for people to park on the land, which will require a development approval. If the earthworks were carried out, the authorised uses of the land would stop being exempt under s 134 (2). In addition to applying for development approval to undertake the earthworks, Barbara must also apply for development approval to use the land for retail and commercial purposes.

The decision-maker cannot refuse to approve the application, or approve it on a condition, only on the ground that, if the application were only for the use of the land for retail purposes or commercial purposes, or use of the office buildings and shops, the decision-maker would refuse the application or approve it on conditions.

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

12 New section 131B

insert

131B Development proposal for lease variation other than in designated area

- (1) This section applies to a development proposal that is a variation of a lease other than a lease in a designated area.
- (2) The development proposal must be dealt with under the provisions of this Act that apply to the merit track unless—
 - (a) the territory plan requires the proposal to be dealt with under another track; or
 - (b) the impact track applies to the proposal under section 123 (Impact track applicability).

- (3) However, if the development proposal is a variation to a lease to add an additional authorised use under the lease, the proposal must be dealt with under the provisions of this Act that apply to the track that applies to the proposed additional authorised use under the territory plan.

13 Section 133

substitute

133 What is an exempt development?

In this Act:

exempt development—

- (a) means development that is exempt from requiring development approval under—
- (i) the relevant development table; or
- Note 1* Development tables are dealt with in s 54.
- Note 2* ***Relevant development table***—see the dictionary.
- (ii) section 134; or
 - (iii) a regulation; but
- (b) for paragraph (a) (i) and (iii)—does not include development on land if—
- (i) the development is inconsistent with a provision of a development approval for other development on the land; and

- (ii) the development approval is given on the condition that the provision is complied with.

Example—condition that provision complied with

Development plans do not include windows in the front wall. The approval is expressed to be subject to the condition that the front wall not have windows.

Example—not a condition that provision complied with

Development plans do not include windows in the front wall. The approval is given without explicit mention of windows in the front wall being a condition of the approval.

Note 1 An approval may be given subject to conditions, see s 165.

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).

**14 Exempt development—authorised use
Section 134 (6) (b)**

substitute

- (b) the licence or permit—
 - (i) has expired and has not been renewed on an application to renew the licence or permit made within 6 months after the day of expiry; or
 - (ii) ends other than by expiring.

15 Section 134, new note

after section 134 (8), insert

Note As the use of land, or a building or structure on the land, is development (see s 7), if the use of the land, or a building or structure on the land, stops being exempt under this section, development approval will be required for the use. Once development approval has been given for the use, it continues indefinitely unless it ends under s 186 (see also s 188). A further development approval will not be required for use of the land, or a building or structure on the land, unless the existing development approval does not cover a proposed new use of the land, or a building or structure on the land.

**16 What is *publicly notified* for ch 7?
Section 152 (2) (a)**

substitute

- (a) under section 155 (Major public notification) and, if the development proposal is, or includes, a lease variation—section 154 (Public notice to registered interest holders) (if applicable);

17 New section 154 (3)

insert

- (3) The validity of a development approval is not affected by a failure by the planning and land authority to comply with this section.

18 New division 7.3.4A

insert

Division 7.3.4A Notice of development applications to registrar-general

157A Notice of development applications

- (1) The planning and land authority must give written notice of each development application lodged with the authority to the registrar-general for recording under the *Land Titles Act 1925*, part 8A (Record of administrative interests).
- (2) The notice under subsection (1) must include the following:
 - (a) a description of the development;
 - (b) the assessment track under which the development is to be assessed;
 - (c) the approval status of the application;

Examples—approval status

- 1 pending
- 2 approved
- 3 approved on conditions
- 4 refused
- 5 under review by the ACAT

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).

- (d) anything else prescribed by regulation.
- (3) If the approval status of a development application changes, the planning and land authority must give written notice to the registrar-general of the change.

**19 Direction that development applications be referred to Minister
Section 158 (3)**

substitute

- (3) If the Minister gives a direction under subsection (1) in relation to an application, the planning and land authority—
- (a) must take no further action that would lead to a decision by the authority on the application; but
 - (b) may continue to take procedural steps in relation to the application, unless the Minister's direction under subsection (1) directs the authority not to take a procedural step.

Examples—procedural steps

- 1 entity referral under div 7.3.3 (Referral of development applications)
- 2 public notification under div 7.3.7 (Extensions of time for deciding development applications)

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).

