

2010

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning and Development (Concessional Leases) Amendment Bill 2010

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J2009-469

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(As presented)

(Minister for Planning)

Planning and Development (Concessional Leases) Amendment Bill 2010

A Bill for

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

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

J2009-469

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

5 **2 Commencement**

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

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

9 **3 Legislation amended**

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

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

3 **4 Section 235**

4 *substitute*

5 **235 Meaning of *lease*—Act**

6 In this Act:

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

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

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

12 **235A Meaning of *concessional lease*—Act**

13 (1) In this Act:

14 *concessional lease*—

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

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

5 *Note Made*—see s (4).

6 (b) includes the following leases:

7 (i) a consolidated or subdivided concessional lease;

8 (ii) a further concessional lease;

9 (iii) a regranted concessional lease.

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

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

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

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

19 (2) However, a lease is not a concessional lease if the lease is a market
20 value lease.

21 (3) A lease is not concessional only because the lease—

22 (a) was granted under the *Leases (Special Purposes) Act 1925*; and

23 (b) was granted before 1 January 1971; and

24 (c) is a lease to which the *Leases (Special Purposes) Act 1925*,
25 section 5AB (Rent) applies.

- 1 (4) In this section:
- 2 *consolidated or subdivided concessional lease* means a lease
3 granted during a consolidation or subdivision involving the
4 surrender of 1 or more previous leases if 1 or more of the previous
5 leases was a concessional lease.
- 6 *further concessional lease* means a further lease if the surrendered
7 lease was a concessional lease.
- 8 *made*—a payment has been *made* if the relevant amount—
- 9 (a) was paid to the Territory, a territory entity, the
10 Commonwealth, a Commonwealth entity or the entity that
11 originally granted the lease; or
- 12 (b) was waived by the Treasurer under the *Financial Management*
13 *Act 1996*, section 131, or part of the amount was waived and
14 the rest of the amount was paid.
- 15 *regranted concessional lease* means a regranted lease (whether the
16 regrant is on the same or different conditions) if the surrendered
17 lease was a concessional lease.

18 **235B Meaning of *market value lease*—Act**

19 In this Act:

20 *market value lease*—

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

24 **Examples—statement in lease**

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

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

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

3 **235C Meaning of *possibly concessional*—Act**

4 (1) For this Act, a lease is *possibly concessional* if the lease—

5 (a) was granted—

6 (i) before 31 March 2008; or

7 (ii) after 30 March 2008 and before the commencement of
8 this section under the *Land (Planning and Environment)*
9 *Act 1991*; and

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

13 (b) does not include a statement, in the lease or a memorial to the
14 lease—

15 (i) that the lease is a concessional lease; or

16 (ii) to the effect that the lease is a market value lease; and

17 **Examples—statement in lease**

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

19 **Examples—statement to effect that lease is market value lease**

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

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

24 (c) is mentioned in schedule 5, part 5.3.

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

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

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

3 **5 Granting leases**
4 **Section 238 (2) (a)**

5 *substitute*

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

11 **Examples—statement in lease**

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

13 **Examples—statement to effect that lease is market value lease**

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

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

18 **6 Restrictions on dealings with certain leases**
19 **Section 251 (3) to (7)**

20 *substitute*

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

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

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

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

- 7 (5) However, a regulation may exempt a lease from this section,
8 whether generally or in relation to a particular dealing.

- 9 (6) A dealing in relation to a lease to which this section applies that is
10 made or entered into without consent has no effect.

- 11 (7) However, subsection (6) does not apply to a dealing registered under
12 the *Land Titles Act 1925*.

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

16 **7 Grant of further leases**
17 **Section 254 (3) and note**

18 *substitute*

- 19 (3) A further lease granted under this section must include a
20 statement—

- 21 (a) if the lease is a concessional lease—that the lease is
22 concessional; or

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

3 **Examples—statement in lease**

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

5 **Examples—statement to effect that lease is market value lease**

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

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

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

12 **8 Decision about whether lease concessional**
13 **Section 257 (1)**

14 *omit*

15 or not

16 **9 Section 257 (2) and (3)**

17 *substitute*

18 (2) However, if someone (other than the lessee) has a registered interest
19 in the lease, the planning and land authority must not make a
20 decision under subsection (1) unless the authority has—

21 (a) given written notice (the *application notice*) of the application
22 to the person; and

23 (b) in the application notice, invited the person to give written
24 representations about the application to the authority at a stated
25 address by not later than the end of a stated period of not less
26 than 15 working days after the date the notice is given to the
27 person; and

28 (c) considered any representations made in the time given in the
29 application notice.

