

1991  
THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for the Environment, Land and Planning)

**Land (Planning and Environment) Bill  
1991**

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TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Crown
4. Interpretation

PART II—PLANNING

*Division 1—Preliminary*

5. Interpretation
6. Stages and parts of the Plan

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**TABLE OF PROVISIONS—continued****Section***Division 2—Territory Plan—object and effect*

- 7. Object
- 8. Effect of Plan
- 9. Effect of draft Plan variations
- 10. Effect of interim Heritage Places Register
- 11. Draft Heritage Places Register and variations—lack of effect
- 12. Plan not to have retrospective effect

*Division 3—Territory Plan—continuation and variation**Subdivision A—Territory Plan*

- 13. Continuation of Plan
- Subdivision B—Preparation of variations of the Plan*

- 14. Application
- 15. Preparation of variations
- 16. Conservator's recommendations
- 17. Heritage
- 18. Environmental reports and Inquiries
- 19. Public consultation
- 20. Consultation with the National Capital Planning Authority
- 21. Public inspection of comments
- 22. Revision, deferral or withdrawal of draft Plan variation

*Subdivision C—Executive approval and consideration by the Legislative Assembly*

- 23. Application
- 24. Submission of draft Plan variation to Executive
- 25. Executive powers
- 26. Return of draft Plan variation to the Authority
- 27. Notice of revival of deferred draft Plan variation
- 28. Consideration of Plan variation by Legislative Assembly
- 29. Commencement

*Subdivision D—Plan variations—defined land*

- 30. Interpretation
- 31. Plan variations in relation to defined land

*Division 4—Australian Capital Territory Planning Authority**Subdivision A—Establishment, constitution, functions and powers*

- 32. Establishment
- 33. Constitution
- 34. Agent of the Crown
- 35. Functions

**TABLE OF PROVISIONS—continued**

<b>Section</b>	
36.	Executive policy directions
37.	Powers
38.	Annual report
39.	Delegation
40.	Staff
41.	Effect of irregularity of appointment of Chief Planner <i>Subdivision B—Chief Planner</i>
42.	Chief Planner
43.	Acting Chief Planner
44.	Remuneration and allowances
45.	Leave of absence
46.	Disclosure of interests
47.	Other employment, remuneration, business etc.
48.	Resignation
49.	Termination of appointment <i>Division 5—Miscellaneous</i>
50.	Challenge to validity of provisions of Plan <b>PART III—HERITAGE</b> <i>Division 1—Preliminary</i>
51.	Interpretation
52.	Interim Registers—interpretation <i>Division 2—Heritage Places Register</i>
53.	Content of Heritage Places Register <i>Division 3—Interim Heritage Places Registers</i> <i>Subdivision A—Effect</i>
54.	Effect of interim Registers <i>Subdivision B—Preparation, notification, submission of Registers</i>
55.	Criteria for preparation
56.	Ministerial directions and declarations under Division 5
57.	Public consultation
58.	Application for inclusion of places in an interim Register
59.	Public notification
60.	Notification of lessees and occupiers
61.	Revision of interim Registers
62.	Submission of interim Register to the Authority <i>Division 4—Acquisition of heritage places and objects</i>
63.	Acquisition

**TABLE OF PROVISIONS—continued**

<b>Section</b>	
64.	Notice of acquisition <i>Division 5—Aboriginal heritage</i> <i>Subdivision A—Preliminary</i>
65.	Interpretation <i>Subdivision B—Reporting discoveries of unregistered Aboriginal places</i>
66.	Reports
67.	Aboriginal heritage discoveries—consideration of reports
68.	Aboriginal heritage discoveries—Ministerial directions and declarations <i>Subdivision C—Protection of unregistered Aboriginal heritage</i>
69.	Damaging unregistered Aboriginal places
70.	Orders for the protection of unregistered Aboriginal places— application of Part VI
71.	Orders—reports by Heritage Council
72.	Orders—Ministerial directions and declarations <i>Subdivision D—Compensation claims</i>
73.	Interpretation
74.	Application
75.	Right to compensation
76.	Loss for which compensation is recoverable
77.	Amount of compensation
78.	Consultation with applicants
79.	Notice of decisions about compensation <i>Subdivision E—Consultation in relation to Registers</i>
80.	Consultation with Aboriginal organisations <i>Subdivision F—Restricted information</i>
81.	Restricted information
82.	Publication of restricted information by public officials
83.	Publication of restricted information generally
84.	Access to restricted information <i>Division 6—Administrative review</i>
85.	Review of decisions <i>Division 7—Public access to heritage information</i> <i>Subdivision A—Information about administrative action</i>
86.	Application
87.	Searching administrative records <i>Subdivision B—Access to Heritage Registers</i>
88.	Searching the Heritage Registers



**TABLE OF PROVISIONS—continued**

**Section**

*Division 8—Australian Capital Territory Heritage Council*

*Subdivision A—Preliminary*

- 89. Interpretation
- Subdivision B—Establishment, functions and powers*
- 90. Establishment
- 91. Functions
- 92. Ministerial directions
- 93. Powers
- 94. Annual reports
- 95. Delegation to Secretary

*Subdivision C—Constitution and meetings*

- 96. Constitution
- 97. Deputy ex-officio members
- 98. Expert appointments
- 99. Terms of appointment
- 100. Chairperson, Deputy Chairperson and Secretary
- 101. Remuneration and allowances
- 102. Leave of absence
- 103. Disclosure of interests
- 104. Resignation
- 105. Termination of appointment
- 106. Acting members
- 107. Convening meetings
- 108. Procedure at meetings
- 109. Quorum

**PART IV—ENVIRONMENTAL ASSESSMENTS  
AND INQUIRIES**

*Division 1—Preliminary*

- 110. Interpretation
- 111. Proponents

*Division 2—Preliminary assessments*

- 112. Directions
- 113. Mandatory preliminary assessments
- 114. Content
- 115. Submission to Minister
- 116. Public inspection
- 117. Exclusion of material

**TABLE OF PROVISIONS—continued****Section***Division 3—Assessments**Subdivision A—Form and content*

- 118. Form
- 119. Content of public environment reports and environmental impact statements

*Subdivision B—Direction of Assessments*

- 120. Decisions to direct Assessments
- 121. Environment Minister's power to direct Assessments
- 122. Directions

*Subdivision C—Preparation, evaluation and consideration by the Legislative Assembly*

- 123. Public environment reports—preparation
- 124. Environmental impact statements—consultation and public inspection
- 125. Environmental impact statements—consideration of relevant comments and reports
- 126. Submission of reports and statements to Environment Minister
- 127. Consultation
- 128. Further information
- 129. Further revision
- 130. Evaluation by Environment Minister
- 131. Tabling in the Legislative Assembly and public inspection
- 132. Exclusion of material
- 133. Exemptions

*Division 4—Inquiries**Subdivision A—Establishment of panels and terms of reference*

- 134. Constitution
- 135. Combined Inquiries
- 136. Remuneration
- 137. Terms of reference
- 138. Notification

*Subdivision B—Inquiry reports*

- 139. Inquiry reports
- 140. Tabling in the Legislative Assembly and public inspection
- 141. Exclusion of material

*Subdivision C—Procedures and powers*

- 142. Interpretation
- 143. Notice of Inquiry hearings
- 144. Public hearings
- 145. General procedure

**TABLE OF PROVISIONS—continued****Section**

- 146. Special hearings—consultation with interested persons
- 147. Assessments for the purpose of Inquiries
- 148. Witnesses—summons to appear
- 149. Victimisation of witnesses
- 150. Inspection of books and documents
- 151. Power of entry
- 152. Search warrants
- 153. Powers of search and inspection
- 154. Obstructing or resisting an authorised person
- 155. Contempt
- 156. Protection of panel members and witnesses
  - Division 5—Administrative review*
- 157. Review of decisions
  - PART V—LAND ADMINISTRATION**
    - Division 1—Preliminary*
- 158. Interpretation
- 159. Application
  - Division 2—Leases*
- 160. Granting of leases
- 161. Fees for granting leases
- 162. Leases to community organisations
- 163. Special leases
- 164. Authority to consider proposed leases
- 165. Inquiries and Assessments in relation to the granting of leases
- 166. Eligibility for certain classes of leases
- 167. Executive not bound to grant lease
- 168. Payment for leases
- 169. Failure to accept and execute lease
- 170. Grant of further lease for residential purposes
- 171. Grant of further lease for purposes other than residential or rural purposes
- 172. Lessee's rights in respect of improvements
- 173. Determination of value of improvements
- 174. Land to be used for the purpose for which it is leased
- 175. Variation of rent
- 176. Review of variations of rent
- 177. Refund of amount paid for grant of lease
- 178. Certificates of compliance
- 179. Transfer of land subject to building and development provision

**TABLE OF PROVISIONS—continued**

<b>Section</b>	
180.	Mortgage of leasehold subject to building and development provision
181.	Land leased to be held as undivided parcel
182.	Power of lessee to sublet portion of building or land in certain cases <i>Division 3—Variation of leases</i>
183.	Payments in respect of variation of leases
184.	Advice of rent payable on variation of a lease
185.	Variation of lease to pay out rent
186.	Certain leases not to be varied to reduce rent to a nominal rent <i>Division 4—Recovery of land</i>
187.	Termination of leases and licences
188.	Recovery of land on expiry, surrender or termination of lease or licence
189.	Certificate of Minister to be evidence <i>Division 5—Public land</i> <i>Subdivision A—Preliminary</i>
190.	Interpretation <i>Subdivision B—Public land</i>
191.	Recommendations to the Authority <i>Subdivision C—Management of public land</i>
192.	Reserved areas
193.	Management
194.	Management objectives <i>Subdivision D—Plans of Management</i>
195.	Content
196.	Preparation
197.	Variations
198.	Environmental Assessments and Inquiries
199.	Public consultation
200.	Revision
201.	Submission to Minister
202.	Minister's powers
203.	Referral back to the Conservator
204.	Notice of revival of deferred draft Plan of Management
205.	Notification, tabling, disallowance, date of effect <i>Subdivision E—Leases and licences</i>
206.	Leases—generally
207.	Grant of leases
208.	Licences
209.	Miner's rights in respect of public land

**TABLE OF PROVISIONS—continued****Section***Division 6—Administrative review*

- 210. Notice of decisions
- 211. Review by Tribunal

*Division 7—Miscellaneous*

- 212. Lessee may surrender lease wholly or in part
- 213. Reduction of rent and relief from provisions of lease
- 214. Access to leased land from public roads and carpark
- 215. Licences in respect of land that is not public land
- 216. Reservation of minerals
- 217. Rights to extract minerals
- 218. Access to lease documents and development agreements
- 219. False statements

**PART VI—APPROVALS AND ORDERS***Division 1—Preliminary*

- 220. Interpretation
- 221. Relationship: controlled activities and concurring authorities

*Division 2—Approvals**Subdivision A—Preliminary*

- 222. Interpretation

*Subdivision B—General*

- 223. Offence—controlled activities
- 224. Application to conduct controlled activities
- 225. Register of applications, approvals and orders
- 226. Restrictions on inspection of applications
- 227. Notice of application
- 228. Approvals
- 229. Matters to be considered
- 230. Duty of applicants
- 231. More information
- 232. Effect of failure to furnish further information
- 233. Duties of concurring authorities
- 234. Environmental Assessments and Inquiries

*Subdivision C—Objections*

- 235. Objections—general
- 236. Inspection of objections
- 237. Identity of objectors

**TABLE OF PROVISIONS—continued****Section***Subdivision D—Approvals*

- 238. Circumstances in which Executive approves applications, other than lease variations, subdivisions, consolidations
- 239. Circumstances in which Executive approves applications for lease variations, subdivisions, consolidations
- 240. Application approved—notification of decision
- 241. Notification of decision to approve or refuse to approve application
- 242. Notification where more than one objector
- 243. Conditional approvals
- 244. Minister to resolve certain inconsistencies
- 245. Minor amendments
- 246. Corrections
- 247. Approval—when takes effect
- 248. Execution of certain approvals
- 249. Expiration of approvals
- 250. Extension of time
- 251. Revocation of approval

*Division 3—Orders*

- 252. Interpretation
- 253. Offences—orders
- 254. Application for order
- 255. Notice of making of order
- 256. Effect of order in certain circumstances
- 257. Non-compliance
- 258. Future owners and occupiers
- 259. Powers of Supreme Court

*Division 4—Enforcement**Subdivision A—Preliminary*

- 260. Things connected with offences
- 261. Inspectors
- 262. Identity cards
- 263. Return of identity cards

*Subdivision B—Inspection*

- 264. Inspections etc.
- 265. Consent to entry
- 266. Display of identity cards
- 267. Powers of inspection
- 268. Work carried out at direction of inspector
- 269. Taking samples

**TABLE OF PROVISIONS—continued**

<b>Section</b>	
270.	Disposal of seized items
271.	Search warrants
272.	Obstruction of inspectors
	<i>Division 5—Miscellaneous</i>
	<i>Subdivision A—Review of decisions</i>
273.	Review—applicants
274.	Review—objectors, third parties
275.	Review—orders
276.	Notification of objectors
277.	Notification of applicants
278.	Modification of section 28 of the <i>Administrative Appeals Tribunal Act 1989</i>
279.	Failure to comply with certain notification requirements
	<i>Subdivision B—General</i>
280.	Regulations—Part VI
	<b>PART VII—MISCELLANEOUS</b>
281.	Persons authorised to exercise powers of the Executive
282.	Power of Administrative Appeals Tribunal and Supreme Court
283.	Corporations—penalties
284.	Conduct of directors, servants and agents
285.	Power of Minister to determine fees
286.	Regulations

**SCHEDULE 1****MANAGEMENT OBJECTIVES FOR PUBLIC LAND****SCHEDULE 2****CONTROLLED ACTIVITIES: CONCURRING AUTHORITIES:  
PENALTIES****SCHEDULE 3****ACTIVITIES SUBJECT TO ORDERS**

1991  
THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for the Environment, Land and Planning)

**Land (Planning and Environment) Bill  
1991**

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**A BILL  
FOR**

**An Act relating to the use of land in the Territory,  
and for related purposes**

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

**PART I—PRELIMINARY**

**Short title**

- 5       1. This Act may be cited as the *Land (Planning and Environment) Act 1991*.

**Commencement**

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- 10       (2) The remaining provisions commence on a day, or on respective days, fixed by the Minister by notice in the *Gazette*.



(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

## 5 Crown

3. (1) This Act binds the Crown.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

## Interpretation

10 4. In this Act, unless the contrary intention appears—

“Assessment” means an Assessment made under Division 3 of Part IV;

“Authority” means the Australian Capital Territory Planning Authority established under Division 4 of Part II;

15 “Conservator” means the Conservator of Wildlife appointed under section 7 of the *Nature Conservation Act 1980*;

“controlled activity” means—

(a) an activity of a kind specified in Schedule 2 or 3; or

(b) an activity under another Act that is declared by that Act to be a controlled activity for the purposes of Schedule 2 or 3;

20 “determined fee” means the fee determined pursuant to section 285 for the purposes of the provision in which the expression occurs;

“formal error” means—

(a) a clerical error;

(b) an error arising from an accidental slip or omission; or

25 (c) a defect of form;

“Heritage Council” means the Heritage Council established under Division 8 of Part III;

“Heritage Places Register” means the register of heritage places incorporated in the Plan;

30 “heritage significance” means archaeological, historic, aesthetic, architectural, scientific, natural or social significance, or other special significance in relation to the environment, for the present community, and for future generations;

“Inquiry” means an inquiry conducted under Division 4 of Part IV;

"interim Heritage Places Register" has the meaning assigned to that expression by section 52;

"newspaper" means a newspaper published and circulating in the Territory;

5 "Plan" means the Territory Plan as in effect from time to time under this Act;

"public works" means installation work or construction work being carried out, or that is to be carried out, by or on behalf of the Territory, but does not include—

10 (a) work to maintain or restore public property, other than property of heritage significance;

(b) work carried out in an emergency in order to protect the health or safety of the public, or for the protection of public property; or

15 (c) any prescribed work or work included in a prescribed class of works;

"Territory authority" means—

(a) a body (whether corporate or not) established by or under an Act, or by the Executive; or

20 (b) the holder of an office established by or under an Act, or by the Executive;

"Tribunal" means the Australian Capital Territory Administrative Appeals Tribunal.

## PART II—PLANNING

### 25 *Division 1—Preliminary*

#### **Interpretation**

5. In this Part, unless the contrary intention appears—

"background papers", in relation to a draft Plan variation or a Plan variation means—

30 (a) an explanatory statement;

(b) a copy of—

(i) any relevant direction of the Executive;

- (ii) any relevant direction of the Minister under paragraph 92 (1) (b);
- 5 (iii) any recommendation of the Conservator referred to in section 16, including any preliminary draft Plan of Management (prepared under Subdivision D of Division 5 of Part V) accompanying such a recommendation;
- (iv) any interim Heritage Places Register referred to in section 17;
- 10 (v) any relevant environmental report; and
- (vi) the report of any relevant Inquiry;
- (c) if the draft Plan is inconsistent with—
  - (i) a direction referred to in subparagraph (b) (i) or (ii);
  - 15 (ii) a recommendation referred to in subparagraph (b) (iii);
  - (iii) any interim Heritage Places Register referred to in section 17; or
  - (iv) a recommendation included in a report referred to in subparagraph (b) (v) or (vi);
  - 20 a statement by the Authority of the reasons for that inconsistency;
  - (d) in the case of a draft Plan variation of the kind referred to in subsection 17 (3)—a copy of any written response of the Heritage Council submitted in accordance with subsection 17 (4), together with a statement by the Authority commenting on that response; and
  - 25 (e) any other documents—
    - (i) considered by the Authority to be necessary or useful in explaining the draft Plan variation; and
    - 30 (ii) designated by the Authority in writing as background papers;

**“Chief Planner”** means the Chief Planner for the Australian Capital Territory appointed under section 42;

35 **“Commonwealth Planning Act”** means the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;

"development", in relation to land, means—

- (a) the erection, alteration or demolition of a building on that land;
- (b) the carrying on of work on that land;
- 5 (c) the use or change of use of that land;
- (d) the use or change of use of a building or works on that land;
- (e) the subdivision or consolidation of that land; or
- (f) the display of signs or advertising material on that land;

10 "draft Plan variation" means a draft Plan variation notified under section 19, as revised under paragraph 22 (1) (a) and section 26;

"environmental report" means—

- (a) a preliminary assessment under Division 2 of Part IV;
- (b) a report under section 127; or
- 15 (c) an Assessment;

"land" includes water;

"National Authority" means the National Capital Planning Authority established by section 5 of the Commonwealth Planning Act;

20 "National Capital Plan" means the plan approved under section 19 of the Commonwealth Planning Act, being that plan as amended and in effect from time to time;

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

#### Stages and parts of the Plan

25 6. In this Part, unless the contrary intention appears, a reference to a draft Plan variation is to be read as including a reference to—

- (a) a draft stage or part of the variation; or
- (b) a provision—
  - (i) of the draft variation; or
  - 30 (ii) of a draft stage or part of the variation.

**Division 2—Territory Plan—object and effect****Object**

- 5 7. (1) The object of the Plan shall be to ensure, in a manner not inconsistent with the National Capital Plan, that the planning and development of the Territory provides the people of the Territory with an attractive, safe and efficient environment in which to live, work and have their recreation.
- (2) The Plan shall—
- 10 (a) set out the planning principles and policies for giving effect to its object; and
- (b) reserve an area of public land for each of the purposes specified in section 192.
- (3) For the purpose of giving effect to the object of the Plan and the principles and policies referred to in subsection (2), the Plan may—
- 15 (a) set out specific objectives and policies;
- (b) specify purposes for which land may be used;
- (c) for the purposes of Part VI, specify—
- 20 (i) controlled activities and authorities that are concurring authorities in relation to each controlled activity so specified; and
- (ii) circumstances in which persons are not entitled to apply for the review of decisions referred to in that Part;
- (d) incorporate a register of heritage places known as the Heritage Places Register;
- 25 (e) identify land for the purposes of Subdivision D of Division 3 of this Part, specifying in addition the principles and policies for its development;
- (f) for the purposes of Division 5 of Part V—identify an area of land as public land and reserve it for a purpose specified in that Part;
- 30 (g) provide for such other matters as are relevant to—
- (i) the exercise; or
- (ii) the administrative review of the exercise;
- of the powers of the Territory, the Executive or a Territory authority under a Territory law; and
- 35 (h) provide for such matters as are otherwise necessary or convenient.

**Effect of Plan**

8. The Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act, that is inconsistent with the Plan.

**5 Effect of draft Plan variations**

9. (1) Subject to section 11, during—

- (a) the defined period; or
- (b) the period specified in the notice under section 19 of a draft Plan variation;

10 whichever is shorter, the Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act that—

- (c) would be inconsistent with the Plan if it were varied in accordance with the draft variation; or
- (d) is inconsistent with the Plan.

15 (2) Where a draft Plan variation is deferred under paragraph 22 (1) (b) or 26 (a), this section does not apply in relation to that draft variation during the period of its deferral.

(3) In this section—

20 “defined period” means the period commencing on the date the draft Plan variation is notified in the *Gazette* under section 19 and terminating at the expiration of the day before—

- (a) the date the draft variation comes into effect;
- (b) the date the corresponding Plan variation is rejected by the Legislative Assembly;
- 25 (c) the date the Executive revokes its approval of the corresponding Plan variation; or
- (d) the date the draft variation, or the corresponding Plan variation, is withdrawn under paragraph 22 (1) (c), 26 (a) or 28 (9) (b);

30 as the case requires;

“draft Plan variation”—

- (a) means a draft Plan variation as revised under paragraph 22 (1) (a) and section 26; and
- (b) includes a provision of a draft Plan variation.

**Effect of interim Heritage Places Register**

- 5 10. (1) Where an interim Heritage Places Register that has been submitted to the Authority pursuant to section 62 is not submitted to the Executive in a draft Plan variation before the expiration of the applicable period, it ceases to have effect on the expiration of that period.

- 10 (2) For the purposes of subsection (1), the applicable period in relation to an interim Heritage Places Register is the period of 4 months commencing on the day on which the Register is submitted to the Authority pursuant to section 62 or such longer period commencing on that day as the Minister, by writing, allows.

**Draft Heritage Places Register and variations—lack of effect**

- 15 11. (1) A draft Heritage Places Register, or a draft variation to the Heritage Places Register, notified under section 19 as a draft Plan variation, or as part of a draft Plan variation, has no effect.
- (2) Subsection (1) does not apply in relation to an interim Heritage Places Register.

**Plan not to have retrospective effect**

- 20 12. Where, immediately before the Plan comes into effect under this Act, it would be lawful to use any land in a particular way in the exercise of a right derived from an estate in that land, the Plan does not prevent the use of that land in that way during the term of the estate.

***Division 3—Territory Plan—continuation and variation******Subdivision A—Territory Plan*****Continuation of Plan**

- 25 13. The plan established under Part III of the *Interim Planning Act 1990*, being that plan as in effect under that Act immediately before the commencement of this section, continues in effect under this Act as the Territory Plan and may be varied in accordance with this Part.

***Subdivision B—Preparation of variations of the Plan*****30 Application**

14. This Subdivision does not apply in relation to a variation to the Plan under Subdivision D.

**Preparation of variations**

- 35 15. (1) The Authority shall prepare the variations to the Plan.
- (2) The Authority may prepare Plan variations in separate stages or parts.

**Conservator's recommendations**

- 5 16. In preparing a draft Plan variation, the Authority shall consider any recommendation submitted by the Conservator, including any preliminary draft Plan of Management under Subdivision D of Division 5 of Part V accompanying such a recommendation.

**Heritage**

- 10 17. (1) Where the Heritage Council submits an interim Heritage Places Register to the Authority pursuant to section 62, the Authority shall consider the interim Register and, if it agrees with all the proposals contained in the Register or any of them—

- 15 (a) where it agrees with all the proposals—forthwith include the interim Register in a draft Plan variation; or  
(b) where it does not agree with all the proposals—forthwith prepare a draft Heritage Places Register, or a draft variation to the Heritage Places Register, that contains the proposals with which it agrees and include the draft Register, or the draft variation of the Register, prepared by the Authority in a draft Plan variation.

- 20 (2) A draft Heritage Places Register, or a draft variation to the Heritage Places Register, included in a draft Plan variation is not to include any provision which would have the effect of including in the Heritage Places Register any entry in addition to the entries—

- 25 (a) proposed, in any relevant interim Heritage Places Register, for inclusion in the Heritage Places Register; or  
(b) in the case of a draft variation to the Heritage Places Register—  
included in that Register.

- (3) If the Authority—

- 30 (a) prepares a draft variation to the Heritage Places Register in the absence of a relevant interim Heritage Places Register; or  
(b) prepares a draft Heritage Places Register, or a draft variation to that Register, which is different from any relevant interim Heritage Places Register;

- 35 the Authority shall give written notice to the Heritage Council no later than 28 days before the date (being a date specified in the notice) on which the Authority intends to notify the relevant draft Plan variation in the *Gazette* under section 19.

- (4) In preparing a draft variation of the kind referred to in subsection (3), the Authority shall consider any written response submitted by the Heritage Council where that response is submitted not later than 7 days before the date specified in the notice under subsection (3) as the date the



Authority intends to notify the relevant draft Plan variation in the *Gazette* under section 19.

(5) In this section—

5                      “relevant interim Heritage Places Register” means an interim Heritage Places Register which has effect under Part III, as revised under that Part.

#### **Environmental reports and Inquiries**

18. (1) In preparing a draft Plan variation, the Authority shall consider—

- 10                      (a) any relevant environmental report; or  
                         (b) the report of any relevant Inquiry.

(2) At the Authority’s written request, or of his or her own motion, the Minister may—

- (a) direct that an Assessment be made; or  
15                      (b) establish a panel to conduct an Inquiry;

about any aspect of a draft Plan variation or a proposed draft Plan variation.

