

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment and Sustainable Development)

Planning, Building and Environment Legislation Amendment Bill 2014

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2014

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for the Environment and Sustainable Development)

Planning, Building and Environment Legislation Amendment Bill 2014

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:

J2013-702

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, Building and Environment Legislation*
4 *Amendment Act 2014*.

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 • *Utilities Act 2000*.

Part 2 Building Act 2004

4 Notification by certifier of contraventions of building and development approvals—building work Section 50 (1), except note

substitute

(1) A certifier commits an offence if—

- (a) a contravention of part 3 (Building work) or part 4 (Stop and demolition notices) or conduct that the certifier reasonably believes may be an offence under section 76 (Occupation and use of buildings), section 77 (Use of buildings restricted) or section 78 (Occupation and use of ex-government buildings), comes to the notice of the certifier; and
- (b) the certifier does not tell the construction occupations registrar about the contravention or conduct—
- (i) for a contravention in relation to building work that is fundamentally noncompliant—not later than the next working day after the day the contravention comes to the certifier's attention; or
- (ii) in any other case—within 21 days after the day the contravention or conduct comes to the certifier's attention.

Maximum penalty: 5 penalty units.

5 Section 50 (3)

omit

apply to building work

substitute

apply to a contravention in relation to building work

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

3 **6 Exempt buildings and building works**
4 **Schedule 1, part 1.1, section 1.1, definition of *large***
5 ***building***

6 *omit*

7 identified in the exempt building code,

8 **7 Schedule 1, part 1.3, item 3, column 4**

9 *substitute*

10 fence must comply with—

11 (a) if there is an exempt building code—that code; and

12 (b) otherwise—the building code

13 **8 Schedule 1, part 1.3, item 5, column 4**

14 *substitute*

15 retaining wall must comply with—

16 (a) if there is an exempt building code—that code; and

17 (b) otherwise—the building code

18 **9 Schedule 1, part 1.3, item 7, column 4**

19 *substitute*

20 large building must comply with—

21 (a) if there is an exempt building code—that code; and

22 (b) otherwise—the building code

10 Schedule 1, part 1.3, item 15, column 4, paragraph (a)

2 *substitute*

- 3 (a) external alteration must comply with—
- 4 (i) if there is an exempt building code—that code; and
- 5 (ii) otherwise—the building code

11 Schedule 1, part 1.3, item 16, column 4

7 *substitute*

- 8 external alteration must comply with—
- 9 (a) if there is an exempt building code—that code; and
- 10 (b) otherwise—the building code

1 **Part 4** **Planning and Development**
2 **Act 2007**

3 **12** **Transfer of land subject to building and development**
4 **provision**
5 **Section 298 (4)**

6 *substitute*

- 7 (4) The planning and land authority may also, in writing, consent to a
8 transfer of a lease containing a building and development provision,
9 or an interest in the lease, if the proposed transfer is the first sale of
10 a lease of undeveloped land by the person who provided the
11 infrastructure on the lease.

12 **13** **Sections 407 and 408**

13 *substitute*

14 **407** **Definitions—ch 13**

15 In this chapter:

16 ***decision-maker***, for a reviewable decision, means—

- 17 (a) for a decision of an entity that is required, as a condition of a
18 development approval, to be satisfied in relation to the carrying
19 out of the development or a stated stage of the development,
20 under section 165 (3) (a)—the entity whose satisfaction is
21 required; or
22 (b) for a decision under section 277E (1) (b) (i) or
23 section 277E (1) (b) (ii)—the commissioner for revenue; or
24 (c) in any other case—the planning and land authority.

25 ***eligible entity***, for a reviewable decision, means an entity mentioned
26 in schedule 1, column 3 for the decision.

1 *interested entity*, for a reviewable decision, means an entity
2 mentioned in schedule 1, column 4 for the decision.

3 *reviewable decision*—

4 (a) means a decision mentioned in schedule 1, column 2, made by
5 a decision-maker; but

6 (b) does not include a decision of the planning and land authority
7 to refuse a development application under section 162 because
8 the Minister decides under section 261 that considering the
9 application is not in the public interest.

10 **408 Reviewable decision notices**

11 If a decision-maker makes a reviewable decision, the
12 decision-maker must give a reviewable decision notice only to—

13 (a) each eligible entity for the decision; and

14 (b) each interested entity for the decision.