1 (2A) If the planning and land authority is not satisfied that the lease is a
2 concessional lease, the authority must decide that the lease is not
3 concessional, in which case the lease is taken to be a market value
4 lease.

5 (3) However, the planning and land authority is taken to have decided
6 (the *deemed decision*) that the lease is a concessional lease if the
7 authority has not made a decision on the application at the end of the
8 period of 15 working days after—

9 (a) the day the application is made; or

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

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

15 *Note 2* The time for making an application for review of a deemed decision is
16 20 working days after the end of the 20 working-day period mentioned
17 in s (4) (see s 409A).

18 **10 Section 257 (4)**

19 *substitute*

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

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

1 **11 Section 257 (5)**

2 *omit*

3 an interest

4 *substitute*

5 a registered interest

6 **12 New section 257 (6)**

7 *after the note, insert*

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

10 **13 Authority may decide whether lease concessional on own
11 initiative
12 New section 258 (2A)**

13 *insert*

14 (2A) If the planning and land authority is not satisfied that the lease is a
15 concessional lease, the authority must decide that the lease is not
16 concessional, in which case the lease is taken to be a market value
17 lease.

18 **14 Section 258 (4)**

19 *omit*

20 an interest

21 *substitute*

22 a registered interest

1 **15 New sections 258A to 258C**

2 *insert*

3 **258A Application for decision about whether certain leases are**
4 **concessional**

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

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

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

16 **258B Making other decisions about concessional status of**
17 **certain leases**

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

- 1 (ii) there is information to indicate that the authority made a
2 formal error when it made the original decision; and
- 3 *Note* **Formal error**—see the dictionary.
- 4 (b) if someone (other than the lessee) has a registered interest in
5 the lease, the authority has—
- 6 (i) given written notice (the **application notice**) of the
7 application to the person; and
- 8 (ii) in the application notice, invited the person to give
9 written representations about the application to the
10 authority at a stated address by not later than the end of a
11 stated period of not less than 15 working days after the
12 day the notice is given to the person; and
- 13 (iii) considered any representations made in the time given in
14 the application notice.
- 15 (3) If the planning and land authority is not satisfied that the lease is a
16 concessional lease, the authority must decide that the lease is not
17 concessional, in which case the lease is taken to be a market value
18 lease.
- 19 (4) However, the planning and land authority is taken to have decided
20 (the **deemed decision**) that the lease is a concessional lease if the
21 authority has not made a decision on the application at the end of the
22 period of 15 working days after—
- 23 (a) the day the application is made; or

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

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

6 *Note 2* The time for making an application for review of a deemed decision is
7 20 working days after the end of the 20 working-day period mentioned
8 in s (5) (see s 409A).

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

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

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

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

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

27 (8) In this section:
28 *original decision*—see section 258A (1) (c).

29 **258C Authority may make another decision about whether**
30 **certain leases concessional on own initiative**

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

- 1 (a) the lease was granted before 31 March 2008; and
2 (b) the lease does not state in the lease that the lease is a
3 concessional lease; and
4 (c) the planning and land authority made a decision (the *original*
5 *decision*) that the lease is concessional, whether before or after
6 31 March 2008; and
7 (d) the decision is stated in a memorial to the lease.

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

9 (2) The planning and land authority may, on its own initiative, decide
10 whether the lease is a concessional lease.