#### **Public consultation**

19. (1) Before submitting a draft Plan variation to the Executive, the Authority shall cause to be published in the *Gazette*, and in a daily newspaper, a notice—

- 20                      (a) stating that copies of the draft Plan variation and the background papers are available for public inspection and purchase during a specified period of not less than 21 days at specified places;  
                         (b) inviting interested persons to submit written comments about the  
25                      draft variation to the Authority at a specified address and within a period of not less than 21 days;  
                         (c) stating the effect of sections 9 and 11; and  
                         (d) specifying, for the purpose of paragraph 9 (1) (b), the maximum  
30                      period (being a period not exceeding 1 year) during which the draft variation is to have an interim effect.

(2) The Authority shall make copies of the draft Plan variation and the background papers available for public inspection and purchase during office hours during the period, and at the places, specified in the notice.

35                      (3) The Authority may, on request by a person who has provided written comments in relation to a draft Plan variation, exclude from the copies of the draft variation, or the background papers relating to the draft

variation, that are made available for public inspection or purchase pursuant to subsection (2) information which would identify the person if, in the opinion of the Authority based on reasonable grounds, it would not be in the public interest for the information to be published.

- 5       (4) Where, in the opinion of the Authority based on reasonable grounds, it would not be in the public interest for part of a draft Plan variation, or a part of a background paper relating to a draft Plan variation, to be published, the Authority shall cause that part to be excluded from each copy of the draft variation or the background paper made available for public inspection or purchase pursuant to subsection (2).
- 10

- (5) Where part of a draft Plan variation or a background paper is excluded from the copies of the draft variation or paper made available for public inspection or purchase pursuant to subsection (2), each copy so made available shall include a statement to the effect that an unspecified part of the draft variation or paper has been excluded in the public interest.
- 15

(6) Where, on application by the Authority, the Executive is satisfied that a draft Plan variation—

- (a) has the sole purpose of correcting a formal error in the Plan; or
- (b) would, if approved, not affect the rights of any person in a manner prejudicial to that person;
- 20

it may, by instrument, relieve the Authority of the necessity for complying with subsections (1) and (2) in relation to the draft variation.

- (7) Where, pursuant to an instrument under subsection (6), the Authority does not comply with subsections (1) and (2) in relation to a draft Plan variation it shall obtain such information about the public attitudes to the draft variation as is reasonable in the circumstances.
- 25

#### **Consultation with the National Capital Planning Authority**

20. Before submitting a draft Plan variation to the Executive, the Authority shall consult with the National Authority about the draft.

#### **30 Public inspection of comments**

21. (1) Before submitting a draft Plan variation to the Executive, the Authority shall cause to be published in a daily newspaper a notice stating that copies of any written comments—

- (a) submitted pursuant to the invitation in the relevant notice under subsection 19 (1) or otherwise; and
- 35       (b) received from the National Authority;

are available for public inspection within a specified period of at least 21 days from the date of the notice, at specified places.

(2) The Authority shall make copies of any comments referred to in subsection (1) available for public inspection during office hours during the period, and at the places, specified in the notice.

- 5 (3) The Authority may, on request by a person who has provided written comments in relation to a draft Plan variation, exclude from the copies of the written comments that are made available for public inspection pursuant to subsection (2) information which would identify the person if, in the opinion of the Authority based on reasonable grounds, it would not be in the public interest for the information to be published.

10 **Revision, deferral or withdrawal of draft Plan variation**

22. (1) After the expiration of the period specified in the notice under subsection 19 (1) the Authority may—

- (a) revise the draft Plan variation;
- 15 (b) by notice published in the *Gazette* defer until a specified date, or until the occurrence of a specified event, the submission of the draft Plan variation to the Executive; or
- (c) by notice published in the *Gazette* withdraw the draft Plan variation.

20 (2) A notice under paragraph (1) (b) or (c) shall include a statement of the effect of section 9 in relation to the deferral or withdrawal of the draft Plan variation.

(3) In revising, deferring or withdrawing a draft Plan variation under subsection (1), the Authority shall consider written comments about the draft variation received from any person or the National Authority.

25 (4) In addition to its power under subsection (1), the Authority may, at any time before the submission or re-submission of a draft Plan variation to the Executive, revise the draft variation to correct any formal error.

30 (5) Where a draft Plan variation is deferred by notice under paragraph (1) (b), on the date specified in the notice, or as soon as practicable after the occurrence of the event specified in the notice, as the case requires, the Authority shall cause to be published in the *Gazette* a notice stating—

- (a) that the draft variation is revived; and
- (b) the effect of section 9 in relation to the revival of the draft variation.

**Subdivision C—Executive approval and consideration by the  
Legislative Assembly**

**Application**

- 5      23. This Subdivision does not apply in relation to a Plan variation under Subdivision D.

**Submission of draft Plan variation to Executive**

24. After the expiration of the period specified in the notice under subsection 19 (1), the Authority shall submit a draft Plan variation to the Executive for approval, together with—

- 10      (a) the background papers;
- (b) a written report setting out the issues raised in any written comments concerning the draft variation submitted pursuant to the invitation in the relevant notice under subsection 19 (1) or otherwise;
- 15      (c) a written report about its consultation with the public and the National Authority;
- (d) a written report about any consultation between the Authority and the Heritage Council relating to the draft variation, being a report that specifies any difference between the views of the Authority and the Heritage Council in relation to any site of heritage significance; and
- 20      (e) a copy of any written comments submitted to the Authority by the National Authority or the Heritage Council in relation to the draft variation.

25      **Executive powers**

25. (1) On receipt of a draft Plan variation submitted or re-submitted for approval, the Executive shall—

- (a) approve the draft variation in the form in which it is submitted or re-submitted; or
- 30      (b) return the draft variation to the Authority together with any or all of the following written directions:
- (i) to conduct further specified consultation;
- (ii) to consider any relevant environmental report, the report of any relevant Inquiry, or any other relevant report;
- 35      (iii) to consider any revision suggested by the Executive;
- (iv) to revise the draft variation in a specified manner;

(v) to defer, by notice published in the *Gazette*, the re-submission of the draft variation to the Executive until a specified date or the occurrence of a specified event;

5

(vi) to withdraw the draft variation by notice published in the *Gazette*.

(2) A notice under subparagraph (1) (b) (v) or (vi) shall state the effect of section 9 in relation to the deferral or withdrawal of the draft Plan variation.

10

(3) The Executive may revoke its approval of a Plan variation at any time before the variation is laid before the Legislative Assembly.

(4) Where the Executive revokes its approval of a Plan variation it shall cause to be published in the *Gazette* a notice stating—

(a) that the approval of the variation has been revoked; and

(b) the effect of section 9 in relation to the revocation of the approval.

15

#### **Return of draft Plan variation to the Authority**

26. If the Executive returns a draft Plan variation to the Authority under paragraph 25 (1) (b), the Authority shall—

(a) comply with any Executive direction;

20

(b) if the Executive gives a direction under subparagraph 25 (1) (b) (i), (ii) or (iii)—

(i) if the Authority thinks fit, revise the draft variation; and

(ii) re-submit the draft variation to the Executive for approval together with a written report about the Authority's compliance with the Executive directions and any further revision of the draft variation under subsection 22 (4); and

25

(c) if the Executive gives a direction under subparagraph 25 (1) (b) (iv)—re-submit the draft variation (as revised) together with a written report about any further revision of the draft variation under subsection 22 (4).

30

#### **Notice of revival of deferred draft Plan variation**

27. Where the Authority, in compliance with an Executive direction under subparagraph 25 (1) (b) (v), defers a draft Plan variation, on the date specified in the notice of deferral, or within a reasonable time after the occurrence of the event specified in that notice, as the case requires, the Authority shall—

35

(a) cause to be published in the *Gazette*, and in a daily newspaper, a notice stating—

- (i) that the draft variation is revived;
- (ii) the effect of section 9 in relation to the revival of the draft variation; and
- (iii) the effect of any revision under subsection 22 (4); and

5 (b) re-submit the draft variation to the Executive.

**Consideration of Plan variation by Legislative Assembly**

28. (1) A Plan variation shall be laid before the Legislative Assembly within 5 sitting days of its approval by the Executive, together with—

- (a) the background papers;
- 10 (b) a copy of the summaries and reports referred to in paragraphs 24 (b), (c) and (d);
- (c) a copy of any direction given under paragraph 25 (1) (b);
- (d) a copy of any report referred to in subparagraph 25 (1) (b) (ii); and
- (e) a copy of any report referred to in paragraph 26 (c);

15 in relation to the variation.

(2) If a Plan variation is not laid before the Legislative Assembly in accordance with subsection (1) it does not come into effect.

(3) The Legislative Assembly may, pursuant to a motion of which notice has been given within 5 sitting days after a Plan variation has been laid before it, by resolution reject the variation or any provision of it.

(4) If, at the expiration of 5 sitting days after notice of a motion to reject a Plan variation or a provision of a Plan variation has been given in the Legislative Assembly (being notice given within 5 sitting days after the variation was laid before the Legislative Assembly)—

- 25 (a) the notice has not been called on; or
- (b) the motion has been called on and moved and has not been withdrawn or otherwise disposed of;

the Plan variation or provision specified in the motion shall be deemed to have been rejected by the Legislative Assembly.

30 (5) If, before the expiration of 5 sitting days after a notice of motion to disallow a Plan variation or a provision of a Plan variation has been given in the Legislative Assembly (being notice given within 5 sitting days after the variation was laid before the Legislative Assembly)—

- (a) the Legislative Assembly is dissolved or expires; and

(b) at the time of dissolution or expiry—

(i) the notice has not been withdrawn and the motion has not been called on; or

5 (ii) the motion has been called on and moved and has not been withdrawn or otherwise disposed of;

the Plan variation shall, for the purposes of subsections (3) and (4), be deemed to have been laid before the Legislative Assembly on the first sitting day of the Legislative Assembly after the next general election of members of the Assembly.

10 (6) If, at the expiration of 5 sitting days after a Plan variation is laid before the Legislative Assembly, the Assembly has not passed a resolution rejecting the variation or any provision of it and is not, pursuant to subsection (4), to be deemed to have rejected the variation or any provision of it, the Minister shall cause to be published in the *Gazette* a notice—

15 (a) specifying the date of commencement of the variation, or the dates of commencement of the various provisions of the variation, being a date or dates not before the date of publication of the notice; and

(b) specifying a place or places where copies of the variation may be inspected or purchased.

20 (7) If a Plan variation or a provision of a Plan variation is—

(a) rejected pursuant to subsection (3); or

(b) to be deemed to be rejected pursuant to subsection (4);

the variation or provision does not come into effect.

25 (8) If the whole of a Plan variation is rejected, the Minister shall cause a notice to be published in the *Gazette* stating that the variation has been rejected.

(9) If part only of a Plan variation is rejected, or is pursuant to subsection (4) to be deemed to be rejected, the Minister shall, in relation to each remaining provision of the variation—

30 (a) cause to be published in the *Gazette* a notice specifying—

(i) the date of commencement of the provision being a date not before the date of publication of the notice; and

(ii) a place or places where copies of the provision may be inspected or purchased; or

35 (b) by notice published in the *Gazette* withdraw the provision.

(10) The Minister shall make copies of a Plan variation, or any relevant provision of a Plan variation, available for inspection or purchase

during office hours at the places and during the period specified in the relevant notice under subsection (6) or paragraph (9) (a).

#### **Commencement**

- 5 29. A Plan variation, or a provision of a Plan variation, comes into effect on the date specified in the relevant notice under subsection 28 (6) or paragraph 28 (9) (a).

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

##### **Interpretation**

30. In this Subdivision—  
10 “defined land” means land identified in the Plan pursuant to paragraph 7 (3) (c).

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

- 15 31. (1) Upon approval of the subdivision of a parcel of defined land, the Authority shall, by notice published in the *Gazette*, vary the Plan to specify the purposes for which that land may be used.

(2) A notice under subsection (1) in relation to a parcel, or part of a parcel, of land shall include a map of that parcel or part showing the purposes for which identified parts of that land may be used.

- 20 (3) A variation of the Plan under subsection (1) is to be consistent with—

- (a) the relevant subdivision and any conditions subject to which that subdivision is approved; and
- (b) the principles and policies specified in the Plan for the development of the relevant defined land.

- 25 (4) A variation of the Plan under subsection (1) takes effect from the date of its publication in the *Gazette*, or from such later date as is specified in the notice under that subsection.

- 30 (5) The Authority shall, within 7 days after the date on which a notice under subsection (1) is published in the *Gazette*, cause to be published in a daily newspaper a notice that—

- (a) specifies the variation made to the Plan by the notice under subsection (1);
- (b) includes a copy of the map that was included in the notice under subsection (1); and
- 35 (c) specifies the date on which the variation to the Plan took effect or is to take effect.



**Division 4—Australian Capital Territory Planning Authority**  
**Subdivision A—Establishment, constitution, functions and powers**

**Establishment**

- 5       32. The Australian Capital Territory Planning Authority is established by this section.

**Constitution**

33. The Authority is constituted by the Chief Planner.

**Agent of the Crown**

- 10       34. The Authority is an agent of the Crown.

**Functions**

35. (1) The functions of the Authority are—
- 15       (a) to administer the Plan;
- (b) to keep the Plan under constant review and to propose variations to it where necessary;
- (c) to perform such other functions as are required by this Act or any other law of the Territory, or by any law of the Commonwealth; and
- 20       (d) with the written approval of the Minister, to perform planning services for any person or body, whether within Australia or overseas.

(2) The Authority shall perform its functions in accordance with any directions given under subsection 36 (1).

- 25       (3) The Authority shall comply with any directions given under subsection 36 (2).

**Executive policy directions**

36. (1) The Executive may give the Authority general directions in writing about the policies and objectives it should pursue in the performance of its functions.
- 30       (2) The Executive may give the Authority general directions in writing to review the Plan, or any specified part of the Plan.
- (3) The Minister shall cause particulars of any directions to be published in the *Gazette* within 14 days.
- 35       (4) Directions not published in accordance with subsection (3) cease to have effect from the expiration of the 14th day after they are given.

(5) The Authority shall publish particulars of any directions given in a financial year in its annual report for that year.

(6) This section does not apply in relation to a direction given under section 25.

**5 Powers**

37. (1) The Authority has power to do all things necessary or convenient to be done in connection with the performance of its functions.

(2) For the purposes of the performance of its functions, the Authority may, on behalf of the Territory, enter into contracts.

10 (3) The Authority shall not, except with the approval of the Minister, enter into a contract involving the payment or receipt by the Authority of an amount exceeding \$100,000.

**Annual report**

15 38. The Authority shall, after each 30 June, prepare and furnish to the Minister a report of the operations of the Authority during the year ending on that date.

**Delegation**

20 39. The Authority may, by instrument, delegate all or any of the Authority's powers to a public servant or to the holder of an office established by or under an Act.

**Staff**

40. The Authority is to be assisted in the performance of its functions by public servants.

**Effect of irregularity of appointment of Chief Planner**

25 41. Anything done by or in relation to the Authority is not invalid because—

(a) there is a defect or irregularity in or in connection with the appointment of the Chief Planner; or

(b) that appointment had ceased to have effect.

**30 Subdivision B—Chief Planner**

**Chief Planner**

42. (1) The Minister shall, by instrument, appoint a person to be Chief Planner for the Australian Capital Territory.

35 (2) The Chief Planner holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment.

(3) The Chief Planner holds office on such terms and conditions (in respect of matters not provided for by this Part) as are determined by the Minister in writing.

(4) A retiring Chief Planner is eligible for re-appointment.

## **5 Acting Chief Planner**

43. (1) The Minister may, by instrument, appoint a public servant to act as Chief Planner—

- (a) during a vacancy in the office of Chief Planner, whether or not an appointment has previously been made to the office; or
- 10 (b) during any period, or during all periods, when the Chief Planner is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of that office;

but a person appointed to act during a vacancy shall not continue to do so for more than 12 months.

15 (2) Anything done by or in relation to a person purporting to act as Chief Planner is not invalid because—

- (a) the occasion for the appointment had not arisen;
- (b) there is a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- 20 (d) the occasion to act had not arisen or had ceased.

(3) A person who is acting as Chief Planner shall continue to be paid the remuneration and allowances payable to him or her as a public servant, but shall also be paid—

- 25 (a) so much of any remuneration payable to the Chief Planner as exceeds the remuneration that so continues to be paid;
- (b) so much of any allowance payable to the Chief Planner as exceeds the corresponding allowance that so continues to be paid; and
- (c) if an allowance is payable to the Chief Planner in respect of which there is no corresponding allowance payable to the acting Chief
- 30 Planner as a public servant—that allowance.

## **Remuneration and allowances**

44. (1) The Chief Planner shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply in relation to—

- 35 (a) remuneration if there is a subsisting determination relating to the remuneration to be paid to the Chief Planner; or

(b) an allowance of a particular kind if there is such a subsisting determination relating to an allowance of that kind to be paid to the Chief Planner.

(3) In subsection (2)—

5 “determination” means a determination of the Remuneration Tribunal of the Commonwealth.

(4) This section does not apply where the Chief Planner is the Head of Administration or an Associate Head of Administration.

#### Leave of absence

10 45. The Minister may, by writing, grant leave of absence to the Chief Planner on specified terms and conditions as to remuneration or otherwise.

#### Disclosure of interests

15 46. (1) The Chief Planner shall, upon his or her appointment and on each subsequent 30 June, give written notice to the Minister of all his or her direct or indirect pecuniary interests.

(2) If the Chief Planner has or acquires a direct or indirect pecuniary interest in a matter which, to his or her knowledge, is being considered or about to be considered by the Authority, the Chief Planner shall give written notice to the Minister of that interest.

#### 20 Other employment, remuneration, business etc.

47. (1) Except with the written permission of the Minister, the Chief Planner shall not—

25 (a) accept or continue to hold an office in or under the Government of the Commonwealth, another Territory or a State, or in or under any public or municipal corporation;

(b) accept or continue to hold or discharge the duties of, or be employed in a paid office in connection with any business whether carried on by any corporation, company, firm or individual;

30 (c) engage in or undertake any business, whether as principal or agent;

(d) engage or continue in the private practice of any profession, occupation or trade, or enter into any employment, whether remunerative or not, with any person, company or firm who or which is so engaged;

35 (e) act as a director of a company or incorporated society, otherwise than in accordance with the requirements of the duties of his or her office as Chief Planner or as a public servant; or

- (f) accept or engage in any remunerative employment other than in connection with the duties of his or her office as Chief Planner or as a public servant.

- 5 (2) Nothing in this section is to be taken to prohibit the Chief Planner from becoming a member or shareholder of any incorporated company, or of any company or society of persons.

### **Resignation**

48. The Chief Planner may resign office by writing signed by him or her and delivered to the Minister.

### **10 Termination of appointment**

49. (1) The Minister may terminate the appointment of the Chief Planner for misbehaviour or physical or mental incapacity.

(2) The Minister shall terminate the appointment of the Chief Planner if he or she—

- 15 (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b) without reasonable excuse, contravenes section 46 or 47; or
- 20 (c) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 1 year.

### ***Division 5—Miscellaneous***

#### **Challenge to validity of provisions of Plan**

- 25 50. The validity of a provision of the Plan shall not be questioned in any legal proceedings except those commenced within 3 months after the date of the commencement of the provision.

## **PART III—HERITAGE**

### ***Division 1—Preliminary***

#### **30 Interpretation**

51. (1) In this Part, unless the contrary intention appears—

“Aboriginal object” means—

- (a) a natural or manufactured object; or

- (b) human remains not buried in accordance with a law of the Territory, a State or another Territory;

which is, or are, of significance in Aboriginal tradition;

5 "Aboriginal place" means a place which is of significance in Aboriginal tradition;

10 "Aboriginal tradition" means the traditions, observances, customs or beliefs of the people who inhabited Australia before European colonisation and include traditions, observances, customs and beliefs that have evolved or developed from that tradition since European colonisation;

"conservation" includes preservation, protection, maintenance, restoration and enhancement;

15 "heritage object" means a natural or manufactured object, including an Aboriginal object, of heritage significance in relation to the Territory;

"heritage place" means a place in the Territory of heritage significance;

"interim variation", in relation to the Heritage Places Register, means a proposed variation to that Register notified under section 59;

20 "relevant Aboriginal organisation", in relation to a proposed action by the Territory, the Executive, the Minister or a Territory authority, means an organisation or association (whether incorporated or unincorporated)—

(a) comprised substantially of Aboriginal persons;

25 (b) having amongst its principal objects the conservation of Aboriginal tradition in the Territory; and

(c) which the person or body proposing the action believes on reasonable grounds to have an object or interest directly relevant to, or directly affected by, that action;

30 "restricted information", in relation to an Aboriginal place, means information which is the subject of a declaration under subsection 81 (1);

"variation" includes revocation and substitution.

35 (2) Where this Part requires the Executive, the Minister or the Heritage Council to consult with, or to notify, any person or body (whether incorporated or unincorporated), that requirement is to be taken to be satisfied if the Executive, the Minister or the Heritage Council (as the case requires) takes all reasonable steps to consult with, or to notify, that person or body.

**Interim Registers—interpretation**

52. In this Part, unless the contrary intention appears, a reference to an interim Heritage Places Register is to be taken to be a reference to—

- 5 (a) where there is no Heritage Places Register—a proposed Heritage Places Register; or
- (b) where there is a Heritage Places Register—an interim variation to that Register;

being a proposed Register, or an interim variation to a Register, notified in the *Gazette* under section 59, as revised under section 61.

10 **Division 2—Heritage Places Register**

**Content of Heritage Places Register**

53. (1) The Heritage Places Register shall—

- (a) identify heritage places, specifying any that are Aboriginal places;
- (b) identify—
  - 15 (i) each structure or group of structures;
  - (ii) each object or group of objects, specifying any that are Aboriginal objects;
  - (iii) each landform or group of landforms;
  - (iv) each plant or group of plants;
  - 20 (v) each animal habitat; or
  - (vi) each other feature (whether manufactured or natural);

which is located on each identified heritage place and which is intrinsic to the heritage significance of the place;
- 25 (c) include a statement of the heritage significance of each identified heritage place;
- (d) specify requirements for the conservation of the heritage significance of each identified heritage place, including any requirements for the conservation of features identified as intrinsic to that heritage significance; and
- 30 (e) specify any restricted information in the Register in relation to an Aboriginal place referred to in the Register.

(2) A word or phrase in the Heritage Places Register has the same meaning as in this Part, unless the contrary intention appears in the Register.

**Division 3—Interim Heritage Places Registers**

**Subdivision A—Effect**

**Effect of interim Registers**

5     **54. (1)** Where there is no Heritage Places Register, during the defined period an interim Heritage Places Register has effect as if it were the Heritage Places Register.

10     **(2)** Where an interim Heritage Places Register is in the form of an interim variation to the Heritage Places Register, during the defined period the Territory, the Executive, a Minister or a Territory authority shall not do any act, or approve the doing of any act, which—

**(a)** would be inconsistent with the Heritage Places Register if it were varied in accordance with the interim variation; or

**(b)** is inconsistent with the Heritage Places Register.

15     **(3)** In this section, in relation to an interim Heritage Places Register—  
    “defined period” means the period commencing on the date the interim Register is notified in the *Gazette* under section 59 and terminating at the expiration of—

20     **(a)** the day before the date a Heritage Places Register prepared in consideration of the interim Register comes into effect under section 29; or

**(b)** the period specified in that notice in the *Gazette*;

whichever is shorter.

**Subdivision B—Preparation, notification, submission of Registers**

25     **Criteria for preparation**

**55. (1)** In preparing an interim Heritage Places Register, the Heritage Council shall—

30     **(a)** assess the heritage significance of a place in accordance with the determined criteria; and

**(b)** consider the need to take measures which are prudent and feasible to conserve the heritage significance of each heritage place.

**(2)** The Minister shall, in writing, determine criteria for the purpose of paragraph (1) (a).

35     **(3)** A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.



**Ministerial directions and declarations under Division 5**

56. (1) Where the Minister issues a direction under paragraph 68 (1) (a) or 72 (1) (a) to the Heritage Council to notify an interim Heritage Places Register in relation to a place, the Heritage Council shall comply with that direction.

(2) While a declaration of the Minister under paragraph 68 (1) (b) or 72 (1) (b) is in force, the Heritage Council shall not notify an interim Heritage Places Register which would have the effect of listing that place on the Heritage Places Register.

**10 Public consultation**

57. (1) In preparing an interim Heritage Places Register, the Heritage Council shall—

- (a) obtain such information about the public attitude to its proposals as the Heritage Council considers appropriate; and
- 15 (b) consider that information.

(2) Before notifying an interim Heritage Places Register under section 59, the Heritage Council shall consult with, and consider the views of, any person whose interests, in the opinion of the Heritage Council based on reasonable grounds, would be affected by its proposals.

20 (3) This section does not apply where subsection 56 (1) applies.

**Application for inclusion of places in an interim Register**

58. (1) A lessee of land on which a place is located may apply in writing to the Heritage Council for the inclusion of a provision in an interim Heritage Places Register which would have the effect of including an entry in relation to that place on the Heritage Places Register.

(2) An application—

- (a) shall be accompanied by a statement of the reasons why the applicant considers that the place should be included on the Heritage Places Register; and
- 30 (b) be accompanied by the determined fee.

(3) On application in accordance with this section, the Heritage Council may, in consideration of the matters referred to in section 55—

- (a) include a provision in an interim Heritage Places Register which would have the effect of including an entry in relation to the relevant place in the Heritage Places Register; or
- 35 (b) refuse to approve the application.

(4) The Heritage Council shall give a written notice of its decision under subsection (3) to the applicant.

(5) A notice under subsection (4) shall include—

- 5 (a) if the application is approved—details of the provision proposed for inclusion in an interim Heritage Places Register in accordance with the approval; and
- (b) if the application is refused—
- 10 (i) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, the applicant may apply for a review of the decision of the Heritage Council to refuse the application; and
- (ii) except where subsection 26 (11) of that Act applies—a statement to the effect that the applicant may request a statement under section 26 of that Act.

15 (6) This section is not to be read as limiting the power of the Heritage Council to prepare interim Heritage Places Registers.