**20 Notice of approval of application
Section 170 (1) (c)**

substitute

- (c) if the application approved does not relate to a variation of a lease—to the registrar-general for recording under the *Land Titles Act 1925*, part 8A (Record of administrative interests); and

**21 When development approvals take effect—ACAT review
Section 178 (1) (b)**

substitute

- (b) application is made to the ACAT for review of the decision to approve the application and the ACAT confirms or varies the decision, or makes a substitute decision;

22 Section 178 (2)

after

development application

insert

, as confirmed, varied or substituted by the ACAT,

23 Section 178 (2) (b)

substitute

- (b) the day that the confirmation, variation or substitution by the ACAT takes effect under the *ACT Civil and Administrative Tribunal Act 2008*, section 69 (Effect of orders for administrative review).

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 69 provides that an order of the ACAT made under s 68 (3) is taken to be a decision of the decision-maker and takes effect from the day the order is made unless the ACAT orders otherwise.

24 **When development approval takes effect—activity not allowed by lease**
Section 179 (2)

after

development application

insert

or, if an application for review has been made in relation to the approval, the approval as confirmed, varied or substituted by the ACAT,

25 **Section 179 (2) (c) excluding note**

substitute

(c) if an application for review has been made in relation to the approval—

- (i) the day that the confirmation, variation or substitution by the ACAT takes effect under the *ACT Civil and Administrative Tribunal Act 2008*, section 69 (Effect of orders for administrative review); or

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 69 provides that an order of the ACAT made under s 68 (3) is taken to be a decision of the decision-maker and takes effect from the day the order is made unless the ACAT orders otherwise.

- (ii) the day after the day the application for review is withdrawn, dismissed or struck out.

26 When development approval takes effect—condition to be met
Section 180 (2)

after

development application

insert

or, if an application for review has been made in relation to the approval, the approval as confirmed, varied or substituted by the ACAT,

27 Section 180 (2) (c)

substitute

(c) if an application for review has been made in relation to the approval—

- (i) the day that the confirmation, variation or substitution by the ACAT takes effect under the *ACT Civil and Administrative Tribunal Act 2008*, section 69 (Effect of orders for administrative review); or

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 69 provides that an order of the ACAT made under s 68 (3) is taken to be a decision of the decision-maker and takes effect from the day the order is made unless the ACAT orders otherwise.

- (ii) the day after the day the application for review is withdrawn, dismissed or struck out.

28 **When development approval takes effect—application for reconsideration**
Section 182 (2)

after

development application

insert

or, if an application for review has been made in relation to the decision to confirm the original decision, the decision as confirmed, varied or substituted by the ACAT,

29 **Section 182 (2) (c)**

substitute

(c) if an application for review has been made in relation to the decision to confirm the original decision—

- (i) the day that the confirmation, variation or substitution by the ACAT takes effect under the *ACT Civil and Administrative Tribunal Act 2008*, section 69 (Effect of orders for administrative review); or

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 69 provides that an order of the ACAT made under s 68 (3) is taken to be a decision of the decision-maker and takes effect from the day the order is made unless the ACAT orders otherwise.

- (ii) the day after the day the application for review is withdrawn, dismissed or struck out.

**30 End of development approvals other than lease variations
Section 184 (2) (c)**

substitute

- (c) if no period is stated in the approval for starting the development or any stage of the development—
- (i) the development or stage of development has not been started 2 years after the day the approval takes effect; or
 - (ii) if an appeal is made to the ACAT or a court in relation to the approval—the development or stage of the development has not started 2 years after the day the appeal ends; or

Note **Ends**—see the dictionary.

31 New section 184 (2) (e) (iii)

insert

- (iii) if an appeal is made to the ACAT or a court in relation to the approval—
- (A) 2 years after the day the appeal ends; or
 - (B) if an extension of the 2-year period is granted under this section—the extended period after the appeal ends.

Note **Ends**—see the dictionary.

32 Section 184 (2) (f)

substitute

- (f) if the approval relates to land comprised in a lease that requires the development to be completed within a stated time—
- (i) the development is not completed within the stated time; or

- (ii) if the stated time has been extended under section 298B—the development is not completed within the extended time; or

33 Section 184 (4), definition of *prescribed period*, paragraph (b)

substitute

- (b) if no time is stated in the approval for finishing the development—
 - (i) the period ending 2 years after the day the development begins; or
 - (ii) if an appeal is made to the ACAT or a court in relation to the approval—the period ending 2 years after the day the appeal ends.

Note **Ends**—see the dictionary.