15 *Note* The requirements for reviewable decision notices are prescribed under
16 the *ACT Civil and Administrative Tribunal Act 2008*.

17 **408A Applications for review**

18 An eligible entity for a reviewable decision may apply to the ACAT
19 for review of the decision.

20 *Note* If a form is approved under the *ACT Civil and Administrative Tribunal*
21 *Act 2008* for the application, the form must be used.

1 **14 New chapter 18**

2 *insert*

3 **Chapter 18 Transitional—Planning,**
4 **Building and Environment**
5 **Legislation Amendment**
6 **Act 2014**

7 **473 Status of lease under Canberra College of Advanced**
8 **Education (Leases) Act 1977 (repealed)**

9 (1) This section applies to a lease granted under the *Canberra College*
10 *of Advanced Education (Leases) Act 1977* (repealed) and in force
11 immediately before the commencement of this section.

12 (2) The lease is taken, on and after the commencement of this section,
13 to have been granted under this Act.

14 (3) By force of this section any continuing effect of section 457 (2) and
15 (3) (Transitional—continued application of certain repealed Acts
16 and provisions) because of the application of the *Legislation Act*,
17 section 88 ends.

18 *Note* Section 457 expired on 31 March 2008.

19 **474 Expiry—ch 18**

20 This chapter expires on the day it commences.

15 Further amendments, mentions of s 408 (2)

2 *omit*

3 s 408 (2)

4 *substitute*

5 s 408

6 *in*

- 7 • section 170 (3), note
- 8 • section 171 (3), note
- 9 • section 195, note
- 10 • section 257 (6), note
- 11 • section 258 (5), note 1
- 12 • section 258B (6), note
- 13 • section 258C (6), note 1
- 14 • section 272B (3), note
- 15 • section 277G, note

1 **16 Schedule 1**

2 *substitute*

3 **Schedule 1 Reviewable decisions, eligible entities and interested**
4 **entities**

5 (see s 407)

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
1	decision under s 141 (4) to refuse to extend the period within which further information must be provided	applicant for extension of time	entity that made representation under s 156 in relation to the application
2	decision under s 162 to approve a development application in the code track subject to conditions	applicant for development approval	

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
3	decision under s 162 to approve a development application in the merit track subject to a condition or to refuse to approve the application, to the extent that the development proposal— (a) is subject to a rule and does not comply with the rule; or (b) is not subject to a rule	applicant for development approval	entity that made representation under s 156 in relation to the application

Section 16

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
4	<p>decision under s 162 to approve a development application in the merit track, whether subject to a condition or otherwise, if—</p> <p>(a) the application was required to be notified under s 153 and s 155, whether or not it was also required to be notified under s 154; and</p> <p>(b) the application is not exempted by regulation.</p> <p><i>Note</i> A decision under s 162 is reviewable only to the extent that the development proposal—</p> <p>(a) is subject to a rule and does not comply with the rule; or</p> <p>(b) is not subject to a rule. (see s 121 (2)).</p>	<p>an entity if—</p> <p>(a) the entity made a representation under s 156 about the development proposal or had a reasonable excuse for not making a representation; and</p> <p>(b) the approval of the development application may cause the entity to suffer material detriment</p>	the approval-holder

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
5	decision under s 162 to approve a development application in the impact track subject to a condition, or to refuse to approve the application	applicant for development approval	entity that made a representation under s 156 in relation to the application
6	decision under s 162 to approve a development application in the impact track, whether subject to a condition or otherwise, unless the application is exempted by regulation	an entity if— <ul style="list-style-type: none"> <li data-bbox="1066 753 1370 970">(a) the entity made a representation under s 156 about the development proposal or had a reasonable excuse for not making a representation; and <li data-bbox="1066 976 1370 1128">(b) the approval of the development application may cause the entity to suffer material detriment 	the approval-holder

Section 16

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
7	decision of entity required, under condition on development approval, to be satisfied in relation to carrying out of development or stage of development (see s 165 (3) (a))	approval-holder	planning and land authority
8	decision under s 165 (5) to refuse to approve an amendment of a plan, drawing or other document approved in accordance with a condition of a development approval	approval-holder	entity that made representation under s 156 in relation to the application for development approval
9	decision under s 184 (3) to refuse to extend the prescribed period for finishing development or stage of development	approval-holder	entity that made representation under s 156 in relation to the application for the development approval
10	decision under s 189 to revoke development approval	approval-holder of approval revoked	entity that made representation under s 156 in relation to the application for the development approval

