

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning and Land Management)

Planning and Development (Efficiencies) Amendment Bill 2016

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(As presented)

(Minister for Planning and Land Management)

Planning and Development (Efficiencies) Amendment Bill 2016

A Bill for

An Act to amend the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008*

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 and Development (Efficiencies)*
4 *Amendment Act 2016*.

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 *Planning and Development Act 2007* and the
11 *Planning and Development Regulation 2008*.

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

3 **4 Ministerial directions to authority**
4 **Section 14 (1) (b)**

5 *omit*

6 *revise*

7 *substitute*

8 *vary*

9 **5 Meaning of *associated document*—pt 3.6**
10 **New section 30 (1) (ca)**

11 *after the note, insert*

12 (ca) for a concurrent development application—each concurrent
13 document;

14 **6 How territory plan is varied under pt 5.3**
15 **Section 57 (1), except notes**

16 *substitute*

17 (1) A variation of the [territory plan](#) (other than a special variation or
18 technical amendment) begins when the planning and land authority
19 prepares a draft plan variation—

20 (a) on its own initiative (see s 60 (a)); or

21 (b) in accordance with a direction by the Minister under
22 section 14 (1) (b) (see s 60 (b)).

1 **7 Section 57 (8), note 2**

2 *omit*

3 s 95

4 *substitute*

5 s 90C

6 **8 Section 60**

7 *substitute*

8 **60 Preparation of draft plan variations**

9 A document (a *draft plan variation*) to vary the [territory plan](#)—

10 (a) may be prepared by the planning and land authority on the
11 authority's own initiative; or

12 (b) must be prepared by the planning and land authority if the
13 Minister gives a direction under section 14 (1) (b) (Ministerial
14 directions to authority).

15 **9 Public consultation—notification**
16 **Section 63 (1) (a)**

17 *omit*

18 a stated period of not less than 30 working days (the *consultation*
19 *period*)

20 *substitute*

21 the consultation period

10 Section 63 (1), new note

insert

Note If a development application is made under s 137AA (Applications in anticipation of territory plan variation—made before draft plan variation prepared)—

- (a) the development application must be notified on the day the consultation notice for the draft plan variation that gives effect to the anticipated variation is notified under this section (see s 137AA (5)); and
- (b) the development application and the consultation notice for the draft plan variation must be publicly notified for the concurrent consultation period (see s 147AB (2)); and
- (c) comments about the draft plan variation must be made in the concurrent consultation period and at the same time as the person makes a representation about the development application (see s 147AC (2)).

11 New section 63 (8)

insert

(8) In this section:

consultation period means—

- (a) if a development application is made under section 137AA (Applications in anticipation of territory plan variation—made before draft plan variation prepared) and the draft plan variation gives effect to the anticipated variation—the concurrent consultation period; or

Note ***Concurrent consultation period***—see s 147AA.

- (b) in any other case—a stated period of not less than 30 working days.

1 **12** **Definitions—pt 5.4**
2 **Section 86, definition of *code variation***

3 *substitute*

4 *code variation*—see section 87 (2) (a).

5 **13** **Sections 87 and 88**

6 *substitute*

7 **87** **What are *technical amendments* of territory plan and is**
8 **consultation needed?**

9 (1) Each of the following **territory plan** variations is a ***technical***
10 ***amendment*** for which no consultation is needed before it is made
11 under section 89:

12 (a) a variation (an ***error variation***) that—

13 (i) would not adversely affect anyone's rights if approved;
14 and

15 (ii) has as its only object the correction of a formal error in
16 the plan;

17 (b) a variation to change the boundary of a zone or overlay under
18 section 90A (Rezoning—boundary changes);

19 (c) a variation, other than one to which subsection (2) (d) applies,
20 in relation to an estate development plan under section 96
21 (Effect of approval of estate development plan);

22 (d) a variation required to bring the **territory plan** into line with the
23 national capital plan;

1 (e) a variation to omit something that is obsolete or redundant in
2 the [territory plan](#).

3 **Examples—obsolete or redundant things**

4 1 a structure plan that is no longer relevant because all the land that the
5 structure plan applies to ceases to be in a future urban area

6 2 a provision of the [territory plan](#) that has become redundant because of
7 the enactment of a law that applies in the Territory

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

11 (2) Each of the following [territory plan](#) variations is a ***technical***
12 ***amendment*** for which only limited consultation is needed under
13 section 90:

14 (a) a variation (a ***code variation***) that—

15 (i) would only change a code; and

16 (ii) is consistent with the policy purpose and policy
17 framework of the code; and

18 (iii) is not an error variation;

19 (b) a variation to change the boundary of a zone under section 90B
20 (Rezoning—development encroaching on adjoining territory
21 land);

22 (c) a variation in relation to a future urban area under
23 section 90C (Technical amendments—future urban areas);

24 *Note* A variation to rezone land that is not in a future urban area is not
25 a technical amendment.

