



Australian Capital Territory

Planning and Development (Extension of Time) Amendment Act 2014

A2014-13

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J2014-129

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Australian Capital Territory

Planning and Development (Extension of Time) Amendment Act 2014

A2014-13

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 (Extension of Time) Amendment Act 2014*.

2 Commencement

This Act commences on the 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 New division 9.9.1 heading

before section 296, insert

Division 9.9.1 Building and development provisions—certificates of compliance

5 New division 9.9.2 heading

before section 298, insert

Division 9.9.2 Building and development provisions—transfer of land

6 Sections 298A to 298C

substitute

Division 9.9.3 Building and development provisions—extension of time to complete works

298A Application—div 9.9.3

- (1) This division applies to a lease on and from 1 April 2014 if—
 - (a) if the lease includes a building and development provision requiring works be completed within a stated time—the stated time ends on or after 1 April 2014; and

- (b) if an extension of time to complete works under the lease has been approved under section 298B (Extension of time to commence or complete works), as in force immediately before the commencement of this section—the extension of time ends on or after 1 April 2014; and
 - (c) if the planning and land authority approves an extension of time to complete works under section 474 (Application for extension of time before commencement day—no decision)—the extension of time ends on or after 1 April 2014; and
 - (d) if the planning and land authority approves an extension of time to complete works under section 475 (No application for extension of time before commencement day)—the extension of time ends on or after 1 April 2014.
- (2) This section expires 2 years after the day it commences.

Note Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

298B Extension of time to complete works

- (1) This section applies if—
- (a) a lease includes a building and development provision requiring works be completed within a stated time; and
 - (b) a certificate of occupancy has not been issued for the works; and
 - (c) the works have not been completed within the stated time.
- (2) The time to complete the works is extended indefinitely unless the planning and land authority—
- (a) extends the time to complete the works to another stated time; or
 - (b) refuses to extend the time to complete the works.

- (3) The planning and land authority may extend the time to complete the works to another stated time only if—
- (a) if a time limit for completing the works is prescribed by regulation—the other stated time is on or before the prescribed time; or
 - (b) any of the prescribed criteria apply.
- (4) The planning and land authority may refuse to extend the time to complete the works only if—
- (a) if a time limit for completing the works is prescribed by regulation—the time limit has been reached; or
 - (b) any of the prescribed criteria apply.
- (5) The period of extension starts when the stated time in the building and development provision to complete the works ends.
- (6) The period of extension ends—
- (a) if the time to complete the works is extended indefinitely—when the construction occupations registrar issues a certificate of occupancy in relation to the lease; or
 - (b) if the time to complete the works is extended to another stated time—on the other stated time.
- (7) In this section:
- prescribed criteria*** means—
- (a) completion of the works is in the public interest; or
 - (b) development of the land subject to the lease is required for residential or commercial purposes; or
 - (c) criteria prescribed by regulation.

298C Extension of time to complete works—decision by planning and land authority

- (1) This section applies if the time to complete works under a lease is extended indefinitely under section 298B (2).
- (2) The planning and land authority may, on its own initiative, decide that the extension of time to complete the works will end at a stated time.
- (3) However, the planning and land authority must not make a decision under subsection (2) before a fee is payable in relation to an extension of time.
- (4) The planning and land authority may decide that an extension of time to complete the works will end at a stated time only if—
 - (a) if a time limit for completing the works is prescribed by regulation—the stated time is on or before the prescribed time; or
 - (b) any of the prescribed criteria apply.
- (5) The period of extension ends on the stated time.
- (6) In this section:
prescribed criteria means—
 - (a) completion of the works is in the public interest; or
 - (b) development of the land subject to the lease is required for residential or commercial purposes; or
 - (c) criteria prescribed by regulation.

