

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning, Building and Environment Legislation Amendment Bill 2014 (No 2)

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Planning, Building and Environment Legislation Amendment Bill 2014 (No 2)

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 2014 (No 2)*.

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](#).

1 Part 2 Building Act 2004

2 4 New section 25AA

3 *after section 25A, insert*

4 25AA Meaning of *site work notice*—div 3.3

5 In this division:

6 *site work notice* means a notice issued by a certifier under
7 section 28 (1A)—

8 (a) stating—

9 (i) that the plans for the building work to which the
10 application for building approval relates show all the
11 information necessary to establish that site work to which
12 the building work relates is exempt development under
13 the *Planning and Development Act 2007*, section 133;
14 and

15 (ii) that the site work is exempt development; and

16 (iii) the certifier's reasons for assessing that the site work is
17 exempt development; and

18 (b) including any document or information prescribed by
19 regulation.

1 **5 Issue of building approvals**
2 **New section 28 (1A)**

3 *insert*

4 (1A) As soon as practicable after receiving the application for building
5 approval, the certifier must issue a site work notice—

6 (a) if an exemption assessment D notice stating that the site work
7 is exempt development has not been issued for the site work;
8 and

9 (b) if the planning and land authority has not made an exemption
10 declaration under the *Planning and Development*
11 *Regulation 2008*, schedule 1, section 1.100A (1) (b) or
12 section 1.100AB (1) (b); and

13 (c) if a development approval has not been issued in relation to the
14 site work; and

15 (d) if satisfied on reasonable grounds that—

16 (i) the plans show all the information necessary to establish
17 that the site work to which the building work relates is
18 exempt development under the *Planning and*
19 *Development Act 2007*, section 133; and

20 (ii) the site work is exempt development.

21 **6 Marking building approval**
22 **New section 28A (4) (a) (iia)**

23 *insert*

24 (iia) if the certifier issues a site work notice in relation to the
25 site work to which the building work relates—the site
26 work notice; and

7 New section 28A (4) (b) (iiia)

insert

- (iiia) if the certifier issues a site work notice in relation to the site work to which the building work relates—a copy of the site work notice; and

**8 Approval requirements
Section 29 (1) (g), except example and notes**

substitute

- (g) if the plans show site work that, if carried out in accordance with the plans, might be exempt under the *Planning and Development Act 2007* from requiring development approval—

- (i) a copy of an exemption assessment D notice for the site work stating that the site work is exempt development is attached; or

Note Applying for an exemption assessment is not a requirement of the development approval or building approval process. If a person believes that a development is an exempt development, the person need not apply for an exemption assessment from a works assessor or building surveyor (see *Planning and Development Act 2007*, div 7.3.1A).

- (ii) a site work notice for the site work, stating that the site work is exempt development, has been issued under section 28 (1A); or

Note If site work is an exempt development, it does not require development approval (see *Planning and Development Act 2007*, s 133).

- 1 (iii) development approval for the site work is attached; or
2 (iv) a copy of an exemption declaration under the *Planning*
3 *and Development Regulation 2008*, schedule 1,
4 section 1.100A (1) (b) or section 1.100AB (1) (b) is
5 attached.

6 **9 Dictionary, new definition of *site work notice***

- 7 *insert*
8 *site work notice*, for division 3.3 (Building approvals)—see
9 section 25AA.

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

3 **10** **New section 9A**

4 *insert*

5 **9A** **Site work notice—Act, s 25AA**

6 The following information is prescribed:

7 (a) in relation to the parcel of land on which the site work is
8 carried out—

9 (i) the block and section number and division; and

10 (ii) the street name and number;

11 (b) the identity of any of the following relied on by the certifier to
12 assess the site work as exempt development:

13 (i) a provision of the *Planning and Development*
14 *Regulation 2008*;

15 (ii) if a provision mentioned in subparagraph (i) incorporates
16 a Territory Plan Code—the code;

17 (c) the certifier's name, licence number and signature;

18 (d) the date the notice is signed by the certifier.

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

3 **11 Public consultation—notification**
4 **Section 63 (2), except note**

5 *substitute*

6 (2) The planning and land authority may, by notice extend or further
7 extend the consultation period (an *extension notice*).

8 **12 Impact track applicability**
9 **Section 123 (b), note**

10 *omit*

11 s 138A (2)

12 *substitute*

13 s 138AA (2)

14 **13 Deciding environmental significance opinion applications**
15 **Section 138AB (5)**

16 *substitute*

17 (5) The relevant agency must notify the planning and land authority in
18 writing if it rejects the application.

19 (5A) If the planning and land authority receives notice under
20 subsection (5), the planning and land authority must notify the
21 applicant in writing of the rejection.

1 **14 New section 195A**

2 *in division 7.3.11, insert*

3 **195A Meaning of *decision-maker*—div 7.3.11**

4 In this division:

5 *decision-maker*, for a development approval means—

6 (a) if the planning and land authority has approved a development
7 application under section 162 (Deciding development
8 applications)—the planning and land authority; or

9 (b) if the Minister has approved a development application under
10 section 162—the Minister.