#### Public notification

20 59. (1) After preparing an interim Heritage Places Register, the Heritage Council shall cause to be published in the *Gazette*, and in a daily newspaper, a notice—

- (a) stating that copies of the interim Register are available for public inspection at specified places;
- (b) specifying, for the purpose of section 54, the maximum period during which the interim Register, or each part of it, is to have effect under that section; and
- 25 (c) including—
- (i) a statement of the effect of section 54; and
- (ii) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, a person whose interests in relation to land are affected may apply for a review of a decision of the Heritage Council to include a provision in the interim Register; and
- 30 (iii) except where subsection 26 (11) of that Act applies—a statement to the effect that such a person may request a statement under section 26 of that Act.
- 35

(2) The Heritage Council shall make copies of the interim Heritage Places Register available for public inspection during office hours at the places specified in the notice under subsection (1).

- 5 (3) A copy of an interim Heritage Places Register made available for public inspection under subsection (2) shall not include any restricted information in relation to an Aboriginal place.

(4) The validity of a decision of the Heritage Council to include a provision in an interim Register is not affected by a failure to comply with paragraph (1) (a) or (c) or subsection (2) or (3).

10 **Notification of lessees and occupiers**

60. (1) As soon as practicable after a notice is published in the *Gazette* under section 59 in relation to an interim Heritage Places Register, the Heritage Council shall give each lessee, and each occupier, of land affected by a decision of the Heritage Council to include a provision in the interim Register a notice—

- 15 (a) specifying that provision;
- (b) specifying, and identifying as such, any relevant restricted information about Aboriginal places on that land;
- 20 (c) including the statements referred to in paragraph 59 (1) (c) in relation to the interim Register, and
- (d) including a statement of the effect of section 83 in relation to the publication of restricted information.

- 25 (2) The validity of a decision of the Heritage Council to include a provision in an interim Heritage Places Register is not affected by a failure to comply with subsection (1).

**Revision of interim Registers**

61. (1) After the notification of an interim Heritage Places Register under section 59, the Heritage Council may, by notice published in the *Gazette*, revise the interim Register—

- 30 (a) to correct a formal error; or
- (b) except where subsection 56 (1) applies—to provide for the removal of a provision of the interim Register which would have had the effect of including an entry in the Heritage Places Register, with effect from the date of the notice.

- 35 (2) The Heritage Council shall cause a copy of a notice under subsection (1) to be published in a newspaper.

- (3) A notice under paragraph (1) (b) shall include—

- (a) a statement that copies of the interim Register, as revised, are available for public inspection at specified places;
- (b) a statement of the effect of section 54 in relation to the interim Heritage Places Register as revised;
- 5 (c) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, a person whose interests in relation to land are affected may apply to the Tribunal for a review of the Heritage Council's decision to revise a provision of the interim Register; and
- 10 (d) except where subsection 26 (11) of that Act applies—a statement to the effect that such a person may request a statement under section 26 of that Act.

(4) The Heritage Council shall make copies of the interim Heritage Places Register, as revised, available for public inspection during office  
15 hours at the places specified in the notice under subsection (3).

(5) Where paragraph (1) (b) applies, the Heritage Council shall give each lessee, and each occupier, of land affected by the decision of the Heritage Council to revise the interim Register a notice—

- (a) specifying the revision; and
- 20 (b) including the statements referred to in subsection (3).

(6) The validity of a decision of the Heritage Council to revise a provision of an interim Heritage Places Register under paragraph (1) (b) is not affected by a failure to comply with subsection (2), (3), (4) or (5).

#### Submission of interim Register to the Authority

25 62. (1) For the purposes of section 17, the Heritage Council shall submit an interim Heritage Places Register to the Authority in accordance with this section.

(2) The Heritage Council shall submit an interim Heritage Places Register to the Authority after the expiration of 28 days after the interim  
30 Register is notified in the *Gazette* under subsection 59 (1), except where there is an application for review under paragraph 85 (2) (a) or (b) in relation to the interim Register.

(3) Where there is an application for review under paragraph 85 (2) (a) or (b) in relation to an interim Heritage Places Register, the Heritage Council  
35 shall—

- (a) in relation to those provisions of the interim Register which are not the subject of such an application—submit those provisions to the

Authority after the expiration of 28 days after the interim Register is notified in the *Gazette* under subsection 59 (1); and

- 5 (b) in relation to each provision of the interim Register which is the subject of such an application—where appropriate, submit that provision to the Authority, as varied (if at all) to reflect the Tribunal's decision, after the resolution of the application.

- 10 (4) Where there is an application under subsection 85 (3) for the review of a decision of the Heritage Council to refuse to approve an application under section 58 for the inclusion of a provision in an interim Heritage Places Register—

- (a) subsection (1) applies notwithstanding the application for review; and  
 15 (b) if the application for review is successful—the Heritage Council shall submit that provision to the Authority in the form approved by the Tribunal in its decision.

(5) Where there is an application under paragraph 85 (2) (c) for the review of a decision of the Heritage Council to revise an interim Heritage Places Register so as to remove a provision—

- 20 (a) subsection (1) applies notwithstanding the application; and  
 (b) if the application is successful—the Heritage Council shall submit that provision to the Authority as reinstated in the interim Register in accordance with the decision of the Tribunal.

#### *Division 4—Acquisition of heritage places and objects*

##### **Acquisition**

- 25 63. (1) The Executive may, on behalf of the Territory, acquire a place listed on the Heritage Places Register where the Executive is satisfied that—

- (a) the place has substantial heritage significance; and  
 30 (b) acquisition is the most prudent and feasible means to ensure the conservation of that significance.

(2) Where subsection (1) applies in relation to a place, the Executive may acquire an object identified in the Heritage Places Register as intrinsic to the heritage significance of that place.

- 35 (3) The Executive shall acquire a place or an object under this section on just terms.

(4) The Executive shall not acquire a place or an object under this section without first consulting with, and considering the views of—

- (a) the lessee and the occupier of the place;

- (b) where an object is to be acquired—the owner and the possessor of the object;
  - (c) the Heritage Council; and
  - (d) any relevant Aboriginal organisation;
- 5 about the proposed acquisition.

**Notice of acquisition**

64. (1) Where the Executive makes a decision to acquire a place or an object under section 63, the Minister shall, within 28 days after the date of the decision, cause notice in writing of the decision to be given to—

- 10 (a) the lessee and the occupier of the place; and
  - (b) where an object is acquired—the owner and the possessor of the object.
- (2) A notice shall—
- 15 (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to acquire the place or object or to acquire it on particular terms; and
  - (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person, organisation or association  
20 whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.
- (3) The validity of a decision referred to in subsection (1) is not affected by a failure to comply with this section.

***Division 5—Aboriginal heritage***

25 ***Subdivision A—Preliminary***

**Interpretation**

65. (1) In this Division, unless the contrary intention appears—
- “interim Register” means an interim Heritage Places Register;
- “Register” means the Heritage Places Register.
- 30 (2) In this Division, a reference to a registered place is to be read as a reference to a place in relation to which—
- (a) there is an entry in a Register; or
  - (b) there is a provision in an interim Register which would have the effect of including such an entry in a Register;

and a reference to—

- (c) an unregistered place; or
- (d) the registration of a place;

is to be read accordingly.

**5            Subdivision B—Reporting discoveries of unregistered  
                 Aboriginal places**

**Reports**

66. (1) A person who discovers a place which he or she believes on  
reasonable grounds to be an unregistered Aboriginal place shall, within 7  
10 days, report that discovery to the Minister in accordance with subsection  
(2).

(2) A report under subsection (1) shall—

- (a) be in writing;
- (b) specify the name and address of—
  - 15            (i) the person giving the report; and
  - (ii) the lessee and each occupier of the land on which the place  
                 is located (where the identity of those persons is known to  
                 the person giving the report); and
- (c) specify the nature and location of the discovery.

20            (3) A person shall not, without reasonable excuse, fail to comply with  
subsection (1).

Penalty: \$500.

(4) This section does not apply in relation to a person who—

- 25            (a) in accordance with Aboriginal tradition, has traditional affiliations  
                 with the land on which the place is located;
- (b) believes on reasonable grounds that a declaration under paragraph  
                 68 (1) (b) or 72 (1) (b) (that the place is not to be registered) is in  
                 force; or
- 30            (c) believes on reasonable grounds that the place has previously been  
                 registered.

(5) Notwithstanding paragraph (4) (a), a person who, in accordance  
with Aboriginal tradition, has traditional affiliations with particular land  
may, for the purposes of this Subdivision, report the discovery of an  
Aboriginal place on that land in accordance with subsection (1).

**Aboriginal heritage discoveries—consideration of reports**

**67. (1)** Upon receiving a report of a discovery under section 66, the Minister shall—

- 5       (a) if the place is registered, or has previously been registered—give the lessee and the occupier of the land on which the place was discovered written notice of the details of that registration, including any relevant restricted information, together with a statement of the effect of that registration (where it is still in force); or
- 10       (b) if the place has never been registered—direct the Heritage Council to report to the Minister within 21 days about the heritage significance of the place or object.
- (2) The Heritage Council shall—
- 15       (a) prepare a report for submission to the Minister in compliance with a direction under paragraph (1) (b); and
- (b) in preparing that report, consult with, and consider the views of—
  - (i) the lessee and the occupier of the place;
  - (ii) the person who reported the discovery; and
  - (iii) any relevant Aboriginal organisation.

**20   Aboriginal heritage discoveries—Ministerial directions and declarations**

**68. (1)** Within 14 days after receiving a report from the Heritage Council under section 67, the Minister shall—

- 25       (a) direct the Heritage Council to notify an interim Register under section 59 which would have the effect of registering the place on particular terms; or
- (b) declare that the place is not to be registered, by notice in writing to—
  - 30       (i) the lessee and the occupier of the land where the place was discovered;
  - (ii) the person who reported the discovery; and
  - (iii) any relevant Aboriginal organisation.

(2) Before making a decision under subsection (1), the Minister shall consult with the persons referred to in paragraph (1) (b).

- 35       (3) In making a decision under subsection (1), the Minister shall—



- (a) after taking into account the report of the Heritage Council—consider whether the place is of sufficient heritage significance to be registered; and
- 5 (b) after taking into account the views of the persons consulted under subsection (2)—consider the effect of registration on those persons' interests.
- (4) Where the Minister makes a decision under paragraph (1) (a), sections 59 and 60 apply in relation to a decision of the Minister under paragraph (1) (a) as if the references in those sections to a decision of the
- 10 Heritage Council to include a provision in an interim Register were references to that decision of the Minister.
- (5) The Minister shall cause particulars of a direction under paragraph (1) (a) and a declaration under paragraph (1) (b) to be published in the *Gazette* within 14 days after the making of the direction or declaration.
- 15 (6) A declaration under paragraph (1) (b) shall—
- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, a person whose interests in relation to land are affected may apply for a review of the decision of the Minister to make the declaration; and
- 20 (b) except where subsection 26 (11) of that Act applies—a statement to the effect that such a person may request a statement under section 26 of that Act.

***Subdivision C—Protection of unregistered Aboriginal heritage***  
**Damaging unregistered Aboriginal places**

- 25 69. (1) A person shall not knowingly disturb, damage or destroy or cause or permit to be disturbed, damaged or destroyed an unregistered Aboriginal place, unless—
- (a) that place has previously been registered; and
- (b) that registration has been cancelled.
- 30 Penalty: \$5,000.
- (2) Subsection (1) does not apply where the person referred to in that subsection—
- (a) does not believe that the place is an Aboriginal place; or
- 35 (b) believes on reasonable grounds that a declaration under paragraph 68 (1) (b) or 72 (1) (b) (that the place is not to be registered) is in force.

**Orders for the protection of unregistered Aboriginal places—  
application of Part VI**

70. (1) In this section—

“order” means an order referred to in subsection (2).

5       (2) The Minister may make an order under Division 3 of Part VI in relation to the disturbance, damage or destruction of an unregistered Aboriginal place except where—

(a) a declaration under paragraph 68 (1) (b) or 72 (1) (b) is in force in relation to that place; or

10       (b) the place has previously been registered.

(3) For the purposes of Division 3 of Part VI in its application to an order, the disturbance, damage or destruction referred to in subsection (2) is to be taken to be a controlled activity.

15       (4) In deciding whether to make an order, the Minister shall consider whether the relevant controlled activity is likely to affect adversely the heritage significance of the place.

(5) An order—

(a) shall specify the grounds on which the order is made; and

(b) may direct any person against whom it is made—

20       (i) to stop disturbing, damaging or destroying an unregistered Aboriginal place; or

(ii) not to commence disturbing, damaging or destroying such a place.

25       (6) An order shall remain in force for such period, not exceeding 35 days, as is specified in the order.

(7) Subsection 254 (5) does not apply in relation to an order for the purposes of this section.

**Orders—reports by Heritage Council**

30       71. (1) Where the Minister makes an order for the purposes of section 70, he or she shall direct the Heritage Council to report within 21 days about the heritage significance of the relevant place.

(2) The Heritage Council shall—

(a) prepare a report for submission to the Minister in compliance with a direction under subsection (1); and

35       (b) in preparing that report, consult with, and consider the views of—

- (i) the lessee and the occupier of the place;
- (ii) the person who reported the discovery; and
- (iii) any relevant Aboriginal organisation.

**Orders—Ministerial directions and declarations**

5        72. (1) Within 14 days after receiving a report from the Heritage Council under section 71, the Minister shall—

- (a) direct the Heritage Council to notify an interim Register under section 59 which would have the effect of registering the place on particular terms; or
- 10        (b) declare, by notice in writing to the lessee and the occupier of the land where the place was discovered and to any relevant Aboriginal organisation, that the place is not to be registered.

(2) Before making a decision under subsection (1), the Minister shall consult with the persons referred to in paragraph (1) (b).

15        (3) In making a decision under subsection (1), the Minister shall—

- (a) taking into account the report of the Heritage Council—consider whether the place is of sufficient heritage significance to be registered;
- 20        (b) taking into account the views of the persons consulted under subsection (2)—consider the effect of registration on those persons' interests; and
- (c) taking into account that report and those views—consider whether there is any prudent and feasible alternative to the activity in relation to which the order is in force.

25        (4) Where the Minister makes a decision under paragraph (1) (a), sections 59 and 60 apply in relation to a decision of the Minister under paragraph (1) (a) as if the references in those sections to a decision of the Heritage Council to include a provision in an interim Register were references to that decision of the Minister.

30        (5) The Minister shall cause particulars of a direction under paragraph (1) (a) and a declaration under paragraph (1) (b) to be published in the *Gazette* within 14 days after the making of the direction or declaration.

(6) A declaration under paragraph (1) (b) shall—

- 35        (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, a person whose interests in relation to land are affected may apply for a review of the decision of the Minister to make the declaration; and

- (b) except where subsection 26 (11) of that Act applies—a statement to the effect that such a person may request a statement under section 26 of that Act.

**Subdivision D—Compensation claims**

**5 Interpretation**

73. In this Subdivision—

“compensation” means compensation under section 77.

**Application**

74. This Subdivision applies where—

- 10 (a) a person reports the discovery of an unregistered place in accordance with section 66;
- (b) an order referred to in subsection 70 (2) is made in relation to a place;
- 15 (c) a place is registered in an interim Register pursuant to a direction under paragraph 68 (1) (a) or 72 (1) (a) following such a report or order, or
- (d) a place is registered in a Register as a result of its registration in an interim Register pursuant to such a direction.

**Right to compensation**

- 20 75. (1) In a circumstance in which this Subdivision applies, on application in accordance with subsection (4) the Minister shall, on behalf of the Territory, compensate the applicant for loss or damage—

- (a) directly attributable to that circumstance; and
- 25 (b) which arises out of any contractual or statutory obligations incurred by the applicant prior to the occurrence of that circumstance.

(2) Where this Subdivision applies in relation to more than 1 circumstance relating to the same land—

- 30 (a) the Minister may compensate the applicant under subsection (1) for the combined loss or damage directly attributable to that combination of circumstances; and
- (b) such compensation is only payable for loss or damage in relation to contractual or statutory obligations incurred by the applicant prior to the occurrence of the earliest of those circumstances.

- 35 (3) Where an order referred to in section 70 is made against a person, no compensation is payable to that person for any loss or damage

attributable to that order being made, or to any subsequent registration of the relevant place, which arises out of an obligation incurred by the applicant where, at the time the obligation was incurred, the applicant believed that the relevant place was an Aboriginal place.

- 5 (4) An application for compensation shall be made within 1 year of the date of occurrence of the latest of the relevant circumstances by virtue of which this Subdivision applies.

- 10 (5) Where this Subdivision applies, no amount for damages or compensation is payable to any person by reason only of the circumstances of that application, except under this Subdivision.

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

76. (1) Compensation is only payable for loss or damage attributable to the application of this Subdivision which—

- 15 (a) is capable of being assessed by way of a liquidated amount;  
(b) takes into account any opportunity for recovery of taxes or diminution of tax liabilities; and  
(c) is not otherwise capable of recovery or mitigation, or further recovery or mitigation.

(2) Loss for which compensation is payable includes—

- 20 (a) expenditure incurred in the preparation of plans for the purposes of any work in relation to which the compensation is sought;  
(b) any other expenditure necessarily preparatory to carrying out that work; and  
25 (c) the cost of acquisition of any land or object, including any incidental costs.

(3) Loss for which compensation is payable does not include—

- (a) any capital costs or capital depreciation except for expenditure or costs referred to in subsection (2); or  
30 (b) any amount in relation to the prospective use of the land in relation to which this Subdivision applies, except where—  
(i) that land is registered in a Register; and  
(ii) that use is consistent with the requirements of the Register.

#### **Amount of compensation**

- 35 77. (1) Subject to section 76, where the Minister decides that compensation should be paid to an applicant, the Territory shall pay the

applicant such amount as is determined by the Minister by notice in writing to the applicant.

5 (2) Where an applicant, by notice in writing to the Minister, disputes the amount of compensation determined under subsection (1), the Minister may, by notice in writing to the applicant, revise that determination in accordance with a determination—

- (a) of a valuer appointed by agreement between the Minister and the applicant; or
- 10 (b) arrived at by such other method as is agreed upon between the Minister and the applicant.

#### Consultation with applicants

78. Before giving an applicant for compensation a notice under section 79, the Minister shall—

- (a) consult with the applicant; and
  - 15 (b) consider the views of the applicant;
- about the Minister's proposed decision.

#### Notice of decisions about compensation

20 79. (1) Within 60 days after receiving an application for compensation, the Minister shall give the applicant written notice of his or her decision in relation to the application.

(2) Where the Minister decides to refuse to grant an applicant any compensation, the notice under subsection (1) shall include—

- 25 (a) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, the applicant for compensation may apply to the Tribunal for a review of the Minister's decision; and
- (b) except where subsection 26 (11) of that Act applies—a statement to the effect that the applicant for compensation may request a statement pursuant to section 26 of that Act.

30 (3) The validity of a decision to refuse to grant an applicant compensation is not affected by a failure to comply with subsection (2).

#### *Subdivision E—Consultation in relation to Registers*

##### Consultation with Aboriginal organisations

35 80. (1) This section applies where the Heritage Council is preparing an interim Register, or a revision to an interim Register, which relates to an Aboriginal place.

(2) Where this section applies, the Heritage Council shall consult with, and consider the views of, any relevant Aboriginal organisation about the effect of the interim Register or revision on Aboriginal tradition.

(3) In this section—

- 5       “Aboriginal place” includes a place which the Heritage Council at one time considered to be an Aboriginal place, but which the Heritage Council no longer considers to be such a place.

**Subdivision F—Restricted information**

**Restricted information**

- 10       81. (1) Where, in the Minister’s opinion, the public disclosure of particular information about the location or nature of an Aboriginal place would be likely to have a significant adverse effect on—

- (a) Aboriginal tradition; or
- (b) the heritage significance of the place;

- 15       the Minister shall, in writing, declare that information to be restricted information for the purposes of this Act.

(2) The Minister shall not make a declaration under subsection (1) without first consulting with, and considering the views of—

- (a) the Heritage Council; and
  - 20       (b) any relevant Aboriginal organisation;
- about the relevant information.

(3) The Minister shall give a copy of a declaration under subsection (1) to—

- 25       (a) the lessee and the occupier of any land in relation to which the declaration is given;
- (b) the Heritage Council; and
- (c) any relevant Aboriginal organisation.

(4) A copy of a declaration given to a person under paragraph (3) (a) shall be accompanied by—

- 30       (a) a statement of the effect of the declaration;
- (b) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, the person may apply to the Tribunal for a review of the decision of the Minister to make the declaration; and

- (c) except where subsection 26 (11) of that Act applies—a statement to the effect that the person may request a statement pursuant to section 26 of that Act.

- 5 (5) The validity of a decision of the Minister to make a declaration under subsection (1) is not affected by a failure to comply with subsections (2), (3) and (4).

**Publication of restricted information by public officials**

- 10 82. (1) The Territory, the Executive, a Minister or a Territory authority shall not publish or cause to be published any restricted information about an Aboriginal place except—

- (a) for the purposes of this Part or Part II;
- (b) in accordance with subsection (2); or
- (c) in accordance with the prescribed procedures.

- 15 (2) For the purposes of paragraph (1) (b), restricted information may be published where the person or body responsible for its publication is satisfied on reasonable grounds that the publication would not have a significant adverse effect on—

- (a) Aboriginal tradition; or
- (b) the heritage significance of the relevant place.

20 **Publication of restricted information generally**

- 83. (1) A person (other than a person referred to in subsection 82 (1)) shall not, without reasonable excuse, publish or cause to be published restricted information about an Aboriginal place except—

- (a) in accordance with an approval under subsection (2); and
- 25 (b) where that publication is accompanied by a written statement in the form referred to in paragraph 81 (4) (a).

Penalty: \$500.

- 30 (2) On application in accordance with subsection (3), the Heritage Council shall, by notice in writing to the applicant, approve the publication of restricted information about an Aboriginal place where it is satisfied on reasonable grounds that the publication would not have a significant adverse effect on—

- (a) Aboriginal tradition; or
- (b) the heritage significance of the relevant place.

- 35 (3) An application under subsection (2) shall be in writing specifying—



- (a) the nature of the restricted information;
  - (b) the reason for the proposed publication; and
  - (c) the nature of the proposed publication, including the person, persons or class of persons to whom or to which it is directed.
- 5 (4) If the Heritage Council refuses an application under this section, it shall give written notice of its decision to the applicant including—
- (a) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, the applicant may apply to the Tribunal for review of the Heritage Council's decision; and
- 10 (b) except where subsection 26 (11) of that Act applies—a statement to the effect that the applicant may request a statement pursuant to section 26 of that Act.

#### Access to restricted information

84. (1) On application in accordance with subsection (2) by—
- 15 (a) a lessee or an occupier of land; or
  - (b) where an interest in relation to land is being offered for sale—a person who is considering purchasing that interest;

the Heritage Council shall publish to that person any restricted information relevant to the conservation and use of that land.

- 20 (2) An application shall be in writing accompanied by a written declaration—
- (a) in the case referred to in paragraph (1) (a)—specifying the capacity in which the applicant is applying; or
  - 25 (b) in the case referred to in paragraph (1) (b)—specifying the interest being offered for sale, and stating that the applicant is considering the purchase of that interest.

(3) Where the Heritage Council publishes restricted information to a person under subsection (1), it shall give the person a statement in the form referred to in paragraph 81 (4) (a).

#### 30 *Division 6—Administrative review*

##### Review of decisions

85. (1) Application may be made to the Tribunal for review of a decision—
- (a) of the Executive under section 63 to acquire a place; or
  - 35 (b) of the Executive under section 63 to acquire a place on particular terms.

(2) A person whose interests in relation to land are affected may apply to the Tribunal for review of a decision—

- (a) of the Heritage Council to include a provision in an interim Heritage Places Register notified under section 59;
- 5 (b) of the Minister under paragraph 68 (1) (a) or 72 (1) (a) to direct the Heritage Council to notify an interim Heritage Places Register;
- (c) of the Heritage Council under paragraph 61 (1) (b) to revise an interim Heritage Places Register; or
- 10 (d) of the Minister under paragraph 68 (1) (b) or 72 (1) (b) to declare that no interim Heritage Places Register is to be notified in relation to a particular place.

(3) An applicant for the inclusion of a provision in an interim Heritage Places Register under subsection 58 (3) may apply to the Tribunal for review of a decision of the Heritage Council to refuse the application.

- 15 (4) An applicant for compensation under Subdivision D of Division 5 may apply to the Tribunal for review of a decision of the Minister to refuse to grant compensation under that Subdivision.

- 20 (5) A person whose interests in relation to land are affected by a decision of the Minister to make a declaration under subsection 81 (1) may apply to the Tribunal for review of that decision.

(6) An applicant for an approval to publish restricted information under subsection 83 (2) may apply to the Tribunal for review of a decision of the Minister to refuse to grant that approval.

- 25 (7) Subsections (2) to (6) (inclusive) are to be read as modifying the operation of section 25 of the *Administrative Appeals Tribunal Act 1989*.

***Division 7—Public access to heritage information***

***Subdivision A—Information about administrative action***

**Application**

86. This Subdivision applies in relation to the following documents:

- 30 (a) reports under section 66;
- (b) declarations under paragraph 68 (1) (b), while the declarations are in force;
- (c) orders referred to in section 70, while the orders are in force;
- 35 (d) declarations under paragraph 72 (1) (b), while the declarations are in force.

**Searching administrative records**

87. (1) A person may, during office hours, inspect a document to which this Subdivision applies, excluding any part of the document which—

- 5       (a) contains restricted information; or  
         (b) contains information which is the subject of a declaration under subsection (3).

10       (2) On application by a person, accompanied by the determined fee, the Minister shall give the person a copy of a document to which this Subdivision applies, or any part of such document, excluding any part of the document which—

- (a) contains restricted information; or  
         (b) contains information which is the subject of a declaration under subsection (3).

15       (3) The Minister may, by written notice to the applicant, declare that a document to which this Subdivision applies, or a specified part of such a document, is not to be available for public inspection under subsection (1) or (2).

20       (4) The Minister shall only make a declaration under subsection (3) if he or she is satisfied that—

- (a) information in the relevant application or part—  
              (i) relates to the personal or business affairs of a person; and  
              (ii) was supplied to the Minister in confidence; and  
25       (b) the publication of that information would not be in the public interest.

***Subdivision B—Access to Heritage Registers*****Searching the Heritage Registers**

88. (1) A person may, during office hours, inspect the Register or interim Register, other than any part which contains restricted information.

30       (2) On application by a person, accompanied by the determined fee, the Heritage Council shall give the person a copy of, or of any part of, the Register or interim Register, other than any part which contains restricted information.

