

2012

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment and Sustainable Development)

Planning, Building and Environment Legislation Amendment Bill 2012

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(Minister for the Environment and Sustainable Development)

Planning, Building and Environment Legislation Amendment Bill 2012

A Bill for

An Act to amend legislation about planning, building and the environment

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Planning, Building and Environment Legislation*
4 *Amendment Act 2012*.

5 **2 Commencement**

6 This Act commences on the 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 following legislation:

- 11 • *Building Act 2004*
12 • *Building (General) Regulation 2008*
13 • *Planning and Development Act 2007*
14 • *Planning and Development Regulation 2008*
15 • *Unit Titles Act 2001*
16 • *Unit Titles Regulation 2001*.

1 **Part 2 Building Act 2004**

2 **4 Building code**
3 **Section 136 (1), definition of *building code***

4 *substitute*

5 *building code* means—

6 (a) the Building Code of Australia prepared and published by the
7 Australian Building Codes Board as amended from time to
8 time by—

9 (i) the Australian Building Codes Board; and

10 (ii) the Australian Capital Territory Appendix to the Building
11 Code of Australia; and

12 (b) a document prescribed by regulation.

1 **Part 3** **Building (General)**
2 **Regulation 2008**

3 **5** **Section 10**

4 *substitute*

5 **10** **Number of copies of plans—Act, s 26 (2) (a)**

6 The number of copies prescribed is—

7 (a) 1 in electronic form; and

8 (b) if the certifier asks for a paper copy—1 copy.

9 **6** **New section 43A**

10 *in part 5, insert*

11 **43A** **Documents forming part of building code—Act, s 136 (1),**
12 **def *building code*, par (b)**

13 A volume of the National Construction Code series is prescribed if
14 the volume—

15 (a) is published by the Australian Building Codes Board; and

16 (b) includes a notation that it forms part of the Building Code of
17 Australia.

Part 4 Planning and Development Act 2007

7 Meaning of *associated document*—pt 3.6 **New section 30 (1) (da)**

insert

(da) an estate development plan required under section 139 (2) (n)
to accompany the application;

8 Territory plan **New section 46 (2) and note**

after the note, insert

(2) The territory plan is a notifiable instrument.

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

9 Public availability of territory plan **Section 47**

omit

10 Public consultation—notification **Section 63 (1) (c)**

omit

on the day after

substitute

10 working days after

11 Partial rejection of plan variations by Legislative Assembly
New section 84 (2A) and (2B)

insert

(2A) The planning and land authority must, in relation to each provision of the plan variation that is rejected, prepare a notice stating that the provision of the plan variation has been rejected.

(2B) The notice is a notifiable instrument.

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

12 Partial rejection of plan variations—publication etc
New section 85 (1) (aa)

before paragraph (a), insert

(aa) a rejection notice under section 84 (2A); or

13 What are *technical amendments* of territory plan?
New section 87 (h)

insert

(h) a variation to relocate a provision within the territory plan if the substance of the provision is not changed.

Example

relocating an area-specific policy from a development code to a precinct code

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).

1 **14 Is consultation needed for technical amendments?**
2 **New section 88 (1) (d)**

3 *insert*

4 (d) a variation to relocate a provision within the territory plan if
5 the substance of the provision is not changed.

6 **15 Limited consultation**
7 **Section 90 (2) (d)**

8 *omit*

9 on the day after

10 *substitute*

11 10 working days after

12 **16 What is an estate development plan?**
13 **Section 94 (1), new note**

14 *insert*

15 *Note* A development application for the development of an estate must be
16 accompanied by an estate development plan (see s 139 (2) (n)).