11 (3) However, the planning and land authority must not make a decision
12 under subsection (2) unless—

13 (a) the authority is satisfied that—

14 (i) there is additional relevant information about the
15 concessional status of the lease; or

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

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

19 (b) the authority has—

20 (i) given written notice (the *lease decision notice*) of the
21 authority's intention to make a decision under
22 subsection (2) to each person with a registered interest in
23 the lease; and

24 (ii) in the lease decision notice, invited the person to give
25 written representations about the proposed decision to the
26 authority at a stated address by not later than the end of a
27 stated period of not less than 15 working days after the
28 day the notice is given to the person; and

- 1 (iii) considered any representations made in the time given in
2 the lease decision notice.
- 3 (4) If the planning and land authority is not satisfied that the lease is a
4 concessional lease, the authority must decide that the lease is not
5 concessional, in which case the lease is taken to be a market value
6 lease.
- 7 (5) Also, if the planning and land authority gives a lease decision notice
8 in relation to a lease, the authority must make a decision under
9 subsection (2) in relation to the lease not later than 15 working days
10 after the day the period for making representations given in the lease
11 decision notice ends.
- 12 (6) The planning and land authority must give written notice of the
13 decision under subsection (2) to each person with a registered
14 interest in the lease to which the decision relates.
- 15 *Note 1* If the notice is given to a person who may apply to the ACAT for
16 review of the decision to which it relates, the notice must be a
17 reviewable decision notice (see s 408 (2)).
- 18 *Note 2* A lessee has a right to apply for review of a decision under this
19 provision (see ch 13 and sch 1).

20 **16 Section 259**

21 *substitute*

22 **259 Lodging notice of decision about concessional status of**
23 **lease**

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

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

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

10 (2) The planning and land authority must lodge notice with the
11 registrar-general for registration under the *Land Titles Act 1925*
12 that—

13 (a) if the planning and land authority decides that the lease is a
14 concessional lease—the lease is concessional; or

15 (b) if the planning and land authority decides that the lease is not
16 concessional—the lease is a market value lease.

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

19 **259A Lodging notice of deemed decision about concessional**
20 **status of lease**

21 (1) This section applies if—

22 (a) the planning and land authority is taken to have made a
23 decision that a lease is concessional under section 257 (3) or
24 section 258B (4); and

25 (b) the 20 working-day period mentioned in section 257 (4) or
26 section 258B (5) for the decision has ended; and

27 (c) either—

- 1 (i) no application is made to the ACAT for review of the
2 decision that the lease is a concessional lease within the
3 time allowed for applications; or
- 4 (ii) an application for review of the decision is made and the
5 ACAT—
- 6 (A) confirms, varies or substitutes the decision; or
- 7 (B) remits the matter for reconsideration by the
8 planning and land authority and the authority
9 decides that the lease is a concessional lease or not.
- 10 (2) The planning and land authority must lodge notice with the
11 registrar-general for registration under the *Land Titles Act 1925*
12 that—
- 13 (a) if the planning and land authority decides that the lease is a
14 concessional lease—the lease is concessional; or
- 15 (b) if the planning and land authority decides that the lease is not
16 concessional—the lease is a market value lease.
- 17 *Note* The registrar-general must register an instrument lodged in registrable
18 form (see *Land Titles Act 1925*, s 48 (1)).

19 **259B Non-concessional status of leases**

- 20 (1) This section applies to a lease if—
- 21 (a) the lease includes a statement, in the lease or a memorial to the
22 lease, to the effect that the lease is a market value lease; or
- 23 **Examples—statement in lease**
24 a condition of the lease or a notation or stamp on the lease
- 25 **Examples—statement to effect that lease is market value lease**
26 the lease is a market value lease or the lease is not concessional
- 27 *Note* An example is part of the Act, is not exhaustive and may extend,
28 but does not limit, the meaning of the provision in which it
29 appears (see Legislation Act, s 126 and s 132).

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

9 **259C Concessional status of leases**

- 10 (1) This section applies to a lease if—
- 11 (a) the lease states, in the lease or a memorial to the lease, that the
12 lease is a concessional lease; or
- 13 **Examples—statement in lease**
14 a condition of the lease or a notation or stamp on the lease
- 15 *Note* An example is part of the Act, is not exhaustive and may extend,
16 but does not limit, the meaning of the provision in which it
17 appears (see Legislation Act, s 126 and s 132).
- 18 (b) the planning and land authority has lodged a notice that the
19 lease is a concessional lease with the registrar-general for
20 registration under the *Land Titles Act 1925*.
- 21 (2) A person may rely on the statement and deal with the lease as a
22 concessional lease.
- 23 (3) The planning and land authority must not make a decision that
24 would change the lease's status as a concessional lease.
- 25 (4) This section is subject to—
- 26 (a) a decision about whether a lease is a concessional lease under
27 section 258B or section 258C; or

1 (b) a variation of the lease to remove the concessional status of the
2 lease under division 9.4.2; or

3 (c) an order of a court or tribunal.