35       (3) On application to the Heritage Council accompanied by the determined fee, in relation to a place which—

- (a) is not listed in the Register or interim Register; and

- (b) is not, in an interim Register, proposed to be listed in the corresponding Register,

the Heritage Council shall give the applicant a certificate stating—

- 5 (c) whether a declaration in relation to that place is in force under paragraph 68 (1) (a) or 72 (1) (a); or  
(d) whether the place has previously been so listed, or proposed to be so listed.

(4) In this section—

“interim Register” means the interim Heritage Places Register,

10 “Register” means the Heritage Places Register.

***Division 8—Australian Capital Territory Heritage Council***

***Subdivision A—Preliminary***

**Interpretation**

89. In this Division, unless the contrary intention appears—

15 “appointed member” means a member appointed under paragraph 96 (1) (b);

“Chairperson” means the Chairperson of the Heritage Council;

“Deputy Chairperson” means the Deputy Chairperson of the Heritage Council;

20 “deputy member” means a deputy member of the Heritage Council;

“ex-officio member” means a member referred to in paragraph 96 (1) (a);

“member” means a member of the Heritage Council;

“Secretary” means the Secretary to the Heritage Council.

25 ***Subdivision B—Establishment, functions and powers***

**Establishment**

90. There is established by this section a council called the Australian Capital Territory Heritage Council.

**Functions**

30 91. The functions of the Heritage Council are—

- (a) to advise the Minister about—

- 5 (i) the criteria according to which the heritage significance of places and objects is to be determined for the purposes of this Part and the *Heritage Objects Act 1991*;
- (ii) incentives for the conservation of the heritage significance of heritage places and heritage objects;
- (iii) promotion of public awareness of heritage places and heritage objects; and
- (iv) other matters in relation to heritage significance in the Territory;
- 10 (b) at the request of a Territory authority—to advise the authority about the matters and incentives referred to in paragraph (a) as they relate to the exercise or performance of the authority's powers or functions under this or any other Act;
- 15 (c) to prepare an initial interim Heritage Places Register and an initial interim Heritage Objects Register and, subsequently, to prepare interim variations to the Heritage Places Register and the Heritage Objects Register; and
- (d) such other functions as are conferred on it by or under this or any other Act.

## 20 Ministerial directions

92. (1) The Minister may give the Heritage Council directions in writing—

- (a) about the policy and objectives it should pursue in the performance of its functions; or
- 25 (b) to review the Heritage Places Register or the Heritage Objects Register, or any specified parts of either Register, in consideration of any specified matters.

(2) The Minister shall cause particulars of any directions to be published in the *Gazette* within 14 days of their being given.

- 30 (3) The Heritage Council shall comply with any directions published in accordance with subsection (2).

(4) The Heritage Council shall publish particulars of any directions given in a financial year in its annual report for that year.

## Powers

- 35 93. The Heritage Council has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

**Annual reports**

94. The Heritage Council shall, after each 30 June, prepare and furnish to the Minister a report of the operations of the Heritage Council during the year ending on that date.

**5 Delegation to Secretary**

95. The Heritage Council may, by resolution at a properly constituted meeting, delegate to the Secretary any of its powers or any functions referred to in paragraph 91 (d).

**Subdivision C—Constitution and meetings**

**10 Constitution**

96. (1) The Heritage Council is constituted by—

- (a) the Chief Planner and the Conservator as ex-officio members; and
- (b) not more than 9 other members appointed by the Minister in writing.

15 (2) An ex-officio member shall not vote on any question in relation to an interim Heritage Places Register.

(3) The performance of the functions or the exercise of the powers of the Heritage Council is not affected by reason only of a vacancy or vacancies in the membership of the Heritage Council.

**20 Deputy ex-officio members**

97. (1) The Minister may, in writing, appoint a person to be the deputy of an ex-officio member.

25 (2) In the absence of a member from a Heritage Council meeting, any person appointed under subsection (1) to be the member's deputy has all the powers of the member.

**Expert appointments**

30 98. (1) In making appointments under paragraph 96 (1) (b) or subsection 97 (1) or 106 (1), the Minister shall endeavour to ensure that the following disciplines and areas of expertise are represented amongst the appointed members of the Heritage Council:

- (a) archaeology;
- (b) Aboriginal tradition;
- (c) local history;
- (d) town planning;

- (e) engineering;
  - (f) architectural history and conservation;
  - (g) landscape architecture;
  - (h) the natural environment and its conservation;
  - 5 (j) archivism;
  - (k) librarianship;
  - (m) preservation of Australian material culture;
  - (n) knowledge of objects in an Australian context.
- 10 (2) A retiring appointed member is eligible for re-appointment for 1 term initially, and for a further 2 terms after the expiration of 3 years following the expiration of the initial re-appointment.

#### **Terms of appointment**

99. (1) Members hold office as part-time members.
- (2) An appointed member holds office—
- 15 (a) for such period, not exceeding 3 years, as is specified in the instrument of appointment; and
- (b) on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined in writing by the Minister.

#### **20 Chairperson, Deputy Chairperson and Secretary**

100. (1) The Minister shall appoint from the members—
- (a) a Chairperson; and
  - (b) a Deputy Chairperson.
- (2) The Minister shall appoint a public servant who is not a member to
- 25 be Secretary to the Heritage Council.

#### **Remuneration and allowances**

101. (1) Appointed members shall be paid such remuneration and allowances as are prescribed.
- (2) Subsection (1) does not apply—
- 30 (a) in relation to remuneration—if there is a subsisting determination relating to the remuneration to be paid to the appointed members; or

- (b) in relation to an allowance of a particular kind—if there is a subsisting determination relating to an allowance of that kind to be paid to the appointed members.

(3) In subsection (2)—

5       “determination” means a determination of the Remuneration Tribunal of the Commonwealth.

#### **Leave of absence**

10       102. The Minister may, by writing, grant leave of absence to a member on specified terms and conditions as to remuneration (subject to section 101) or otherwise.

#### **Disclosure of interests**

15       103. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Heritage Council shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a Heritage Council meeting.

(2) A disclosure shall be recorded in the minutes of the meeting and, unless the Minister otherwise determines, the member shall not—

- 20       (a) be present during any deliberation of the Heritage Council with respect to that matter; or
- (b) take part in any decision of the Heritage Council with respect to that matter.

#### **Resignation**

25       104. A member may resign his or her office by writing signed by the member and delivered to the Minister.

#### **Termination of appointment**

105. (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

(2) If a member—

- 30       (a) is absent, except on leave granted under section 102, from 3 consecutive meetings of the Committee; or

(b) without reasonable excuse, contravenes section 103;

the Minister shall terminate the appointment of the member.

#### **Acting members**

35       106. (1) The Minister may appoint a person to act as a member—



- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the member is absent from duty or from the Territory or is, for any reason, unable to perform the duties of the office;

5

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that—

10

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

#### 15 Convening meetings

107. (1) The Chairperson, or, if he or she is unable to do so, the Deputy Chairperson, shall convene such Heritage Council meetings—

- (a) as the Chairperson or the Deputy Chairperson considers necessary for the efficient performance of its functions; and
- (b) as the Minister directs by notice in writing given to the Chairperson or the Deputy Chairperson.

20

(2) Where the Chairperson or the Deputy Chairperson proposes to convene a meeting of the Heritage Council, he or she shall, not later than 5 days before the date of the proposed meeting, give each member a notice in writing specifying—

25

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

#### Procedure at meetings

108. (1) The Chairperson shall preside at all Heritage Council meetings at which he or she is present.

30

(2) Where the Chairperson is not present at a meeting the Deputy Chairperson shall preside.

(3) Where the Chairperson and the Deputy Chairperson are both absent from a meeting, the members present shall elect 1 of their number to preside.

35

(4) The member presiding at a meeting may give directions regarding the procedure to be followed in connection with the meeting.

(5) Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting.

5 (6) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

(7) The Heritage Council shall keep minutes of its proceedings.

#### **Quorum**

10 109. At a meeting of the Heritage Council, a majority of the members currently appointed to the Council constitutes a quorum.

### **PART IV—ENVIRONMENTAL ASSESSMENTS AND INQUIRIES**

#### ***Division 1—Preliminary***

##### **Interpretation**

15 110. In this Part, unless the contrary intention appears—

“defined decision” means a decision of the Territory, the Executive, a Minister or a Territory authority about a proposal, being a proposal in relation to which a Minister is empowered under Part II, V or VI, an Act other than this Act or a subordinate law—

20 (a) to direct that an Assessment be made; or

(b) to establish a panel to conduct an Inquiry;

25 “environmental impact”, in relation to a proposal which is the subject of a defined decision, includes the following potential effects of the proposal (if carried out), either by itself or in combination with the potential effects of another such proposal:

(a) environmental effect on a community;

(b) physical, biological or cultural transformation of an area;

(c) environmental effect on the social system or the ecosystems of an area;

30 (d) change to the aesthetic, recreational, scientific or other environmental qualities, or values, of an area;

(e) environmental effect on any premises or land or the surroundings of any premises or land, that has heritage significance;

- (f) the endangering, or further endangering, of a community or an area;
  - (g) the endangering, or further endangering, of any species of fauna or flora;
  - 5 (h) long-term environmental effects including those with potential to place demands on the social system;
  - (i) curtailing of the range of beneficial uses of the environment;
  - (j) pollution;
  - 10 (k) problems associated with the disposal of waste;
  - (l) increased demands on natural resources which are, or are likely to be, in short supply;
  - (m) change to the values or lifestyles of particular groups and communities or to existing social relationships;
  - 15 (n) socio-economic effect;
- “environmental impact statement” means an environmental impact statement prepared in accordance with Division 3;
- “Environment Minister” means the Minister administering this Part;
- “land” includes water;
- 20 “panel” means a panel established to conduct an Inquiry;
- “preliminary assessment” means an assessment made under Division 2;
- “proponent”, in relation to a defined decision, means the person designated as such under section 111;
- 25 “public environment report” means a public environment report prepared in accordance with Division 3;
- “relevant Minister”, means the Minister responsible for the administration of the Act or subordinate law under which—
- (a) in relation to an Assessment or Inquiry—that Assessment or Inquiry is authorised to be made or conducted; or
  - 30 (b) in relation to a defined decision—the relevant decision is authorised to be made.

**Proponents**

111. (1) For the purposes of this Part, the relevant Minister in relation to a defined decision may, in writing, designate a person or Territory authority as the proponent in relation to the decision.

- 5 (2) The relevant Minister shall designate, as the proponent in relation to a defined decision, the person or Territory authority whose interests would be most directly affected by the decision, unless, in the opinion of that Minister, the public interest requires otherwise.

**Division 2—Preliminary assessments**

10 **Directions**

112. The relevant Minister in relation to a defined decision, or the Environment Minister, may, by written notice to the relevant proponent within the prescribed period, direct the proponent to prepare a preliminary assessment of the environmental impact of the relevant proposal.

15 **Mandatory preliminary assessments**

113. Where a defined decision is of a class prescribed by the Plan, the relevant Minister shall, within the period referred to in section 112, issue a notice under that section in relation to the relevant proposal.

**Content**

- 20 114. A preliminary assessment shall consist of such matters as are specified in the notice under section 112.

**Submission to Minister**

- 25 115. (1) Upon notice under section 112, the proponent shall submit a preliminary assessment to the Environment Minister in accordance with the notice.

(2) Where the Environment Minister is not the relevant Minister in relation to a preliminary assessment, the Environment Minister shall forward the preliminary assessment to the relevant Minister.

**Public inspection**

- 30 116. (1) A proponent who has submitted a preliminary assessment to the Environment Minister in accordance with a notice under section 112 shall cause to be published in the *Gazette*, and in a daily newspaper, a notice approved by the Environment Minister stating that copies of the preliminary assessment are available for public inspection and purchase from the  
35 proponent at specified places and times.

(2) A proponent who has published a notice pursuant to subsection (1) shall make copies of the preliminary assessment available for inspection and purchase at the places and times specified in the notice.

5 (3) A copy of a preliminary assessment made available by a proponent for sale pursuant to this section shall not be sold at a price that exceeds a price fixed by the Environment Minister as the maximum price for the sale of a copy of the assessment.

10 (4) In fixing a maximum price at which a proponent may sell a copy of a preliminary assessment, the Environment Minister shall fix a price that will reimburse the proponent for the cost of producing the copy but not for any expense incurred by the proponent in preparing the preliminary assessment.

15 (5) Where the Environment Minister makes a decision fixing the maximum price that a proponent may charge for a copy of a preliminary assessment, he or she shall give written notice of the decision to the proponent including—

- (a) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, the proponent may apply to the Tribunal for review of the Minister's decision; and
- 20 (b) except where subsection 26 (11) of that Act applies—a statement to the effect that the proponent may request a statement under section 26 of that Act.

#### Exclusion of material

117. (1) Where, in the opinion of the Environment Minister based on reasonable grounds—

- 25 (a) a part of a preliminary assessment contains information related to the personal or business affairs of a person, being information—
    - (i) supplied to the proponent or the Minister in confidence;
    - (ii) the publication of which would reveal a trade secret; or
    - 30 (iii) the disclosure of which would, or would reasonably be expected to, adversely affect a person in respect of the lawful business affairs of that person; and
  - (b) it would not be in the public interest for that part to be published;
- the Environment Minister shall cause that part to be excluded from each copy of the preliminary assessment made available to the public or for public inspection.
- 35

(2) Where a part of a preliminary assessment is excluded from the copies of that assessment made available to the public or for public inspection, each copy shall include a statement to the effect that an

unspecified part of the assessment has been excluded for the purpose of protecting the confidentiality of information included in that part.

***Division 3—Assessments***

***Subdivision A—Form and content***

**5 Form**

**118.** Unless otherwise specified in the Act or subordinate law under which it is directed, an Assessment consists of—

- (a) a public environment report; or
- (b) an environmental impact statement;

**10** about the proposal which is the subject of a defined decision, together with the report under section 130 evaluating that public environment report or environmental impact statement.

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

**15 119.** Public environment reports and environmental impact statements are each to include such matters as are—

- (a) prescribed; and
- (b) directed under section 122.

***Subdivision B—Direction of Assessments***

**20 Decisions to direct Assessments**

**25 120.** (1) Within the prescribed period after a proponent submits a preliminary assessment to the Environment Minister, the relevant Minister may direct that an Assessment be made of the proposal if, in the opinion of the relevant Minister based on reasonable grounds, the environmental impact of the proposal would be of sufficient significance.

(2) In making a decision under subsection (1), the relevant Minister shall consider—

- (a) the preliminary assessment;
- (b) the report of any meeting convened under section 127; and
- 30** (c) whether any aspect of the environmental impact of that proposal is, or could be, the subject of—
  - (i) an Inquiry or another Assessment; or
  - (ii) any environmental assessment action taken by or on behalf of the Commonwealth, a State or the Northern Territory.

(3) This section does not apply where a Minister is required under an Act or subordinate law to direct that an Assessment be made.

#### Environment Minister's power to direct Assessments

- 5 121. Where a Minister other than the Environment Minister has the power under an Act or subordinate law to direct that an Assessment be made, the Environment Minister also has that power.

#### Directions

122. (1) A direction by a Minister that an Assessment be made in relation to a defined decision shall—

- 10 (a) be in writing given to the proponent; and  
(b) specify—  
(i) the form of the Assessment;  
(ii) the matters to be included in the public environment report or the environmental impact statement (as the case  
15 requires), and the relative emphasis to be given to each such matter;  
(iii) subject to section 123 or sections 124 and 125, as the case requires—the manner in which the report or statement is to be prepared; and  
20 (iv) where, in the opinion of the Environment Minister based on reasonable grounds, the environmental impact of a proposal which is the subject of another defined decision is relevant to the environmental impact of the relevant proposal—sufficient details of the first-mentioned proposal  
25 to enable the proponent to assess the potential combined effects of the proposals.

(2) The Environment Minister shall, in consultation with the relevant Minister, determine the matters to be specified under paragraph (1) (b).

- 30 (3) Where a Minister gives a direction that an Assessment be made, he or she shall cause to be published in the *Gazette*, and in a daily newspaper, a notice that sets out—

- (a) the name of the proponent;  
(b) the matters specified in the direction pursuant to paragraph (1) (b); and  
35 (c) the name of any consultant nominated by the Minister pursuant to subsection (4) to assist in the preparation of the Assessment.

(4) A Minister who directs that an Assessment be made may, under subparagraph (1) (b) (iii), direct the proponent in relation to an Assessment to engage the services of a consultant specified by the Minister in accordance with the prescribed criteria to assist the proponent in the preparation of the Assessment.

**Subdivision C—Preparation, evaluation and consideration by the Legislative Assembly**

**Public environment reports—preparation**

123. (1) The Environment Minister may, in writing, direct the proponent in relation to a public environment report—

(a) to undertake such consultation in relation to the preparation of the report as is specified; and

(b) after any such consultation—to make the report available, in a specified manner and form, for public inspection, with such notice of that availability as is specified.

(2) The proponent in relation to a public environment report shall comply with a direction under subsection (1).

(3) This section does not apply in relation to the preparation of a public environment report for the purposes of an Assessment which will be—

(a) a background paper within the meaning of Part II; or

(b) notified together with a draft Plan of Management under Division 5 of Part V.

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

124. (1) The proponent in relation to an environmental impact statement shall cause to be published in the *Gazette*, and in a daily newspaper, a notice approved in writing by the Environment Minister—

(a) stating that copies of the draft environmental impact statement are available for public inspection and purchase from the proponent at specified places and times; and

(b) inviting interested persons to submit written comments about the draft to the proponent at a specified address and within a period of 28 days or such longer period as is directed in writing by the relevant Minister.

(2) The proponent in relation to an environmental impact statement shall make copies of the draft statement available for inspection and purchase at the places and times specified in the notice under subsection (1).



(3) A proponent shall not sell a copy of a draft environmental impact statement that he or she has made available for purchase pursuant to subsection (2) at a price that exceeds a price fixed by the Environment Minister as the maximum price for the sale of a copy of the statement.

5 (4) In fixing a maximum price at which a proponent may sell a copy of a draft environmental impact statement, the Environment Minister shall fix a price that will reimburse the proponent for the cost of producing the copy but not for the expense incurred by the proponent in preparing the draft statement.

10 (5) Where the Environment Minister makes a decision fixing the maximum price that a proponent may charge for a copy of a draft environmental impact statement, he or she shall give written notice of the decision to the proponent including—

15 (a) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, the proponent may apply to the Tribunal for a review of the Minister's decision; and

(b) except where subsection 26 (11) of that Act applies—a statement to the effect that the proponent may request a statement under section 26 of that Act.

20 (6) This section does not apply in relation to the preparation of an environmental impact statement for the purposes of an Assessment which will be—

(a) a background paper within the meaning of Part II; or

25 (b) notified together with a draft plan of management under Division 5 of Part V.

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

30 125. The proponent in relation to an environmental impact statement shall, in preparing the statement, consider any written comments from any person or Territory authority, and any reports, related to the environmental impact of the relevant proposal.

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

35 126. The proponent shall submit the relevant public environment report or environmental impact statement to the Environment Minister, together with—

(a) a written report about the proponent's consultation in relation to the report or statement;

(b) a copy of each written comment about the report or statement received by the proponent; and

- (c) a copy of each report referred to in section 125 which is not available to the public.

### **Consultation**

5 127. (1) The Environment Minister may, by giving reasonable notice to the proponent of a proposal that has an environmental impact and any other person that the Minister believes on reasonable grounds to have an interest that would be directly affected by the proposal, convene a meeting of such persons for the purposes of—

- (a) clarifying the proposal or concerns relating to the proposal;
- 10 (b) clarifying the report of a panel established to conduct an Inquiry into the proposal; or
- (c) discussing any ways in which the proposal could be modified in order to reduce or eliminate any potential adverse environmental impact.

15 (2) The Environment Minister shall give a written report to each participant in the meeting stating—

- (a) the outcome of the meeting; and
  - (b) any recommendations which the Environment Minister intends to include in his or her report under section 130 as a result of the meeting.
- 20

(3) Where a meeting recommends that a proposal be varied, the Minister shall cause copies of the report prepared in relation to the meeting for the purposes of subsection (2) to be made available for public inspection at times and places specified in a notice published in the *Gazette* and in a daily newspaper.

25

### **Further information**

128. (1) Within the prescribed period after the submission of a public environment report or an environmental impact statement to the Environment Minister, that Minister may, by notice in writing to the proponent, direct the proponent to provide further specified information in relation to the proposal, report or statement.

30

(2) Upon notice under subsection (1), the proponent shall, in writing, provide the specified information to the Environment Minister.

### **Further revision**

35 129. (1) Within the prescribed period after the submission of a public environment report or an environmental impact statement to the Environment Minister, that Minister may, by notice in writing to the

proponent, request the proponent to revise the report or statement in consideration of specified matters.

(2) Upon notice under subsection (1), the proponent may revise the report or statement in consideration of the specified matters.

5 (3) The proponent shall—

(a) if the report or statement is revised—re-submit the revised report or statement to the Environment Minister; or

10 (b) if the report or statement is not revised—submit a written report to the Environment Minister stating the reasons why the proponent has not revised the report or statement.

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

15 130. (1) Unless subsection (2) applies, within the prescribed period after the submission of a public environment report or environmental impact statement to the Environment Minister, he or she shall prepare a written report evaluating it.

(2) Where the Environment Minister gives a notice to a proponent under subsection 129 (1), that Minister shall prepare a written report evaluating a public environment report or statement within the prescribed period after the proponent—

20 (a) re-submits the report or statement under paragraph 129 (3) (a); or

(b) submits a report under paragraph 129 (3) (b);

as the case requires.

(3) A report under subsection (1) shall include—

25 (a) a statement as to whether, in the opinion of the Environment Minister, the public environment report or environmental impact statement has been prepared in accordance with this Division, and with the relevant directions under this Division;

(b) any comment by that Minister about the environmental impact of the relevant proposal;

30 (c) where that Minister has convened a meeting under section 127—the report of that meeting referred to in subsection 127 (2); and

(d) any recommendation of that Minister about the conditions subject to which the proposal should be approved.

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

35 131. (1) Within 6 sitting days after the completion of a report referred to in section 130, the relevant Minister shall cause to be laid before the Legislative Assembly a copy of—

- (a) the relevant Assessment;
- (b) any notice given by the Environment Minister under section 128 or 129; and
- 5 (c) any report, comment or written information submitted to the Environment Minister under section 126, 128 or 129.

(2) After an Assessment is completed, the relevant Minister shall make copies of the Assessment, together with copies of any notice, report, comment or written information referred to in paragraph (1) (b) or (c), available to the public during office hours at places and times specified in a  
10 notice published—

- (a) in the *Gazette*; and
- (b) in a daily newspaper.

#### Exclusion of material

15 132. (1) Where, in the relevant Minister's opinion, based on reasonable grounds—

- (a) a part of an Assessment contains information related to the personal or business affairs of a person, being information—
  - (i) supplied to the proponent or that Minister in confidence; or
  - (ii) the publication of which would reveal a trade secret; and
- 20 (b) it would not be in the public interest for that part to be published;

the relevant Minister shall cause that part to be excluded from the copy of the Assessment laid before the Legislative Assembly, and from any copy of the Assessment made available to the public or for public inspection.

25 (2) Where a part of an Assessment is excluded from the copies of that Assessment made available to the public or for public inspection, each copy shall include a statement to the effect that an unspecified part of the Assessment has been excluded for the purpose of protecting the confidentiality of information included in that part.

#### Exemptions

30 133. (1) The Environment Minister may, by instrument—

- (a) exempt a specified defined decision, or defined decisions of a specified class, from being the subject of an Assessment directed under any Act or subordinate law; or
- 35 (b) declare that specified provisions of this Division are not to apply in relation to a specified Assessment, or to Assessments of a specified class.

(2) An instrument of exemption is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

5 (3) Notwithstanding paragraph 6 (1) (b) of the *Subordinate Laws Act 1989* in its application to the instrument, an instrument of exemption takes effect (subject to the remaining provisions of section 6 of that Act) on the expiration of 5 sitting days after it is laid before the Legislative Assembly, or on such a later date as is specified in the instrument.

10 (4) Paragraph 6 (1) (c) and subsections 6 (7), (7A) and (7B) of the *Subordinate Laws Act 1989* apply to an instrument of exemption as if the references in those provisions to 15 sitting days were references to 5 sitting days.

(5) The Environment Minister shall cause an instrument of exemption to be notified in a daily newspaper.

15 (6) The validity of an instrument of exemption is not affected by a failure to comply with subsection (5).

#### *Division 4—Inquiries*

##### *Subdivision A—Establishment of panels and terms of reference* **Constitution**

20 134. (1) Where the relevant Minister in relation to a defined decision decides to establish a panel to inquire into the proposal which is the subject of that decision he or she shall, in writing, appoint a person or persons to constitute a panel to conduct the Inquiry.

25 (2) The relevant Minister shall nominate 1 member (or, in the case of a panel constituted by 1 member, that member) of the panel as the presiding member.

##### **Combined Inquiries**

30 135. Where 2 or more proposals, being the subject of 2 or more defined decisions, would in the opinion of the Environment Minister have substantially interconnected effects, he or she may, under section 134, with the consent of the relevant Minister in relation to each decision, establish a panel to conduct an Inquiry into the potential combined effect of those proposals.

##### **Remuneration**

35 136. The Territory shall pay a member of a panel such remuneration as is determined in writing by the relevant Minister.

##### **Terms of reference**

137. (1) The relevant Minister shall, in writing, determine the terms of reference of an Inquiry.

(2) The terms of reference of an Inquiry—

(a) shall—

- 5
- (i) specify the defined decision;
  - (ii) require the panel to assess the potential costs and benefits to the community and to the Territory of the proposal which is the subject of that decision; and
  - (iii) specify a reasonable period within which the panel is to report; and

(b) may require the panel—

- 10
- (i) to investigate specified aspects of that proposal; or
  - (ii) to consider any specified report.

(3) The relevant Minister may, at the request of a panel, or on his or her own motion, by notice published in the *Gazette*, vary the terms of reference of the relevant Inquiry.