298D Extension of time to complete works—required fee

- (1) If the time to complete the works is extended under section 298B or section 298C, the lessee must pay 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 the extension of time, worked out as follows:

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

Example

Frank's lease includes a building and development provision requiring the works be completed by 15 May 2016. The works are not completed by 15 May 2016. A time limit for completing the works is not prescribed in the regulation, and the prescribed criteria do not apply. The planning and land authority extends the time for completing the works indefinitely. In Frank's case, the *Planning and Development Regulation 2008* prescribes A in the above formula to be 0 for the first 4 years and 1 for the 5th year of the period of extension. No fee is payable for the first 4 years of the extension (until 15 May 2020). If the works are completed after 15 May 2020 but before 15 May 2021, Frank is liable to pay a fee equal to his rates for the year [$1 \times 365/365 \times B$].

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) The planning and land authority must, at the end of each year, or part year of the period of extension, give the lessee written notice of the required fee payable for the year or part year.
- (3) The required fee payable for a year or part year must be paid on or before the payment date stated in the notice.

(4) In this section:

A is the figure 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 year to which the extension of time applies.

D is the lesser of—

- (a) 365; and
- (b) the number of days in the year to which the extension of time applies.

period of extension means the period of extension under section 298B (Extension of time to complete works) or section 298C (Extension of time to complete works—decision by planning and land authority).

Division 9.9.4 Building and development provisions—reduction or waiver of required fee for extension of time to complete works

298E Meaning of *required fee*—div 9.9.4

In this division:

required fee—see section 298D (1).

298F Application for reduction or waiver for hardship

- (1) A lessee may apply to the planning and land authority for a reduction or waiver of a required fee for an extension of time to complete works if—
- (a) the lessee is an individual; and
 - (b) any of the following reasons (a *hardship reason*) applies:
 - (i) the lessee, or someone on whom the lessee is financially dependent, has a medical condition that prevents full-time employment;
 - (ii) the lessee, or someone on whom the lessee is financially dependent, is unemployed;
 - (iii) the lessee, or someone on whom the lessee is financially dependent, is bankrupt or personally insolvent;
 - (iv) someone on whom the lessee is financially dependent has died; and
 - (c) the reduction or waiver is necessary because of the hardship reason.
- Note* If a form is approved under s 425 for this provision, the form must be used.
- (2) However, a lessee may not apply for a reduction or waiver of a required fee—
- (a) in relation to more than 1 extension of time to complete works at a time; or
 - (b) if the lessee has received a reduction or waiver of a required fee for an extension of time to complete works for a hardship reason in relation to another lease within 5 years of making the application.

- (3) The application must—
 - (a) be in writing; and
 - (b) be accompanied by evidence of the hardship reason.
- (4) In this section:
medical condition includes a physical or mental illness or disability.

298G Decision on application for reduction or waiver for hardship

- (1) On application under section 298F, the planning and land authority must—
 - (a) approve a reduction or waiver of the required fee; or
 - (b) refuse a reduction or waiver of the required fee.
- (2) In deciding an application, the planning and land authority must apply any criteria prescribed by regulation for deciding the application.
- (3) The planning and land authority may reduce or waive a required fee only if—
 - (a) the authority is satisfied that—
 - (i) a hardship reason applies to the lessee; and
 - (ii) the reduction or waiver is necessary because of the hardship reason; and
 - (b) the lessee has not received a reduction or waiver of a required fee for an extension of time to complete works for a hardship reason in relation to another lease within 5 years of making the application.

- (4) In satisfying itself under subsection (3) (a), the planning and land authority may, in writing, ask the applicant for further evidence or other information in relation to the application.

Note The planning and land authority may also require information under pt 12.4.

- (5) The planning and land authority may refuse an application if the lessee does not give the planning and land authority the requested evidence or other information—
- (a) if a time is stated in the request for giving the evidence or other information—within the stated time; or
 - (b) in any other case—within 10 working days.
- (6) In deciding to reduce a required fee for an extension of time to complete works, the planning and land authority may allow the reduced fee to be paid in instalments.
- (7) In this section:
hardship reason—see section 298F (1) (b).