26 (d) a variation in relation to an estate development plan under
27 section 96 (Effect of approval of estate development plan) if it
28 incorporates an ongoing provision that was not included in the
29 plan under section 94 (3) (g);

1 (e) a variation to clarify the language in the [territory plan](#) if it does
2 not change the substance of the plan;

3 (f) a variation to relocate a provision within the [territory plan](#) if
4 the substance of the provision is not changed.

5 **Example**

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

8 **14 Making technical amendments**
9 **Section 89 (1), note**

10 *omit*

11 Section 88

12 *substitute*

13 Section 87 (2)

14 **15 Limited consultation**
15 **Section 90 (2) (c)**

16 *omit*

17 how and when

18 *substitute*

19 the consultation period and how

20 **16 Section 90 (2) (d)**

21 *omit*

22 period under paragraph (c) ends

23 *substitute*

24 end of the consultation period

1 **17 Section 90 (4)**

2 *omit*

3 **18 Section 90 (6) (a)**

4 *after*

5 made

6 *insert*

7 in the consultation period and

8 **19 New section 90 (7)**

9 *insert*

10 (7) In this section:

11 *consultation period* means a stated period of not less than—

12 (a) 20 working days; or

13 (b) for a proposed technical amendment under section 90B—the
14 concurrent consultation period.

15 *Note* *Concurrent consultation period*—see s 147AA.

1 **20 New sections 90A and 90B**

2 *in part 5.4, insert*

3 **90A Rezoning—boundary changes**

4 (1) This section applies to a zone or overlay in relation to land if the
5 land adjoins unleased territory land or land for which the Territory is
6 the registered proprietor (the *adjoining territory land*).

7 (2) The planning and land authority may vary the [territory plan](#) under
8 section 89 (Making technical amendments) to change the boundary
9 of the zone or overlay to encroach onto the adjoining territory land
10 if the change is consistent with—

11 (a) the apparent intent of the original boundary line; and

12 (b) the objective for the zone.

13 (3) The planning and land authority may vary the [territory plan](#) under
14 section 89 to change the boundary of an overlay to encroach onto
15 the adjoining territory land if—

16 (a) the authority is advised to do so by—

17 (i) the conservator of flora and fauna; or

18 (ii) the custodian of the land for the overlay; and

19 (b) the conditions in subsection (2) (a) and (b) are satisfied.

20 (4) In this section:

21 *overlay* means an overlay identified in the [territory plan](#).

22 *Note* An overlay is a map that identifies particular land, such as public land,
23 to which certain rules apply.

- 1 **90B** **Rezoning—development encroaching on adjoining**
 2 **territory land**
- 3 (1) The planning and land authority may vary the **territory plan** under
 4 section 89 (Making technical amendments) to change the boundary
 5 of a zone consistent with a development proposal under
 6 section 137AC (Declaration for development encroaching on
 7 adjoining territory land if development prohibited) if the authority
 8 makes a declaration that the proposal satisfies the criteria in
 9 section 137AC (2).
- 10 *Note* Under s 137AC and s 137AD, a person may apply for development
 11 approval of a development proposal that encroaches on adjoining
 12 territory land if the development would otherwise be prohibited on the
 13 land. However, development approval must not be given until the plan
 14 variation has commenced under section 89 (see s 162 (1A)).
- 15 (2) However, the planning and land authority must not vary the **territory**
 16 **plan** under section 89 to change the boundary of the zone if the
 17 adjoining territory land is designated as a future urban area under
 18 the **territory plan**.
- 19 (3) In this section:
 20 *adjoining territory land*—see section 137AC (1) (a).

21 **21** **Part 5.5 heading**
 22 *substitute*

23 **Part 5.5** **Plan variations—structure and**
 24 **concept plans and estate**
 25 **development plans**

26 **22** **Technical amendments—future urban areas**
 27 **Section 95**
 28 *relocate to part 5.4 as section 90C*

1 **23 Rezoning—boundary changes**
2 **Section 96A**

3 *omit*

4 **24 Relationship between development proposals and**
5 **development applications**
6 **Section 113 (5)**

7 *after*

8 section 123

9 *insert*

10 (c), (d) and (e)

11 **25 Section 122**

12 *substitute*

13 **122 Merit track—time for decision on application**

14 (1) A development application for a development proposal in the merit
15 track must be decided under section 162 (Deciding development
16 applications) not later than—

17 (a) 10 working days after the day—

18 (i) for a concurrent development application—the
19 concurrent process is completed;

20 (ii) for an application for development approval of a
21 development proposal made under section 137AB
22 (Applications in anticipation of territory plan variation—
23 made after draft plan variation prepared)—the draft plan
24 variation has commenced under section 83 or section 84;
25 or

- 1 (b) if paragraph (a) does not apply—
- 2 (i) if no representation is made in relation to the proposal—
- 3 30 working days after the day the application is made to
- 4 the planning and land authority; or
- 5 (ii) in any other case—45 working days after the day the
- 6 application is made to the authority.
- 7 (2) In this section:
- 8 *completed concurrent process*—see section 162 (6).