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
11	decision under s 193 (1) (b) (i) on reconsideration to approve application subject to condition	applicant for reconsideration	entity that made representation under s 156 in relation to the application the approval of which was reconsidered
12	decision under s 193 (1) (b) (i) on reconsideration, unless the development application to which the reconsideration relates is exempted by regulation	an entity if— <ul style="list-style-type: none"> (a) the entity made a representation under s 156 about the development proposal or had a reasonable excuse for not making a representation; and (b) the approval of the development application may cause the entity to suffer material detriment 	applicant for reconsideration

Section 16

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
13	decision under s 193 (1) (b) (ii) to confirm original decision on reconsideration	applicant for reconsideration	entity that made representation under s 156 in relation to the application the approval of which was reconsidered
14	decision under s 198 to refuse to amend development approval	approval-holder	entity that made representation under s 156 in relation to the application for development approval
15	decision under s 238 to refuse to grant a lease to a person by direct sale	applicant for grant of lease	
16	decision under s 250 (2) to end person's right to be granted a lease	person whose right is ended	
17	decision under s 252 to refuse to consent to a dealing with a lease	lessee	
18	decision under s 254 to refuse to grant a further lease	applicant for grant of further lease	

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
19	decision under s 257 or s 258 that lease is a concessional lease	lessee	
20	decision under s 258B or s 258C that lease is a concessional lease	lessee	
21	decision under s 263 about the payout amount for a concessional lease	lessee	
22	decision under s 266 to refuse to consent to a dealing with a lease	lessee	
23	decision under s 268 to confirm variation of rent after review	lessee	
24	decision under s 268 to set aside variation and substitute another variation of rent after review	lessee	
25	decision under s 271 adjusting rent after reappraisal	lessee	

Part 4

Planning and Development Act 2007

Section 16

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
26	decision under s 272B (2) (d) about amount payable for variation to reduce rent payable under lease to a nominal rent	lessee	
27	decision under s 277E (1) (b) (i) on reconsideration about amount of lease variation charge for variation of lease	applicant for the reconsideration	
28	decision under s 277E (1) (b) (ii) to confirm original decision on reconsideration about amount of lease variation charge for variation of lease	applicant for the reconsideration	
29	decision under s 295 (2) about market value of improvements on land	lessee	
30	decision under s 296 (1) to refuse to issue a certificate of compliance	lessee	

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
31	decision under s 296 (2) to issue certificate of compliance stating that building and development provision has been partly complied with	lessee	
32	decision under s 296 (2) to issue a certificate of compliance subject to condition that lessee provide security	lessee	
33	decision under s 296 (2) to refuse to issue a certificate of compliance	lessee	
34	decision under s 298 to refuse to consent to the assignment or transfer of a lease or interest in a lease	lessee	
35	decision under s 298B to approve an extension of a stated time for a shorter period than that sought	lessee	

Part 4

Planning and Development Act 2007

Section 16

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
36	decision under s 298B to refuse an extension of a stated time	lessee	
37	decision under s 299 (2) to refuse to accept the surrender of a lease, or part of land comprised in lease	person surrendering lease or part of land comprised in lease	
38	decision under s 299 (2) to accept the surrender of a lease, or part of land comprised in lease, subject to a condition	person surrendering lease or part of land comprised in lease	
39	decision under s 300 to refuse to authorise payment of prescribed amount for surrendered or terminated lease	person surrendering lease or whose lease is terminated	
40	decision under s 351 to make a controlled activity order other than the order applied for	applicant for controlled activity order	
41	decision under s 351 to refuse to make a controlled activity order	applicant for controlled activity order	

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
42	decision under s 351 to make a controlled activity order	person against whom order directed lessee of land to which order relates occupier of land to which order relates	
43	decision under s 355 to make a controlled activity order	person against whom order directed lessee of land to which order relates occupier of land to which order relates	