11 **15 Applications to amend development approvals**
12 **Section 197 (1) and (2)**

13 *omit*

14 planning and land authority

15 *substitute*

16 decision-maker

17 **16 Deciding applications to amend development approvals**
18 **Section 198 (1)**

19 *omit*

20 planning and land authority

21 *substitute*

22 decision-maker

1 **17 Section 198 (1), note 1**

2 *substitute*

3 *Note 1* A decision of the planning and land authority to amend a development
4 approval subject to a condition, or refuse to amend a development
5 approval, may be reconsidered under pt 7.3.10 (see s 191 (1) (a)). The
6 approval holder may apply for review of a decision under
7 s 193 (1) (b) (ii) to confirm the original decision (see sch 1, item 13).

8 **18 Section 198 (1), note 3**

9 *omit*

10 planning and land authority

11 *substitute*

12 decision-maker

13 **19 Section 198 (1), new note**

14 *insert*

15 *Note 4* The Minister may delegate the decision to the planning and land
16 authority (see [Legislation Act](#), s 254A).

17 **20 New section 198 (2A) and (2B)**

18 *insert*

19 (2A) If the decision-maker is the Minister, the Minister may ask the
20 planning and land authority to prepare a report for the Minister in
21 relation to the application on anything the Minister considers
22 relevant.

23 (2B) The Minister may, in deciding to amend or to refuse to amend a
24 development approval, consider the report prepared by the planning
25 and land authority.

1 **21 Section 198 (3) and (4)**

2 *omit*

3 planning and land authority

4 *substitute*

5 decision-maker

6 **22 Exception to referral requirement under s 198 (1) (b)**
 7 **Section 198A (1) (c) and (2)**

8 *omit*

9 planning and land authority

10 *substitute*

11 decision-maker

12 **23 Waiver of notification requirement under s 198 (1) (b)**
 13 **Section 198B**

14 *omit*

15 planning and land authority

16 *substitute*

17 decision-maker

18 **24 When development approvals do not require amendment**
 19 **Section 198C (1)**

20 *omit*

21 planning and land authority

22 *substitute*

23 decision-maker

1 **25 Development applications for developments undertaken**
2 **without approval**
3 **Section 205 (4)**

4 *omit*
5 section 139 (2) (i)
6 *substitute*
7 section 139 (2) (j)

8 **26 Notice of direct sale**
9 **Section 242 (1)**

10 *omit*
11 5 working days
12 *substitute*
13 10 working days

14 **27 Meaning of s 276E chargeable variation and s 277**
15 **chargeable variation—div 9.6.3**
16 **Section 276A (1), definition of s 276E chargeable**
17 **variation, paragraph (c) (i) and (ii)**

18 *substitute*
19 (i) increases or limits the number of dwellings permitted on
20 the land under the lease; or
21 (ii) increases, or has the effect of increasing, the maximum
22 gross floor area of any building or structure permitted for
23 non-residential use on the land under the lease;

1 **28 Chargeable variation of nominal rent lease—lease**
2 **variation charge**
3 **Section 276B (1)**

4 *omit*

5 section 278A

6 *substitute*

7 section 278

8 **29 Information requirements**
9 **Section 395 (1) (a)**

10 *omit*

11 knowledge of

12 **30 Dictionary, definition of *decision-maker***

13 *substitute*

14 *decision-maker*—

15 (a) for a development approval, for division 7.3.11 (Correction
16 and amendment of development approvals)—see section 195A;
17 and

18 (b) for chapter 13 (Review of decisions)—see section 407.

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

3 **31 Section 24 heading**

4 *substitute*

5 **24 Exemption assessment D notice—attached documents—**
6 **Act, s 138D (2) (b) (ii)**

7 **32 Section 24 (2)**

8 *substitute*

- 9 (2) If the works assessor or building surveyor assesses that the
10 development is exempt—
- 11 (a) the works assessor or building surveyor must—
- 12 (i) identify any of the following relied on to assess the
13 development as exempt development:
- 14 (A) a provision of the *Planning and Development*
15 *Regulation 2008*;
- 16 (B) if a provision mentioned in subparagraph (A)
17 incorporated a Territory Plan code—the code; and
- 18 (ii) state in the exemption assessment D notice that the
19 provisions mentioned in subparagraph (i) were satisfied;
20 and
- 21 (iii) initial, date and mark the works assessor or building
22 surveyor's licence number on each page of the plans; and
- 23 (b) the exemption must be marked on, or attached to, or partly
24 marked on or partly attached to, each page of the plans used by
25 the works assessor or building surveyor in the assessment.

1 **33 Section 24 (4), example**

2 *omit*

3 exemption assessment B notice

4 *substitute*

5 exemption assessment D notice

6 **34 Compliant single dwellings—old residential land**
 7 **Schedule 1, section 1.100 (1) (c) (ii)**

8 *omit*

9 (other than rule 33 and rule 66)

10 **35 Compliant single dwellings—new residential land**
 11 **Schedule 1, section 1.100AA (1) (d) (ii)**

12 *omit*

13 (other than rule 33 and rule 66)

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 25 September 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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