

2008

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning and Development Legislation Amendment Bill 2008

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(As presented)

(Minister for Planning)

Planning and Development Legislation Amendment Bill 2008

A Bill for

An Act to amend the law relating to planning and development, and for related purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Planning and Development Legislation Amendment Act 2008*.

2 Commencement

This Act commences on the commencement of the *Planning and Development Act 2007*, section 46.

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

1 **Part 2** **Planning and Development**
2 **Act 2007**

3 **3 Legislation amended—pt 2**

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

5 **4 Meaning of *development***
6 **Section 7 (1) (f)**

7 *substitute*

- 8 (f) varying a lease relating to the land (other than a variation that
9 reduces the rent payable to a nominal rent);

10 **5 Section 7 (2), definition of *subdivision***

11 *substitute*

12 *subdivision*—

- 13 (a) includes—

14 (i) the surrender of 1 or more leases held by the same lessee,
15 and the grant of new leases to the lessee to subdivide the
16 parcels of land in the surrendered leases; and

17 (ii) the subdivision of land under the *Unit Titles Act 2001*;
18 and

19 (iii) the subdivision of land in future urban areas; but

- 20 (b) does not include subletting a sublease.

- 1 **6 Public availability of territory plan**
2 **Section 47 (2)**
- 3 *after*
4 obtain
5 *insert*
6 from the authority
- 7 **7 What are *technical amendments* of territory plan?**
8 **New section 87 (ca)**
- 9 *insert*
10 (ca) a variation to change the boundary of a zone or overlay under
11 section 96A (Rezoning—boundary changes);
- 12 **8 Making technical amendments**
13 **Section 89 (1) (b)**
- 14 *substitute*
15 (b) any limited consultation needed for the variation has taken
16 place.
17 *Note* Section 88 sets out when limited consultation is needed.
- 18 **9 Part 5.5, heading**
- 19 *substitute*
- 20 **Part 5.5 Plan variations—structure plans**
21 **and rezoning**

10 Rezoning—future urban areas
Section 95 (2)

substitute

- (2) The planning and land authority may vary the territory plan under section 89 to change the boundary of a future urban area if the change is consistent with the structure plan for the area.
- (3) However, the planning and land authority must not vary the territory plan under section 89 to change the boundary of a future urban area if part of the boundary proposed to be changed is aligned with the boundary of an existing leasehold.

11 New section 96A

in part 5.5, insert

96A Rezoning—boundary changes

- (1) The planning and land authority may vary the territory plan under section 89 (Making technical amendments) to change the boundary of a zone or overlay if the change is consistent with—
- (a) the apparent intent of the original boundary line; and
- (b) the objective for the zone.
- (2) However, the planning and land authority must not vary the territory plan under section 89 to change the boundary of the zone if part of the boundary proposed to be changed is aligned with the boundary of an existing leasehold.

Examples— changes allowed

- 1 boundary change consistent with more detailed survey work that reveals
2 copse of trees further away from boundary than intended

1 2 boundary change to align boundary to boundaries of nearby, recently-created
2 leases

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

6 **12 Applications for development approval in relation to use**
7 **for otherwise prohibited development**
8 **Section 137 (2) (b)**

9 *substitute*

10 (b) the proposal is taken not to be for a prohibited development;
11 and

12 **13 Section 152**

13 *substitute*

14 **152 What is *publicly notifies* for ch 7?**

15 (1) For this chapter, the planning and land authority *publicly notifies* a
16 development application if—

17 (a) for an application for a development proposal in the merit track
18 that is prescribed by regulation—the authority notifies the
19 application in the manner prescribed under subsection (2); or

20 (b) for any other application for a development proposal—the
21 authority notifies the application under—

22 (i) section 153 and section 155; and

23 (ii) if the development proposal is, or includes, a lease
24 variation—section 154 (if applicable).

25 *Note 1* Only developments to which the merit track and impact track applies
26 are required to be publicly notified (see s 121 and s 130). Also, the
27 planning and land authority must re-notify some amended development
28 applications (see s 146).

Note 2 An entity other than an applicant may apply for review of a decision to approve a development application in the merit track only if the application is required to be notified under section 153 and section 155 (see sch 1, item 4).

(2) For an application prescribed under subsection (1) (a), the planning and land authority may, by regulation, prescribe either of the following ways of notifying the application:

(a) under section 155 (Major public notification) and, if applicable, section 154 (Public notice to registered interest holders);

(b) under section 153 (Public notice to adjoining premises) and, if the development proposal is, or includes, a lease variation—section 154 (if applicable).

14 Deciding development applications Section 162 (4)

omit

registered tree

substitute

regulated tree

15 New section 165A

in division 7.3.6, insert

165A Lease to be varied to give effect to development approval

(1) This section applies if—

(a) the planning and land authority or the Minister approves a development application under section 162; and

(b) the development consists of or includes a lease variation.

1 (2) The planning and land authority must vary the lease in accordance
2 with the terms of the approval.

3 (3) This section is subject to division 9.6 (Lease variations).

4 *Note* Section 179 and s 180 set out when development approvals requiring
5 lease variations take effect.

6 **16 Extension of time for further information—further**
7 **information sufficient**
8 **Section 166 (1) (b)**

9 *substitute*

10 (b) the authority decides to give the applicant the request notice
11 not later than 10 working days after the day the application is
12 lodged; and

13 (ba) the notice is given to the applicant as soon as possible after the
14 authority decides to give the notice; and

15 **17 When is a s 125-related EIS completed?**
16 **Section 209A (1) (b) (i) and (ii)**

17 *substitute*

18 (i) the Minister has not decided, within the 15-day period
19 mentioned in section 228 (1), to establish an inquiry
20 panel to inquire about the EIS; and

21 (ii) the Public Health Act Minister has not decided, within
22 the 15-day period mentioned in the *Public Health*
23 *Act 1997*, section 134 (4), that an inquiry panel to inquire
24 about the EIS must be established; or

18 Section 209A (1) (c) (ii) (A) and (B)*substitute*

(A) if the Minister gave the authority notice in relation to the EIS under section 226—the Public Health Act Minister has not decided, within the 15-day period mentioned in the *Public Health Act 1997*, section 134 (4), that an inquiry panel to inquire about the EIS must be established; or

(B) in any other case—the Minister has not decided, within the 15-day period mentioned in section 228 (1), to establish an inquiry panel to inquire about the EIS; or

**19 Definitions—ch 9
Section 234, new definition of *single dwelling house lease****insert*

single dwelling house lease means a lease granted under section 240 (1) (cb).

**20 Granting leases
Section 238 (1), notes***substitute*

Note 1 Not everyone may be eligible to be granted a lease under this subsection (see s 239).

Note 2 Section 240, s 241, s 242 and s 243 also apply to grants under par (d).

- 1 **21 Section 239**
- 2 *substitute*
- 3 **239 Eligibility for grant of lease**
- 4 The planning and land authority may restrict the people eligible for
- 5 the grant of a lease under section 238 by stating, in the relevant
- 6 notice of auction, tender, ballot or direct sale, that a class of people
- 7 is eligible or ineligible for the grant of a lease under the auction,
- 8 tender, ballot or direct sale.
- 9 **22 Restriction on direct sale by authority**
- 10 **New section 240 (1) (ca) and (cb)**
- 11 *insert*
- 12 (ca) the lease is prescribed by regulation; or
- 13 (cb) the grant is of a residential lease for a single dwelling house; or
- 14 **23 Section 240 (2)**
- 15 *after*
- 16 approve the
- 17 *insert*
- 18 grant by
- 19 **24 New section 240 (4)**
- 20 *insert*
- 21 (4) In this section:
- 22 *single dwelling house*—see the territory plan.