17 **17 Section 133**

18 *substitute*

19 **133 What is an exempt development?**

20 (1) In this Act:

21 *exempt development* means development that is exempt from
22 requiring development approval under—

23 (a) the relevant development table; or

24 (b) section 134; or

- 1 (c) a regulation.
- 2 *Note 1* Development tables are dealt with in s 54.
- 3 *Note 2* **Relevant development table**, for a development proposal—see the
4 dictionary.
- 5 *Note 3* The planning and land authority must tell a proponent of a development
6 proposal if the development is likely to be exempt (see s 138 (4) (a)). A
7 person may apply for an exemption assessment to work out whether a
8 development is an exempt development (see s 138B).
- 9 (2) However, for paragraphs (a) and (c), **exempt development** does not
10 include—
- 11 (a) development if a development application for the proposed
12 development is assessable in the impact track; or
- 13 (b) development on land if—
- 14 (i) the development is inconsistent with a provision of a
15 development approval for other development on the land;
16 and
- 17 (ii) the development approval is given on the condition that
18 the provision is complied with.
- 19 **Example—condition that provision complied with**
20 Development plans do not include windows in the front wall. The approval
21 is expressed to be subject to the condition that the front wall not have
22 windows.
- 23 **Example—not a condition that provision complied with**
24 Development plans do not include windows in the front wall. The approval
25 is given without explicit mention of windows in the front wall being a
26 condition of the approval.
- 27 *Note 1* An approval may be given subject to conditions (see s 165).
- 28 *Note 2* An example is part of the Act, is not exhaustive and may extend,
29 but does not limit, the meaning of the provision in which it
30 appears (see Legislation Act, s 126 and s 132).

1 **18 Exemption assessments and notices**
2 **Section 138D (2) (b)**

3 *substitute*

4 (b) issue a notice (an *exemption assessment D notice*)—

5 (i) stating whether the development is an exempt
6 development under section 133; and

7 (ii) including anything else prescribed by regulation; and

8 **19 New section 138D (2A)**

9 *after the notes, insert*

10 (2A) A regulation under subsection (2) (b) (ii) may prescribe—

11 (a) any document that must be attached to the exemption
12 assessment D notice; and

13 (b) information required to be shown in the document.

14 **20 Form of development applications**
15 **Section 139 (2) (h)**

16 *before*

17 an assessment

18 *insert*

19 be accompanied by

20 **21 New section 139 (2) (n)**

21 *before the notes, insert*

22 (n) if the application is for the development of an estate—be
23 accompanied by an estate development plan for the estate.

22 End of development approvals for lease variations
New section 185 (2) (b) (iii)

before the notes, insert

(iii) if, in relation to a lease variation charge for the approval—

(A) a reconsideration application is made—the period of 2 years starting on the day the decision on reconsideration is made; or

(B) an application for review to the ACAT is made—the period of 2 years starting on the day the application is decided, withdrawn, dismissed or struck out; or

(C) an appeal to a court is made—the period of 2 years starting on the day the appeal ends.

23 Section 287

substitute

287 No subdivision of rural leases during holding period

The planning and land authority must not consent to the subdivision of a lease to which section 284 applies during the holding period.

287A Consolidation of rural leases during holding period

The planning and land authority may consent to the consolidation of a lease to which section 284 applies during the holding period.

1	24	Transfer of land subject to building and development
2		provision
3		Section 298 (4)
4		<i>omit</i>
5		holding
6	25	Reviewable decisions, eligible entities and interested
7		entities
8		Schedule 1, item 12, column 2
9		<i>substitute</i>
10		decision under s 193 (1) (b) (i) on reconsideration, unless the
11		development application to which the reconsideration relates is
12		exempted by regulation.

1 **Part 5** **Planning and Development**
2 **Regulation 2008**

3 **26** **Section 23**

4 *substitute*

5 **23** **Exemption assessment D notices—Act, s 138D (2) (b) (ii)**

6 The following are prescribed:

- 7 (a) any information that was used by the works assessor or
8 building surveyor in assessing whether the development is
9 exempt or not;
- 10 (b) if the works assessor or building surveyor assesses that the
11 development is exempt—whether the development is exempt
12 under—
- 13 (i) a development table, and if so, which table; or
14 (ii) the Act, section 134; or
15 (iii) a regulation, and if so, which regulation;
- 16 (c) the works assessor or building surveyor's name, signature and
17 licence number;
- 18 (d) the date of the notice.