Section 16

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
44	decision under s 363 (4) to refuse to revoke a controlled activity order	applicant for revocation lessee of land to which order relates occupier of land to which order relates	
45	decision under s 377 (3) to give a prohibition notice	person against whom notice directed lessee of land to which notice relates occupier of land to which notice relates	
46	decision under s 380 (3) to refuse to revoke a prohibition notice	applicant for revocation lessee of land to which notice relates occupier of land to which notice relates	

column 1 item	column 2 reviewable decision	column 3 eligible entities	column 4 interested entities
47	decision under s 382 to terminate a lease	person whose lease is terminated	
48	decision under s 383 to terminate a licence	person whose licence is terminated	
49	decision under s 417 to refuse to grant a right to extract minerals	person applying for grant of right	

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

3 **17** **When survey certificate not required for development**
4 **applications—Act, s 139 (2) (i)**
5 **Section 25 (3)**

6 *omit*
7 commercial or industrial development

8 *insert*
9 non-residential development

10 **18** **When development approvals do not require**
11 **amendment—Act, s 198C (3)**
12 **Section 35 (2) to (4) and note**

13 *omit*

14 **19** **Exemptions from requirement for development approval**
15 **Schedule 1, section 1.4 (1), examples**

16 *omit*
17 • *Nature Conservation Act 1980*

18 **20** **Schedule 1, section 1.4 (2) (a)**

19 *substitute*
20 (a) section 1.14 (Criterion 4—heritage, tree, environment and
21 conservation);

- 1 **21 Schedule 1, section 1.10 (c)**
- 2 *substitute*
- 3 (c) section 1.14 (Criterion 4—heritage, tree, environment and
- 4 conservation);
- 5 **22 Schedule 1, section 1.14 heading**
- 6 *substitute*
- 7 **1.14 Criterion 4—heritage, tree, environment and conservation**
- 8 **23 Schedule 1, new section 1.14 (1) (d)**
- 9 *before the note, insert*
- 10 (d) the *Nature Conservation Act 1980*.
- 11 **24 Schedule 1, section 1.23 (b)**
- 12 *omit*
- 13 (Criterion 4—heritage, tree and environment protection)
- 14 *substitute*
- 15 (Criterion 4—heritage, tree, environment and conservation)
- 16 **25 Schedule 1, section 1.100B (1) (a)**
- 17 *omit*
- 18 (Criterion 4—heritage, tree and environment protection)
- 19 *substitute*
- 20 (Criterion 4—heritage, tree, environment and conservation)

26 Schedule 1, section 1.101 (1)

2 *omit*

3 (Criterion 4—heritage, tree and environment protection)

4 *substitute*

5 (Criterion 4—heritage, tree, environment and conservation)

**27 Limited public notification of certain merit track
development applications
Schedule 2, new items 7 and 8**

9 *after the note, insert*

7 An addition or alteration to a residential unit in a multi-unit residential development if the addition or alteration either—

(a) does not increase the gross floor area of the unit by more than 10%; or

(b) does not add more than more than 20m² to the gross floor area (whether or not it increases the gross floor area by more than 10%).

Note Some alterations of buildings may be exempt from the requirement for development approval (see sch 1, s 1.21 and s 1.21A).

8 The putting up, attaching or displaying of a sign (whether permanent or temporary) on land, or to a building or structure on land.

Note A sign may be exempt from the requirement for development approval under sch 1, div 1.3.3.

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

2 **28** **Unit title applications—general requirements**
3 **Section 17 (3) (a)**

4 *omit*

1 **Part 7 Utilities Act 2000**

2 **29 New section 406A**

3 *insert*

4 **406A Certain electricity services and gas services**

5 (1) Despite the omission of section 6 (c) and section 9 (d) by the
6 *National Energy Retail Law (Consequential Amendments) Act 2012*,
7 this Act applies, until 31 March 2015, to a utility service mentioned
8 in those provisions.

9 (2) However, subsection (1) does not apply to a utility service that is the
10 sale of energy to a person for premises within the meaning of the
11 *National Energy Retail Law (ACT)*.

12 **30 Expiry—pt 18**
13 **Section 407 (1)**

14 *omit*

15 (other than section 405)

16 *substitute*

17 (other than section 406A)

18 **31 Section 407 (2), except note**

19 *substitute*

20 (2) Section 406A expires on 31 March 2015.

Endnotes

1 Presentation speech

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

2 Notification

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

3 Republications of amended laws

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

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