25 Section 242*substitute***242 Notice of direct sale**

(1) The planning and land authority must, not later than 5 working days after the end of a quarter, give the Minister—

(a) a statement of—

(i) the number of single dwelling house leases granted during the quarter; and

(ii) any other information prescribed by regulation for single dwelling house leases; and

(b) a statement that sets out the prescribed information for each other direct sale lease granted during the quarter; and

(c) a copy of each other direct sale lease granted during the quarter.

(2) The Minister must present the documents given under subsection (1) to the Legislative Assembly not later than 5 sitting days after the day the Minister receives the information.

(3) To remove any doubt, the validity of a single dwelling house lease or other direct sale lease is not affected by a failure to comply with subsection (1) or (2) in relation to the lease.

(4) In this section:

other direct sale lease means a lease granted by direct sale, other than a single dwelling house lease.

Note ***single dwelling house lease***—see s 234.

prescribed information, for an other direct sale lease, means—

(a) the amount (if any) paid for the grant of the lease; and

- 1 (b) if the lease was granted with the approval of the Executive
2 under section 240 (2)—the reason for granting the lease with
3 the approval of the Executive.

4 **26 Use of land for leased purpose**
5 **Section 247 (1), note**

6 *after*
7 par (d)
8 *insert*
9 and s 8, def *use*, par (a)

10 **27 Section 247 (2), new note**

11 *insert*
12 *Note* While the use of a residential lease for a home business is authorised,
13 the use of the land for a home business is not exempt from requiring
14 development approval unless the use is an exempt development (see
15 div 7.2.6).

16 **28 Restrictions on dealings with certain leases**
17 **Section 251 (1) (c)**

18 *substitute*
19 (c) a lease granted under section 238 (1) (d), other than—
20 (i) a lease granted to the Territory; or
21 (ii) a single dwelling house lease, other than a single
22 dwelling house lease prescribed by regulation;

23 **29 New section 251 (2A)**

24 *insert*
25 (2A) However, a regulation may exempt a lease from this section,
26 whether generally or in relation to a particular dealing.

30 New section 251 (3A)*insert*

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

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

- (3B) The application of this section to a lease is not affected by—

- (a) failure by the planning and land authority to comply with subsection (3A); or
- (a) failure by the registrar-general to comply with the *Land Titles Act 1925*, section 72D.

31 Section 273*substitute***272A Application for rent payout lease variation**

- (1) This section applies to a lease that is included in a class of leases prescribed by regulation.
- (2) The lessee may apply to the planning and land authority for a variation of the lease to reduce the rent payable to a nominal rent.

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

272B Decision on rent payout lease variation application

- (1) Within the period prescribed by regulation after the day the planning and land authority receives an application by a lessee under section 272A, the authority must—
 - (a) decide to vary the lease to reduce the rent payable to nominal rent; or

- 1 (b) if subsection (2) prevents the authority from varying the
2 lease—refuse to vary the lease.
- 3 (2) The planning and land authority must not vary the lease to reduce
4 the rent payable to a nominal rent unless—
- 5 (a) all amounts payable to the Territory up to the day of variation
6 of the lease for rates and land tax levied in relation to the land
7 comprised in the lease have been paid; and
- 8 (b) the provisions of the lease requiring the lessee to develop the
9 land comprised in the lease have been complied with up to the
10 day of the variation; and
- 11 (c) the lessee has paid the Territory an amount decided by the
12 planning and land authority by reference to any policy
13 direction made under section 272C.
- 14 (3) The planning and development authority must give written notice of
15 the decision on the application to the applicant.
- 16 *Note* If the notice is given to a person who may apply to the AAT for review
17 of the decision to which it relates, the notice must comply with the
18 requirements of the code of practice in force under the *Administrative*
19 *Appeals Tribunal Act 1989*, s 25B (1) (see s 408 (3)).

20 **272C Policy directions for paying out rent**

- 21 (1) The Minister may make policy directions for section 272B (2) (c).
- 22 (2) A policy direction is a disallowable instrument.
- 23 *Note* A disallowable instrument must be notified, and presented to the
24 Legislative Assembly, under the Legislation Act.

25 **272D Power to decide rent payout applications deemed refused**

- 26 (1) This section applies if—
- 27 (a) an application has been made under section 272A (Application
28 for rent payout lease variation); and

- 1 (b) the time for deciding the application has ended; and
- 2 (c) the planning and land authority has not decided the application
- 3 under section 272B.
- 4 (2) The planning and land may decide to vary the lease to reduce the
- 5 rent payable to nominal rent under section 272B despite the ending
- 6 of the time for deciding the application.
- 7 (3) To remove any doubt, if the planning and land authority has not
- 8 decided an application under section 272B, the authority is taken to
- 9 have decided to refuse the application under the *Administrative*
- 10 *Appeals Tribunal Act 1989*, section 24 (6).

11 **273 Lease to be varied to pay out rent**

- 12 (1) This section applies if the planning and land authority decides to
- 13 vary a lease under section 272B to reduce the rent payable to a
- 14 nominal rent.
- 15 (2) The planning and land authority must vary the lease in accordance
- 16 with the decision.
- 17 (3) The lease as varied must provide that the lessee is to pay a rent of
- 18 5 cents each year if and when that rent is demanded.

19 **32 Section 288**

20 *omit everything before*

21 *lessee*

22 *substitute*

23 **288 Definitions—pt 9.8**

24 In this part:

25 *improvement*, in relation to land, means—

- 26 (a) a building or structure on or under the land; or

(b) for land held under a rural lease—

(i) a building or structure on or under the land; or

(ii) any earthworks, planting or other work that affects the landscape of the land that is reasonably undertaken for rural purposes.

33 New section 298A

in part 9.9, insert

298A Application for extension of time to commence or complete building and development

(1) This section applies if a lease includes a building and development provision requiring the commencement or completion of building or development to take place within a stated time.

Note The planning and land authority may make a controlled activity order under div 11.3.2 (Controlled activity orders on authority's initiative) or terminate a lease under s 382 (Termination of leases) if a lessee fails to comply with a building and development provision.

(2) The lessee may, at any time before or after the stated time has ended, apply to the planning and land authority to extend the stated time under section 298B.

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

(3) The application must be accompanied by—

(a) the most recent assessment notice for rates for the land; and

(b) the amount (the *required fee*) worked out as follows:

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

(4) The required fee is not affected by the number of stated times under the lease for which an extension is sought.

1 (5) In this section:

2 *A* is—

3 (a) 5; or

4 (b) if a lower figure is prescribed by regulation—the figure
5 prescribed.

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

9 *B* is the amount of rates payable in relation to the land under the
10 *Rates Act 2004*, for the financial year when the application is made.

11 *D* means the number of days for which the extension is sought.

12 *Note* The required fee may be waived under the *Financial Management*
13 *Act 1996*, section 131.

14 **298B Extension of time to commence or complete building and**
15 **development**

16 (1) This section applies to an application for extension of a stated time
17 under section 298A.

18 (2) The planning and land authority must—

19 (a) approve the extension; or

20 (b) refuse to approve the extension.

21 (3) The planning and land authority may approve the extension only if
22 satisfied on reasonable grounds that the extension for the period
23 sought would not cause an unacceptable delay to another
24 development or land release.