**34 End of development approvals for lease variations
Section 185 (2) (b) (except note)**

substitute

- (b) at the end of—
 - (i) the period of 2 years starting on the day after the day the approval takes effect; or
 - (ii) if an appeal is made to the ACAT or a court in relation to the approval—the period of 2 years starting on the day after the day the appeal ends.

Note **Ends**—see the dictionary.

**35 End of development approvals for use under lease without lease variation, licence or permit
Section 186 (3) and (4)**

substitute

- (3) If only 1 use is allowed under the development approval, the development approval ends if the use in accordance with the development approval does not begin or happen before the end of—
- (a) the period of 2 years starting on the day after the day the approval takes effect; or
 - (b) if an appeal is made to the ACAT or a court in relation to the approval—the period of 2 years starting on the day after the day the appeal ends.

Note **Ends**—see the dictionary.

- (4) If more than 1 use is allowed under the development approval, the development approval ends if none of the uses in accordance with the development approval begin or happen before the end of—
- (a) the period of 2 years starting on the day after the day the approval takes effect; or
 - (b) if an appeal is made to the ACAT or a court in relation to the approval—the period of 2 years starting on the day after the day the appeal ends.

Note **Ends**—see the dictionary.

36 **End of development approvals for use under licence or permit**
Section 187 (2) (d), except note

substitute

- (d) the licence or permit has expired and has not been renewed on an application to renew the licence or permit made within 6 months after the day of expiry; or
- (e) the licence or permit ends other than by expiring.

37 **Section 187 (3)**

substitute

- (3) The development approval ends if use in accordance with the development approval does not begin or happen before the end of—
 - (a) the period of 2 years starting on the day after the day the approval takes effect; or
 - (b) if an appeal is made to the ACAT or a court in relation to the approval—the period of 2 years starting on the day after the day the appeal ends.

Note *Ends*—see the dictionary.

38 **Applications to amend development approvals**
Section 197 (1), new note

insert

Note If the development proposal changes in accordance with the development approval condition requiring the change, the change is covered by the approval, so this section does not apply.

**39 Deciding applications to amend development approvals
Section 198 (1), example**

omit

floor

substitute

room

40 Section 198 (1), new note 3

insert

Note 3 The planning and land authority must decide whether to amend the development approval as soon as possible (see Legislation Act, s 151B).

41 Section 198 (2)

substitute

- (2) However, section 162 (3) (Deciding development applications) does not apply to the application.
- (2A) The planning and land authority must refuse to amend the development approval if satisfied that—
- (a) if the original proposal was in the code track—the changed development proposal would be in the merit track or impact track; or
 - (b) if the original proposal was in the merit track—the changed development proposal would be in the impact track; or
 - (c) the changed development proposal would be in breach of a condition on the approval imposed (rather than confirmed or varied) by a court or tribunal.

**42 Development applications for developments undertaken without approval
New section 205 (1A)**

insert

- (1A) If the development becomes an exempt development—
- (a) the development is taken to have been an exempt development since the development was started; but
 - (b) the exemption of the development does not affect any proceeding under this part, whether or not the proceeding starts before the development became exempt.

**43 Definitions—ch 9
Section 234, definition of *rental lease***

omit

nominal

substitute

a nominal

**44 Meaning of *concessional lease* and *lease*—Act
Section 235 (1), definition of *concessional lease*,
paragraph (a)**

omit

to the Territory

45 Section 235 (2)

substitute

- (2) For subsection (1), definition of *concessional lease*, paragraph (a)—
- (a) a payment has been *made* if it was paid to the Territory, a territory entity, a Commonwealth entity or the entity that originally granted the lease; and
 - (b) it does not matter whether the consideration for the grant of the lease was paid as a lump sum or is payable under the lease as rent.

46 Section 235 (3), new definitions

insert

Commonwealth entity means—

- (a) the Commonwealth; 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)*.

territory entity means—

- (a) a territory authority; or
- (b) a territory instrumentality; or
- (c) a territory-owned corporation.

47 New section 235 (4)

insert

- (4) A lease granted before the commencement of this subsection for which a payment has been made under subsection (1) (a) (i), whether before or after the commencement of that subsection, is taken not to be a concessional lease, starting from the day the payment was made.

48 New section 238A

insert

238A Lease conditional on approval for stated development

- (1) This section applies to a lease granted under section 238 if—
- (a) a provision of the lease requires the lessee to obtain the approval of the planning and land authority to undertake development on the land comprised in the lease; and
 - (b) the development is exempt development.
- (2) The lessee does not require the planning and land authority's approval for the development.