9 **26 Section 127**

10 *substitute*

11 **127 Impact track—development applications**

- 12 (1) A development application for a development proposal in the impact
- 13 track must include a completed EIS if—
- 14 (a) the proponent of the development proposal has previously
- 15 lodged a development application in relation to the
- 16 development proposal (the *previous application*); and
- 17 (b) the previous application was made less than 2 years before the
- 18 development application; and
- 19 (c) the planning and land authority rejected the EIS in relation to
- 20 the previous application under section 224A (Rejection of
- 21 unsatisfactory EIS).
- 22 (2) If subsection (1) does not apply, a development application for a
- 23 development proposal in the impact track must include—
- 24 (a) a completed EIS; or
- 25 (b) a draft EIS.

1 (3) However, neither a completed EIS nor a draft EIS is required for a
2 development application for a development proposal in the impact
3 track if—

4 (a) an EIS exemption is in force for the proposal; or

5 (b) an EIS exemption application for the proposal accompanies the
6 development application.

7 *Note* While a proponent may lodge a draft EIS or an EIS exemption
8 application with a development application, development approval must
9 not be given unless there is either a completed EIS or an EIS exemption
10 for the development application (see s 128 (1) (a)).

11 **27 Impact track—when development approval must not be**
12 **given**
13 **Section 128 (1) (a), notes**

14 *substitute*

15 *Note* If a draft EIS or an EIS exemption application is lodged with a
16 concurrent development application, development approval may
17 only be given if the concurrent process is completed
18 (see s 162 (1A)).

19 **28 Section 128 (1), note 4**

20 *omit*

21 **29 Impact track—time for decision on application**
22 **Section 131 (1) (a) and (b)**

23 *substitute*

24 (a) 10 working days after the day—

25 (i) for a concurrent development application—the
26 concurrent process is completed;

- 1 (ii) for an application for development approval of a
2 development proposal made under section 137AB
3 (Applications in anticipation of territory plan variation—
4 made after draft plan variation prepared)—the draft plan
5 variation has commenced under section 83 or section 84;
6 or
- 7 (b) if paragraph (a) does not apply—
- 8 (i) if no representation is made in relation to the proposal—
9 30 working days after the day the application is made to
10 the planning and land authority; or
- 11 (ii) in any other case—45 working days after the day the
12 application is made to the authority.

13 **30 Section 131 (2)**

14 *omit*

15 subsection (1) (a) and (b)

16 *substitute*

17 subsection (1) (b) (i) and (ii)

18 **31 New section 131 (3)**

19 *insert*

20 (3) In this section:

21 *completed concurrent process*—see section 162 (6).

1 **32 Section 136**

2 *substitute*

3 **136 Certain development in future urban area prohibited**

4 A development by an entity other than the Territory or a territory
5 authority in a future urban area is prohibited unless the structure
6 plan for the area states otherwise.

7 **136A Development applications for prohibited development**

8 The planning and land authority may only accept an application for
9 approval of a proposal for a prohibited development if the
10 application is made under—

- 11 (a) section 137 (Applications for development approval in relation
12 to use for otherwise prohibited development); or
- 13 (b) section 137AA (Applications in anticipation of territory plan
14 variation—made before draft plan variation prepared); or
- 15 (c) section 137AB (Applications in anticipation of territory plan
16 variation—made after draft plan variation prepared); or
- 17 (d) section 137AD (Applications for development encroaching on
18 adjoining territory land if development prohibited).

19 *Note 1* It is an offence to undertake prohibited development (see s 200).

20 *Note 2* However, if development is authorised by a development approval and
21 subsequently becomes prohibited, the development can continue (see
22 s 201).

23 *Note 3* Also, development that is lawful when it begins continues to be lawful
24 (see s 203 and s 204).

1 **33 Applications for development approval in relation to use**
2 **for otherwise prohibited development**
3 **Section 137 (2)**

4 *substitute*

- 5 (2) A person may apply to the planning and land authority for
6 development approval of the development proposal.
- 7 (2A) If an application is made under subsection (2)—
- 8 (a) the use is taken not to be a prohibited development; and
- 9 (b) the impact track applies to the proposal.

10 **34 New sections 137AA to 137AD**

11 *in division 7.2.7, insert*

12 **137AA Applications in anticipation of territory plan variation—**
13 **made before draft plan variation prepared**

- 14 (1) A person may apply for approval of a development proposal for a
15 prohibited development in anticipation of a variation to the [territory](#)
16 [plan](#) (the *anticipated variation*) that would have the effect of
17 allowing the proposed development.

18 *Note* A development application made under this section is a concurrent
19 development application (see s 147AA) and div 7.3.2A (Concurrent
20 development applications) applies to it.