25 (4) An approval may be given for a shorter extension than that sought
26 by the application.

(5) However, the planning and land authority must not approve an extension—

(a) for more than the prescribed period; or

(b) for a period that, together with any earlier extension, would total more than the prescribed period.

(6) In this section:

prescribed period means—

(a) 3 years; or

(b) if another period is prescribed by regulation—the other period.

Example—par (b)

the prescription of a longer period in hardship cases

Note 1 Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48), and power for the stated entity to make provision about a matter or any aspect of a matter (see Legislation Act, s 52).

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

34 Section 370

substitute

370 Rectification work by authorised people

(1) An authorised person may enter premises where rectification work is to be carried out—

(a) during business hours with the consent of an occupier; or

(b) in accordance with a rectification work order.

Note An occupier may consent on being asked for consent by an inspector, or after being given an intention to enter notice under s 391B.

- 1 (2) An authorised person who enters premises may remain at, and
2 re-enter, the premises to carry out the rectification work during
3 business hours, or at another time authorised by a rectification work
4 order, whether or not the inspector remains at the premises.

5 *Note 1* **Business hours**—see the dictionary.

6 *Note 2* If entry is made under a rectification work order, see s 402G for re-entry
7 to the premises.

- 8 (3) However—

9 (a) an authorised person must not enter premises for the first time
10 unless accompanied by an inspector; and

11 (b) if the authorised person enters or re-enters the premises with
12 consent under subsection (1) (a), the person must leave the
13 premises if an occupier withdraws consent to the person being
14 on the premises.

15 **35 New section 376A**

16 *in part 11.4, insert*

17 **376A Protection of authorised people from liability**

18 (1) An authorised person does not incur civil liability for rectification
19 work carried out in accordance with the directions of an inspector.

20 (2) A civil liability that would, apart from this section, attach to the
21 authorised person attaches instead to the Territory.

36 Section 389

substitute

389 Power to enter premises

(1) For this Act, an inspector may—

(a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment); or

(b) for entry without an authorised person—at any time, enter premises with the occupier's consent; or

(c) for entry with an authorised person—enter the premises during business hours with the occupier's consent; or

Note An occupier may consent on being asked for consent by an inspector, or after being given an intention to enter notice under s 391B.

(d) enter premises with an authorised person in accordance with a rectification work order; or

(e) enter premises in accordance with a search warrant or monitoring warrant.

(2) However, subsection (1) (a) does not authorise entry into a part of premises that is being used only for residential purposes.

(3) An inspector may, without the consent of the occupier of premises, enter land around the premises to—

(a) ask for consent to enter the premises; or

(b) give notice under section 391B.

(4) To remove any doubt—

(a) an inspector may enter premises under subsection (1) without payment of an entry fee or other charge; and

- 1 (b) for subsection (3), it does not matter whether someone is on the
2 premises or not when the inspector enters.

3 **37 Section 391 heading**

4 *substitute*

5 **391 Consent to entry without authorised person**

6 **38 Section 391 (1) (b)**

7 *substitute*

- 8 (b) tell the occupier—
9 (i) the purpose of the entry; and
10 (ii) that the occupier may refuse consent to enter the
11 premises; and
12 (iii) that the occupier may withdraw consent to remain at the
13 premises.

14 **39 Section 391 (2) (a)**

15 *substitute*

- 16 (a) that the occupier was told—
17 (i) the purpose of the entry; and
18 (ii) that the occupier may refuse consent to enter the
19 premises; and
20 (iii) that the occupier may withdraw consent to remain at the
21 premises; and

40 Section 391 (4)

substitute

- (4) A court must find that the occupier did not consent to the inspector entering or remaining at the premises under this part if—
- (a) the question arises in a proceeding in the court whether the occupier consented; and
 - (b) an acknowledgment of consent is not produced in evidence; and
 - (c) it is not proved that the occupier consented.

41 New sections 391A and 391B

insert

391A Consent to entry with authorised person

- (1) This section applies to an inspector seeking the consent of an occupier to enter premises under section 389 (1) (c).

Note The inspector may, without consent, enter land around the premises to ask for consent to enter the premises (see s 389 (3)).

- (2) The inspector must, during business hours—

Note **Business hours**—see the dictionary.

- (a) produce his or her identity card; and
- (b) tell the occupier that—
 - (i) the planning and land authority gave a direction for rectification work to be done at the premises; and
 - (ii) notice of the direction was given under section 366; and
 - (iii) the rectification work has not been carried out in accordance with the notice; and

- 1 (iv) a person has been authorised to carry out the rectification
2 work; and
- 3 (v) entry is sought to allow the authorised person to carry out
4 the rectification work; and
- 5 (vi) the authorised person is accompanying the inspector; and
- 6 (vii) the inspector may, but need not, remain at the premises to
7 give directions to the authorised person; and
- 8 (viii) the authorised person may return during business hours
9 as required to complete the work; and
- 10 (ix) the occupier may refuse consent to enter the premises;
11 and
- 12 (x) the occupier may withdraw consent to remain at the
13 premises.
- 14 (3) If the occupier consents, the inspector must ask the occupier to sign
15 a written acknowledgment (an *acknowledgment of consent*)—
- 16 (a) that the occupier was told that—
- 17 (i) the planning and land authority gave a direction for
18 rectification work to be done at the premises; and
- 19 (ii) notice of the direction was given under section 366; and
- 20 (iii) the rectification work has not been carried out in
21 accordance with the notice; and
- 22 (iv) a person has been authorised to carry out the rectification
23 work; and
- 24 (v) entry is sought to allow the authorised person to carry out
25 the rectification work; and
- 26 (vi) the authorised person is accompanying the inspector; and

- 1 (vii) the inspector may, but need not, remain at the premises to
2 give directions to the authorised person; and
- 3 (viii) the authorised person may return during business hours
4 as required to complete the work; and
- 5 (ix) the occupier may refuse consent to enter the premises;
6 and
- 7 (x) the occupier may withdraw consent to remain at the
8 premises; and
- 9 (b) that the occupier consented to the entry; and
- 10 (c) stating the time and date when consent was given.
- 11 (4) If the occupier signs an acknowledgment of consent, the inspector
12 must immediately give a copy to the occupier.
- 13 (5) A court must find that the occupier did not consent to the inspector
14 entering or remaining at the premises under this part if—
- 15 (a) the question arises in a proceeding in the court whether the
16 occupier consented; and
- 17 (b) an acknowledgment of consent is not produced in evidence;
18 and
- 19 (c) it is not proved that the occupier consented.