15 **Notification**

138. The relevant Minister in relation to an Inquiry shall cause to be published a notice in the *Gazette* specifying—

- 20
- (a) the members of the panel, and the presiding member;
  - (b) the terms of reference of the Inquiry;
  - (c) the period within which the panel is to report; and
  - (d) such other matters as that Minister considers necessary.

**Subdivision B—Inquiry reports**

**Inquiry reports**

25 139. A panel shall report its findings and recommendations in writing to the relevant Minister in accordance with the terms of reference determined under section 137.

**Tabling in the Legislative Assembly and public inspection**

30 140. (1) The relevant Minister shall cause a copy of the report of a panel's findings and recommendations to be laid before the Legislative Assembly within 6 sitting days of receiving the report.

(2) After a report is completed, the relevant Minister shall make copies of the report available to the public at places and times specified in a notice published—

- (a) in the *Gazette*; and
- (b) in a daily newspaper.

#### Exclusion of material

5 141. (1) Where, in the panel's opinion based on reasonable grounds and expressed in its report—

- (a) a part of a report contains information related to the personal or business affairs of a person, being information—
    - (i) supplied to the panel in confidence; or
    - (ii) the publication of which would reveal a trade secret; and
  - 10 (b) it would not be in the public interest for that part to be published;
- the relevant Minister may cause that part of the report to be excluded from the copy laid before the Legislative Assembly, and from any copy made available to the public or for public inspection.

15 (2) Where a part of a report is excluded under subsection (1), each copy of the report laid before the Legislative Assembly or made available to the public or for public inspection shall include a statement to the effect that an unspecified part of the report has been excluded for the purpose of protecting the confidentiality of information included in that part.

#### Subdivision C—Procedures and powers

##### 20 Interpretation

142. (1) In this Subdivision, unless the contrary intention appears—

“authorised person” means—

- (a) a panel member; or
- 25 (b) a person assisting a panel member in a manner authorised in writing by that member;

“place” includes any premises, land, vehicle, aircraft or vessel.

30 (2) Where an authorised person enters a place in accordance with this Subdivision, a reference in this Subdivision to the occupier of that place includes a reference to a person the authorised person believes on reasonable grounds to be the occupier, or to be in charge, of that place.

#### Notice of Inquiry hearings

143. At a reasonable time before the commencement of an Inquiry, the presiding member of a panel shall cause to be published in the *Gazette*, and in a daily newspaper, a notice stating—

- 35 (a) the subject-matter of the Inquiry; and

- (b) the time and place at which the Inquiry is to commence.

**Public hearings**

144. (1) A panel shall conduct its Inquiry in public, except as provided by subsection (2).

5 (2) A panel may—

- (a) direct that the Inquiry or any part of it be held in private, and give directions about who may be present during any private hearing;
- (b) give directions prohibiting or restricting the publication of evidence given before the Inquiry, or of matters contained in documents lodged with the Inquiry; or
- 10 (c) give directions prohibiting or restricting the disclosure to any specified person of such evidence or such matters.

(3) In making a direction under subsection (2), a panel shall consider—

- 15 (a) the principle that it is desirable that the Inquiry should be held in public, and that evidence given before the Inquiry, and documents lodged with the Inquiry, should be available to interested persons and to the public; and
- (b) in the circumstances, whether confidentiality is required for the relevant proceedings, evidence or matter.
- 20

(4) A panel may issue a direction under subsection (2) for the purposes of a special hearing under section 146.

**General procedure**

145. (1) At a hearing of an Inquiry, the panel—

- 25 (a) shall not conduct the hearing in an unduly formal manner;
- (b) is not bound by the rules of evidence, and may inform itself—
- (i) in any way it thinks fit; and
- (ii) without notice to any person who has made a submission to the Inquiry;
- 30 (c) may take evidence on oath, or affirmation, administered by a member of the panel;
- (d) may prohibit or regulate cross-examination; and
- (e) subject to this Subdivision, may otherwise determine its own procedures.



(2) Unless otherwise required by the panel, a person may make a submission to an Inquiry orally or in writing or partly orally and partly in writing.

5 (3) The panel may adjourn an Inquiry from time to time and from place to place (whether within or outside the Territory).

**Special hearings—consultation with interested persons**

10 146. (1) A panel may hold a special hearing of the Inquiry in order to consult with the proponent, and any other person that the panel believes on reasonable grounds to have an interest directly affected by the proposal, for the purposes of—

- (a) clarifying the proposal; and
- (b) discussing any ways in which the proposal could be modified in order to reduce or eliminate any potential environmental impact.

15 (2) The panel shall give each person referred to in subsection (1) reasonable notice in writing of the special hearing.

(3) The panel shall conduct a special hearing in an informal manner.

(4) The panel shall include in the report of an Inquiry a report stating—

- (a) the outcome of the special hearing; and
- 20 (b) any influence the special hearing has had on the panel's recommendations in relation to the proposal.

**Assessments for the purpose of Inquiries**

25 147. (1) For the purposes of an Inquiry, the relevant Minister may, at the written request of the panel, or on his or her own motion, direct that an Assessment be made of the environmental impact of any aspect of the proposal which is the subject of the relevant defined decision.

30 (2) An Assessment under subsection (1) consists of a public environment report or an environmental impact statement, but does not include a report of the Environment Minister under section 130 evaluating the public environment report or environmental impact statement.

(3) Sections 126, 127, 128 and 129 apply to an Assessment under subsection (1) as if the references to the Environment Minister in those sections were references to the relevant Minister.

35 (4) Section 130 does not apply in relation to an Assessment under subsection (1).

(5) For the purposes of subsection 131 (1), the relevant Minister shall cause a copy of an Assessment under subsection (1), together with any

notice, report, comment or information referred to in paragraph 131 (1) (b) or (c), be laid before the Legislative Assembly within 6 sitting days of—

- (a) receiving the Assessment under section 126;
- 5 (b) where he or she issues a notice under section 128, but does not issue a notice under section 129—receiving the relevant information under subsection 128 (2); or
- (c) where he or she issues a notice under section 129—receiving the Assessment or report under subsection 129 (3).

**Witnesses—summons to appear**

- 10 148. (1) The presiding member of a panel may, by writing, summon a person to attend a hearing of the Inquiry at a specified time and place to give evidence and to produce such books and documents as are—

- (a) relevant to any matter at issue in the Inquiry; and
- (b) specified in the summons.

- 15 (2) A person served with a summons under subsection (1) shall not, without reasonable excuse, fail to comply with the summons.

Penalty: \$5,000 or imprisonment for 6 months, or both.

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

20 **Victimisation of witnesses**

149. (1) A person shall not—

- (a) use violence to or inflict injury upon;
- (b) cause or procure violence, damage, loss or disadvantage to; or
- (c) cause or procure the punishment of;

- 25 a person on account of the person's giving, or proposing to give, evidence to an Inquiry.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(2) An employer shall not—

- 30 (a) dismiss an employee from his or her employment, or prejudice an employee in his or her employment, on account of the employee's giving, or proposing to give, evidence to an Inquiry; or
- (b) threaten so to dismiss, or so to prejudice, an employee on account of the employee's proposing to give evidence to an Inquiry.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(3) For the purposes of paragraph (2) (a), in proceedings for an offence against subsection (2), if it is established that an employer dismissed an employee from his or her employment, or prejudiced an employee in his or her employment, after the employee gave, or proposed to give, evidence to an Inquiry, it is to be presumed that that dismissal or prejudice was by reason of the employee's giving, or proposing to give, evidence at the Inquiry, but that presumption is rebuttable.

(4) For the purposes of paragraph (2) (b), in proceedings for an offence against subsection (2), if it is established that an employer threatened to dismiss an employee from his or her employment, or to prejudice an employee in his or her employment, after the employee proposed to give evidence to an Inquiry, it is to be presumed that that threat was by reason of the employee's proposal, but that presumption is rebuttable.

#### 15 Inspection of books and documents

150. (1) An authorised person may inspect any book or document given in evidence to the Inquiry, and may make copies of, or copy extracts from, such a book or document.

(2) A book or document given in evidence to an Inquiry may be retained by the panel for such reasonable period as the panel thinks fit.

(3) A panel shall allow the owner of a book or document retained by the panel reasonable access to the book or document.

#### Power of entry

151. (1) For the purposes of an Inquiry, an authorised person may enter any place—

- (a) with the consent of the occupier; or
- (b) pursuant to a warrant issued under section 152.

(2) Before seeking the consent of the occupier of a place for the purpose of subsection (1), an authorised person shall—

- (a) if the authorised person is a panel member—produce written evidence of his or her appointment;
- (b) if the authorised person is the assistant of a panel member—produce written evidence of his or her authority; and
- (c) inform the occupier that he or she may refuse to give consent.

#### 35 Search warrants

152. (1) Where a panel member believes on reasonable grounds that it is necessary, for the purposes of the Inquiry, for an authorised person to

enter and inspect any place and to search for and inspect any thing or any kind of thing, within the next following 28 days the member may—

- (a) lay before a magistrate an information on oath setting out those grounds; and
- 5 (b) apply for the issue of a warrant to search the place for such a thing or things, and to inspect it or them.

(2) On application under subsection (1), the magistrate may issue a warrant authorising the authorised person named in the warrant, with such assistance and by such force as is necessary and reasonable—

- 10 (a) to enter the place;
- (b) to search for any specified thing or any thing of a specified kind; and
- (c) to inspect any such thing.

(3) A magistrate shall not issue a warrant unless—

- 15 (a) the applicant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is sought; and
- 20 (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(4) A warrant shall—

- (a) specify the Inquiry in relation to which the entry, search and inspection are authorised;
- (b) state the purpose for which it is issued;
- 25 (c) specify particular hours during which the entry is authorised, or state that the entry is authorised at any time of the day or night;
- (d) include a description of the things, or kinds of things, in relation to which any power under section 153 may be exercised; and
- 30 (e) specify a date not later than 28 days after the date of issue of the warrant on which the warrant ceases to have effect.

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

153. (1) Subject to the terms of any warrant issued under section 152, where an authorised person enters a place in accordance with section 151, he or she may, for the purposes of the Inquiry—

- 35 (a) inspect the place;

- (b) search for and inspect any thing; or
- (c) require the occupier to give the authorised person such assistance as is reasonable to enable the authorised person to exercise his or her powers under this section.

5 (2) A person shall not, without reasonable excuse, contravene a requirement made of the person under paragraph (1) (c).

Penalty for contravention of subsection (2): \$5,000 or imprisonment for 6 months, or both.

#### **Obstructing or resisting an authorised person**

10 154. A person shall not wilfully obstruct or resist an authorised person in the exercise or attempted exercise of his or her powers under this Subdivision.

Penalty: \$5,000 or imprisonment for 6 months, or both.

#### **Contempt**

15 155. A person shall not, without reasonable excuse—

- (a) contravene a direction lawfully given by a panel member;
- (b) disturb a panel member in the exercise of the member's powers or the performance of his or her functions;
- (c) interrupt a hearing of an Inquiry;
- 20 (d) use insulting language, or act in an insulting manner, towards a panel member;
- (e) create a disturbance, or participate in the creation or continuation of a disturbance, in or near a place where a hearing of an Inquiry is taking place; or
- 25 (f) do any other act or thing which would, if the panel were a court of record, constitute a contempt of that court.

Penalty: \$5,000 or imprisonment for 6 months, or both.

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

30 156. (1) A panel member has, in the exercise of the member's powers or the performance of his or her functions, the same protection and immunity as a Justice of the Supreme Court.

(2) Subject to this Division, a person giving evidence to an Inquiry has the same protection, and is subject to the same liabilities, in any civil or criminal proceedings as a witness in proceedings in the Supreme Court.

**Division 5—Administrative review**

**Review of decisions**

157. A proponent in relation to an assessment may apply to the Tribunal for review of—

- 5 (a) a decision of the Environment Minister under section 116 fixing the maximum price at which the proponent may sell a copy of a preliminary assessment; or
- 10 (b) a decision of the Environment Minister under section 124 fixing the maximum price at which the proponent may sell a copy of a draft environmental impact statement.

**PART V—LAND ADMINISTRATION**

**Division 1—Preliminary**

**Interpretation**

158. (1) In this Part, unless the contrary intention appears—

- 15 “building and development provision”, in relation to a lease, means a provision of the lease that requires the lessee to carry out specified works on the land comprised in the lease or on any unleased Territory Land;

“lease” means—

- 20 (a) a lease granted under this Act;
- (b) a lease granted under a repealed Act and continued in force by the *Land (Planning and Environment) (Consequential Provisions) Act 1991*; or
- (c) a lease granted under the *Unit Titles Act 1970*;

25 but does not include a sublease;

“lessee” means the person who is the proprietor of a lease, whether or not he or she is the registered proprietor of the lease, and whether or not the lease was granted to him or her or the lease passed to him or her by assignment, transfer, devolution or operation of law;

- 30 “public carpark” means an area that is an off-street parking area within the meaning of the *Motor Traffic Act 1936* and that is available for use by the public without the payment of money;

“public land” means land identified as public land in the Territory Plan;

“public road” has the same meaning as in the *Motor Traffic Act 1936*;

"registered lease" means a lease registered in the Register Book kept under the *Real Property Act 1925*;

5 "registered proprietor", in relation to a lease, means the person who is registered under the *Real Property Act 1925* as proprietor of the lease;

"repealed Act" means an Act repealed by the *Land (Planning and Environment) (Consequential Provisions) Act 1991*;

"residential lease" means a lease of Territory Land granted for residential purposes only;

10 "sublease" means a sublease of a parcel of land, or part of a parcel of land, subject to a lease, or of a building, or a part of a building, on a parcel of land subject to a lease;

15 "sublessee" means the person who is the proprietor of a sublease, whether the sublease was granted to him or her or the sublease has passed to him or her by assignment, transfer, devolution or operation of law;

"Territory Land" has the same meaning as in the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth.

20 (2) A reference in this Part to a provision of a lease shall be read as including a reference to a provision to which the lease is subject.

(3) A reference in this Part to the variation of a lease shall be read as including a reference to the surrender of a lease and the grant of a new lease to the same lessee over land—

25 (a) that is the whole or part of the land comprised in the surrendered lease; and

(b) that is not defined land within the meaning of Subdivision D of Division 3 of Part II;

subject to provisions that differ from those of the surrendered lease.

30 (4) A reference in this Part to the market value of a lease is a reference to the amount that could be expected to be paid for the lease on the open market if it were sold by a willing but not anxious seller to a willing but not anxious buyer.

### Application

35 159. (1) This Part applies to all grants of estates in Territory Land made by the Executive on behalf of the Commonwealth.

(2) This Part does not apply to a transfer by the Territory of a registered lease of which the Territory is the registered proprietor.

**Division 2—Leases**

**Granting of leases**

160. (1) The Executive may, on behalf of the Commonwealth, grant a lease of Territory Land by—

- 5       (a) auctioning the lease;
- (b) calling tenders for the grant of the lease;
- (c) conducting a ballot for the right to the grant of the lease; or
- (d) a direct grant to an applicant for a lease.
- (2) A lease granted under this section may include provisions—
- 10       (a) requiring the lessee to develop the land comprised in the lease, or any unleased Territory Land, in a specified way; or
- (b) requiring the lessee to give security for the performance of any of his or her obligations under the lease.
- 15       (3) A lease granted under paragraph (1) (d) shall be granted subject to such provisions as are agreed between the Executive and the applicant for the lease.
- (4) The Executive shall not grant a lease of Territory Land under paragraph (1) (d) otherwise than in accordance with criteria specified pursuant to subsection (5).
- 20       (5) The Executive may, for the purposes of this section, by instrument—
- (a) specify criteria for the granting of leases under paragraph (1) (d); or
- (b) amend or revoke criteria so specified.
- 25       (6) An instrument under subsection (5) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.
- (7) Subject to subsection (8), where the Executive grants a lease under paragraph (1) (d), it shall cause a copy of the lease to be laid before the Legislative Assembly within 5 sitting days after the day on which the lease
- 30       is granted.
- (8) Subsection (7) does not apply in relation to—
- (a) a lease granted under paragraph (1) (d) that is expressed to be granted for the purpose of enabling the lessee to develop the land comprised in the lease for subdivision and resale; or



- (b) a lease granted under paragraph (1) (d) following the development of the land leased pursuant to a lease of the kind referred to in paragraph (a).

- 5 (9) The validity of a lease to which subsection (7) applies shall not be taken to be affected by a failure to comply with that subsection.

#### **Fees for granting leases**

161. (1) A lease under section 160 shall only be granted on payment of the determined fee.

- 10 (2) Different fees may be determined in respect of different classes of leases granted under section 160.

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

162. (1) In this section—

“community organisation” means a body corporate that—

- 15 (a) has as its principal purpose the provision of a service, or a form of assistance, to persons living or working in the Territory;
- (b) is not carried on for the pecuniary profit or gain of its members; and
- (c) does not hold a Club Licence under the *Liquor Act 1975*.

- 20 (2) The Executive may, on behalf of the Commonwealth, grant a lease of Territory Land to a community organisation without charge or for a charge that is less than the market value of the lease.

- 25 (3) The Executive shall not grant a lease under this section otherwise than in accordance with criteria for the granting of leases to community organisations specified pursuant to subsection (4).

(4) The Executive may, for the purposes of this section, by instrument—

- (a) specify criteria for the granting of leases to community organisations; or
- 30 (b) amend or revoke criteria so specified.

(5) An instrument under subsection (4) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(6) The Executive shall, within 28 days of granting a lease under this section, table a copy of the lease in the Legislative Assembly.

- 35 (7) The validity of a lease granted under this section is not to be taken to be affected by a failure to comply with subsection (6).

(8) A community organisation shall not transfer a lease granted under this section and a purported transfer of such a lease shall be of no effect.

5 (9) Nothing in this section shall be taken to derogate from the power of the Executive to grant a lease of Territory Land to a community organisation otherwise than under this section.

**Special leases**

10 163. (1) The Executive may, on behalf of the Commonwealth, grant a lease of Territory Land for a charge that is less than the market value of the lease where the Executive is satisfied that it is desirable to do so in order to facilitate—

- (a) the economic development of the Territory; or
- (b) the development of business in the Territory.

15 (2) The Executive shall not grant a lease of Territory Land under this section otherwise than in accordance with criteria for the granting of special leases specified pursuant to subsection (3).

(3) The Executive may, for the purposes of this section, by instrument—

- (a) specify criteria for the granting of special leases; or
- (b) amend or revoke criteria so specified.

20 (4) An instrument under subsection (3) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(5) The Executive shall, within 28 days of granting a lease under this section, table a copy of the lease in the Legislative Assembly.

25 (6) The validity of a lease granted under this section is not to be taken to be affected by a failure to comply with subsection (5).

**Authority to consider proposed leases**

164. (1) In this section—

30 “Designated Area” has the same meaning as in the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;

“lease” includes a licence to occupy or use an area of unleased Territory Land for a period exceeding 3 months.

35 (2) Where the Executive proposes to grant a lease of Territory Land on behalf of the Commonwealth, not being land in a Designated Area, it shall give the Authority notice in writing of its intention to do so and in the notice specify—

- (a) the boundaries of the land over which it is proposed that the lease should be granted;
  - (b) the term of the lease;
  - (c) the purposes for which the lease is to be granted; and
  - 5 (d) the provisions to be included in the lease and any agreement collateral to the lease.
- (3) On receiving a notice under subsection (2), the Authority shall, within the prescribed period, advise the Executive by instrument whether it considers that the lease specified in the notice—
- 10 (a) may appropriately be granted as proposed in the notice under subsection (2);
  - (b) may appropriately be granted subject to compliance with conditions specified in the instrument; or
  - (c) could not appropriately be granted.
- 15 (4) In determining the advice it is to give to the Executive under subsection (3) in relation to a proposed lease, the Authority shall consider each of the following matters, and only the following matters:
- (a) whether the lease would be consistent with the planning principles and policies set out in the Territory Plan;
  - 20 (b) whether the lease would be in accordance with any directions of the Executive in force under section 36;
  - (c) any matters prescribed by the Territory Plan for the purpose of this subsection.
- 25 (5) The conditions that the Authority may specify pursuant to paragraph (3) (b) in relation to a proposed lease are conditions of the following kinds only:
- (a) a condition specifying the land over which the lease may be granted;
  - 30 (b) a condition specifying the term, or the maximum term, for which the lease may be granted;
  - (c) a condition specifying the purposes for which the land to be leased may be used under the lease;
  - (d) a condition specifying provisions to be included in the lease or an agreement collateral to the lease.
- 35 (6) Where the Authority gives the Executive advice of the kind referred to in paragraph (3) (b) or (c), it shall—

- (a) in the case of advice of the kind referred to in paragraph (3) (b)—specify in the instrument under subsection (3) its reasons for considering that the conditions specified in the instrument should be imposed; or
  - 5 (b) in the case of advice of the kind referred to in paragraph (3) (c)—specify in the instrument under subsection (3) its reasons for considering that the proposed lease could not appropriately be granted.
- 10 (7) Where the Authority has advised the Executive pursuant to subsection (3) that a proposed lease may appropriately be granted, the Executive may—
  - (a) if the Authority has stated that the lease may appropriately be granted as proposed in the notice under subsection (2)—grant the lease as proposed in that notice; or
  - 15 (b) if the Authority has stated that the lease may appropriately be granted subject to conditions specified in the instrument under subsection (3)—grant the lease subject to compliance with those conditions.
- 20 (8) Where the Executive has given the Authority a notice under subsection (2) in relation to a proposed lease and the Authority has not, within the time prescribed for the purposes of subsection (3), advised the Executive pursuant to that subsection whether it considers that the proposed lease may appropriately be granted, the Executive may grant the lease as proposed in the notice under subsection (2).
- 25 (9) Where the Authority has advised the Executive pursuant to subsection (3) that a lease specified in a notice under subsection (2) may appropriately be granted subject to compliance with specified conditions, the Executive may grant the lease without complying with 1 or more of those conditions.
- 30 (10) The Executive may grant a lease specified in a notice under subsection (2) notwithstanding that the Authority has, pursuant to subsection (3), advised the Executive that it considers that the lease could not appropriately be granted.
- 35 (11) Notwithstanding anything contained in this Act or any other Act, the power to grant a lease in accordance with subsection (9) or (10) may only be exercised by—
  - (a) the Executive; or
  - (b) a Minister acting on behalf of the Executive.

**Inquiries and Assessments in relation to the granting of leases**

165. (1) Where it is proposed that a lease of Territory Land be granted, the Executive may—

- 5
- (a) establish a panel to conduct an Inquiry into whether the proposed lease should be granted; or
  - (b) direct that an Assessment be made into the possible environmental impact of a decision to grant the lease.

10 (2) Where the Executive establishes a panel to conduct an Inquiry, or directs an Assessment to be made, pursuant to subsection (1), the Executive—

- 15
- (a) shall not grant the proposed lease until—
    - (i) in a case where a panel is established to conduct an Inquiry—the panel has reported to the Executive and the Executive has considered the report; or
    - (ii) in a case where a direction has been given for an Assessment to be made—the Assessment has been completed and the Executive has considered the environment report or the environmental impact statement forming part of the Assessment; and
  - 20 (b) shall review the provisions of the proposed lease taking into consideration the environment report, environmental impact statement or report of the panel established to conduct the Inquiry, as the case requires.

**Eligibility for certain classes of leases**

25 166. (1) The Executive may, by instrument—

- 30
- (a) declare a specified class of leases to be leases to which this section applies;
  - (b) specify, in respect of a class of leases declared under paragraph (a) to be leases to which this section applies, criteria for determining whether a person is eligible to hold the land comprised in a lease included in that class; or
  - (c) amend or revoke a declaration under paragraph (a) or criteria specified under paragraph (b).

35 (2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(3) The Executive shall not grant a lease to which this section applies to a person who does not satisfy the criteria specified pursuant to paragraph (1) (b) in respect of the class of leases in which the lease is included.

(4) The validity of a lease to which this section applies is not to be taken to be affected by a failure to comply with subsection (3).

(5) The lessee under a lease to which this section applies shall not—

- (a) assign or transfer the lease;
- 5 (b) sublet the land comprised in the lease or any part of it; or
- (c) part with possession of the land comprised in the lease or any part of it;

10 without having obtained the written consent of the Executive and any assignment, transfer, sublease, agreement or arrangement made or entered into in contravention of this subsection shall be of no effect.

(6) The Executive shall not consent to the lessee under a lease to which this section applies—

- (a) assigning or transferring the lease;
- (b) subletting the land comprised in the lease or any part of it; or
- 15 (c) parting with possession of the land comprised in the lease or any part of it;

20 unless it is satisfied that the person to whom it is proposed that the lease should be assigned or transferred, the person to whom it is proposed that a sublease should be granted or the person to whom it is proposed that possession of the land should be given, as the case may be, is a person who satisfies the criteria of eligibility specified pursuant to paragraph (1) (b) in respect of the class of leases in which the lease is included.

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

25 167. The Executive shall not be bound to grant a lease of Territory Land to any applicant, notwithstanding that applications for a lease have been invited and, where applications for a lease have been invited subject to conditions, the Executive may, without granting a lease, invite fresh applications for the lease subject to the same or other conditions.

#### **Payment for leases**

30 168. (1) Subject to subsection (2), the Executive shall not grant a lease of Territory Land otherwise than for payment of an amount that is not less than the market value of the lease.

(2) Subsection (1) does not apply in respect of—

- 35 (a) a lease granted for a rent that is the full market rental value of the lease; or

- (b) a lease granted under paragraph 160 (1) (d) or section 162, 163, 170 or 171.

**Failure to accept and execute lease**

5     **169. (1)** Subject to subsection (2), where a person who is entitled to the grant of a lease of Territory Land pursuant to this Part fails to—

- (a) accept and execute the lease; or
- (b) pay any amount that he or she is required to pay before being granted the lease;

10     within the prescribed period, the Executive may, by instrument served on the person, terminate his or her right to the grant of the lease.

(2) An instrument under subsection (1) shall—

- (a) specify the ground on which it is given; and
- (b) state that it takes effect on the day 28 days after the day on which it is served.

15     (3) An instrument under subsection (1) may be served on a person by—

- (a) delivering it to the person personally;
- (b) sending it to the person by post; or
- 20     (c) where the residential address of the person is not known to the Executive—publishing a copy of the instrument in a daily newspaper.

(4) An instrument under subsection (1) shall take effect on the day 28 days after the day on which it is served.