**49 Restriction on direct sale by authority
Section 240 (2)**

substitute

- (2) The Executive may approve the grant by direct sale of a lease other than in accordance with criteria prescribed if satisfied that—
- (a) the grant meets 1 or more of the grant objectives; and
 - (b) a grant by a means other than direct sale—
 - (i) is not likely to meet any of the grant objectives; or

- (ii) may meet 1 or more of the grant objectives but is unlikely to meet the objective to the same extent as the grant by direct sale of the lease.

50 Section 240 (4), new definition of *grant objective*

insert

grant objective—each of the following is a ***grant objective***:

- (a) to benefit the economy of the ACT or region;
- (b) to contribute to the environment, or social or cultural features in the ACT;
- (c) to introduce new skills, technology or services in the ACT;
- (d) to contribute to the export earnings and import replacement of the ACT or region;
- (e) to facilitate the achievement of a major policy objective.

**51 Payment for leases
Section 246 (2) (a)**

omit

the full market

substitute

not less than the market

**52 Failure to accept and execute lease
Section 250 (4)**

omit

a copy of

**53 Restrictions on dealings with certain leases
New section 251 (1) (c) (iii) and (iv)**

insert

- (iii) a lease—
 - (A) that was offered for sale under section 238 (1) (a) or (c) but not sold; and
 - (B) for which not less than the market value was paid for the subsequent direct sale; or
- (iv) a lease—
 - (A) that was sold under section 238 (1) (c) but the contract of sale was rescinded or otherwise ended before the lease was granted under the contract; and
 - (B) for which not less than the market value was paid for the subsequent direct sale; or

54 New section 251 (1A)

insert

- (1A) This section does not apply in relation to the following leases:
 - (a) a concessional lease;
 - (b) a rural lease.

**55 Decision on rent payout lease variation application
Section 272B (1) (a)**

omit

nominal

substitute

a nominal

56 Section 272B (3)

omit

planning and development authority

substitute

planning and land authority

**57 Power to decide rent payout applications deemed refused
Section 272D (2)**

omit

nominal

substitute

a nominal

**58 Lease to be varied to pay out rent
Section 273 (3)**

omit

rent of 5 cents each year

substitute

nominal rent

**59 Dealings with rural leases
Section 284 (4)**

substitute

- (4) The planning and land authority must consent under this section to a dealing in relation to a lease if—
- (a) either—
- (i) the lessee's domestic partner or child is the person to whom—
 - (A) the lease is being assigned or transferred; or
 - (B) the land comprised in the lease, or part of it, is sublet; or
 - (C) possession of the land comprised in the lease, or part of it, is being given; or
 - (ii) the holding period for the lease has ended; and
- (b) if section 283 applies to the dealing—the person to whom the lease is to be granted has entered into an agreement with the Territory in accordance with section 283.

**60 Transfer of land subject to building and development provision
New section 298 (2) (b) (v)**

before the examples, insert

- (v) the authority is satisfied that the transfer or assignment (the *relevant transfer or assignment*) of the lease is—
- (A) by the Territory, a territory entity, the Commonwealth or a Commonwealth entity (each of which is an *entity*); and
 - (B) within the entity's functions; and

- (C) necessary because of a change in a policy of the Territory, the Commonwealth or the entity that affects more than 1 transfer or assignment, or potential transfer or assignment, including the relevant transfer or assignment.

61 New section 298 (6)

insert

- (6) In this section:

Commonwealth entity means—

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

territory entity means—

- (a) a territory authority; or
- (b) a territory instrumentality; or
- (c) a territory-owned corporation.

62 Section 298A heading

substitute

298A Application for extension of time to commence or complete works

63 Section 298A (1)

omit

building or development

substitute

works

64 Section 298A (3) to (5)

substitute

- (3) The application must be accompanied by the most recent assessment notice for rates for the land.

65 Section 298B heading

substitute

298B Extension of time to commence or complete works**66 Section 298B (3)**

omit

may approve the extension only if

substitute

must approve the extension if

67 New section 298C

in part 9.9, insert

**298C Extension of time to commence or complete works—
required fee**

- (1) If the planning and land authority approves an extension of a stated time under section 298B, the approval is subject to the condition that the applicant pays the planning and land authority the amount, or the total of the amounts, (the *required fee*) for each year, or part year, of the period of extension of time approved, worked out as follows:

$$A \times \frac{D}{365} \times B$$

Example

Frank applies for an extension of time for 1 October 2009 to 31 December 2011 (2 years and 92 days). In Frank's case, the *Planning and Development Regulation 2008* prescribes A in the above formula to be 1 for the 1st year, 2 for the 2nd year and 3 for the 3rd year of the period of extension. The fee is worked out using the following formula: [1 x 365/365 x B] + [2 x 365/365 x B] + [3 x 92/365 x B].