20 **391B Entry on notice for rectification work and monitoring**

- 21 (1) This section applies to an inspector proposing to enter premises—
- 22 (a) under section 389 (1) (b) to check whether a controlled activity
23 has happened, or is happening, in relation to the premises; or
- 24 (b) under section 389 (1) (b) to check whether 1 or more of the
25 following in relation to the premises is being complied with; or

- 1 (c) with an authorised person under section 389 (1) (c):
- 2 (i) a controlled activity order;
- 3 (ii) a direction under section 366 to carry out rectification
- 4 work;
- 5 (iii) a prohibition notice;
- 6 (iv) an injunction.
- 7 (2) The inspector may give an occupier of the premises written notice
- 8 (an *intention to enter notice*) of the inspector's intention to enter the
- 9 premises.
- 10 (3) An intention to enter notice—
- 11 (a) must be given to the occupier at least 2 working days before
- 12 the proposed entry; and
- 13 (b) may be given to the occupier without first asking for the
- 14 occupier's consent to enter the premises.
- 15 (4) An intention to enter notice, for a proposed entry mentioned in
- 16 subsection (1) (a) or (b), must state—
- 17 (a) the reason for the proposed entry; and
- 18 (b) when the inspector proposes to enter the premises; and
- 19 (c) that the occupier may refuse consent for the inspector or
- 20 authorised person to enter the premises; and
- 21 (d) that the occupier may withdraw consent for the inspector or
- 22 authorised person to remain at the premises.
- 23 (5) An intention to enter notice, for a proposed entry mentioned in
- 24 subsection (1) (c), must state—
- 25 (a) that—
- 26 (i) the planning and land authority gave a direction for
- 27 rectification work to be done at the premises; and

- 1 (ii) notice of the direction was given under section 366; and
- 2 (iii) the rectification work has not been carried out in
- 3 accordance with the notice; and
- 4 (iv) a person has been authorised to carry out the rectification
- 5 work; and
- 6 (v) the inspector proposes to enter the premises with an
- 7 authorised person to allow the authorised person to carry
- 8 out the rectification work; and
- 9 (vi) the inspector may, but need not, remain at the premises to
- 10 give directions to the authorised person; and
- 11 (vii) the occupier may refuse consent for the inspector or
- 12 authorised person to enter the premises; and
- 13 (viii) the occupier may withdraw consent for the inspector or
- 14 authorised person to remain at the premises; and
- 15 (b) when, during business hours, the work is proposed to be
- 16 carried out.
- 17 *Note* **Business hours**—see the dictionary.
- 18 (6) Before entering the premises in accordance with the intention to
- 19 enter notice, the inspector must—
- 20 (a) tell the occupier that—
- 21 (i) the inspector proposes to enter the premises with an
- 22 authorised person to allow the authorised person to carry
- 23 out the rectification work to which the notice relates; or
- 24 (ii) the inspector proposes to enter the premises to check
- 25 whether a controlled activity has happened, or is
- 26 happening; or
- 27 (iii) the inspector intends to enter the premises to check
- 28 compliance in accordance with the notice; and

- 1 (b) tell the occupier that, if the occupier does not consent to the
2 inspector or authorised person entering, or remaining at, the
3 premises, an application may be made to a court for a
4 rectification work order or a monitoring warrant; and
- 5 (c) give the occupier a copy of the notice.
- 6 (7) If an inspector gives the occupier an intention to enter notice, the
7 inspector must ask the occupier to sign a written acknowledgment
8 that the occupier was told that—
- 9 (a) the inspector—
- 10 (i) proposes to enter the premises with an authorised person
11 to allow the authorised person to carry out the
12 rectification work to which the notice relates; or
- 13 (ii) proposes to enter the premises to check whether a
14 controlled activity has happened, or is happening; or
- 15 (iii) intends to enter the premises to check compliance in
16 accordance with the notice; and
- 17 (b) if the occupier does not consent to the inspector or authorised
18 person entering, or remaining at, the premises, an application
19 may be made to a court for a rectification work order or a
20 monitoring warrant.
- 21 (8) If the occupier signs an acknowledgment under subsection (7), the
22 inspector must immediately give a copy to the occupier.

42 Section 392

substitute

392 General powers on entry to premises

(1) An inspector who enters premises under this chapter may, for this Act, do 1 or more of the following in relation to the premises, or anything at the premises:

- (a) inspect or examine;
- (b) take measurements or conduct tests;
- (c) take photographs, films, or audio, video or other recordings, or make sketches;
- (d) ask the occupier, or anyone at the premises—
 - (i) to give the inspector information; or
 - (ii) to produce documents to the inspector; or
 - (iii) to give the inspector reasonable help to exercise a power under this chapter.

Note 1 An inspector who enters premises under a search warrant may also exercise power under s 392B, s 392C and s 392D. An inspector who enters premises under a monitoring warrant may also exercise powers under s 392B and s 392D. See also s (3) in relation to the exercise of power under warrants.

Note 2 The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

(2) However, an inspector must not exercise a power under subsection (1) unless the inspector believes on reasonable grounds that the exercise relates to 1 or more of the following:

- (a) a controlled activity or possible controlled activity;
- (b) a prohibition notice;

- 1 (c) a direction under section 366 to carry out rectification work;
2 (d) an injunction under section 381;
3 (e) an offence or possible offence, or a thing or activity connected
4 with an offence or possible offence, against this Act.

5 (3) However, if the inspector enters the premises under a search warrant
6 or monitoring warrant, the inspector may only exercise a power
7 under subsection (1) in relation to a matter mentioned in
8 subsection (2) if the warrant relates to the matter.

9 (4) This section does not apply to an inspector who enters premises
10 under section 389 (1) (c) or (d).

11 *Note* An inspector who enters premises under s 389 (1) (c) or (d) has power
12 under s 392A.

13 **392A Power on entry for rectification work**

14 An inspector who enters premises under section 389 (1) (c) or (d)
15 may, for this Act, give directions to the authorised person carrying
16 out rectification work about how the work is to be carried out.

17 **392B Power to require help on entry under warrant**

18 (1) An inspector who enters premises under a search warrant or
19 monitoring warrant may require the occupier, or anyone at the
20 premises, to give the inspector reasonable help to exercise a power
21 under this chapter.

22 *Note* For other powers of inspectors under warrants, see s 389, s 392C,
23 s 392D, pt 12.5A and pt 12.5B.

24 (2) A person commits an offence if the person fails to take all
25 reasonable steps to comply with a requirement made of the person
26 under subsection (1).

27 Maximum penalty: 50 penalty units.

28 (3) An offence against subsection (2) is a strict liability offence.

1 **392C Power to take samples on entry under warrant**

2 (1) An inspector who enters premises under a search warrant or
3 monitoring warrant may take samples of anything the inspector
4 believes on reasonable grounds is connected with the matter to
5 which the warrant relates.

6 *Note* For other powers of inspectors under warrants, see s 389, s 392B,
7 s 392D, pt 12.5A and pt 12.5B.

8 (2) The inspector must—

9 (a) ensure that the sample allows paragraph (c) to be complied
10 with; and

11 (b) give a receipt for the sample to the occupier of the place from
12 where the sample was taken; and

13 (c) divide the sample into 2 parts as nearly as practicable identical
14 in size and composition to each other and each suitable for the
15 purpose of analysis; and

16 (d) place each part in a separate container and seal the containers;
17 and

18 (e) attach to each container a label that is signed by the inspector
19 and states the date and time when, and the place where, the
20 sample was taken; and

21 (f) give 1 of the containers to the occupier.

22 **392D Power to seize things on entry under search warrant**

23 An inspector who enters premises under a search warrant may seize
24 anything at the premises that the inspector is authorised to seize
25 under the warrant.

26 *Note* For other powers of inspectors under warrants, see s 389, s 392B,
27 s 392C, pt 12.5A and pt 12.5B.