4 **259D Concessional status guidelines**

5 (1) The planning and land authority may make guidelines
6 (the *concessional lease guidelines*) setting out information to assist
7 people to decide whether a lease is a concessional lease, market
8 value lease or possibly concessional.

9 (2) A person who is deciding whether a lease is a concessional lease,
10 market value lease or possibly concessional may have regard to the
11 concessional lease guidelines but is not bound by the guidelines.

12 (3) A concessional lease guideline is a notifiable instrument.

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

14 **17 Application—div 9.4.2**
15 **Section 260**

16 *after*

17 the application

18 *insert*

19 is for or

20 **18 New section 260A**

21 *insert*

22 **260A Removal of concessional status by variation of lease**

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

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

3 **Example**

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

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

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

9 **19 Development approval of application about concessional**
10 **lease subject to condition**
11 **Section 262**

12 *after*

13 the Territory

14 *insert*

15 or a territory entity

16 **20 New section 262 (2)**

17 *after the notes, insert*

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

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

4 *after*
5 the Territory
6 *insert*
7 or a territory entity

8 **22 Restrictions on dealings with concessional leases**
9 **New section 265 (3)**

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

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

16 **23 No variation of certain leases for 5 years**
17 **New section 275 (4) and (5)**

18 *insert*
19 (4) However, the planning and land authority may consent to the
20 variation if the variation does not limit, add or remove an authorised
21 use of the land.
22 (5) In this section:
23 *authorised use*, of land—
24 (a) means a use authorised (whether expressly or by implication)
25 by a lease; and

- 1 (b) includes a use authorised by a lease that expired not more than
2 6 months before the use if the lease is renewed within 6 months
3 after the expiry.

4 **24 Transfer of land subject to building and development**
5 **provision**
6 **Section 298 (6)**

7 *omit*

8 **25 New section 409A**

9 *insert*

10 **409A ACAT review—time for making application for deemed**
11 **decisions**

- 12 (1) This section applies to a reviewable decision under section 257
13 (Decision about whether lease concessional) or section 258B
14 (Making other decisions about concessional status of certain leases).
- 15 (2) The application for review must be made not later than 20 working
16 days after—
- 17 (a) for a decision to which section 257 applies—the
18 20 working-day period mentioned in section 257 (4); or
- 19 (b) for a decision to which section 258B applies—the
20 20 working-day period mentioned in section 258B (5).

21 **26 Transitional effect—Legislation Act, s 88**
22 **Section 430**

23 *after*

24 This chapter

25 *insert*

26 (other than section 446 or section 467)

- 1 **27 Expiry—ch 15**
2 **Section 431**
- 3 *after*
4 part 15.5
5 *insert*
6 , section 458
- 7 **28 Power to make lease and development conditions**
8 **Section 446 (5)**
- 9 *omit*
- 10 **29 Transitional—application for development approval if**
11 **lease and development condition**
12 **Section 446A (3)**
- 13 *omit*
- 14 **30 Transitional—extended application of s 275**
15 **Section 453 (2)**
- 16 *omit*
- 17 **31 New sections 456B and 456C**
- 18 *insert*
- 19 **456B Transitional—certain City Area Leases Act 1936 leases**
20 (1) This section applies to a lease—
21 (a) granted or continued, or purported to be granted or continued,
22 under the *City Area Leases Act 1936*; and
23 (b) in force immediately before 2 April 1992; and

1 (c) to which the *City Area Leases Act 1936*, section 18 (Rent)
2 applies.

3 (2) Despite the repeal of the *City Areas Leases Act 1936*, that Act,
4 section 18 applies to the lease from 2 April 1992.