25     (5) A person whose right to the grant of a lease has been terminated under this section shall not have any claim for compensation in respect of the termination of the right or for the recovery of any monies paid to the Executive in respect of the grant of the lease.

**Grant of further lease for residential purposes**

**170. Where—**

- 30     (a) the term of a residential lease of Territory Land is to expire within a period of 30 years;
- (b) the lessee of the land applies to the Executive for the grant of a further residential lease of that land;
- 5     (c) neither the Territory nor the Commonwealth requires the land for a public purpose; and

- (d) the lessee pays such fee fixed by the Executive for granting the further lease as does not exceed the cost of granting the lease;

the Executive shall, on behalf of the Commonwealth, grant the lessee a further residential lease of that land to commence on the day of the grant.

**5 Grant of further lease for purposes other than residential or rural purposes**

**171. Where—**

- 10 (a) the term of a lease of Territory Land that has not been granted for residential or rural purposes is to expire within a period of 30 years;
- (b) the lessee applies to the Executive for the grant of a further lease of the land;
- (c) neither the Territory nor the Commonwealth requires the land for a public purpose;
- 15 (d) the Executive does not propose to allow the land to be used for a purpose other than that for which it is presently leased;
- (e) any prescribed requirements for the grant of the further lease applied for are satisfied;
- (f) all rent due under the existing lease is paid; and
- 20 (g) the lessee pays the determined fee;

the Executive shall grant the lessee a further lease of the land to commence on the day of the grant.

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

**172. (1) In this section—**

- 25 "improvement" means a building or a structure but does not include a building or structure, or a part of a building or structure—

- (a) that has been constructed, erected or installed without an approval or authorisation required under a law of the Territory; or
- 30 (b) that has been constructed, erected or installed at the cost of the Territory or the Commonwealth unless the Territory or the Commonwealth has received, or is entitled to receive, payment for the building, structure or part;

- 35 "lessee", in relation to a lease which has been terminated or surrendered or in relation to a lease the term of which has expired, means the person who was the lessee under the lease at the time of the



termination or surrender or at the time of the expiration of the term, as the case may be.

5 (2) Where, upon the expiration of the term of a lease of Territory Land upon which there are improvements, the lessee is granted a further lease of that land or any part of it, he or she shall not be liable to make any payment to the Executive for the improvements on the land or part of the land, as the case may be.

10 (3) Subject to subsections (4) and (8), where, upon the expiration of the term of a lease of Territory Land upon which there are improvements, the lessee is not granted a further lease of the land, or is granted a lease of part only of the land, the Executive shall be liable to pay the lessee—

- (a) where no further lease of the land is granted to the lessee—the amount determined by the Minister to be the value of the improvements on the land; or
- 15 (b) where a further lease of part only of the land is granted to the lessee—the amount determined by the Minister to be the value of the improvements on the part of the land not so leased.

20 (4) If, prior to the expiration of the term of a lease of Territory Land, the Executive declares the land comprised in the lease, or any part of it, to be available for lease and the lessee does not, before the expiration of 6 months after the expiration of the term, elect to take a further lease of the land or part, there shall be deducted from the amount payable to the lessee under this section the amount of such expenditure as the Executive reasonably incurs in connection with the grant to any other person of a lease of that land or part.

25

(5) Subject to subsections (6), (7) and (8), where a lease is terminated or surrendered the provisions of this section relating to the payment to the lessee of the value of the improvements on the land comprised in the lease upon the expiration of the term shall (so far as applicable) apply as if the term of the lease had expired on the day of the termination or surrender.

30

(6) Subsection (5) applies in respect of a lease only if the lessee has fully complied with the provisions (if any) of the lease relating to the erection of a building on the land comprised in the lease.

35 (7) There shall be deducted from any sum payable pursuant to subsection (5) in respect of the value of improvements on the land comprised in a lease which has been terminated or surrendered the amount of such expenditure as the Minister determines has been incurred by the Territory in connection with the termination or surrender of the lease and the grant (if any) of a further lease of the land or any part of it.

40 (8) Subsections (3) and (5) apply in respect of a lease subject to any provisions of the lease that preclude or limit the right of the lessee to payment in respect of improvements on the land comprised in the lease.

**Determination of value of improvements**

173. (1) In this section—

“lessee” has the same meaning as in section 172;

5 “market value”, in relation to improvements on land, means the amount by which the improvements increase the value of the lease of the land, assuming that the lease, together with the improvements, were offered for sale on the open market on the day immediately before the prescribed day on such reasonable terms and conditions as a *bona fide* seller might require;

10 “prescribed day”, in relation to land a lease of which has expired, or has been terminated or surrendered, means the day of expiry, determination or surrender, as the case may be.

(2) Where compensation is payable under section 172 in respect of improvements, the Minister shall, as soon as practicable after the day that is  
15 the prescribed day in relation to the land on which the improvements are situated, by instrument determine, in accordance with this section, the market value of the improvements on the land as at the prescribed day.

(3) Where compensation is payable under subsection 172 (3), the Minister shall, in valuing the improvements, assume that the lease of the  
20 land had been renewed subject to the same provisions, and for the same term, as the lease which has expired.

(4) Where compensation is payable under subsection 172 (5), the Minister shall, in valuing the improvements, assume that the lease of the land had not been terminated or surrendered.

25 **Land to be used for the purpose for which it is leased**

174. Territory Land in respect of which a lease has been granted, whether before or after the commencement of this Part, shall not be used for any purpose other than a purpose authorised by the lease.

**Variation of rent**

30 175. (1) Where the rent payable under a lease of Territory Land is varied in accordance with the provisions of the lease, the Minister shall give the lessee notice in writing of the variation by post.

(2) A variation of rent referred to in a notice under subsection (1) shall come into operation on—

- 35 (a) the day 28 days after the day on which the notice is given; or  
(b) where the lease under which the variation is made provides that the variation shall come into operation on a later day—that later day.

**Review of variations of rent****176. (1) Where—**

- (a) the rent payable under a lease of Territory Land is varied in accordance with the provisions of the lease; and
- 5 (b) the lease does not provide for the submission to arbitration of differences between the parties to the lease regarding variation of the rent;

the lessee may, within 28 days after receiving the notice under subsection 175 (1) relating to the variation, serve on the Minister a request in writing  
10 that he or she review the variation.

(2) The making of a request under subsection (1) does not affect the operation of the variation to which the request relates or prevent the taking of action to implement the variation.

15 (3) Where a request is made under subsection (1), the Minister shall review the variation to which the request relates and may confirm the variation or set it aside and substitute such other variation as the Minister considers appropriate.

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

20 **177. (1)** Subject to subsection (2), the Minister may authorise the payment to—

- (a) a person who has surrendered a lease of Territory Land; or
- (b) a person who held a lease of Territory Land that has been terminated under this Act;

25 of an amount that is equal to the amount paid by the person for the grant of the lease less any charge determined for the purposes of this subsection in respect of the refund of the amount paid for the grant of a lease of that kind.

(2) The Minister shall not authorise the payment of an amount under this section otherwise than in accordance with criteria for the authorisation of payments specified pursuant to subsection (3).

30 (3) The Executive may, for the purposes of this section, by instrument—

- (a) specify criteria for the authorisation of payments under this section; or
- (b) amend or revoke criteria so specified.

35 (4) An instrument under subsection (3) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### Certificates of compliance

5 178. (1) Subject to subsection (2), where a building and development provision of a lease of Territory Land has been fully complied with, the Minister shall, on application by the lessee and payment of the determined fee, issue a certificate that the provision has been so complied with.

10 (2) The Minister shall not issue a certificate under subsection (1) in respect of a building and development provision to which a lease under the *Unit Titles Act 1970* is subject unless the requirements of that subsection are satisfied and the Minister is satisfied—

- (a) in the case of every other lease in respect of the same subdivision that is subject to a building and development provision, that the provision has been complied with; or
- 15 (b) that the occupier of the unit that is held under the lease will not, as occupier, be substantially inconvenienced by works being carried out, or that are to be carried out, in compliance with a building and development provision to which the lease of the common property or another unit contained in the same subdivision under the *Unit Titles Act 1970* is subject.

### 20 Transfer of land subject to building and development provision

179. (1) Where a lease of Territory Land contains a building and development provision, the lease, or an interest in the lease, is not capable of being assigned or transferred, either at law or in equity unless—

- (a) the lessee has died;
- 25 (b) the transfer or assignment is made pursuant to an order of the Family Court of Australia or another court having jurisdiction under the *Family Law Act 1975* of the Commonwealth;
- (c) the transfer or assignment occurs by operation of, or pursuant to, bankruptcy or insolvency; or
- 30 (d) the lessee has obtained—
  - (i) the consent of the Minister under section 28 of the *City Area Leases Act 1936* as in force at any time before 19 December 1973;
  - (ii) a certificate under subsection 178 (1); or
  - 35 (iii) the consent of the Minister under subsection (2).

## (2) Where—

- (a) the lessee under a lease of Territory Land that contains a building and development provision; or
- (b) a proposed assignee or transferee of such a lease, or of an interest in such a lease;

applies to the Minister for his or her consent to a legal or equitable assignment or transfer of the lease, or of an interest in the lease, to a specified assignee or transferee and pays the determined fee, the Minister shall, by instrument, consent to that assignment or transfer if—

- (c) he or she is satisfied that the proposed assignee or transferee intends to comply with the building and development provision; and
- (d) any security required by the Minister for compliance by the assignee or transferee with that provision has been given.

**15 Mortgage of leasehold subject to building and development provision**

**180.** Where a lease contains a building and development provision, the lease, or an interest in the lease, shall not be capable of being mortgaged unless—

- (a) the lessee has obtained a certificate under subsection 178 (1); or
- (b) the mortgage is required by the lessee—
  - (i) to enable the lessee to repay money borrowed by him or her for the purpose of acquiring the lease or interest;
  - (ii) to secure money borrowed by the lessee for the purpose of acquiring the lease or interest; or
  - (iii) to enable the lessee to comply with a building and development provision of the lease.

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

**181. (1)** Subject to section 182, the land comprised in a lease of Territory Land shall at all times be held and occupied by or under the lessee as 1 undivided parcel.

**(2)** Subject to this Part, the land comprised in a lease of Territory Land may be sublet and the lease and any interest in it may be assigned, transferred or mortgaged.

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

5 182. (1) Any portion of a building erected on land comprised in a lease of Territory Land may, subject to the lease and any sublease of the land, be sublet separately from the remainder of that building.

10 (2) Where a portion of a building is sublet separately from the remainder of the building, any portion of the parcel of land on which the building is erected may be sublet with the portion of the building separately from the remainder of the parcel of land, provided that the portion of the parcel of land so sublet adjoins that portion of the parcel of land on which the building is erected.

***Division 3—Variation of leases***

**Payments in respect of variation of leases**

15 183. The Executive shall not execute a variation of a lease of Territory Land unless—

- (a) all rent and additional rent (if any) payable under the lease up to the day of variation has been paid; and
- 20 (b) where the variation of the lease would increase the market value of the lease, the lessee has paid the Executive an amount determined by the Executive as prescribed in respect of the increase in the value of the lease that would result from the variation.

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

184. Where the Executive agrees to a variation of a lease of Territory Land, being a lease under which rent or additional rent is payable, it shall—

- 25 (a) calculate the amount that would be payable under the lease for rent and additional rent up to the day on which it expects the variation to be executed; and
- (b) give the lessee notice in writing of—
  - 30 (i) the amount calculated for rent and additional rent under paragraph (a);
  - (ii) the day up to which the amount payable for rent and additional rent has been calculated; and
  - 35 (iii) the day by which the Executive requires payment of the amount specified pursuant to subparagraph (i) to enable the variation of the lease to be executed on the day specified pursuant to subparagraph (ii).

**Variation of lease to pay out rent**

185. (1) A lease shall not be varied to reduce the rent payable to a nominal rent unless—

- (a) the lease is included in a prescribed class of leases;
- 5 (b) all amounts payable to the Territory up to the day of variation of the lease for rates and land tax levied in respect of the land comprised in the lease have been paid; and
- 10 (c) the provisions of the lease requiring the lessee to develop the land comprised in the lease have been complied with up to the day of the variation.

(2) Where a lease of Territory Land is varied to reduce the rent payable to a nominal rent, the lease as varied shall provide that the lessee is to pay a rent of 5 cents per annum if and when that rent is demanded.

- 15 (3) The requirements of this section are in addition to, and not in substitution for, the requirements of the other provisions of this Act relating to the variation of leases.

**Certain leases not to be varied to reduce rent to a nominal rent**

186. Where—

- 20 (a) a lease has been expressed to be granted for rural purposes or for purposes that include rural purposes; or
- (b) a lease has been granted, otherwise than under section 163, for payment of an amount that is less than the market value of the lease;

25 the Executive shall not agree to a variation of the lease that would reduce the rent payable under the lease to a nominal rent.

**Division 4—Recovery of land****Termination of leases and licences**

- 30 187. (1) Subject to subsection (5), where a lessee of Territory Land contravenes the provisions of this Part or the provisions of his or her lease, the Executive may, by notice in writing served on the lessee by post, terminate the lease.

(2) A notice under subsection (1) takes effect on the day 14 days after the day on which it is served.

- 35 (3) Subject to subsection (5), where a person who occupies Territory Land under a licence from the Commonwealth or the Territory contravenes the provisions of this Part or the provisions of his or her licence, the

Executive may, by notice in writing served on the licensee by post, terminate the licence.

(4) A notice under subsection (3) takes effect on the day 7 days after the day on which it is served.

5 (5) The Executive shall not terminate a lease or a licence under this section unless it has—

(a) by notice in writing served on the lessee or licensee by post—

(i) informed the lessee or licensee that it is considering terminating the lease or licence;

10 (ii) specified the grounds on which it is considering taking that action; and

(iii) invited the lessee or licensee to notify the Executive in writing within 21 days after the date of the notice of any reasons why the lessee or licensee considers that the lease or licence should not be terminated; and

15 (b) taken into account any reasons for not terminating the lease or licence notified to the Executive by the lessee or licensee in accordance with the notice served on him or her under paragraph (a).

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

188. If, after—

(a) the term of a lease of Territory Land has expired, or such a lease has been surrendered or terminated; or

25 (b) the term of a licence granted by the Commonwealth or the Territory to occupy Territory Land has expired, or such a licence has been surrendered or terminated;

30 the lessee or licensee, or any other person apparently in occupation or possession of the land fails, on demand by the Executive, to deliver up possession of the land, the Magistrates Court may, on the application of the Executive, issue a warrant authorising a police officer, within a period of not more than 30 days after the date of the warrant, to enter the land, with such assistance and by such force as is necessary and reasonable, and deliver possession of the land to the Executive.

35 **Certificate of Minister to be evidence**

189. A certificate signed by the Minister, or by a person authorised by the Minister to give such a certificate, stating that a lease has been terminated shall be evidence of the termination of the lease.



***Division 5—Public land******Subdivision A—Preliminary*****Interpretation**

190. In this Division—

- 5       “Plan of Management” means a plan of management prepared under Subdivision D, as varied and in effect from time to time;

“variation”, in relation to a Plan of Management, includes the revocation of the Plan and its substitution with a new Plan.

***Subdivision B—Public land***

10       **Recommendations to the Authority**

191. The Conservator may, in writing, recommend to the Authority that the Plan be varied to provide for—

- (a) the identification of an area of land as public land and its reservation for a purpose referred to in section 192; or
- 15       (b) in relation to an area already identified in the Territory Plan as public land—
- (i) the variation of its boundaries;
- (ii) the variation of the purpose for which it is reserved; or
- (iii) the cessation of its designation as public land.

20       ***Subdivision C—Management of public land***

**Reserved areas**

192. The purposes for which areas of public land are to be reserved pursuant to paragraph 7 (2) (b) and for which areas of public land may be reserved under paragraph 191 (a) are for—

- 25       (a) a wilderness area;
- (b) a national park;
- (c) a nature reserve;
- (d) a special purpose reserve;
- (e) an urban open space;
- 30       (f) a cemetery or burial ground;
- (g) a lake; or
- (h) a sport and recreation reserve.

### Management

193. An area of public land shall be managed in accordance with—

- (a) the management objectives applying to the area; and
- (b) the Plan of Management (if any) for the area.

### 5 Management objectives

194. (1) For the purposes of section 193, the management objectives for an area of public land reserved for a particular purpose are—

- (a) objectives specified in Schedule 1; and
- (b) objectives specified by the Conservator pursuant to subsection (2);

10 in relation to areas of land reserved for that purpose.

(2) The Conservator may, by instrument—

- (a) specify management objectives for an area of public land reserved for a purpose specified in Schedule 1; or
- (b) amend or revoke management objectives specified under paragraph (a).

15

(3) An instrument under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(4) Where there is an inconsistency between the application of 2 management objectives specified in Schedule 1 in relation to an area of public land, the objective last-mentioned in that Schedule is to be read subject to the other objective.

20

(5) Where there is an inconsistency between the application of a management objective specified in Schedule 1 and a management objective specified by the Conservator pursuant to subsection (2) in relation to an area of public land, the objective specified by the Conservator is to be read subject to the other objective.

25

(6) In Schedule 1—

“natural environment” means all biological, physical and visual elements of the earth and its atmosphere, whether natural or modified.

30

### Subdivision D—Plans of Management

### Content

195. A Plan of Management includes—

- (a) a description of the area of public land to which it applies; and

- (b) the manner in which the relevant management objectives referred to in subsection 194 (1) are to be implemented or promoted in that area.

### Preparation

- 5      196. (1) The Conservator shall prepare a draft Plan of Management for an area of public land as soon as practicable after the area is identified as such in the Territory Plan.

(2) In preparing a draft Plan of Management, the Conservator shall consider any recommendation submitted by the Authority.

### 10      Variations

197. (1) The Conservator may prepare a draft variation of a Plan of Management in the same manner as a draft Plan of Management.

(2) This Subdivision applies to a draft variation of a Plan of Management as if it were a draft Plan of Management.

### 15      Environmental Assessments and Inquiries

198. (1) At the written request of the Conservator, or on his or her own motion, at any time before a draft Plan of Management is approved under paragraph 202 (a) the Minister may—

- (a) direct that an Assessment be made; or  
20      (b) establish a panel to conduct an Inquiry;  
about any aspect of the draft Plan.

(2) In preparing or revising a draft Plan of Management, the Conservator shall consider any relevant Assessment or the report of any relevant Inquiry.

### 25      Public consultation

199. (1) This section applies to a draft Plan of Management for an area of public land where—

- (a) no corresponding preliminary draft Plan of Management for that area has been notified under section 19; or  
30      (b) where such a preliminary draft has been so notified—the first-mentioned draft Plan of Management differs significantly from that preliminary draft.

(2) The Conservator shall make copies of a draft Plan of Management to which this section applies available for public inspection during office  
35      hours at the places specified in a notice published in the *Gazette* and in a daily newspaper.

(3) A notice under subsection (2) shall include a statement inviting persons to submit written comments about the draft Plan of Management to the Conservator at a specified address and within a specified period of not less than 21 days from the date of the notice.

5 **Revision**

200. The Conservator may revise a draft Plan of Management—

- (a) in consideration of any written comments received from any person about the draft Plan; or
- (b) to correct any formal error.

10 **Submission to Minister**

201. The Conservator shall submit a draft Plan of Management (as revised under section 200) to the Minister for approval, together with—

- (a) a written report setting out the issues raised in any written comments submitted to the Conservator in relation to the draft; and
- 15 (b) a written report about the Conservator's consultation with the public and with any other person or authority about the draft.

**Minister's powers**

202. On receipt of a draft Plan of Management submitted under section 201 or 203 for approval, the Minister shall—

- 20 (a) by instrument, approve a Plan of Management in the form in which the draft is submitted; or
- (b) refer the draft to the Conservator together with any of the following written directions:
  - (i) to conduct further specified consultation;
  - 25 (ii) to consider any revision suggested by the Minister;
  - (iii) to revise the draft in a specified manner;
  - (iv) to defer, by notice published in the *Gazette*, until a specified date or the occurrence of a specified event, the re-submission of the draft to the Minister;
  - 30 (v) to withdraw the draft by notice published in the *Gazette*.

**Referral back to the Conservator**

203. If the Minister refers a draft Plan of Management to the Conservator under paragraph 202 (b), the Conservator shall—

- (a) comply with the Minister's directions;

- (b) if the Minister gives a direction under subparagraph 202 (b) (i) or (ii)—if the Conservator thinks fit, revise the draft Plan;
- (c) revise the draft to correct any formal error; and
- 5 (d) re-submit the draft Plan of Management (as revised) to the Minister for approval together with a written report about the Conservator's compliance with the Minister's directions and about any revision of the draft under paragraph (c).

#### Notice of revival of deferred draft Plan of Management

- 10 204. Where the Conservator, in compliance with a direction of the Minister under subparagraph 202 (b) (iv), defers a draft Plan of Management, on the date specified in the notice of deferral, or as soon as possible after the occurrence of the event specified in that notice, as the case requires, the Conservator shall cause to be published in the *Gazette* a notice stating that the draft is revived.

#### 15 Notification, tabling, disallowance, date of effect

205. (1) A Plan of Management, as approved by the Minister under section 202, is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

- 20 (2) Notwithstanding paragraph 6 (1) (b) of the *Subordinate Laws Act 1989* in its application to the Plan of Management, a Plan of Management takes effect (subject to the remaining provisions of section 6 of that Act) on the expiration of 5 sitting days after it is laid before the Legislative Assembly, or on such later date as is specified in the Plan.

- 25 (3) Paragraph 6 (1) (c) and subsections 6 (7), (7A) and (7B) of the *Subordinate Laws Act 1989* apply to a Plan of Management as if the references in those provisions to 15 sitting days were references to 5 sitting days.

#### Subdivision E—Leases and licences

##### Leases—generally

- 30 206. (1) Except as provided by section 207, the Executive shall not grant a lease—

- (a) of public land; or
- (b) during the defined period—of land designated, in a draft variation of the Plan notified under section 19, to become public land.

- 35 (2) In subsection (1)—

“defined period”, in relation to land designated, in a draft variation of the Plan, to become public land, means the period of interim effect, under Part II, of that draft variation.

**Grant of leases**

5     **207.** (1) On the written recommendation of the Conservator, the Executive may, on behalf of the Commonwealth, grant a lease of an area, or part of an area, of public land except where that area is reserved under the Plan as a wilderness area.

10     (2) On the written recommendation of the Conservator, the Executive may, on behalf of the Commonwealth, during the defined period referred to in subsection 206 (2), grant a lease of an area, or part of an area, of land designated in a draft variation of the Plan to become public land except where it is proposed in that draft variation that the area be reserved as a wilderness area.

(3) The Minister shall, within 6 sitting days of granting a lease under this section, cause that lease to be laid before the Legislative Assembly.

15     (4) The validity of a lease granted under this section is not to be taken to be affected by a failure to comply with subsection (3).

**Licences**

**208.** (1) The Executive may, on the written recommendation of the Conservator, grant a licence to a person for purposes connected with the occupancy of public land.

20     (2) An application for a licence under subsection (1) shall—

(a) be in writing signed by the applicant;

(b) specify—

(i) the land in respect of which the licence is sought;

(ii) the period for which the licence is sought; and

25     (iii) the purposes for which it is proposed that the land should be used under the licence; and

(c) be accompanied by the determined fee.

(3) A licence under subsection (1) shall—

(a) be in writing;

30     (b) apply to the person to whom it is granted and to all other persons to whom it is expressed to apply;

(c) specify the period for which it is granted; and

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

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

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

**Division 6—Administrative review****Notice of decisions**

- 5      **210. (1) Where the Executive makes a decision—**
- (a) for the purposes of subsection 166 (3) that a person is not eligible to be a lessee under a lease included in a class of leases specified under paragraph 166 (1) (a);
  - (b) refusing to consent under subsection 166 (5) to—
    - 10      (i) the assignment or transfer of a lease;
    - (ii) the subletting of the land comprised in a lease or any part of it; or
    - (iii) a lessee parting with possession of the land comprised in a lease or any part of it;
  - 15      (c) to terminate, under subsection 169 (1), the right of a person to the grant of a lease;
  - (d) refusing to grant a further lease of Territory Land under section 170 or 171;
  - 20      (e) determining the amount payable under section 183 in respect of the increase in the value of a lease that would result from a proposed variation of the lease;
  - (f) to terminate a lease under subsection 187 (1); or
  - (g) to terminate a licence under subsection 187 (3);
- 25      the Executive shall, within 28 days of the decision, cause a notice in writing of the decision to be given to the applicant, lessee, licensee or person entitled, as the case requires.
- (2) Where the Minister makes a decision—
- (a) under subsection 176 (3) confirming a variation of rent, or setting a variation of rent aside and substituting another variation;
  - 30      (b) under section 173 determining the value of improvements;
  - (c) refusing to authorise, under subsection 177 (1), the payment of an amount in respect of the surrender or termination of a lease;
  - (d) refusing to issue, under subsection 178 (1), a certificate that a building and development provision of a lease has been fully
  - 35      complied with; or

- (e) refusing to consent, under subsection 179 (2), to a legal or equitable assignment or transfer of a lease or an interest in a lease;

5 he or she shall, within 28 days of the day of the decision, cause a notice in writing of the decision to be given to the lessee, former lessee or applicant, as the case requires.

- (3) A notice under subsection (1) or (2) shall—

10 (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Australian Capital Territory Administrative Appeals Tribunal for a review of the decision; and

- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that the person to whom the notice is given may request a statement pursuant to section 26 of that Act.

15 (4) The validity of a decision referred to in subsection (1) or (2) is not to be taken to be affected by a failure to comply with subsection (3).

#### Review by Tribunal

211. Application may be made to the Tribunal for a review of a decision referred to in subsection 210 (1) or (2).

#### Division 7—Miscellaneous

20 Lessee may surrender lease wholly or in part

212. (1) A person who holds a lease of Territory Land may, at any time, with the consent of the Executive, surrender the lease or any part of the land comprised in the lease.

25 (2) The Executive may agree to accept the surrender of a lease, or part of the land comprised in a lease, under subsection (1) either unconditionally or subject to such conditions as the Executive considers appropriate.

(3) The surrender of a lease, or of part of the land comprised in a lease, shall not entitle the lessee to a refund or remission of any rent already paid or due.