- 21 (2) A development application cannot be made under this section if a
22 consultation notice for a draft plan variation that gives effect to the
23 anticipated variation is notified under section 63.

24 *Note* If a consultation notice for a draft plan variation giving effect to the
25 anticipated variation is notified under s 63, a development application
26 may be made under s 137AB after the day the consultation notice is
27 notified as if the draft plan variation were in force.

- 1 (3) The development application must state—
- 2 (a) why the development is prohibited or is inconsistent with the
- 3 territory plan, including by identifying the relevant provision
- 4 of the territory plan; and
- 5 (b) that the application is made in anticipation of a variation to the
- 6 territory plan under this section.
- 7 (4) The planning and land authority or Minister is taken to have refused
- 8 the development application if a consultation notice for a draft plan
- 9 variation that gives effect to the anticipated variation is not notified
- 10 under section 63 within 6 months after the development application
- 11 is made.
- 12 (5) A development application made under this section must be publicly
- 13 notified on the day the consultation notice for the draft plan
- 14 variation that gives effect to the anticipated variation is notified
- 15 under section 63.
- 16 *Note 1* The development application and the draft plan variation must be
- 17 publicly notified for the concurrent consultation period
- 18 (see s 147AB (2)).
- 19 *Note 2* Comments about a draft plan variation that gives effect to the
- 20 anticipated variation must be made in the concurrent consultation period
- 21 and at the same time as the person makes a representation about the
- 22 development application (see s 147AC (2)).
- 23 *Note 3* A development application made under this section may only be
- 24 decided if the draft plan variation that gives effect to the anticipated
- 25 variation has commenced under s 83 or s 84 (see s 162 (1A)).

- 1 (6) Despite section 50 (Effect of territory plan)—
- 2 (a) chapter 7, chapter 8 and chapter 9 apply to the development
- 3 application as if the draft plan variation that gives effect to the
- 4 anticipated variation were in force; and
- 5 (b) the planning and land authority must assess the application as
- 6 if the draft plan variation that gives effect to the anticipated
- 7 variation were in force.
- 8 (7) In this section:
- 9 *prohibited development* includes a development that is inconsistent
- 10 with the [territory plan](#).
- 11 **137AB Applications in anticipation of territory plan variation—**
- 12 **made after draft plan variation prepared**
- 13 (1) This section applies if the planning and land authority notifies a
- 14 consultation notice for a draft plan variation under section 63.
- 15 (2) A person may apply for approval of a development proposal after
- 16 the day the consultation notice is notified as if the draft plan
- 17 variation were in force.
- 18 (3) The development application must—
- 19 (a) identify the draft plan variation; and
- 20 (b) state that the application is made as if the draft plan variation
- 21 were in force.
- 22 (4) Despite section 50 (Effect of territory plan)—
- 23 (a) chapter 7, chapter 8 and chapter 9 apply to the development
- 24 application as if the draft plan variation were in force; and
- 25 (b) the planning and land authority must assess the application as
- 26 if the draft plan variation were in force; and

- 1 (c) the planning and land authority must, in publicly notifying the
2 development application under division 7.3.4 (Public
3 notification of development applications and
4 representations)—
- 5 (i) identify the draft plan variation; and
6 (ii) state that the application is made in accordance with the
7 draft plan variation.
- 8 (5) The planning and land authority or Minister is taken to have refused
9 the development application if the draft plan variation, or a
10 provision relating to the development application, is—
- 11 (a) withdrawn; or
12 (b) rejected; or
13 (c) revised in a way that no longer permits the proposed
14 development.
- 15 *Note* A development application made under this section may only be
16 decided if the draft plan variation has commenced under s 83 or s 84
17 (see s 162 (1A)).

18 **137AC Declaration for development encroaching on adjoining**
19 **territory land if development prohibited**

- 20 (1) This section applies to a development proposal in relation to a use of
21 land, or a building or structure on the land, if—
- 22 (a) the land, or the building or structure on the land, adjoins
23 unleased territory land or land for which the Territory is the
24 registered proprietor (the *adjoining territory land*); and
- 25 (b) the use would encroach no further onto, over or under the
26 adjoining territory land than the distance prescribed by
27 regulation (the *encroachment*); and
- 28 (c) the use of the land, or the building or structure on the land, is a
29 prohibited development on the adjoining territory land.

- 1 (2) A person may apply to the planning and land authority for a
2 declaration that the development proposal satisfies the following
3 criteria:
- 4 (a) the encroachment is a minor part of the development;
- 5 (b) carrying out the proposal in relation to the adjoining territory
6 land would enable a more logical and appropriate development
7 than if there was no encroachment;
- 8 (c) the proposed use of the land would—
- 9 (i) not detract from the amenity of the surrounding area; and
10 (ii) promote better land management; and
11 (iii) not unreasonably restrict public access to other land;
- 12 (d) the authority is not prohibited from granting by direct sale a
13 lease over the encroachment.
- 14 *Note 1* If a form is approved under s 425 for this provision, the form must be
15 used.
- 16 *Note 2* A fee may be determined under s 424 for this provision.
- 17 (3) The application must include—
- 18 (a) if the adjoining territory land is unleased land—written consent
19 by the custodian for the land to the encroachment; and
- 20 (b) a copy of any written information provided to the custodian,
21 with each page—
- 22 (i) signed by the custodian; and
23 (ii) numbered by stating the page number and the total
24 number of pages provided.