43 Section 394*omit***44 New parts 12.5A and 12.5B***insert***Part 12.5A Rectification work orders****402A Definitions—pt 12.5A**

In this part:

remote application means an application for a rectification work order made other than in person.*remote order* means a rectification work order made on remote application.**402B Meaning of *rectification work order*—Act**

In this Act:

rectification work order means an order made under this part.**402C When may inspector apply for rectification work order?**

An inspector may apply for a rectification work order to authorise entry to premises to carry out rectification work if—

- (a) the planning and land authority gave a direction for rectification work to be done at the premises; and
- (b) notice of the direction was given under section 366; and
- (c) the rectification work has not been carried out in accordance with the notice; and

- 1 (d) a person has been authorised to carry out the rectification
2 work; and
- 3 (e) 1 or more of the following circumstances exists in relation to
4 the premises:
- 5 (i) the rectification work proposed cannot reasonably be
6 undertaken, or consent to entry cannot be obtained,
7 during business hours;
- 8 *Note Business hours*—see the dictionary.
- 9 (ii) an inspector who has given an intention to enter notice
10 under section 391B, or an accompanying authorised
11 person, has been refused entry in accordance with the
12 notice;
- 13 (iii) a consent to the entry of an authorised person or
14 accompanying person to carry out the rectification work
15 has been withdrawn.

16 **402D Application for rectification work order generally**

17 *Note* An application may be made remotely (see s 402H).

18 An application for a rectification work order must be sworn and
19 state—

- 20 (a) the grounds on which the applicant relies to make the
21 application; and
- 22 (b) why the order is sought; and
- 23 (c) if the order sought is for rectification work to be carried out at
24 stated times outside business hours—why the work needs to be
25 carried out at the stated times; and

26 *Note Business hours*—see the dictionary.

- 27 (d) whether police assistance, or any other assistance, is likely to
28 be needed to execute the order; and

- 1 (e) if the application is made other than in person—why the
2 application is being made other than in person.

3 **402E Decision on application for rectification work order**

- 4 (1) A magistrate may refuse to consider an application for a
5 rectification work order (whether a remote application or otherwise)
6 until the inspector gives the magistrate any further information the
7 magistrate requires for subsection (2).
- 8 (2) The magistrate must not make the rectification work order unless
9 satisfied that—
- 10 (a) there are grounds for making the application; and
- 11 *Note* The grounds for making the application are set out in s 402C.
- 12 (b) if the order authorises rectification work to be carried out at
13 stated times outside business hours—that it is reasonably
14 necessary for the work to be carried out at the stated times; and
- 15 (c) if the application states that assistance is likely to be necessary
16 to execute the order—that the assistance mentioned in the
17 application is reasonably necessary to execute the order; and
- 18 (d) if the application is made other than in person—that the
19 application has been made in accordance with
20 section 402H (Rectification work order—remote application).
- 21 (3) A rectification work order may not be made in relation to an
22 inspector other than the applicant.
- 23 (4) However, a rectification work order may authorise another inspector
24 to accompany the applicant to execute the order.

25 **402F Content of rectification work order**

26 A rectification work order must state the following:

- 27 (a) the address of the premises to which the order relates;

- 1 (b) the name of the inspector authorised to enter the premises;
- 2 (c) the name of the authorised person authorised to enter the
- 3 premises with the inspector;
- 4 (d) that the inspector and authorised person may use reasonable
- 5 force to enter the premises;
- 6 (e) if the order authorises using assistance in executing the order—
- 7 the assistance that may be used in executing the order;
- 8 (f) that entry is authorised during business hours or, if authorised
- 9 outside business hours, at stated times outside business hours;
- 10 (g) the date, not later than 4 working days after the day the order is
- 11 made, when the rectification work must be begun.

12 **402G Authorisation by rectification work order**

13 A rectification work order authorises—

- 14 (a) the carrying out of the rectification work to which the order
- 15 applies; and
- 16 (b) the stated inspector to enter premises in accordance with the
- 17 order; and
- 18 (c) the stated authorised person to enter premises in accordance
- 19 with the order if accompanied by the inspector; and
- 20 (d) if the order authorises assistance—the inspector and authorised
- 21 person to enter with assistance in accordance with the order;
- 22 and
- 23 (e) the inspector to remain on the premises, or to re-enter the
- 24 premises, to give directions to the authorised person; and

- 1 (f) the authorised person—
- 2 (i) to remain on the premises to carry out the rectification
- 3 work, whether or not the inspector remains on the
- 4 premises; and
- 5 (ii) to re-enter the premises to complete the rectification
- 6 work.

7 *Note* Also, an inspector may require a person's name and address for a

8 believed contravention of this Act (see s 393).

9 **402H Rectification work order—remote application**

- 10 (1) An inspector may apply for a rectification work order in relation to
- 11 premises by phone, fax, radio or other form of communication if the
- 12 inspector considers it necessary because consent to the inspector's
- 13 entry to the premises has been withdrawn while the inspector was on
- 14 the premises.
- 15 (2) Before applying for the rectification work order, the inspector must
- 16 prepare an application in accordance with section 402D.
- 17 (3) However, the inspector may apply for the remote order before the
- 18 application is sworn.

19 **402I Rectification work order—after order made on remote**

20 **application**

- 21 (1) After making a rectification work order on a remote application, the
- 22 magistrate must immediately fax a copy to the inspector who made
- 23 the application if it is practicable to do so.
- 24 (2) If it is not practicable to fax a copy of the rectification work order to
- 25 the inspector—
- 26 (a) the magistrate must—
- 27 (i) tell the inspector the order's terms; and

- 1 (ii) tell the inspector the date and time the order was issued;
2 and
- 3 (b) the inspector must complete a form of order (the ***rectification***
4 ***work order form***) and write on it—
- 5 (i) the magistrate's name; and
- 6 (ii) the date and time the magistrate issued the order; and
- 7 (iii) the order's terms.
- 8 (3) The inspector must, at the first reasonable opportunity, send to the
9 magistrate—
- 10 (a) the sworn application; and
- 11 (b) if the inspector completed a rectification work order form—the
12 completed rectification work order form.
- 13 (4) On receiving the documents, the magistrate must attach them to the
14 rectification work order.
- 15 (5) A court must find that a power exercised by the inspector was not
16 authorised by a rectification work order made on a remote
17 application if—
- 18 (a) the question arises in a proceeding in the court whether the
19 exercise of power was authorised by a rectification work order;
20 and
- 21 (b) the order is not produced in evidence; and
- 22 (c) it is not proved that the exercise of power was authorised by a
23 remote order.

- 1 **402J Entry under rectification work order—no occupier**
2 **present**
- 3 (1) This section applies if—
- 4 (a) an inspector proposes to enter premises as authorised by a
5 rectification work order; and
- 6 (b) the inspector believes on reasonable grounds that no occupier
7 is present at the premises.
- 8 (2) The inspector, and anyone authorised under the order to provide
9 assistance, may enter the premises using reasonable force in
10 accordance with the order.
- 11 **402K Entry under rectification work order—occupier present**
- 12 (1) This section applies if—
- 13 (a) an inspector proposes to enter premises as authorised by a
14 rectification work order; and
- 15 (b) an occupier is present at the premises.
- 16 (2) The inspector must—
- 17 (a) produce his or her identity card to the occupier; and
- 18 (b) give the occupier a copy of the rectification work order; and
- 19 (c) tell the occupier that, under the order—
- 20 (i) the authorised person accompanying the inspector is
21 authorised to carry out rectification work under the order;
22 and
- 23 (ii) the inspector may, but need not, remain on the premises
24 to give directions to the authorised person; and

- 1 (d) tell the occupier that—
- 2 (i) hindering the inspector or authorised person may be an
- 3 offence; and
- 4 (ii) the inspector and anyone authorised under the order to
- 5 provide assistance may use reasonable force to enter if
- 6 entry is refused.
- 7 (3) The inspector, and anyone authorised under the order to provide
- 8 assistance, may enter the premises using reasonable force in
- 9 accordance with the order.