Note 1 The required fee may be waived under the *Financial Management Act 1996*, s 131.

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).

- (2) However, if an extension (the *earlier extension*) of time has been approved, in working out the required fee for a further extension—
- (a) the formula for working out the required fee applies as if the period of extension included each earlier extension, other than—
 - (i) an earlier extension for which the required fee was waived under the *Financial Management Act 1996*, section 131; or
 - (ii) an earlier extension prescribed by regulation; and
 - (b) the required fee is reduced by—
 - (i) the amount of the required fee paid for each earlier extension; and
 - (ii) if part of the required fee was waived under the *Financial Management Act 1996*, section 131 for an earlier extension—the amount waived.

- (3) In this section:

A is the figure, not more than 5, prescribed by regulation for the relevant year of the period of extension.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48).

B is the amount of rates imposed under the *Rates Act 2004*, section 14 in relation to the land for the financial year in which the application is made.

D is the lesser of—

- (a) 365; and
- (b) the number of days for which the extension is sought in the relevant year.

period of extension means—

- (a) the period of extension applied for under subsection (2); or
- (b) if an application seeks extensions for 2 or more building and development provisions in a lease—the longest of the extensions sought.

68 **Content of controlled activity orders**
Section 358 (3) (c)

substitute

- (c) to comply with a lease provision or development agreement;
- (ca) to restore any land, or a building or structure on the land, that has been altered, damaged or fallen into disrepair in breach of a lease provision or development agreement;

69 **New section 358 (3) (m)**

insert

- (m) not to do anything that is a controlled activity whether or not a controlled activity order has been, or could be, made under paragraphs (a) to (l).

70 **Entry on notice for rectification work and monitoring**
Section 391B (2)

substitute

- (2) The planning and land authority may give an occupier of the premises written notice (an *intention to enter notice*) of the inspector's intention to enter the premises.

71 Section 391B (6)

omit everything before paragraph (a), substitute

- (6) Before an inspector enters the premises in accordance with the intention to enter notice, the inspector must—

72 New section 395B

insert

395B Authority may ask for information about leases from commissioner for revenue

- (1) The planning and land authority may, in writing, ask the commissioner for revenue for the following information in relation to a lease:

- (a) the lessee's name;
(b) the lessee's home address or other contact address.

Note 1 The Information Privacy Principles apply to the planning and land authority (see *Privacy Act 1988* (Cwlth), s 14 to s 16).

Note 2 The planning and land authority may ask the commissioner for information in relation to more than 1 lease at a time. Words in the singular include the plural (see *Legislation Act*, s 145 (b)).

- (2) The commissioner for revenue must disclose the information required in a request made in accordance with subsection (1).

Note See also the *Taxation Administration Act 1999*, s 97 (c) for power to disclose the information.

- (3) The planning and land authority must not make a request under subsection (1) in relation to a lease more often than—

- (a) once every 3 months; or
(b) if a regulation prescribes a longer period—once each period.

- (4) Nothing in this section prevents the planning and land authority from asking for information under section 395A.

(5) In this section:

lease—see section 235.

lessee—see section 234.

**73 When may inspector apply for rectification work order?
Section 402C (e) (ii) and (iii)**

substitute

- (ii) an inspector, or an accompanying authorised person, has been refused entry in accordance with an intention to enter notice given under section 391B;
- (iii) a consent to the entry of an inspector or an accompanying authorised person to carry out the rectification work has been withdrawn;
- (iv) a consent to the entry or re-entry of an authorised person to carry out or complete the rectification work has been withdrawn.

**74 When may inspector apply for monitoring warrant?
Section 402N (b) (i)**

substitute

- (i) an inspector has been refused entry in accordance with an intention to enter notice given under section 391B;

75 New section 404A

insert

404A Action in relation to seized thing

- (1) An inspector who seizes a thing under section 392D (Power to seize things on entry under search warrant) may—
 - (a) remove the thing from the premises where it was seized to another place; or
 - (b) leave the thing at the premises but restrict access to it.
- (2) A person commits an offence if—
 - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (1) (b); and
 - (b) the person does not have an inspector's approval to interfere with the thing.