298H Application for waiver for lease transferred or assigned in special circumstances

- (1) A lessee, or if the lessee has died, the estate of the lessee, may apply to the planning and land authority for a waiver of a required fee for an extension of time to complete works if the lease was transferred or assigned in any of the following circumstances (a *special circumstance*):
- (a) the lessee has died;
 - (b) the transfer or assignment is made under any of the following orders:
 - (i) an order of the Family Court;

- (ii) an order of another court having jurisdiction under the *Family Law Act 1975* (Cwlth);
- (iii) an order under the *Domestic Relationships Act 1994*, division 3.2 adjusting the property interests of the parties in a domestic relationship;
- (c) the transfer or assignment happened by operation of, or under, bankruptcy or insolvency;
- (d) the transfer or assignment happened in the exercise by an authorised deposit-taking institution or finance company of a power of sale under the *Land Titles Act 1925*, section 94 that arose from a default in payment by the lessee.

Note If a form is approved under s 425 for this provision, the form must be used.

- (2) The application must—
 - (a) be in writing; and
 - (b) be accompanied by evidence of the special circumstance.

298I Decision on application for waiver for lease transferred or assigned in special circumstances

- (1) On application under section 298H, the planning and land authority must—
 - (a) approve a waiver of the required fee; or
 - (b) refuse a waiver of the required fee.
- (2) In deciding an application, the planning and land authority must apply any criteria prescribed by regulation for deciding the application.
- (3) The planning and land authority may waive a required fee only if satisfied that the lease to which the application applies was transferred or assigned in special circumstances.

- (4) In satisfying itself under subsection (3), the planning and land authority may, in writing, ask for further evidence or other information in relation to the application.

Note The planning and land authority may also require information under pt 12.4.

- (5) The planning and land authority may refuse an application if the lessee does not give the planning and land authority the requested evidence or other information—
- (a) if a time is stated in the request for giving the evidence or other information—within the stated time; or
 - (b) in any other case—within 10 working days.
- (6) In approving a waiver of fees, the period for which the waiver may be approved must not be longer than the period for completing the works under the building and development provision when the lease to which the application relates was granted.
- (7) In this section:
special circumstance—see section 298H (1).

298J Application for waiver for external reason

- (1) A lessee may apply to the planning and land authority for a waiver of a required fee for an extension of time to complete works if any of the following reasons (an *external reason*) applies to the lessee:
- (a) the lessee is unable to complete the works required under the building and development provision for the lease because—
 - (i) road or traffic infrastructure to be provided by the Territory is not complete; or
 - (ii) a sewerage, electricity, water or gas service to be provided by the Territory is not installed or connected;

- (b) the lessee is unable to complete the works required under the building and development provision for the lease because of a delay in obtaining a statutory approval required for the works, other than a delay caused in whole or in part by—
 - (i) the lessee; or
 - (ii) a decision to refuse, or impose a condition on, a statutory approval required for the works.

Example—delay not caused by par (b) (i) or (ii)

an application for review of a decision on a development application is made by a third party

Example—delay caused by lessee—par (b)

a development application does not comply with all of the requirements in s 139

Note 1 If a form is approved under s 425 for this provision, the form must be used.

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) The application must—
 - (a) be in writing; and
 - (b) state the period of extension of time for which the lessee seeks the waiver; and
 - (c) be accompanied by evidence of the external reason.

298K Decision on application for waiver for external reason

- (1) On application under section 298J, the planning and land authority must—
 - (a) approve a waiver of the required fee; or
 - (b) refuse a waiver of the required fee.

- (2) In deciding an application, the planning and land authority must apply any criteria prescribed by regulation for deciding the application.
- (3) The planning and land authority may waive a required fee only if satisfied that an external reason applies to the lessee.
- (4) In satisfying itself under subsection (3), the planning and land authority may, in writing, ask for further evidence or other information in relation to the application.

Note The planning and land authority may also require information under pt 12.4.

- (5) The planning and land authority may refuse an application if the lessee does not give the planning and land authority the requested evidence or other information—
 - (a) if a time is stated in the request for giving the evidence or other information—within the stated time; or
 - (b) in any other case—within 10 working days.
- (6) In this section:
external reason—see section 298J (1).