5 **456C Transitional—certain Leases (Special Purposes) Act 1925**
6 **leases**

7 (1) This section applies to a lease—

8 (a) granted or continued, or purported to be granted or continued,
9 under the *Leases (Special Purposes) Act 1925*; and

10 (b) in force immediately before 2 April 1992; and

11 (c) to which the *Leases (Special Purposes) Act 1925*, section 5AB
12 (Rent) applies.

13 (2) Despite the repeal of the *Leases (Special Purposes) Act 1925*, that
14 Act, section 5AB applies to the lease from 2 April 1992.

15 **32 Transitional—applications for certain grants before**
16 **commencement day**
17 **New section 458 (3) (aa)**

18 *before paragraph (a), insert*

19 (aa) must include a statement—

20 (i) if the lease is a concessional lease—that the lease is
21 concessional; or

22 (ii) if the lease is not concessional—to the effect that the
23 lease is a market value lease; and

24 **Examples—statement in lease**

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

26 **Examples—statement to effect that lease is market value lease**

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

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

4 **33 Section 458 (4)**

5 *omit*

6 **34 Transitional—contracts before commencement day to**
7 **grant leases**
8 **New section 459A (3) (aa)**

9 *before paragraph (a), insert*

10 (aa) must include a statement—

11 (i) if the lease is a concessional lease—that the lease is
12 concessional; or

13 (ii) if the lease is not concessional—to the effect that the
14 lease is a market value lease; and

15 **Examples—statement in lease**

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

17 **Examples—statement to effect that lease is market value lease**

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

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

22 **35 Transitional—plans of management**
23 **Section 467 (5)**

24 *omit*

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

substitute

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

37 New schedule 5

insert

Schedule 5 Market value leases and leases that are possibly concessional

(see s 235B and s 235C)

Part 5.1 Interpretation

5.1 Definitions—sch 5

In this schedule:

deal—see section 234.

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

rental lease—see section 234.

residential lease—see section 234.

rural lease—see section 234.

Part 5.2 Market value leases

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

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

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

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

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

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

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

Part 5.3 Possibly concessional leases

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

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

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

column 1 item	column 2 lease
10	<p>a lease granted to an incorporated association or community organisation over a unit in a units plan under the <i>Unit Titles Act 2001</i> if—</p> <p>(a) the lease (the <i>original lease</i>) that ended on registration of the units plan was granted to the incorporated association or community organisation; and</p> <p>(b) the incorporated association or community organisation occupies the unit—</p> <p>(i) for its own purposes; and</p> <p>(ii) in accordance with a condition in the original lease</p> <p><i>Note</i> On registration of a units plan, the lease of the parcel of land over which the units plan is registered ends (see <i>Unit Titles Act 2001</i>, s 33).</p>
11	a lease, other than a rural lease, granted for a term less than 99 years
12	<p>a lease prescribed by regulation, other than a lease in relation to which a dealing was registered after the commencement of this item and before the commencement of the regulation</p> <p><i>Note</i> This item expires 3 years after s 235C (3) commences (see s 235C (3)).</p>

38 Dictionary, new definitions

insert

Commonwealth entity means—

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

- (d) a company in which a controlling interest is held by either of the following, or by both of the following together:
 - (i) the Commonwealth;
 - (ii) a Commonwealth company under the *Commonwealth Authorities and Companies Act 1997* (Cwlth).

community organisation means a corporation that—

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

39 Dictionary, definition of *concessional lease*

substitute

concessional lease—see section 235A.

40 Dictionary, definition of *market value lease*

substitute

market value lease—see section 235B.

41 Dictionary, new definitions

insert

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

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

territory entity means—

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

(c) a territory-owned corporation.

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

Part 3 Planning and Development Regulation 2008

**42 Concessional leases
Part 5.1A**

omit

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

omit

44 Section 100, definition of *territory entity*

substitute

territory entity does not include the housing commissioner.

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

substitute

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

46 Section 105 (a) (ii), note

substitute

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

47 Section 105 (e), note

substitute

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

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

substitute

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

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

substitute

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

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

substitute

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

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

substitute

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

52 Section 142 heading

substitute

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

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

omit

235 (3)

substitute

235A (4)

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

omit

235

substitute

235A

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

substitute

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

56 Dictionary, note 3

insert

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

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

omit

Endnotes

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