- 1 **24 Exemption assessment D notice—attached documents—**
2 **Act, s 138D (2A) (a) and (b)**
- 3 (1) The following documents are prescribed:
- 4 (a) a copy of any plans that were used by the works assessor or
5 building surveyor in assessing whether the development is
6 exempt or not;
- 7 (b) if the works assessor or building surveyor assesses that a single
8 dwelling is exempt under schedule 1, section 1.100 (Compliant
9 single dwellings)—a copy of the survey certificate that was
10 used by the works assessor or building surveyor in assessing
11 that the dwelling is exempt.
- 12 (2) If the works assessor or building surveyor assesses that the
13 development is exempt—
- 14 (a) the exemption must be marked on, or attached to, or partly
15 marked on or partly attached to, each page of the plans used by
16 the works assessor or building surveyor in the assessment; and
- 17 (b) the works assessor or building surveyor must initial, date and
18 mark the works assessor or building surveyor's licence number
19 on each page of the plans.
- 20 (3) However, if, because of the size of the plans, it is impractical to
21 mark the exemption on each page of the plans, the works assessor or
22 building surveyor may, instead of marking the exemption under
23 subsection (2) (a), mark each page of the plans with—
- 24 (a) the works assessor or building surveyor's initials and licence
25 number and the date; and
- 26 (b) an indication that the details of the exemption are in the
27 exemption assessment D notice.

- (4) The pages of any document attached to an exemption assessment D notice must be numbered consecutively through each document, starting with the number 1 and each page must state the total number of pages comprising the attached documents.

Example

An exemption assessment B notice has 3 attached documents that total 25 pages. Each page of the attachments, starting from the first page, is numbered as 'page 1 of 25', 'page 2 of 25' and so on, until the last page of the final attachment which is numbered 'page 25 of 25'.

Note An example is part of the regulation, 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).

27 Compliant single dwellings
Schedule 1, section 1.100 (4), definition of *preliminary block*, paragraphs (b) and (c)

substitute

- (b) a development application for the development of an estate has been approved in relation to the lease; and

Note A development application for the development of an estate must be accompanied by an estate development plan (see Act, s 139 (2) (n)).

- (c) the estate development plan accompanying the development application identifies the land as a block; and

1 **Part 6** **Unit Titles Act 2001**

2 **28** **Unit title applications—general requirements**
3 **New section 17 (1A)**

4 *before subsection (1), insert*

5 (1A) This section applies to a parcel if the remaining term of the parcel's
6 lease is at least 50 years.

7 **29** **Section 17 (1)**

8 *omit*

9 a parcel

10 *substitute*

11 the parcel

1 **Part 7 Unit Titles Regulation 2001**

2 **30 Unit title assessment report—contents—Act, s 22B (5) (a)**
3 **Section 2D (1) (n) (i)**

4 *substitute*

5 (i) there is a letter box—

6 (A) for a units plan that comprises 3 or more units used
7 for residential purposes—for each unit and for the
8 owners corporation; and

9 (B) for a units plan that comprises less than 3 units used
10 for residential purposes—for each unit; and

11 (C) for a units plan that comprises units used for
12 commercial purposes—for the owners corporation;
13 and

14 (D) for a units plan that comprises units used for
15 residential purposes and units used for commercial
16 purposes—for each unit used for a residential
17 purpose and for the owners corporation; and

18 **31 Permissible unit subsidiaries—Act, s 19**
19 **Section 3 (2)**

20 *omit*

21 (xiv)

22 *substitute*

23 (xiii)

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 29 March 2012.

2 Notification

Notified under the Legislation Act on 2012.

3 Republications of amended laws

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

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