30 Reduction of rent and relief from provisions of lease

213. (1) The Executive may, in respect of any period, whether commencing before, at or after the commencement of this section, or whether commencing before, at or after the giving of the approval, approve of—

- 35 (a) a reduction of the rent payable under a lease of Territory Land or of the amount payable in respect of any occupation of Territory Land; or



- (b) the grant of relief, to a lessee or occupier of Territory Land, from compliance, wholly or in part, with any provision to which his or her lease or occupation is subject;

5 and thereupon the liability or obligation of the lessee or occupier under the lease, or in respect of his or her occupation, shall, in respect of that period, be discharged to the extent of the reduction or grant of relief approved.

(2) Any grant of relief approved pursuant to subsection (1) may be unconditional or subject to such conditions as the Executive considers appropriate.

- 10 (3) Where the Executive approves a grant of relief to a lessee or occupier under subsection (1), it shall cause to be sent by post or delivered to the lessee or occupier a memorandum specifying the reduction of rent or other grant of relief it has approved.

#### **Access to leased land from public roads and car parks**

- 15 214. (1) Where the Executive grants a lease of Territory Land on behalf of the Commonwealth, it shall at all times during the term of the lease give the lessee—

- (a) direct access to the leased land from a public road or public carpark; or  
20 (b) access to the leased land from a public road or public carpark by means of an access road or track, or by other means, that the lessee may use without charge and for all purposes at any hour of the day or night.

- 25 (2) A means of access to leased land provided by the Executive pursuant to paragraph (1) (b) shall not interfere with any building, garden or stock yard on the land at the time the means of access is provided and the means of access shall be so located as to cause as little damage or inconvenience to the lessee as possible.

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

- 30 215. (1) A person may apply to the Executive for a licence to occupy or use an area of unleased Territory Land that is not public land.

(2) An application under subsection (1) shall—

- (a) be in writing signed by the applicant;  
(b) specify—  
35 (i) the land in respect of which the licence is sought;  
(ii) the period for which the licence is sought; and

(iii) the purposes for which it is proposed that the land should be used under the licence; and

(c) be accompanied by the determined fee.

5 (3) On receiving an application under subsection (1) the Executive may grant the applicant a licence to occupy or use the land specified in the application for the purposes and period specified in the application.

(4) A licence under subsection (1) shall—

(a) be in writing;

10 (b) apply to the person to whom it is granted and to all other persons to whom it is expressed to apply;

(c) specify the period for which it is granted; and

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

#### Reservation of minerals

15 216. A reservation of minerals contained in a lease of Territory Land shall be read as a reservation of all minerals and mineral substances in or on the land, including gold, silver, copper, tin, other metals, ores and substances containing metals, gems, precious stones, coal, limestone, shale, mineral oils, valuable earths and substances, stone, clay, gravel and sand.

#### 20 Rights to extract minerals

217. (1) The Executive may, by a lease or other agreement, grant a person the right to extract minerals from specified Territory Land.

(2) The provisions of a lease or other agreement entered pursuant to subsection (1) shall be such provisions as are agreed between the parties.

#### 25 Access to lease documents and development agreements

218. (1) Subsection 11 (2) of the *Freedom of Information Act 1989* does not apply to a document that is—

(a) a lease;

(b) a variation of a lease; or

30 (c) a renewal of a lease;

where the document became a document of a Commonwealth agency before 1 January 1977.

(2) A document that is—

(a) a lease;

- (b) a variation of a lease; or
- (c) a renewal of a lease;

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

- 5 (3) A reference in this section to a lease shall be read as a reference to a lease of Territory Land.

#### **False statements**

219. A person shall not make to—

- (a) the Executive;
- 10 (b) a Minister;
- (c) a public servant; or
- (d) an agent of the Executive or a Minister;

15 a statement, either orally or in writing, in connection with an application for the grant, or a variation, of a lease of Territory Land that is, to the knowledge of the person, false or misleading in a material particular.

Penalty: \$200.

## **PART VI—APPROVALS AND ORDERS**

### ***Division 1—Preliminary***

#### **Interpretation**

- 20 220. (1) In this Part, unless the contrary intention appears—

“application” means an application to conduct a controlled activity;

“approval” means—

- (a) an approval under section 228, 238 or 239; or
- 25 (b) a decision under another Act that is declared by that Act to be an approval for the purposes of this Part;

“building work” has the same meaning as in the *Building Act 1972*;

“lease” and “lessee” have the same respective meanings as in Part V;

“objection” means an objection under section 233 or 235, as the case requires;

- 30 “order” means—

- (a) an order under section 254; or

- (b) a decision under another Act that is declared by that Act to be an order for the purposes of this Part;

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

- 5 (2) A reference in this Part to the Executive is to be read as including a reference to a Minister acting on behalf of the Executive.

(3) A reference in this Part to the variation of a lease is to be read as including a reference to the surrender of a lease and the grant of a new lease to the same lessee over land—

- 10 (a) that is the whole or part of the land comprised in the surrendered lease; and  
(b) that is not defined land within the meaning of Subdivision D of Division 3 of Part II;

subject to provisions that differ from those of the surrendered lease.

- 15 (4) Division 4 does not apply in relation to a controlled activity specified in item 2 or 3 of Schedule 2.

**Relationship: controlled activities and concurring authorities**

- 20 221. For the purposes of this Part, an authority specified as a concurring authority in an item in Schedule 2 is a concurring authority in respect of the controlled activity specified in that item.

***Division 2—Approvals***

***Subdivision A—Preliminary***

**Interpretation**

- 25 222. In this Division, a reference to a controlled activity is to be read as not including a reference to a controlled activity specified in Schedule 3 or declared under another Act to be a controlled activity for the purposes of that Schedule.

***Subdivision B—General***

**Offence—controlled activities**

- 30 223. (1) A person who, without reasonable excuse, conducts—  
(a) a controlled activity specified in Schedule 2; or  
(b) an activity declared under another Act to be a controlled activity for the purposes of that Schedule;

other than in accordance with an approval, is guilty of an offence punishable, on conviction, by a fine not exceeding the amount specified in that Schedule in relation to that activity.

- 5 (2) A Territory authority shall not, without reasonable excuse, conduct a controlled activity except in accordance with an approval.

#### **Application to conduct controlled activities**

224. (1) An application for approval to conduct a controlled activity shall—

- (a) be in a form made available by the Minister;  
10 (b) set out, or be accompanied by, such information relating to the controlled activity as is required by the form;  
(c) be executed by the applicant;  
(d) be lodged with the Minister; and  
(e) be accompanied by the determined fee.

- 15 (2) An application made by a person who is not the lessee of the place to which the application relates shall be executed by the lessee of that place.

(3) The Minister may, before giving notice under section 227—

- (a) at the request of the applicant—make an alteration to an application or correct a formal error; or  
20 (b) of his or her own motion—correct a formal error in an application.

- (4) Where the Minister makes an alteration or a correction under subsection (3), the Minister may, if the applicant is not the lessee of the place to which the application relates, require the applicant to notify the lessee of the place to which the application relates of an alteration or  
25 correction made under that subsection and to make a declaration that notice has been given.

#### **Register of applications, approvals and orders**

225. (1) The Minister shall keep a register of—

- (a) each alteration or correction to an application made pursuant to subsection 224 (3);  
30 (b) each application that has not been withdrawn, or that is not to be taken to have been withdrawn and in respect of which the period for making an application under section 273 or 274 has not expired;  
35 (c) each approval in respect of which the period for making an application under section 273 or 274 has not expired;

(d) each approval, for the period for which it remains in force; and

(e) each order, for the period for which it remains in force.

(2) A person may, during office hours—

(a) inspect the register; and

5 (b) on payment of the determined fee, make copies of, or take extracts from, the register or any part of a document relevant to an application.

#### Restrictions on inspection of applications

10 226. (1) An applicant for approval to conduct a controlled activity may apply in writing to the Minister for a part of any copy of the application to be excluded from being made available to the public or for public inspection.

(2) The Minister may approve or refuse to approve an application under subsection (1).

15 (3) If, on application being made under subsection (1), the Minister is satisfied that—

(a) a part of an application to conduct a controlled activity contains information related to the personal or business affairs of a person, being information—

20 (i) supplied to the Minister in confidence;

(ii) the publication of which would disclose a trade secret; or

(iii) the disclosure of which would, or would reasonably be expected to, adversely affect a person in respect of the lawful business affairs of that person; and

25 (b) it would not be in the public interest for that part to be published;

the Minister shall cause that part to be excluded from any copy of the application to conduct the controlled activity made available to the public or for public inspection.

30 (4) Where a part of an application is excluded from the copies of that application made available to the public or for public inspection, each copy shall include a statement to the effect that an unspecified part of the application has been excluded for the purpose of protecting the confidentiality of information included in that part.

#### Notice of application

35 227. (1) The Minister shall—

- (a) if a place adjoining the place to which an application relates—
- (i) is occupied—give notice by post of the making of the application to the lessee of each adjoining place at the address of the adjoining place; or
- 5 (ii) is unoccupied—give notice by post to the lessee of the adjoining place at the address of the lessee last known to the Minister;
- (b) publish notice of the making of each application in a daily newspaper; and
- 10 (c) forward a copy of the application to each concurring authority in relation to the controlled activity to which the application relates.
- (2) Paragraphs (1) (a) and (b) do not apply if—
- (a) in the opinion of the Minister, the number of places adjoining the place to which the application relates is such that it would be impractical to give notice by post to the lessee of each place; or
- 15 (b) the Plan specifies circumstances in which persons are not entitled to apply for review of decisions referred to in this Part.
- (3) The Minister shall, if the application is to conduct a controlled activity specified in item 2 or 3 of Schedule 2, give notice in writing of the making of the application to each person having an estate or interest in the place to which the application relates (being an estate or interest that is registered under the *Real Property Act 1925*).
- 20 (4) The Minister—
- (a) shall forward to the Heritage Council for comment a copy of each application affecting the requirements specified in the Heritage Places Register or an interim Heritage Places Register for the conservation of the heritage significance of places specified in the Register; and
- 25 (b) may forward a copy of an application to any other person or body for comment.
- 30 (5) The Minister may, by instrument, require an applicant to erect a sign in a conspicuous place in or on the place to which his or her application relates.
- (6) A sign erected under subsection (5) shall specify the nature of the controlled activity proposed to be conducted in or on that place.
- 35 (7) A reference in subsection (1) to a lessee is to be read as a reference to the person registered as lessee in the Register Book kept under the *Real Property Act 1925* in relation to the place to which the application relates.

(8) The regulations may prescribe circumstances in which the provisions of—

- (a) subsection (1); or
- (b) paragraph (1) (a) or (b);

5 need not be complied with.

#### **Approvals**

228. (1) The Minister may approve or refuse to approve an application to conduct a controlled activity.

10 (2) The Minister shall not give an approval in terms inconsistent with the lease of the land to which the application relates.

(3) The Minister shall not approve an application without first obtaining the concurrence of each concurring authority in respect of the controlled activity to which the application relates.

15 (4) If the Minister fails to make a decision on an application before the expiration of the prescribed period, the Minister is to be taken to have refused to approve the application.

20 (5) Notwithstanding subsection (4), the Minister may approve an application at any time during the period commencing on the expiration of the prescribed period and ending on the expiration of the last day on which application may be made to the Tribunal for a review of a decision to refuse to approve the application.

(6) Subsection (2) does not apply in relation to an approval to conduct a controlled activity specified in item 2 or 3 of Schedule 2.

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

25 229. (1) Before approving or refusing to approve an application, the Minister shall—

(a) consider—

- (i) any comments of a person or body to which the application has been referred for comment;
- 30 (ii) each objection or other submission the Minister has received in relation to the application which has not been withdrawn;
- (iii) a preliminary assessment under Division 2 of Part IV, or a report under section 127; and



- (iv) any Assessment made, or the report of any Inquiry conducted, in relation to the controlled activity to which the application relates; and
- 5 (b) in the case of an application to conduct a controlled activity affecting the requirements for the conservation of the heritage significance of an Aboriginal place included in the Heritage Places Register or an interim Heritage Places Register—take all reasonable steps to consult with, and consider the views of, any relevant Aboriginal organisation.
- 10 (2) In paragraph (1) (b)—  
“Aboriginal place” and “relevant Aboriginal organisation” have the same respective meanings as in Part III.

#### **Duty of applicants**

- 15 230. (1) Instead of the Minister giving notice of an application in accordance with section 227 or another Act, the Minister may require the applicant—
  - (a) to give such notice of the application as the Minister would, but for this subsection, be required to give in accordance with that section or other Act; and
  - 20 (b) to give notice to such other persons as are specified by the Minister.
- (2) If an applicant fails to comply with a requirement made under subsection (1), the application is to be taken to have been withdrawn.
- 25 (3) The applicant shall pay the cost of a notice given in accordance with subsection (1).
- (4) If the Minister publishes a notice under paragraph 227 (1) (b), the reasonable cost of the notice is a debt payable by the applicant to the Territory.
- 30 (5) A notice under subsection (1) shall be in a form approved by the Minister.

#### **More information**

- 35 231. (1) The Minister may, by notice in writing, require an applicant to furnish to the Minister, within the period specified in the notice (being a period of not less than 28 days), either orally or in writing, such further information relating to the application as is specified in the notice.
- (2) An applicant may, at any time before the expiration of the period specified in a notice under subsection (1), apply to the Minister for an extension of the period within which the applicant is to furnish information.

(3) On receipt of an application under subsection (2), the Minister may grant an extension of the period of not more than 6 months.

**Effect of failure to furnish further information**

5 232. If a person fails to furnish information in accordance with a notice under subsection 231 (1), the applicant is to be taken to have withdrawn the application on the expiration of the period specified in the notice or any extension of that period.

**Duties of concurring authorities**

10 233. (1) A concurring authority to which an application is referred by the Minister shall, within the prescribed period, give notice in writing to the Minister that the concurring authority—

- (a) does not object to the approval of the application;
- (b) does not object to the approval of the application if the approval is given subject to conditions specified by the concurring authority in the notice; or
- 15 (c) objects to the approval of the application.

20 (2) The Authority shall, before giving notice under subsection (1) in relation to a controlled activity specified in item 2 or 3 of Schedule 2, consider whether or not the controlled activity proposed to be conducted would be inconsistent with—

- (a) the planning principles set out in the Plan; or
- (b) any directions of the Executive in force under section 36.

25 (3) For the purposes of paragraph (1) (b), a concurring authority may include a condition that a controlled activity to which the application relates is to be done to the satisfaction of the concurring authority or a person or body specified by the concurring authority in the notice.

30 (4) If a concurring authority to which an application is referred fails to give notice to the Minister within the prescribed period the concurring authority is to be taken to have given notice to the Minister that it does not object to the approval of the application.

**Environmental Assessments and Inquiries**

234. The Minister may—

- (a) direct that an Assessment be made; or
- (b) establish a panel to conduct an Inquiry;
- 35 about any aspect of an application.

**Subdivision C—Objections****Objections—general**

5 235. (1) Any person who may be affected by the approval of an application may, within the prescribed period, object to the grant of the approval.

(2) An objection shall be made to the Minister in writing and shall set out the grounds of the objection.

10 (3) The Minister shall give an applicant for approval to conduct a controlled activity a copy of each objection to the application, and any other submission received by the Minister in relation to the application, which has not been withdrawn.

**Inspection of objections**

15 236. The Minister shall make a copy of each objection available for inspection by members of the public during office hours until the expiration of the period during which application may be made to the Tribunal for a review of a decision in relation to the application.

**Identity of objectors**

20 237. The Minister may, on request by a person making an objection, exclude the identity of the objector from being made available under subsection 235 (3) or section 236 if, in the Minister's opinion, based on reasonable grounds, it would not be in the public interest for that identity to be published.

**Subdivision D—Approvals****25 Circumstances in which Executive approves applications, other than lease variations, subdivisions, consolidations**

238. (1) This section applies to an application to conduct a controlled activity, other than a controlled activity specified in item 2 or 3 of Schedule 2, made by—

- 30 (a) the Executive; or  
(b) a Territory authority.

(2) Where, in respect of an application to which this section applies, a concurring authority has, under subsection 233 (1), notified the Minister that the concurring authority—

- 35 (a) objects to the approval of the application; or  
(b) does not object to the approval of the application if it is given subject to conditions specified in the notice under that subsection;

the Executive may—

- 5 (c) notwithstanding that the concurring authority has advised the Minister that the concurring authority objects to the approval of the application—approve the application; or
- (d) if the concurring authority has stated that it does not object if the approval is given subject to conditions—approve the application subject to conditions, whether or not all or any of those conditions are inconsistent with the conditions specified by the concurring authority in the notice under subsection 233 (1).
- 10 (3) Notwithstanding section 281 or the provisions of any other Act, the power to approve an application under subsection (2) may only be exercised by the Executive.

**Circumstances in which Executive approves applications for lease variations, subdivisions, consolidations**

15 239. (1) This section applies to an application to conduct a controlled activity specified in items 2 and 3 of Schedule 2.

- (2) Where, in relation to an application to which this section applies—
- (a) a concurring authority does not object and another concurring authority objects to the approval of the application; or
- 20 (b) both concurring authorities do not object to the approval of the application subject to conditions, but those conditions are, in the opinion of the Minister, inconsistent;

the Executive may, notwithstanding that a concurring authority has advised the Minister that the concurring authority objects to the approval of the application, does not object to the approval or does not object to the approval subject to conditions—

25

- (c) approve or refuse to approve the application; or
- (d) approve the application subject to conditions, whether or not all or any of the conditions are inconsistent with the conditions specified by the concurring authority in the notice under subsection 233 (1).
- 30 (3) Notwithstanding section 281 or the provisions of any other Act, the power to approve or refuse to approve an application under paragraph (2) (c) or (d) may only be exercised by the Executive.

**Application approved—notification of decision**

35 240. (1) If the Minister approves an application, the Minister shall give the applicant written notice of his or her decision, and the date on which the decision takes effect.

- (2) Where, under section 238 or 239, the Executive—

- (a) approves or refuses to approve an application; or
- (b) approves an application subject to conditions;

the Executive shall give the applicant written notice of the decision and the date on which the decision takes effect.

- 5       (3) If the Minister approves an application to conduct a controlled activity specified in item 1 or 2 of Schedule 2, the Minister shall give written notice of the decision to the Registrar of Titles.

**Notification of decision to approve or refuse to approve application**

- 10       **241. (1)** Notwithstanding section 240, if the Minister or the Executive approves an application against which decision a person may make application to the Tribunal under section 274, the Minister or the Executive, as the case requires, shall—

- 15       (a) if the approval is in relation to an application to which subsection 227 (8) applies—publish notice of the decision in a daily newspaper; and
- (b) give notice of the decision to—
- (i) each concurring authority;
- (ii) each person notified personally under paragraph 227 (1) (a); and
- 20       (iii) each person who objected under subsection 235 (1).

- (2) Paragraph (1) (a) does not apply in relation to an approval if regulations are in force under subsection 227 (8) prescribing circumstances in which the provisions of paragraph 227 (1) (b) need not be complied with
- 25       in respect of an application to which the approval relates.

- (3) A notice under paragraph (1) (b) shall—

- (a) contain—
- (i) a description of the place to which the decision relates; and
- (ii) a brief description of the controlled activity the subject of the decision;
- 30       (b) set out the decision; and
- (c) specify—
- (i) the place and times at which a copy of the application and the decision may be inspected; and
- 35       (ii) the manner in which application may be made to the Tribunal for a review of the decision.

(4) If the Minister or Executive refuses to approve an application, the Minister or Executive, as the case requires, shall give written notice of the decision to—

- (a) the applicant;
- 5 (b) each concurring authority;
- (c) each person notified personally under paragraph 227 (1) (a); and
- (d) each person who objected under subsection 235 (1).

(5) A notice under subsection (4) shall set out the reasons for the decision.

10 **Notification where more than one objector**

242. Where a number of persons make 1 objection, the Minister or Executive is to be taken to have complied with subsection 241 (1) or (3), as the case may be, if the Minister or Executive (as the case requires) gives notice—

- 15 (a) where the name and address of 1 of those persons has been given to the Minister as the person to whom notice of the decision is to be given—to that person; or
- (b) where no name and address has so been given—to 1 of the persons who made that objection.

20 **Conditional approvals**

243. (1) Subject to this section and sections 238, 239 and 244, the Minister may approve an application subject to such conditions as are specified by the Minister, after taking into consideration the matters referred to in paragraph 229 (1) (a).

25 (2) The Minister—

- (a) shall include in an approval any condition which is required to be included by the Plan or by a concurring authority; and
- (b) shall not include in an approval a condition inconsistent with a condition included under paragraph (a).

30 (3) Without limiting the generality of subsection (1), the conditions subject to which an approval may be given may include a condition—

- (a) that a specified controlled activity is to be conducted to the satisfaction of the Minister or a specified person or body;
- 35 (b) requiring a controlled activity to be carried out in stages within the periods specified in or under the approval;

- (c) specifying a period within which a controlled activity or any stage of the activity is to be conducted;
- (d) that an approval does not take effect unless a specified approval is revoked, amended or given;
- 5 (e) in relation to an approval to conduct a controlled activity for a specified period, that—
  - (i) building works or other works carried out in or on a place the subject of the approval is to be removed at the expiration of that period; or
  - 10 (ii) the place is to be restored to a specified state at the expiration of that period;
- (f) that a bond be entered into securing performance against the conditions of an approval;
- 15 (g) that the applicant is to enter into an agreement with the Minister for the conservation of the heritage significance of places specified in the Heritage Places Register;
- (h) that controlled activities be conducted to a specified standard;
- (j) that specified works, services or facilities which the Minister considers reasonable in the circumstances—
  - 20 (i) be provided by the applicant on or to a place the subject of the approval, or on or to another place;
  - (ii) be paid for in whole or in part by the applicant; or
  - 25 (iii) be provided on or to a place the subject of the approval by agreement between the applicant and the Minister responsible for the provision of the works, services or facilities;
- (k) that plans, drawings or other documents be prepared by the applicant and lodged with the Minister for approval before commencing to conduct the controlled activity (whether in whole or in part); or
- 30 (l) requiring changes to be made to any plan, drawing or other document forming part of the application for approval.

- (4) The Minister may approve an amendment to a plan, drawing or other document approved under paragraph (3) (k) if the amendment is not inconsistent with subsection 228 (2) or an approval under paragraph (3) (k).
- 35

#### **Minister to resolve certain inconsistencies**

**244. (1)** If, in relation to an application (other than an application to which sections 238 and 239 apply), the Minister is of the opinion that there

is an inconsistency between the conditions imposed by concurring authorities in respect of the controlled activity to which the application relates, the Minister shall give each concurring authority written notice that the Minister is of that opinion.

5       (2) On receipt of a notice under subsection (1), each concurring authority the subject of the notice shall endeavour to resolve the inconsistency.

10       (3) The concurring authorities to which a notice has been given under subsection (1) shall, before the expiration of the prescribed period, notify the Minister in writing that—

      (a) the concurring authorities have resolved the inconsistency to which the notice relates; or

      (b) the concurring authorities are unable to resolve the inconsistency.

15       (4) A notice to the effect of paragraph (3) (a) shall specify the conditions (if any) which the concurring authorities have resolved to impose.

      (5) If—

      (a) the Minister receives a notice under subsection (3) to the effect of paragraph (3) (b); or

20       (b) the concurring authorities, to which a notice has been given under subsection (1), fail to give the Minister notice under subsection (3) within the prescribed period;

the Minister shall give such directions or make such alterations to the conditions as are necessary to resolve the inconsistency.

## 25   Minor amendments

245. (1) The lessee or an occupier of a place in respect of which an approval (other than an approval in respect of a controlled activity specified in item 2 or 3 of Schedule 2) is in force may apply in writing to the Minister to amend the approval.

30       (2) The Minister may amend an approval, if satisfied that the amendment—

      (a) does not change the effect of a condition subject to which the approval was given;

      (b) does not adversely affect the interests of a concurring authority;

35       (c) will not cause a significant increase in detriment to any person; and



(d) does not change the controlled activity for which the approval was given, other than a change to the description of the controlled activity.

(3) The Minister shall give notice of an amendment—

- 5 (a) to the person who made the application to amend;
- (b) if that person is not the lessee or occupier of the place to which the approval relates—to the lessee; and
- (c) to any relevant Territory authority.

### **Corrections**

10 246. If the Minister is satisfied that an approval contains a formal error, the Minister shall—

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

### **Approval—when takes effect**

15 247. (1) If no application is made to the Tribunal for a review of the Minister's decision to approve an application or of a decision of the Executive under section 238 or 239, respectively, within 28 days after the date of the decision, the approval takes effect—

- 20 (a) 7 days after the last day on which a person may apply to the Tribunal for a review of the decision; or
- (b) if, before the expiration of the period referred to in paragraph (a), the Minister gives the applicant written notice that no application has been made to the Tribunal—on the day on which that notice is given;

25 whichever occurs first.

(2) If application is made to the Tribunal for a review of the Minister's decision to approve an application or of a decision of the Executive under section 238 or 239, respectively, within 28 days after the date of the decision, the approval takes effect on the date on which the Tribunal's decision affirming or varying the decision comes into operation.

### **Execution of certain approvals**

30 248. Subject to section 185, where an approval to conduct a controlled activity specified in item 2 or 3 of Schedule 2 takes effect pursuant to section 247, the Executive shall cause the variation of the lease or the subdivision or consolidation of land to be executed in accordance with the terms of the approval.

### Expiration of approvals

249. (1) An approval to conduct a controlled activity (other than a controlled activity specified in item 2 or 3 of Schedule 2) expires if—

- 5 (a) the activity or any stage of the activity is not commenced within the period specified in the approval;
- (b) the activity or any stage of the activity is not completed within the period specified in the approval; or
- 10 (c) if no period is specified in an approval for the commencement of an activity or any stage of an activity—the activity or any stage of the activity is not commenced within 2 years after the date of the approval.

(2) The expiry of an approval does not affect anything done under the approval before the expiry.

### Extension of time

- 15 250. (1) The lessee or occupier of a place in respect of which an approval to conduct a controlled activity (other than a controlled activity specified in item 2 or 3 of Schedule 2) applies (being an approval which specifies the date for the completion of the activity or any stage of the activity) may, before the expiration of the approval, apply to the Minister for
- 20 an extension of the period within which to complete the activity or any stage of it.