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

**76 ACAT review—people who made representations etc
Section 409 (2)**

omit

4 weeks

substitute

20 working days

77 Section 431

substitute

431 Expiry—ch 15

- (1) This chapter (other than part 15.1, part 15.5 and section 467) expires 3 years after the commencement day.
- (2) Part 15.1, part 15.5 and section 467 expire 5 years after the commencement day.

**78 Transitional—development application lodged on or after commencement day for estate development plan given before commencement day
Section 442C (1) (b)**

omit

planning and development authority

substitute

planning and land authority

**79 Transitional—status of leases and licences
New section 456 (1A)**

insert

- (1A) This section also applies to the following leases granted or continued, or purported to have been granted or continued, under the repealed Act, whether or not in force immediately before the commencement day:
 - (a) 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;
 - (b) a concessional lease.

80 Section 456A heading

substitute

456A Transitional—application for extension of time to commence or complete development**81 Section 456A (1)**

omit

building or development

substitute

a development

82 Section 456A (4)

omit

building and development

substitute

works

83 Section 456A (4) (b)

omit

section 298A (3) (b)

substitute

section 298C (1)

84 Section 456A (5)

omit

building and development

substitute

works

85 Schedule 1, item 2, column 4

omit

applicant

substitute

applicant for development approval

86 Schedule 1, item 3, column 2

omit

to the extent that the decision

substitute

to the extent that the development proposal

87 Schedule 1, item 3, column 4

omit

applicant

substitute

applicant for development approval

88 Schedule 1, item 4, column 2

after paragraph (b), insert

Note A decision under s 162 is reviewable only to the extent that the development proposal—

(a) is subject to a rule and does not comply with the rule; or

(b) is not subject to a rule.

(see s 121 (2)).

89 Schedule 1, item 5, column 4

omit

applicant

substitute

applicant for development approval

90 Schedule 1, item 25, column 2

omit

nominal

substitute

a nominal

91 Dictionary, new definition of *end*

insert

ends—an appeal *ends* if it is decided, withdrawn or struck out.

92 Dictionary, new definition of *nominal rent*

insert

nominal rent means—

- (a) rent of 5 cents each year; or
- (b) if another nominal amount each year is prescribed by regulation—rent of the other nominal amount.

93 Dictionary, definition of *nominal rent lease*

omit

for nominal

substitute

for a nominal

94 Dictionary, definition of *variation*, paragraph (a) (iv)

substitute

- (iv) does not include—
 - (A) the surrender of the lease and the grant of a further lease under section 254 (Grant of further leases); or
 - (B) a variation to a deed that is incorporated into, or referred to in, the lease, if the deed is varied in a way that is provided for in the deed; and

Part 3 Planning and Development Regulation 2008

95 Legislation amended—pt 3

This part amends the *Planning and Development Regulation 2008*.

96 Exemptions from restrictions on dealings with certain leases—Act, s 251 (3) Section 142 (1) and note

omit

97 Section 142 (2) (e)

omit

98 Section 202 heading

substitute

202 Application for extension of time—earlier extension—Act, s 298C (2) (a) (ii)

99 Section 203 heading

substitute

203 Application for extension of time—general rule—Act, s 298C (3), def A

100 Section 203 (3), definition of *period of extension*, and note

substitute

period of extension—see the Act, section 298C (3).

Note The Act, s 298C (3) defines *A* to be 5 if a lower figure is not prescribed.

101 Section 204 heading

substitute

204 Application for extension of time—hardship reason—Act, s 298C (3), def A

102 Section 204 (4), definition of *period of extension*

substitute

period of extension—see the Act, section 298C (3).

103 Section 205 heading

substitute

205 Application for extension of time—external reason—Act, s 298C (3), def A

104 Section 206 heading

substitute

206 Application for extension of time—lease transferred or assigned in special circumstances—Act, s 298C (3), def A

105 Section 207 heading*substitute***207 Application for extension of time—certain leases granted before 31 March 2008—Act, s 298C (3), def A****106 Securing things seized under the Act, pt 12.3
Section 403***omit***107 Criterion 5—compliance with lease and other
development approvals
Schedule 1, section 1.15 (1) (a)***omit***108 Schedule 1, section 1.15 (2) and examples***omit*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 December 2009.

2 Notification

Notified under the Legislation Act on 17 February 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 Amendment Bill 2010, which originated in the Legislative Assembly as the Planning and Development Amendment Bill 2009 (No 2) and was passed by the Assembly on 11 February 2010.

Acting Clerk of the Legislative Assembly

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