1 (4) Not later than 10 working days after the day the person applies to
2 the planning and land authority for a declaration under
3 subsection (2), the authority must—

4 (a) make the declaration; or

5 (b) refuse to make the declaration.

6 *Note* The requirement to make a decision under s (4) does not lapse if the
7 10-day time limit is not met (see [Legislation Act](#), s 152).

8 (5) A declaration is a notifiable instrument.

9 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

10 **137AD Applications for development encroaching on adjoining**
11 **territory land if development prohibited**

12 (1) If the planning and land authority has made a declaration under
13 section 137AC in relation to a development proposal—

14 (a) the person who applied for the declaration may apply to the
15 planning and land authority for development approval of the
16 development proposal; and

17 (b) the use is taken not to be a prohibited development on the
18 adjoining territory land.

19 (2) Despite section 50 (Effect of territory plan)—

20 (a) chapter 7, chapter 8 and chapter 9 apply to the application as if
21 the [territory plan](#) were varied under section 90B (Rezoning—
22 development encroaching on adjoining territory land) to
23 change the boundary of the land consistent with a proposal
24 under section 137AC; and

1 (b) the planning and land authority must assess the application as
2 if the [territory plan](#) were varied under section 90B.

3 *Note 1* A development application made under this section may only be
4 decided if the [territory plan](#) has been varied under s 90B
5 (see s 162 (1A)).

6 *Note 2* The planning and land authority must not grant a lease over an
7 encroachment on adjoining territory land by direct sale unless the
8 [territory plan](#) has been varied under s 90B (see s 240 (1) (h)).

9 (3) In this section:

10 *adjoining territory land*—see section 137AC (1) (a).

11 **35 Form of development applications**
12 **Section 139 (2) (g) (ii) and notes**

13 *substitute*

14 (ii) the completed EIS or draft EIS for the proposal, unless an
15 EIS exemption is in force, or there is an EIS exemption
16 application, for the development proposal; and

17 (ga) for a concurrent development application other than an
18 application under section 137AA (Applications in anticipation
19 of territory plan variation—made before draft plan variation
20 prepared)—be accompanied by each concurrent document; and

21 (gb) if the application is for approval of a development which
22 encroaches on adjoining territory land under section 137AD
23 (Applications for development encroaching on adjoining
24 territory land if development prohibited)—be accompanied by
25 the declaration under section 137AC (3); and

1 **36 Section 139 (8), new definitions**

2 *insert*

3 *adjoining territory land*—see section 137AC (1) (a).

4 *encroachment*—see section 137AC (1) (b).

5 **37 New division 7.3.2A**

6 *insert*

7 **Division 7.3.2A Concurrent development applications**

8 **147AA Definitions**

9 (1) In this Act:

10 *concurrent consultation period*, for a concurrent development
11 application, means a stated period of not less than 35 working days
12 plus any concurrent extension period.

13 *concurrent development application* means an application for
14 development approval—

15 (a) made under section 137AA (Applications in anticipation of
16 territory plan variation—made before draft plan variation
17 prepared); or

18 (b) that is accompanied by 1 or more concurrent documents.

19 *concurrent document*, in relation to a concurrent development
20 application, means—

21 (a) if the application is made under section 137AA—the draft plan
22 variation that gives effect to the anticipated [territory plan](#)
23 variation; or

- 1 (b) if the application is made under section 137AD (Applications
2 for development encroaching on adjoining territory land if
3 development prohibited)—the proposed technical amendment;
4 or
- 5 (c) if a draft EIS is lodged with the application—the draft EIS; or
- 6 (d) if an application for an EIS exemption is lodged with the
7 development application—the EIS exemption application.
- 8 (2) In this section:
- 9 *concurrent extension period*, in relation to a concurrent
10 development application, means—
- 11 (a) if the application is made under section 137AA (Applications
12 in anticipation of territory plan variation—made before draft
13 plan variation prepared)—the period of any extension under
14 section 63 (2); or
- 15 (b) if a draft EIS is lodged with the application—the period of any
16 extension under section 211D (2); or
- 17 (c) if an application for an EIS exemption is lodged with the
18 development application—the period of any extension under
19 section 219 (3).

20 **147AB Public notification of concurrent documents**

- 21 (1) This section applies if—
- 22 (a) a development application is a concurrent development
23 application; and
- 24 (b) a concurrent document in relation to the application must be
25 publicly notified under this Act.