10 Part 12.5B Monitoring warrants

11 402L Definitions—pt 12.5B

12 In this part:

13 *remote application* means an application for a monitoring warrant

14 made other than in person.

15 *remote warrant* means a monitoring warrant made on remote

16 application.

17 *warrant form*—see section 402T (2) (b).

18 402M Meaning of *monitoring warrant*—Act

19 In this Act:

20 *monitoring warrant* means a warrant issued under this part.

- 1 **402N When may inspector apply for monitoring warrant?**
- 2 An inspector may apply for a monitoring warrant in relation to
- 3 premises if—
- 4 (a) any of the following apply:
- 5 (i) the inspector believes on reasonable grounds that a
- 6 controlled activity has happened, or is happening, at the
- 7 premises;
- 8 (ii) there is a controlled activity order in relation to a
- 9 controlled activity at the premises;
- 10 (iii) there is a prohibition notice in relation to the premises;
- 11 (iv) a direction has been given under section 366 to carry out
- 12 rectification work at the premises;
- 13 (v) an injunction under section 381 is in force in relation to
- 14 the premises; and
- 15 (b) any of the following apply:
- 16 (i) an inspector who has given an intention to enter notice
- 17 under section 391B has been refused entry in accordance
- 18 with the notice;
- 19 (ii) the occupier—
- 20 (A) is given an intention to enter notice under
- 21 section 391B; and
- 22 (B) consents to the entry of an inspector in accordance
- 23 with the notice; and
- 24 (C) withdraws the consent.

- 1 **402O Application for monitoring warrant generally**
- 2 *Note* An application may be made remotely (see s 402S).
- 3 An application for a monitoring warrant must be sworn and state—
- 4 (a) the grounds on which the applicant relies to make the
- 5 application; and
- 6 (b) why the warrant is sought; and
- 7 (c) whether police assistance, or any other assistance, is likely to
- 8 be needed to execute the warrant; and
- 9 (d) if the application is made other than in person—why the
- 10 application is being made other than in person.
- 11 **402P Decision on application for monitoring warrant**
- 12 (1) A magistrate may refuse to consider an application for a monitoring
- 13 warrant (whether a remote application or otherwise) until the
- 14 inspector gives the magistrate any further information the magistrate
- 15 requires for subsection (2).
- 16 (2) The magistrate must not issue the monitoring warrant unless
- 17 satisfied that—
- 18 (a) there are grounds for making the application; and
- 19 *Note* The grounds for making the application are set out in s 402N.
- 20 (b) if the application states that assistance is likely to be necessary
- 21 to execute the warrant—that the assistance mentioned in the
- 22 application is reasonably necessary to execute the warrant; and
- 23 (c) if the application is made other than in person—that the
- 24 application has been made in accordance with
- 25 section 402S (Monitoring warrant—remote application).
- 26 (3) A monitoring warrant may not be issued in relation to an inspector
- 27 other than the applicant.

- 1 (4) However, a monitoring warrant may authorise another inspector to
2 accompany the applicant to execute the warrant.

3 **402Q Content of monitoring warrant**

4 A monitoring warrant must state the following:

- 5 (a) the address of the premises to which the warrant relates;
6 (b) the name of the inspector authorised to enter the premises;
7 (c) that the inspector may use reasonable force to enter the
8 premises;
9 (d) if the warrant authorises using assistance in executing the
10 warrant—the assistance that may be used in executing the
11 warrant;
12 (e) that the warrant ends—
13 (i) if the ground for applying for the warrant is a
14 circumstance mentioned in section 402N (1) (a) (i)—
15 5 working days after the day the warrant is issued; or
16 (ii) if the ground for applying for the warrant is a
17 circumstance mentioned in section 402N (1) (a) (ii) to
18 (v)—on the earlier of—
19 (A) when the circumstance no longer applies; and
20 (B) 3 months after the day the warrant is issued.

21 **402R Authorisation by monitoring warrant**

22 The monitoring warrant authorises the stated inspector, and anyone
23 authorised by the warrant to provide assistance, to enter premises in
24 accordance with the warrant.

25 *Note 1* While on the premises, the inspector may exercise power under s 392.

26 *Note 2* For when an inspector may require a person to state the person's name
27 and address, see s 393.

- 1 **402S Monitoring warrant—remote application**
- 2 (1) An inspector may apply for a monitoring warrant in relation to
- 3 premises by phone, fax, radio or other form of communication if the
- 4 inspector considers it necessary because consent to the inspector's
- 5 entry to the premises has been withdrawn while the inspector was on
- 6 the premises.
- 7 (2) Before applying for the monitoring warrant, the inspector must
- 8 prepare an application in accordance with section 402O.
- 9 (3) However, the inspector may apply for the remote warrant before the
- 10 application is sworn.
- 11 **402T Monitoring warrant—after order made on remote**
- 12 **application**
- 13 (1) After making a monitoring warrant on a remote application, the
- 14 magistrate must immediately fax a copy to the inspector who made
- 15 the application if it is practicable to do so.
- 16 (2) If it is not practicable to fax a copy of the monitoring warrant to the
- 17 inspector—
- 18 (a) the magistrate must—
- 19 (i) tell the inspector the warrant's terms; and
- 20 (ii) tell the inspector the date and time the warrant was
- 21 issued; and
- 22 (b) the inspector must complete a form of warrant (the *warrant*
- 23 *form*) and write on it—
- 24 (i) the magistrate's name; and
- 25 (ii) the date and time the magistrate issued the warrant; and
- 26 (iii) the warrant's terms.

- 1 (3) The inspector must, at the first reasonable opportunity, send to the
2 magistrate—
- 3 (a) the sworn application; and
- 4 (b) if the inspector completed a warrant form—the completed
5 warrant form.
- 6 (4) On receiving the documents, the magistrate must attach them to the
7 monitoring warrant.
- 8 (5) A court must find that a power exercised by the inspector was not
9 authorised by a monitoring warrant made on a remote application
10 if—
- 11 (a) the question arises in a proceeding in the court whether the
12 exercise of power was authorised by a monitoring warrant; and
- 13 (b) the warrant is not produced in evidence; and
- 14 (c) it is not proved that the exercise of power was authorised by a
15 remote warrant.

16 **402U Entry under monitoring warrant—no occupier present**

- 17 (1) This section applies if—
- 18 (a) an inspector proposes to enter premises as authorised by a
19 monitoring warrant; and
- 20 (b) the inspector believes on reasonable grounds that no occupier
21 is present at the premises.
- 22 (2) The inspector, and anyone authorised by the warrant to provide
23 assistance, may enter the premises using reasonable force in
24 accordance with the warrant.

402V Entry under monitoring warrant—occupier present

- (1) This section applies if—
- (a) an inspector proposes to enter premises as authorised by a monitoring warrant; and
 - (b) an occupier is present at the premises.
- (2) The inspector must—
- (a) produce his or her identity card to the occupier; and
 - (b) give the occupier a copy of the monitoring warrant; and
 - (c) tell the occupier that—
 - (i) hindering the inspector may be an offence; and
 - (ii) the inspector may use reasonable force to enter if entry is refused.
- (3) The inspector, and anyone authorised by the warrant to provide assistance, may enter the premises using reasonable force in accordance with the warrant.

45 New section 416A

insert

416A Basic fences between leased and unleased land

- (1) This section applies in relation to an open space boundary of a block of land if, whether before or after the commencement of this section, a development requirement in relation to the block requires the erection of a basic paling fence for the boundary.
- (2) The development requirement is taken to have been complied with for the open space boundary if, instead of a basic paling fence, either of the following is erected:
- (a) a fence that is exempt from requiring development approval;

1 (b) a fence in accordance with a notice under the *Common*
2 *Boundaries Act 1981*, section 23 (Boundary between leased
3 and unleased land).