(2) On receipt of an application under subsection (1), the Minister may extend the period within which the conduct of a controlled activity or any stage of it is to be commenced or it or any stage of it is to be completed.

### 25 Revocation of approval

251. The Minister may revoke an approval—

- (a) if satisfied that the approval was obtained by fraud or misrepresentation; or
- 30 (b) where the approval is in respect of a place that is specified in the Heritage Places Register or interim Heritage Places Register—if the applicant is convicted of an offence under this Part.

### Division 3—Orders

#### Interpretation

- 35 252. In this Division, unless the contrary intention appears, a reference to a controlled activity is to be read as not including—

- (a) a reference to a controlled activity specified in Schedule 2; or

- (b) an activity declared under another Act to be a controlled activity for the purposes of that Schedule.

#### Offences—orders

- 5     **253. (1)** A person who, without reasonable excuse, contravenes an order is guilty of an offence punishable, on conviction, by a fine not exceeding the amount specified in Schedule 3 in relation to the activity in respect of which the order was made.

(2) A Territory authority shall not, without reasonable excuse, contravene an order.

#### 10     Application for order

**254. (1)** A person may apply to the Minister for an order against—

- (a) the lessee or occupier of a place on which a controlled activity is being, or is to be, conducted; or  
15     (b) any person by whom or on whose behalf the activity was, is being, or is to be, conducted.

(2) An application under subsection (1) shall set out the grounds on which the order is sought.

(3) On application being made under subsection (1), the Minister may make or refuse to make an order.

- 20     **(4)** The Minister may make an order under this section of his or her own motion.

**(5)** An order—

- (a) shall specify—  
      (i) the grounds on which the order is made; and  
25     (ii) its date of effect; and  
  
(b) may direct any person against whom it is made—  
      (i) to stop conducting a controlled activity specified in Schedule 2 without approval;  
30     (ii) to stop, or not to commence to conduct, a controlled activity that is not specified in Schedule 2;  
      (iii) not to commence to conduct a controlled activity without approval;  
      (iv) to comply with the terms of an approval to conduct a controlled activity; or

- (v) to stop conducting a controlled activity otherwise than in accordance with the conditions subject to which the approval to conduct the activity was given.

- 5 (6) If the Minister fails to make an order under this section (other than subsection (4)) within the prescribed period, the Minister is, for the purposes of subsection (3), to be taken to have refused to make an order.

**Notice of making of order**

255. If the Minister makes an order under section 254, the Minister shall give notice of the making of the order to—

- 10 (a) any person against whom the order is sought;
- (b) in the case of an application under subsection (1)—the applicant;
- (c) the lessee and occupier of the place to which the order relates;
- (d) the Registrar of Titles; and
- 15 (e) any other person whose interests are, in the opinion of the Minister, adversely affected by the order.

**Effect of order in certain circumstances**

- 20 256. (1) Where the Minister, by order, directs a person to refrain from conducting a controlled activity, the person to whom the order is directed is guilty of an offence under section 253 if the person contravenes the order at any time during the period between the date the order takes effect and—

- (a) the date of revocation of the order by the Minister; or
- (b) if application is made to the Tribunal for a review of the decision and the decision is upheld—the date the decision is upheld;
- 25 whichever first occurs.

(2) An order made by the Minister directing a person to do an act or thing does not take effect until—

- (a) the period for making application to the Tribunal for a review of the decision to make the order has expired; or
- 30 (b) if within that period application is made for a review of the decision—the decision is affirmed or varied by the Tribunal.

**Non-compliance**

257. (1) Whether or not proceedings are instituted for an offence against this Part, the Minister may—

- (a) direct that a person authorised by the Minister enter a place on which a controlled activity is being conducted and carry out work or conduct an activity to which an order relates which was not carried out within the period specified in the order; or
- 5 (b) apply to the Supreme Court—
- (i) for an injunction restraining any person from contravening an order; or
- (ii) for an order requiring a person to do an act or thing in accordance with the terms of an approval.
- 10 (2) The reasonable cost of work carried out under paragraph (1) (a) is a debt payable by the person against whom the order was made to the Territory.
- (3) The Minister shall not make a direction under paragraph (1) (a)—
- 15 (a) if application is made to the Tribunal for a review of the decision to make the order to which the proposed direction relates—unless the decision to make the order is upheld; or
- (b) if no application is made to the Tribunal—until the expiration of the period within which such an application may be made.

#### **Future owners and occupiers**

- 20 258. (1) An order under this Division may be expressed to bind any subsequent lessee or occupier of land to the same extent as if the order had been made against that subsequent occupier or lessee.
- (2) Where the Minister makes an order of the kind referred to in subsection (1), the Minister shall give the Registrar of Titles a copy of the
- 25 order.
- (3) Where the Minister revokes an order of the kind referred to in subsection (1), the Minister shall give written notice to the Registrar of Titles.

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

- 30 259. (1) The Supreme Court may, on application being made under paragraph 257 (1) (b) or by any other person, grant an injunction restraining a person from engaging in conduct which would contravene an order and, if in the Court's opinion it is desirable to do so, requiring the person to do any act or thing.
- 35 (2) Where, in the opinion of the Court, it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(3) The Court may rescind or vary an injunction granted under subsection (1) or (2).

(4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised—

- 5       (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind.

10       (5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised—

- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- 15       (b) whether or not the person has previously refused or failed to do that act or thing.

#### ***Division 4—Enforcement***

##### ***Subdivision A—Preliminary***

##### **Things connected with offences**

20       260. (1) For the purposes of this Division, a thing is connected with a particular offence if—

- (a) it is a thing with respect to which the offence has been committed;
- (b) it will afford evidence of the commission of the offence; or
- 25       (c) it was used, or is or was intended to be used, for the purposes of committing the offence.

(2) A reference in this Division to an offence is to be read as including a reference to an offence that there are reasonable grounds for believing has been or will be committed.

30       (3) Where a person is authorised under section 261 or this Division to enter a place, and enters that place, a reference to the occupier of such a place shall include a reference to a person reasonably believed by the authorised person to be the occupier, or to be in charge, of that place.

##### **Inspectors**

35       261. (1) The Minister may, in writing, appoint a person to be an inspector for the purposes of this Part.

(2) An inspector shall, subject to this Part and the regulations, perform such duties as the Minister directs.

#### **Identity cards**

- 5     262. The Minister shall issue to each inspector an identity card that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.

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

- 10    263. A person appointed to be an inspector shall not, without reasonable excuse, fail to return his or her identity card to the Minister upon ceasing to be an inspector.

Penalty: \$100.

### ***Subdivision B—Inspection***

#### **Inspections etc.**

- 15    264. For the purposes of ascertaining whether or not a controlled activity is being conducted in or on any place—

- (a) in accordance with an approval;
  - (b) without an approval;
  - (c) contrary to the conditions of an approval; or
  - (d) in accordance with, or in contravention of, an order;
- 20    an inspector may enter the place—
- (e) with the consent of the occupier of the place;
  - (f) pursuant to a warrant issued under section 271; or
  - (g) with such assistance and by such force as is reasonable, where the
- 25           inspector believes on reasonable grounds that the circumstances are of such seriousness and urgency as to require the immediate exercise of those powers without the authority of a warrant issued under section 271;

- 30    and, subject to section 266, exercise any power referred to in section 267 if the inspector believes on reasonable grounds that a controlled activity is, or is intended to be, conducted in or on that place.

#### **Consent to entry**

265. (1) Before seeking the consent of the occupier of a place for the purposes of section 264, an inspector shall inform the occupier that he or she may refuse to give that consent.

(2) If an inspector obtains the occupier's consent for those purposes, the inspector shall ask the occupier to sign a written acknowledgment—

- 5 (a) that the occupier has been informed that he or she may refuse to give consent, for the purposes of section 264, for the inspector to enter the place and to exercise any power under section 267;
- (b) that the occupier has given the inspector that consent; and
- (c) of the day on which, and the time at which, the consent was given.

10 (3) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented for the purposes of section 264 and an acknowledgment, in accordance with subsection (2), signed by the occupier, is not produced in evidence, it shall be presumed that the occupier did not consent, but that presumption is rebuttable.

#### **Display of identity cards**

15 266. An inspector who enters a place under section 264 is not entitled to remain in or on the place if, on request by the occupier, the inspector does not show his or her identity card to the occupier.

#### **Powers of inspection**

267. (1) Subject to this Part, an inspector who enters a place under section 264 may—

- 20 (a) inspect, examine, take measurements of, or conduct tests concerning, the premises or a controlled activity conducted in or on that place;
- 25 (b) take such photographs, video recordings, or make such sketches or other recordings, as the inspector believes on reasonable grounds to be necessary;
- (c) take samples of any thing that the inspector believes on reasonable grounds is connected with an offence against this Part;
- (d) seize any thing that the inspector believes on reasonable grounds to be connected with an offence against this Part;
- 30 (e) inspect, make copies of, or take extracts from, any document in or on that place that the inspector believes on reasonable grounds is connected with an offence against this Part;
- (f) require any person in or on the place—
  - 35 (i) to give the inspector such information; or
  - (ii) to produce to the inspector any document containing such information;



relating to the use of the place in connection with the conduct of a controlled activity;

- (g) require any person in or on the place to answer questions; and
- 5 (h) require any person on the premises to give the inspector such assistance as is reasonable to enable the inspector to exercise his or her powers under this section.

(2) A person shall not, without reasonable excuse, fail to comply with a requirement made of the person under paragraph (1) (f), (g) or (h).

Penalty: \$1,000.

10 **Work carried out at direction of inspector**

268. Where an authorised person enters land pursuant to paragraph 257 (1) (a), the authorised person shall not carry out the work or conduct the controlled activity otherwise than in accordance with the directions of an inspector.

15 **Taking samples**

269. An inspector who takes samples under paragraph 267 (c) shall—

- (a) ensure that the sample is such as to permit paragraph (c) to be complied with;
- 20 (b) give a receipt for the sample to the occupier of the place from which the sample was taken;
- (c) divide the sample into 2 parts as nearly as practicable identical in size and composition to each other and each suitable for the purpose of analysis;
- 25 (d) place each of those parts in a separate container and seal each container;
- (e) attach to each container a label bearing the signature of the inspector and particulars of the date and time when, and the place at which, the sample was taken; and
- (f) give 1 container to the occupier of the place.

30 **Disposal of seized items**

270. (1) Where a thing has been seized under paragraph 267 (d) and—

- 35 (a) a prosecution for an offence against this Part in connection with that thing has not been instituted within 90 days after the day of seizure; or
- (b) a person is so charged but is not convicted;

subject to subsection (2), the Minister shall take all reasonably practical steps to give the thing to the person to whom the Minister reasonably believes to be entitled to it.

(2) Where a person is—

- 5       (a) convicted of an offence against this Part; or  
      (b) dealt with under section 556A of the Crimes Act, 1900 of the State of New South Wales in its application to the Territory in respect of an offence against this Act;

10       the court may order that any thing seized under paragraph 267 (d) and connected with the offence—

- (c) be given to the person who appears to the court to be entitled to it; or  
      (d) be forfeited to the Territory.

**Search warrants**

15       271. (1) Where an inspector suspects on reasonable grounds that there is in or on any place a thing of a particular kind connected with a particular offence against this Part or the regulations, the inspector may—

- (a) lay before a magistrate an information on oath setting out those grounds; and  
20       (b) apply for the issue of a warrant to search the place for things of that kind.

25       (2) Where an application is made under subsection (1) for a warrant to search a place, a magistrate may, subject to subsection (3), issue a warrant authorising an inspector named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the place;  
      (b) to ascertain whether or not a controlled activity is being conducted in or on the place;  
30       (c) to search the place for things of the kind specified in the warrant; and  
      (d) to seize any thing found in the course of the search that the inspector believes on reasonable grounds to be a thing of that kind connected with the relevant offence.

35       (3) A magistrate shall not issue a warrant under subsection (2) unless—

- (a) the informant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- 5 (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (4) A warrant shall—
  - (a) state the purpose for which it is issued;
  - (b) specify the nature of the relevant offence;
  - 10 (c) specify particular hours during which the entry is authorised, or state that the entry is authorised at any time of the day or night;
  - (d) include a description of the kinds of things in relation to which the powers under the warrant may be exercised; and
  - 15 (e) specify the date, being a date not later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.

#### **Obstruction of inspectors**

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

Penalty: \$5,000 or imprisonment for 6 months.

20

#### ***Division 5—Miscellaneous***

##### ***Subdivision A—Review of decisions***

#### **Review—applicants**

273. (1) This section applies to—

- (a) a decision of the Minister—
  - 25 (i) refusing to approve an application under subsection 226 (2);
  - (ii) refusing to give an approval under section 228;
  - (iii) refusing to grant an extension of a period under subsection 231 (3);
  - 30 (iv) refusing to exclude the identity of an objector under section 237;
  - (v) giving an approval under section 243 subject to conditions;
  - (vi) refusing to give an approval under subsection 243 (4);
  - (vii) refusing to amend an approval under section 245;

- (viii) refusing to extend time under section 250; or
- (ix) revoking an approval under section 251;
- (b) a decision of a concurring authority under paragraph 233 (1) (b) or (c); and
- 5 (c) a decision of the Executive under section 238 or 239.

(2) Where the Minister, a concurring authority or the Executive, as the case may be, makes a decision to which this section applies, the person who made the application in respect of which the decision was made may apply to the Tribunal for a review of the decision.

10 (3) Where—

- (a) an approval that is in force contains a condition that a specified controlled activity is to be conducted to the satisfaction of the Minister or a specified person or body; and
- 15 (b) the Minister or that specified person or body makes a decision that the activity has not been conducted to the satisfaction of the Minister or that person or body;

the applicant to whom the decision relates may apply to the Tribunal for a review of the decision.

20 (4) Where the Minister, a concurring authority or the Executive makes a decision of a kind to which this section applies, the Minister shall cause notice in writing of the decision to be given to the applicant.

25 (5) Where the Minister or a person or body referred to in subsection (3) makes a decision of a kind referred to in that subsection, the Minister, or the person or body making the decision shall cause notice in writing of the decision to be given to the applicant to whom the decision relates, as the case requires.

(6) A notice under subsection (4) or (5) shall—

- 30 (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

35

(7) The validity of a decision to which this section applies is not to be taken to be affected by a failure to comply with subsection (6).

**Review—objectors, third parties****274. (1) Application for a review of—**

- (a) a decision of the Minister to approve an application under section 228 or 243;
- 5 (b) a decision of a concurring authority not to object to the approval of an application under section 233; or
- (c) a decision of the Executive to approve an application under section 238 or 239;

10 may be made by a person to the Tribunal within 14 days after the day on which the person was notified of the decision if—

- (d) the person making the application is a person who objected under section 235; or
- 15 (e) the Tribunal has reasonable grounds for believing that the applicant was, in the circumstances, unable to object to the making of the decision within the prescribed period.

(2) A notice given under section 241 to a person who objected under section 235 shall—

- 20 (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, application may be made to the Tribunal, within 14 days after the date of the decision, for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.
- 25

(3) The validity of a decision to which this section applies is not to be taken to be affected by a failure to comply with subsection (2).

30 (4) If regulations are made for the purposes of subsection 227 (8) then, in respect of a decision in respect of which those regulations apply (other than in respect of a matter to which subsection (5) of this section applies), subsection (1) of this section does not apply, and any person whose interests are affected by the decision may apply to the Tribunal for a review of the decision.

35 (5) A person is not entitled to make an application under this section if—

- (a) the Minister has issued a certificate that, an Environmental Impact Statement made, or an Inquiry conducted, under Part IV, has substantially dealt with matters forming the basis of the Minister's

decision to give the applicant approval to conduct a controlled activity; or

- (b) circumstances are specified in the Plan pursuant to paragraph 7 (3) (c).

5 (6) At the hearing of a proceeding before the Tribunal, the Tribunal shall have regard to—

- (a) any decisions or recommendations of a Committee of the Legislative Assembly in relation to; and

- (b) any Environmental Impact Statement made, or Inquiry conducted

10

into;

a matter which is in issue in the hearing.

(7) A certificate under paragraph (5) (a) shall be tabled in the Legislative Assembly on the first sitting day of the Assembly after the date of the certificate.

15 **Review—orders**

275. (1) A person whose interests are affected by a decision of the Minister—

- (a) to make an order under section 254;
- (b) to refuse to make an order under section 254; or

- (c) to make an order subject to a direction of a kind referred to in paragraph 254 (5) (b);

20

may apply to the Tribunal for a review of the decision.

25 (2) Where the Minister makes a decision of the kind referred to in subsection (1), the Minister shall cause notice of the decision to be given to the applicant and any other person whose interests are, in the opinion of the Minister, adversely affected by the decision.

(3) A notice under subsection (2) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and

30

- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

35

(4) The validity of a decision to which this section applies is not to be taken to be affected by a failure to comply with subsection (3).

#### Notification of objectors

5 276. (1) Where an applicant makes an application under section 273 for the review of a decision referred to in paragraph 273 (1) (a), (b) or (c), the Minister shall, as soon as practicable after being notified of the application for review, give notice to each concurring authority and to each person who objected under section 235 that the applicant has applied for a review of the decision.

10 (2) A notice under subsection (1) shall include a statement to the effect that the person to whom it is given is entitled, on application to the Tribunal, to be made a party to the proceedings for the review.

#### Notification of applicants

15 277. (1) Where an objector makes an application under section 274 for the review of a decision, the objector shall, at the same time, give notice to the person who made the application for approval of the decision in relation to which the objector has applied for review.

20 (2) A notice under subsection (1) shall include a statement to the effect that the person to whom it is given is entitled, on application to the Tribunal, to be made a party to the proceedings for the review.

(3) In subsection (1)—

“objector” means a person referred to in paragraph 274 (1) (d) or (e) and includes a person who has made application under subsection 274 (4).

#### 25 Modification of section 28 of the *Administrative Appeals Tribunal Act 1989*

30 278. For the purposes of the application of section 28 of the *Administrative Appeals Tribunal Act 1989* in relation to an application referred to in section 276 or 277 of this Act, section 28 of the first-mentioned Act is modified by inserting after subsection 28 (2) the following subsection:

35 “(2A) Where an application has been made by a person to the Tribunal for a review of a decision, a person to whom notice has been given under section 276 or 277 of the *Land (Planning and Environment) Act 1991* may apply, as prescribed, to the Tribunal to be made a party to the proceedings, and the Tribunal shall, by order, make that person a party to the proceedings.”.

**Failure to comply with certain notification requirements**

279. The validity of an approval is not to be taken to be affected by a failure by the applicant to comply with subsection 227 (5).

**Subdivision B—General**

5 **Regulations—Part VI**

280. The regulations may make provision in relation to—

- (a) the lodging of applications;
- (b) the form and conditions of a bond referred to in paragraph 243 (3) (f), including the method of calculating the amount of the bond and the conditions of payment under the bond;
- (c) the exemption of the Territory or a Territory authority from the requirements of all or any of the provisions of this Part;
- (d) the circumstances, whether generally or in a particular case, in which an exemption under paragraph (c) applies;
- (e) exempting the conduct of a specified controlled activity, or a controlled activity included in a specified class of controlled activities, either absolutely or subject to conditions, from the requirement of all or any of the provisions of this Part or the regulations; and
- (f) the extension of any period within which action is to be taken by the Executive, a person, a concurring authority or the Minister, under this Part or the regulations.

**PART VII—MISCELLANEOUS**

**Persons authorised to exercise powers of the Executive**

281. (1) Subject to subsection (3), the Executive may, by instrument, authorise a person to act on its behalf in the exercise of a power in accordance with Part II or V.

(2) Where the exercise of a power by the Executive in accordance with this Part is dependent upon the opinion, belief or state of mind of the Executive in relation to a matter and a person has, pursuant to subsection (1), been authorised to exercise that power, the power may be exercised by the person so authorised upon his or her opinion, belief or state of mind in relation to the matter.

(3) Subsection (1) does not apply in respect of the exercise of a power of the Executive under subsection 162 (4), 163 (3), 166 (1) or 177 (3).



**Power of Administrative Appeals Tribunal and Supreme Court**

282. Where a person appeals, or purports to appeal, under this Act—

- (a) to the Tribunal; or
- 5 (b) against a determination or decision of the Tribunal to the Supreme Court, and it appears to the Tribunal or Court that—
  - (i) the appeal, or purported appeal, or the decision, or purported decision, against which the appeal, or purported appeal, has been brought is affected by a failure to comply with a requirement of this Act; and
  - 10 (ii) to exercise the powers conferred by this subsection would not be unjust or inequitable;

the Tribunal or the Court may excuse the failure by ordering that, subject to such conditions as may be specified in the order by the Tribunal or the Court, the requirement concerned be dispensed with to the necessary extent.

**15 Corporations—penalties**

283. Except where otherwise expressly provided, a body corporate is convicted of an offence against this Act or the regulations, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

**Conduct of directors, servants and agents**

284. (1) Where, for the purposes of a prosecution for an offence against this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
  - (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.
- 30 (2) A reference in subsection (1) to the state of mind of a body or person includes a reference to—
- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
  - 35 (b) the body's or person's reasons for the intention, opinion, belief or purpose.
- (3) Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of

the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

5

(4) Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

10 the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

15 (6) A reference in this section to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

#### **Power of Minister to determine fees**

285. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

#### **20 Regulations**

286. The Executive may make regulations, not inconsistent with this Act, prescribing—

- (a) matters required or permitted by this Act to be prescribed;
- 25 (b) matters necessary or convenient to be prescribed for carrying out or giving effect to this Act; or
- (c) penalties, for offences against the regulations, not exceeding—
  - (i) if the offender is a natural person—a fine of \$1,000; or
  - (ii) if the offender is a body corporate—a fine of \$5,000.

**SCHEDULE 1**

Section 194

**MANAGEMENT OBJECTIVES FOR PUBLIC LAND**

<b>Reserve</b>	<b>Management objectives</b>
<b>Wilderness area</b>	<ol style="list-style-type: none"> <li>1. To conserve the natural environment in a manner ensuring that disturbance to that environment is minimal.</li> <li>2. To provide for the use of the area (other than by vehicles or other mechanised equipment) for recreation by limited numbers of people, so as to ensure that opportunities for solitude are provided.</li> </ol>
<b>National park</b>	<ol style="list-style-type: none"> <li>1. To conserve the natural environment.</li> <li>2. To provide for public use of the area for recreation, education and research.</li> </ol>
<b>Nature reserve</b>	<ol style="list-style-type: none"> <li>1. To conserve the natural environment.</li> <li>2. To provide for public use of the area for recreation, education and research.</li> </ol>
<b>Special purpose reserve</b>	<ol style="list-style-type: none"> <li>1. To provide for public and community use of the area for recreation and education.</li> </ol>
<b>Cemetery or burial ground</b>	<ol style="list-style-type: none"> <li>1. To provide for the burial of the dead and the storage of the ashes of the dead.</li> <li>2. To conserve the natural environment.</li> </ol>
<b>Sport and recreation reserve</b>	<ol style="list-style-type: none"> <li>1. To provide for public and community use of the area for sport and recreation.</li> </ol>
<b>Urban open space</b>	<ol style="list-style-type: none"> <li>1. To provide for public and community use of the area.</li> <li>2. To develop the area for public and community use.</li> </ol>
<b>Lake</b>	<ol style="list-style-type: none"> <li>1. To prevent and control floods by providing a reservoir to receive flows from rivers, creeks and urban run-offs.</li> <li>2. To prevent and control pollution of waterways.</li> <li>3. To provide for public use of the lake for recreation.</li> <li>4. To provide a habitat for fauna and flora.</li> </ol>

**SCHEDULE 2**Sections 4, 220, 221,  
223, 228, 233, 238, 239,  
245, 248-250 and 252**CONTROLLED ACTIVITIES: CONCURRING AUTHORITIES:  
PENALTIES**

Column 1 Item	Column 2 Controlled activity	Column 3 Concurring authority	Column 4 Penalty
1	Work affecting the requirements for the conservation of the heritage significance of places included in the Heritage Places Register or an interim Heritage Places Register	The Planning Authority and the Conservator	\$20,000
2	The execution of a variation of a lease of Territory Land	The Minister and the Planning Authority	\$1,000
3	The execution of a new lease for the purpose of effecting the subdivision or consolidation of Territory Land	The Minister and the Planning Authority	\$1,000
4	Subject to the Territory Plan, the use of residential land for carrying on a profession, trade, occupation or calling on the land	The Minister and the Planning Authority	\$5,000
5	An activity specified pursuant to paragraph 7 (3) (c) to be a controlled activity for the purposes of this Act	The authority specified in the Plan whose permission is required	\$5,000
6	Encroachment onto, over or under public land within the meaning of Part V, or a public road within the meaning of that Part	The Minister, the Planning Authority and the Conservator	\$5,000
7	Mining	The Minister and the Planning Authority	\$5,000
8	Public works	The Minister and the Planning Authority, and, in respect of public land, the Conservator	\$25,000

## SCHEDULE 3

Sections 4, 222 and 253

## ACTIVITIES SUBJECT TO ORDERS

Column 1	Column 2	Column 3
Item	Activities	Penalty
1	Work affecting the requirements for the conservation of the heritage significance of places included in the Heritage Places Register or an interim Heritage Places Register conducted otherwise than in accordance with an approval	\$20,000
2	Using residential land for the carrying on of a profession, trade, occupation or calling otherwise than in accordance with an approval, or the Plan	\$5,000
3	Using land otherwise than in accordance with— (a) the lease; or (b) if the lease is granted subject to the lessee entering into a development agreement and the lessee has entered into that agreement—the development agreement	\$5,000
4	Failure to keep a leasehold clean	\$5,000
5	Activities specified pursuant to paragraph 7 (3) (c) conducted otherwise than in accordance with an approval	\$5,000
6	Encroachment onto, over or under public land otherwise than in accordance with an approval	\$5,000
7	Mining otherwise than in accordance with an approval	\$5,000
8	Public work otherwise than in accordance with an approval	\$5,000
9	Permitting a tree, sapling, plant or shrub to overhang a public place so as to obstruct or inconvenience a person in that place	\$5,000