1 (2) The concurrent document must be publicly notified together with
2 the concurrent development application for the concurrent
3 consultation period.

4 *Note* A development application is **publicly notified** under div 7.3.4.

5 (3) A notice under subsection (2) must—

6 (a) state that the concurrent development application—

7 (i) is a concurrent development application; and

8 (ii) cannot be finalised until the concurrent process is
9 complete; and

10 (b) state the concurrent consultation period for the concurrent
11 development application; and

12 (c) state that if the concurrent document relating to the application
13 is refused, rejected or withdrawn, the application is taken to
14 have been refused; and

15 (d) include an electronic link to each concurrent document for the
16 concurrent development application on the authority website.

17 (4) In this section:

18 **completed concurrent process**—see section 162 (6).

19 **publicly notified**, for a concurrent document, means—

20 (a) for a draft plan variation that gives effect to an anticipated
21 **territory plan** variation under section 137AA—notification of
22 the consultation notice for the draft plan variation under
23 section 63 (3); or

24 (b) for a proposed technical amendment under section 90B—
25 public notice under section 90 (2); or

1 (c) for an EIS exemption application—notification of the
2 consultation notice for the EIS exemption application under
3 section 211C; or

4 (d) for a draft EIS—notification of the draft EIS under section 217.

5 **147AC Representations about concurrent documents**

6 (1) This section applies if—

7 (a) a development application is a concurrent development
8 application; and

9 (b) a written representation about a concurrent document relating
10 to the application may be made under this Act.

11 (2) A person may only make a written representation about—

12 (a) the concurrent development application and each concurrent
13 document in the concurrent consultation period; and

14 (b) the concurrent document at the same time as the person makes
15 a representation about the concurrent development application.

16 (3) Subsection (4) applies if—

17 (a) a person makes a written representation about a concurrent
18 document at the same time as the person makes a
19 representation about a concurrent development application; and

20 (b) the representation must be published under this Act.

21 (4) The planning and land authority must—

22 (a) include an electronic link to each concurrent document for the
23 concurrent development application on the authority website;
24 and

- 1 (b) either—
- 2 (i) publish the representations together on the authority
- 3 website; or
- 4 (ii) include an electronic link to the representations on the
- 5 authority website.
- 6 (5) In this section:
- 7 **representation**, about a concurrent document, means—
- 8 (a) for a draft plan variation that gives effect to an anticipated
- 9 [territory plan](#) variation under section 137AA—a comment
- 10 about the variation under section 63; or
- 11 (b) for a proposed technical amendment under section 90B—a
- 12 comment about the amendment under section 90; or
- 13 (c) for an EIS exemption application—a submission about the
- 14 application under section 211C; or
- 15 (d) for a draft EIS—a representation about the draft EIS under
- 16 section 219.

17 **147AD Refusal, rejection or withdrawal of concurrent documents**

- 18 (1) This section applies if—
- 19 (a) a development application is a concurrent development
- 20 application; and
- 21 (b) a concurrent document relating to the application—
- 22 (i) is refused, rejected or withdrawn; or
- 23 (ii) is taken to have been refused, rejected or withdrawn; or

- 1 (iii) for a draft plan variation that gives effect to an
2 anticipated **territory plan** variation under
3 section 137AA—
- 4 (A) the draft plan variation is revised in a way that no
5 longer permits the proposed development; or
- 6 (B) if a provision of the draft plan variation relates to
7 the concurrent development application—
8 subparagraph (i), (ii) or (iii) (A) applies to the
9 provision.
- 10 (2) The planning and land authority or Minister is taken to have refused
11 the concurrent development application.
- 12 *Note* For a development application made under s 137AA, the planning and
13 land authority or Minister is taken to have refused the development
14 application if a consultation notice for a draft plan variation that gives
15 effect to the anticipated variation is not notified under s 63 within 6
16 months after the development application is made (see s 137AA (3)).
- 17 (3) Any other concurrent document is taken to have been withdrawn.
- 18 (4) For subsection (1) (b), if the concurrent document is a draft plan
19 variation that gives effect to an anticipated **territory plan** variation
20 under section 137AA, a reference also includes refusal or rejection
21 of a provision of the draft plan variation if the provision relates to
22 the concurrent development application.
- 23 (5) The planning and land authority must give the applicant for the
24 concurrent development application notice of the effect of this
25 section.

1 **38 New section 151A**

2 *in division 7.3.3, insert*

3 **151A Effect of advice by referral entity for concurrent**
4 **documents**

- 5 (1) This section applies if—
- 6 (a) an entity gives advice in relation to a development application
7 in accordance with section 149; and
- 8 (b) the development application is a concurrent development
9 application.
- 10 (2) The advice must not be inconsistent with any previous advice given
11 by the entity in relation to a concurrent document for the concurrent
12 development application unless—
- 13 (a) further information in relation to the proposed development
14 comes to the entity's attention; and
- 15 (b) the entity did not have the further information when the entity
16 gave the previous advice; and
- 17 (c) the further information is relevant to the previous advice the
18 entity gave; and
- 19 (d) the entity would have given different advice if the entity had
20 the further information before giving the previous advice.