4 (3) In this section:

5 ***basic paling fence*** means a fence that consists of not more than—

- 6 (a) a support structure; and
7 (b) timber palings only as the fence's panelling; and
8 (c) a capping rail.

9 **Example—fences that are not basic paling fences**

- 10 1 a paling fence with a lattice extension or panelling
11 2 a fence with brick piers separating paling panels

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

15 ***development requirement***, in relation to a block of land, means—

- 16 (a) a condition in a lease for the block of land; or
17 (b) a condition, other than a condition in a lease for the block of
18 land, that—
19 (i) was approved by the Territory when the lease was
20 granted; and
21 (ii) regulates the development or use of the land; or
22 (c) a requirement of a development approval or a corresponding
23 approval under a repealed territory law.

24 ***open space boundary*** means a boundary between leased and
25 unleased territory land.

- 1 **46 New section 422A**
- 2 *insert*
- 3 **422A References in territory plan to certain instruments**
- 4 (1) A reference in the territory plan to an instrument prescribed by
- 5 regulation is a reference to the instrument as in force from time to
- 6 time.
- 7 *Note 1* A statutory instrument may also apply, adopt or incorporate (with or
- 8 without change) a law or instrument (or a provision of a law or
- 9 instrument) as in force at a particular time (see Legislation Act,
- 10 s 47 (1)).
- 11 *Note 2* If a statutory instrument applies, adopts or incorporates a law or
- 12 instrument (or a provision of a law or instrument), the law, instrument
- 13 or provision may be taken to be a notifiable instrument that must be
- 14 notified under the Legislation Act (see s 47 (2) to (6)).
- 15 (2) The Legislation Act, section 47 (6) does not apply in relation to an
- 16 instrument mentioned in subsection (1).
- 17 **47 Regulation-making power**
- 18 **Section 426 (2) (c)**
- 19 *substitute*
- 20 (c) the criteria a person must satisfy to be a consultant under
- 21 section 213;
- 22 **48 Section 426 (2), example 2**
- 23 *omit*
- 24 register
- 25 *substitute*
- 26 list

49 New section 426 (2A) and (2B)*insert*

- (2A) A regulation may make provision about a matter by applying, adopting or incorporating (with or without change) a standard, or a provision of a standard, as in force from time to time.

Note 1 A statutory instrument may also apply, adopt or incorporate (with or without change) a law or instrument (or a provision of a law or instrument) as in force at a particular time (see Legislation Act, s 47 (1)).

Note 2 If a statutory instrument applies, adopts or incorporates a law or instrument (or a provision of a law or instrument), the law, instrument or provision may be taken to be a notifiable instrument that must be notified under the Legislation Act (see s 47 (2) to (6)).

- (2B) The Legislation Act, section 47 (6) does not apply in relation to an Australian Standard or an Australian/New Zealand Standard applied, adopted or incorporated as in force from time to time under the regulations.

50 Section 431*substitute***431 Expiry—ch 15**

- (1) This chapter, other than an excluded provision, expires 2 years after the commencement day.
- (2) Each of the following is an excluded provision:
- (a) section 446 (Transitional—application for development approval if lease and development condition under repealed Act);
 - (b) section 446A (Transitional—power to make and apply lease and development conditions);
 - (c) section 467 (Plans of management).

- 1 **51** **Section 435 heading**
- 2 *substitute*
- 3 **435** **Transitional—variations begun but not notified under**
- 4 **repealed Act**
- 5 **52** **Section 436 heading**
- 6 *substitute*
- 7 **436** **Transitional—draft plan variations publicly notified under**
- 8 **repealed Act**
- 9 **53** **Section 437 heading**
- 10 *substitute*
- 11 **437** **Transitional—draft plan variation revised etc under**
- 12 **repealed Act**
- 13 **54** **New sections 442A and 442B**
- 14 *insert*
- 15 **442A** **Transitional—applications for subdivision lodged before**
- 16 **commencement day**
- 17 (1) This section applies if—
- 18 (a) before commencement day, a person applied for approval
- 19 under the repealed Act, section 226 (Application to undertake
- 20 development) and the development was for a subdivision of
- 21 defined land; and
- 22 (b) the planning and land authority approves the application after
- 23 the commencement day.

1 (2) Section 96 (When land ceases to be in future urban area) applies in
2 relation to the development as if it had been approved under this
3 Act.

4 (3) In this section:
5 *defined land*—see section 446A.

6 **442B Transitional—application for review lodged after**
7 **commencement day for application lodged before**
8 **commencement day**

- 9 (1) This section applies if—
- 10 (a) before commencement day, a person applied for approval
11 under the repealed Act, section 226 (Application to undertake
12 development); and
- 13 (b) the application is decided by the Minister, or the planning and
14 land authority, before or after commencement day; and
- 15 (c) an application is made to the AAT for review of the decision
16 after commencement day.
- 17 (2) The repealed Act (including the territory plan and any other
18 instruments under the repealed Act) continues to apply for the
19 purposes of deciding the application for review.
- 20 (3) To remove any doubt, this section is additional to, and does not
21 limit, the Legislation Act, section 84 (Saving of operation of
22 repealed and amended laws).

55 Transitional—application for development approval if lease and development condition under repealed Act Section 446 (2)

substitute

- (2) The planning and land authority, or Minister, must consider the lease and development condition in making a decision under section 162 (Deciding development applications) in relation to a development application if, and to the extent that, the territory plan requires the condition to be considered.

56 New section 446A

insert

446A Transitional—power to make and apply lease and development conditions

- (1) On and after the commencement day, the planning and land authority may make lease and development conditions and apply them in assessing a development application, and granting a development approval, to the extent that the territory plan requires.
- (2) However, the planning and development authority may only exercise a power under subsection (1) in relation to a development application if—
- (a) the application—
- (i) was made before the commencement day; and
- (ii) relates to land that was defined land when the application was made; and
- (iii) is for approval to subdivide land, whether or not it is also for approval of something else; and
- (b) the lease and development conditions are relevant to assessing the application and granting the approval.

- 1 (3) In this section:
- 2 *defined land* means land identified in the old territory plan for the
- 3 repealed Act, subdivision 2.3.4.
- 4 *old territory plan* means the Territory Plan under the repealed Act.
- 5 (4) This section expires 5 years after the day it commences.
- 6 **57 Section 447, heading**
- 7 *substitute*
- 8 **447 Transitional—extended meaning of *development***
- 9 *approval*—s 199
- 10 **58 Section 448, heading**
- 11 *substitute*
- 12 **448 Transitional—existing rights to use land etc not affected**
- 13 **59 New section 456A**
- 14 *insert*
- 15 **456A Transitional—application for extension of time to**
- 16 **commence or complete building and development**
- 17 (1) This section applies if, immediately before commencement day, a
- 18 person had a lease requiring the commencement or completion of
- 19 building or development to take place within a stated time.
- 20 (2) An extension of the stated time approved by the planning and land
- 21 authority before commencement day continues in force under the
- 22 repealed Act until the time when, under that Act, it would have
- 23 ended, including any time on or after commencement day.