7 Termination of leases

Section 382 (1) (a)

substitute

- (a) either—
 - (i) a lessee contravenes this chapter or the lease; or
 - (ii) a lessee fails to pay a required fee in relation to an extension of time to complete works under section 298D; and

8 New chapter 18

insert

Chapter 18 Transitional—Planning and Development (Extension of Time) Amendment Act 2014

473 Meaning of *commencement day*—ch 18

In this chapter:

commencement day means the day this chapter commences.

old law means section 298A to section 298C of this Act, as in force immediately before the commencement day.

474 Application for extension of time before commencement day—no decision

- (1) This section applies if, before the commencement day—
 - (a) a lease includes a building and development provision requiring the completion of works to take place within a stated time; and
 - (b) the lessee has applied to the planning and land authority to extend the stated time under the old law; and
 - (c) the planning and land authority has not decided the application.
- (2) The application must be decided by the planning and land authority under the old law.

475 No application for extension of time before commencement day

- (1) This section applies if, before the commencement day—
 - (a) a lease includes a building and development provision requiring the completion of works to take place within a stated time; and
 - (b) the stated time has expired; and
 - (c) the lessee has not applied for an extension of time under the old law.
- (2) The lessee may apply for an extension of time under the old law.
- (3) The application must be decided by the planning and land authority under the old law.

476 Working out required fee paid under old law

- (1) This section applies if, before the commencement day—
 - (a) an extension of time to complete works has been approved under the old law; and
 - (b) the extension of time ends on or after 1 April 2014.
- (2) The required fee for the part of the period of extension that begins on or after 1 April 2014 and ends at the stated time is worked out under section 298D (Extension of time to complete works—required fee).

477 Building and development provision requiring works commence by a stated time

- (1) This section applies if a lease contains a building and development provision requiring works be commenced within a stated time, whether or not that stated time has expired or the lessee has applied for an extension of time under the old law.

- (2) The time is extended indefinitely, without fee, until the work has commenced.

478 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Planning and Development (Extension of Time) Amendment Act 2014*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.
- (4) A regulation under subsection (2) expires 2 years after the day it commences.

479 Expiry—ch 18

This chapter expires 2 years after the commencement day.

9 Reviewable decisions, eligible entities and interested entities
Schedule 1, items 35 and 36

substitute

35	decision under s 298B (2) (b) to extend a stated time to another stated time	planning and land authority	lessee
36	decision under s 298C (2) to decide that extension of time to complete works will end at stated time	planning and land authority	lessee

10 **Controlled activities**
Schedule 2, item 1, column 2, paragraph (a)

substitute

- (a) a provision of a lease, other than—
- (i) a building and development provision requiring the commencement of works to take place within a stated time; or
 - (ii) a building and development provision requiring the completion of works to take place within a stated time if—
 - (A) the stated time has been extended under div 9.9.3; and
 - (B) the required fee for the extended time has been paid; and
 - (C) the extended time has not ended; or

11 **Dictionary, new definition of *required fee***

insert

required fee for division 9.9.4 (Building and development provisions—reduction or waiver of required fee for extension of time to complete works)—see section 298E.

Part 3 Planning and Development Regulation 2008

12 Division 5.7.2

substitute

Division 5.7.2 Extension of time to complete required works

202 Extension of time to complete works—Act, s 298D (4), def A

- (1) This section applies to an extension of time to complete works in relation to a lease.
- (2) The prescribed figure for *A* for a year, or part of a year, is the figure mentioned in table 202, column 3 in relation to the year of the period of extension mentioned in column 2.

Table 202 General rule

column 1 item	column 2 year	column 3 figure
1	1st to 4th years	0
2	5th or later year	1

- (3) In this section:

period of extension means the period of extension under the [Act](#), section 298B (Extension of time to complete works) or section 298C (Extension of time to complete works—decision by planning and land authority).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 April 2014.

2 Notification

Notified under the [Legislation Act](#) on 20 May 2014.

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 (Extension of Time) Amendment Bill 2014, which was passed by the Legislative Assembly on 6 May 2014.

Clerk of the Legislative Assembly

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