21 **39 What is *publicly notifies* for ch 7?**
22 **Section 152 (1), new note**

23 *insert*

24 *Note 3* If a draft EIS or an EIS exemption application is lodged with a
25 concurrent development application, the planning and land authority
26 must publicly notify the concurrent documents with the development
27 application under s 147AB.

1 **40 Representations about development applications**
2 **Section 156 (2), new note**

3 *insert*

4 *Note 2* For a concurrent development application, a representation about the
5 development application or a concurrent document must be made in the
6 concurrent consultation period (see s 147AC (2)).

7 **41 Section 156 (6) (b), except note**

8 *substitute*

9 (b) if the development application is accompanied by a completed
10 EIS—must not relate to the adequacy of the EIS.

11 **42 Deciding development applications**
12 **New section 162 (1A)**

13 *insert*

14 (1A) However, the planning and land authority or Minister may only
15 decide the application if—

16 (a) for a concurrent development application—the concurrent
17 process is completed; or

18 *Note* Under s 147AA, a **concurrent development application** means an
19 application for development approval that is made under
20 s 137AA, or that is accompanied by 1 or more of the following:

21 (a) if the application is made under s 137AA—the draft plan
22 variation that gives effect to the anticipated [territory plan](#)
23 variation;

24 (b) if the application is made under s 137AD—the proposed
25 technical amendment;

26 (c) if a draft EIS is lodged with the application—the draft EIS;

27 (d) if an application for an EIS exemption is lodged with the
28 development application—the EIS exemption application.

- 1 (b) for a development application made under section 137AB
2 (Applications in anticipation of territory plan variation—made
3 after draft plan variation prepared)—the draft plan variation
4 has commenced under section 83 or section 84.

5 **43 Section 162 (3)**

6 *omit*

7 However

8 *substitute*

9 Also

10 **44 Section 162 (6), new definition of *completed concurrent***
11 ***process***

12 *insert*

13 ***completed concurrent process***—a ***concurrent process is completed***
14 if a concurrent development application is lodged and—

- 15 (a) if the application is made under section 137AA (Applications
16 in anticipation of territory plan variation—made before draft
17 plan variation prepared)—the draft plan variation has
18 commenced under section 83 or section 84; or

19 *Note* For a development application made under s 137AA, the planning
20 and land authority or Minister is taken to have refused the
21 application if a consultation notice for a draft plan variation that
22 gives effect to the anticipated variation is not notified under s 63
23 within 6 months after the development application is made (see
24 s 137AA (3)).

- 25 (b) if the application is made under section 137AD (Applications
26 for development encroaching on adjoining territory land if
27 development prohibited)—the plan variation has commenced
28 under section 89; or

- 1 (c) if the application is lodged with—
- 2 (i) a draft EIS—the EIS has been completed; or
- 3 (ii) an EIS exemption application for the development
- 4 proposal for the application—the EIS exemption has been
- 5 granted under section 211H.

6 **45 Offence to undertake prohibited development**

7 **Section 200 (6) (b)**

- 8 *omit*
- 9 subsection 137 (2) (a)
- 10 *substitute*
- 11 section 137 (2)

12 **46 Part 8.1 heading**

- 13 *substitute*

14 **Part 8.1 Overview and interpretation—**

15 **ch 8**

16 **205A Overview of EIS process under ch 8**

- 17 (1) If this Act requires an environmental impact statement in relation to
- 18 a development proposal, a development application for the proposal
- 19 must include a completed EIS or a draft EIS, unless an EIS
- 20 exemption is in force, or there is an EIS exemption application, for
- 21 the proposal (see s 127).
- 22 (2) If the proponent of the development proposal applies to the Minister
- 23 for an EIS exemption (see s 211B), the Minister may grant, or refuse
- 24 to grant, the exemption (see s 211H).

- 1 (3) If the proponent does not apply for an EIS exemption, or the
2 proponent does apply but the Minister refuses to grant the
3 exemption, the proponent must apply to the planning and land
4 authority for an EIS scoping document (see s 212).
- 5 (4) If the proponent applies to the planning and land authority under
6 section 212, the authority must prepare the scoping document and
7 give the scoping document to the proponent (see s 212 to s 215).
- 8 (5) If the planning and land authority gives a scoping document to the
9 proponent, the proponent must prepare a draft EIS (see s 216).
- 10 (6) The planning and land authority must publicly notify the draft EIS
11 (see s 217 and s 218), and anyone may make a representation about
12 the draft EIS (see s 219) (for a draft EIS that is lodged with a
13 concurrent development application, see also s 147AB and
14 s 147AC).
- 15 (7) The proponent must revise the draft EIS and give the revised EIS to
16 the planning and land authority (see s 221).
- 17 (8) The planning and land authority must consider the EIS (see s 222)
18 and—
- 19 (a) accept the EIS (see s 222 (2)); or
20 (b) give the proponent an opportunity to revise the EIS (see s 224);
21 or
22 (c) reject the EIS (see s 223 and s 224A).
- 23 (9) If the planning and land authority accepts the EIS, the authority
24 must—
- 25 (a) give the EIS to the Minister (see s 225); and
26 (b) prepare an EIS assessment report (see s 225A).