- 1 (3) The repealed Act continues to apply in relation to an application
2 made to the planning and land authority before commencement day
3 to extend the stated time, including for any period on or after
4 commencement day, if the authority had not decided the application
5 before commencement day.
- 6 (4) If an extension of time applied for under section 298A (Application
7 for extension of time to commence or complete building and
8 development) includes any period before commencement day—
- 9 (a) the repealed Act applies in relation to the application to the
10 extent to which it relates to the period; and
- 11 (b) in particular, section 298A (3) (b) does not apply in relation to
12 the application to the extent to which it relates to the period.
- 13 (5) A period of time before commencement day included in an
14 extension of time approved by the planning and land authority in
15 relation to the lease is not included in the prescribed period under
16 section 298B (Extension of time to commence or complete building
17 and development) in relation to an application under section 298A.

18 **60 Section 467, heading**

19 *substitute*

20 **467 Transitional—plans of management**

21 **61 Schedule 1, item 25**

22 *omit*

23 s 273 (1) (d)

24 *substitute*

25 s 272B (2) (c)

1 **62 Schedule 1, new items 34A and 34B**

2 *insert*

34A	decision under s 298B to approve an extension of a stated time for a shorter period than that sought	planning and land authority	lessee	
34B	decision under s 298B to refuse an extension of a stated time	planning and land authority	lessee	

1 **63 Schedule 2**

2 *omit*

3 (see s 339)

4 *substitute*

5 (see s 339 and s 361)

6 **64 Dictionary, new definitions**

7 *insert*

8 ***business hours***, in relation to premises—

9 (a) means 9.00 am to 5.00 pm on a working day; and

10 *Note* ***Working day*** means a day that is not a Saturday or Sunday or a
11 public holiday in the ACT under the *Holidays Act 1958* (see
12 Legislation Act, dict, pt 1).

13 (b) if the premises are not residential premises—includes any
14 period the premises are open for business outside the period
15 mentioned in paragraph (a).

16 ***monitoring warrant***—see section 402M.

17 ***prohibition notice***—see section 377 (1).

18 ***public consultation period*** means—

19 (a) for a development application—see section 157; or

20 (b) for a draft EIS—see section 218.

21 ***publicly notifies***, in relation to a development application—see
22 section 152.

23 ***rectification work order***—see section 402B.

24 ***regulated tree***—see the *Tree Protection Act 2005*, section 10.

- 1 ***remote application***—
- 2 (a) for part 12.5A (Rectification work orders)—see section 402A;
- 3 and
- 4 (b) for part 12.5B (Monitoring warrants)—see section 402L.
- 5 ***remote order***, for part 12.5A (Rectification work orders)—see
- 6 section 402A.
- 7 ***remote warrant***, for part 12.5B (Monitoring warrants)—see
- 8 section 402L.
- 9 ***search warrant*** means a warrant issued under part 12.5.

10 **65 Further amendments, mentions of a place**

- 11 *omit*
- 12 a place
- 13 *substitute*
- 14 premises
- 15 *in*
- 16 section 350 (1) (a)
- 17 section 353 (1) (a)
- 18 section 365, definition of ***rectification work***, paragraph (a) (i)
- 19 section 366 (1) (a)
- 20 section 377 (3) (a)
- 21 section 378

1 **66 Further amendments, mentions of *in relation to***
2 *omit*
3 in relation to
4 *substitute*
5 for
6 *in*
7 section 209 (1) (c)
8 section 209A (1) (d)
9 section 229 (1)

10 **67 Further amendments, mentions of *part***
11 *omit*
12 part
13 *substitute*
14 chapter
15 *in*
16 section 398 (5) (a)
17 section 399 (6)
18 section 403 (1)
19 section 404 (6)
20 section 405
21 section 406 (1) and (2)

- 1 **68 Further amendments, mentions of *place***
- 2 *omit*
- 3 place
- 4 *substitute*
- 5 premises
- 6 *in*
- 7 section 28 (1)
- 8 section 350
- 9 section 353 (2) (b)
- 10 section 358 (1) (c)
- 11 section 359 (1) (c)
- 12 section 360
- 13 section 366
- 14 section 368 (1)
- 15 section 377 (4) (e)
- 16 section 378
- 17 **69 Further amendments, mentions of *proposal***
- 18 *omit*
- 19 proposal
- 20 *substitute*
- 21 development proposal
- 22 *in*
- 23 section 121 (2)
- 24 section 126 (1) (a) (i)
- 25 section 129
- 26 section 162 (5), note

- 1 section 206, definition of *scoping document*
- 2 section 211
- 3 section 216 (2) (a)
- 4 section 220 (2) (b)
- 5 section 222 (1) (b) (ii)
- 6 section 225 (2), note
- 7 schedule 1, items 4, 6 and 12, column 4
- 8 dictionary, definition of *development table*

1 **Part 3** **Environment Protection**
2 **Regulation 2005**

3 **70** **Legislation amended—pt 3**

4 This part amends the *Environment Protection Regulation 2005*.

5 **71** **Schedule 2, section 2.1, definitions of *city centre*,
6 *commercial CZ4 zone* and *commercial CZ5 zone***

7 *substitute*

8 *city centre* means the area identified as the city centre in the City
9 Centre Precinct Code in the territory plan.

10 *commercial CZ4 zone* means an area designated as a commercial
11 CZ4 (Local Centres Zone) zone in the territory plan.

12 *commercial CZ5 zone* means an area designated as a commercial
13 CZ5 (Mixed Use Zone) zone in the territory plan.

14 **72** **Schedule 2, section 2.1, definitions of *group centre* and
15 *office site***

16 *substitute*

17 *group centre* means an area identified as a group centre in the
18 Group Centres Precinct Code in the territory plan.

19 *office site* means an area identified as an office site outside the city
20 centre, group centres and town centres in the territory plan.

Section 74

74 Schedule 2, section 2.1, definitions of *town centre* and *TS2 services zone*

substitute

town centre means an area identified as a town centre in the Town Centres Precinct Code in the territory plan.

TSZ2 services zone means an area identified as a TSZ2 (Services Zone) zone in the territory plan.

75 Schedule 2, table 2.1, items 4, 5 and 6

substitute

4	zone D	land in a commercial CZ4 zone	
5	zone E	land in— <ul style="list-style-type: none"> • a restricted access recreation zone • a broadacre zone 	
6	zone F	land in— <ul style="list-style-type: none"> • a commercial CZ5 zone • a TSZ2 services zone • a community facility zone 	land in the Queanbeyan city special uses zone

76 Dictionary, definitions of *commercial C4 zone*, *commercial C5 zone* and *TS2 services zone*

substitute

commercial CZ4 zone, for schedule 2 (Noise zones, noise standards and conditions)—see schedule 2, part 2.1, section 2.1.

commercial CZ5 zone, for schedule 2 (Noise zones, noise standards and conditions)—see schedule 2, part 2.1, section 2.1.

- 1 ***TSZ2 services zone***, for schedule 2 (Noise zones, noise standards
2 and conditions)—see schedule 2, part 2.1, section 2.1.

1	Part 4	Land Titles Act 1925
2	77	Legislation amended—pt 4
3		This part amends the <i>Land Titles Act 1925</i> .
4	78	New section 72D
5		<i>insert</i>
6	72D	Memorial of application of Planning and Development
7		Act 2007, s 251 to lease
8		If the planning and development authority tells the registrar-general
9		that the <i>Planning and Development Act 2008</i> , section 251
10		(Restrictions on dealings with certain leases) applies to a lease, the
11		registrar-general must enter in the register a memorial to that effect.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2008.

2 Notification

Notified under the Legislation Act on 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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