- 1 (10) If the planning and land authority gives an EIS to the Minister, the
2 Minister may—
- 3 (a) if the Minister decides not to present to the Legislative
4 Assembly under section 227 nor establish an inquiry panel
5 under part 8.3—give the authority a notice of no action on the
6 EIS (see s 226); or
- 7 (b) present the EIS to the Legislative Assembly (see s 227).
- 8 (11) An EIS expires 5 years after the day it is completed (see s 227A).

9 **47 Definitions—ch 8**
10 **Section 206, definitions**

11 *omit the definitions of*
12 *draft EIS*
13 *EIS*
14 *environmental impact statement*
15 *inquiry*

16 **48 When is an EIS completed?**
17 **Section 209 (1) (b)**

18 *omit*
19 has not decided
20 *substitute*
21 decides not

1 **49 Division 8.2.1 heading**

2 *substitute*

3 **Division 8.2.1 EIS exemptions**

4 **50 When is a completed EIS required?**
5 **Section 210**

6 *omit*

7 **51 Meaning of *EIS exemption***
8 **Section 211, definition of *EIS exemption*, new note**

9 *insert*

10 *Note* An EIS exemption may be given if a recent study has already addressed
11 the expected environmental impact of a development proposal
12 (see s 211B).

13 **52 Meaning of *recent study*—pt 8.2**
14 **Section 211A, definition of *recent study*, new note**

15 *insert*

16 *Note* An EIS exemption may be given if a recent study has already addressed
17 the expected environmental impact of a development proposal
18 (see s 211B).

19 **53 EIS exemption application**
20 **New section 211B (3) (aa)**

21 *insert*

22 (aa) include information about the development proposal; and

1 **54 EIS exemption application—public submissions**
2 **Section 211D (1) (b), new note**

3 *insert*

4 *Note* If an EIS exemption application is lodged with a concurrent
5 development application, a submission about the EIS exemption
6 application must be made in the concurrent consultation period
7 and at the same time as the person makes a representation about
8 the development application (see s 147AC (2)).

9 **55 Scoping of EIS**
10 **Section 212 (1) and note**

11 *substitute*

12 (1) A proponent of a development proposal must apply to the planning
13 and land authority under this section if—

14 (a) an EIS, whether completed or draft, is required for the
15 proposal; and

16 (b) the proponent has—

17 (i) not applied for an EIS exemption for the proposal; or

18 (ii) applied for an EIS exemption for the proposal, but the
19 Minister has refused to grant the EIS exemption under
20 section 211H.

21 *Note 1* A development application for a development proposal in the impact
22 track must include either a completed EIS or a draft EIS, unless there is
23 an EIS exemption, or an EIS exemption application, for the proposal
24 (see s 127).

25 *Note 2* If a form is approved under s 425 for this provision, the form must be
26 used.

- 1 **56 Contents of scoping document**
2 **New section 213 (1A)**
- 3 *insert*
- 4 (1A) The proponent must give the draft EIS to the planning and land
5 authority by the end of—
- 6 (a) the period of 18 months starting on the day the authority gives
7 the scoping document for the development proposal to the
8 applicant under section 214; or
- 9 (b) if the scoping document states that a shorter period applies—
10 the shorter period.
- 11 **57 Term of scoping document**
12 **Section 215**
- 13 *omit*
- 14 **58 Preparing draft EIS**
15 **Section 216 (2)**
- 16 *substitute*
- 17 (2) The proponent must, by the end of the period stated in the scoping
18 document for the development proposal—
- 19 (a) prepare a document that addresses each matter raised in the
20 scoping document (a *draft EIS*); and
- 21 (b) give the draft EIS to the planning and land authority for public
22 notification.

1 **59 Public notification of draft EIS**
2 **Section 217, new note**

3 *insert*

4 *Note 2* If a draft EIS is lodged with a concurrent development application, the
5 draft EIS must be publicly notified together with the concurrent
6 development application within the concurrent consultation period
7 (see s 147AB (2)).

8 **60 Section 218**

9 *substitute*

10 **218 Meaning of *public consultation period* for draft EIS**

11 In this Act:

12 *public consultation period*, for a draft EIS, means—

- 13 (a) if the draft EIS is lodged with a concurrent development
14 application—the concurrent consultation period; or

15 *Note Concurrent consultation period*—see s 147AA.

- 16 (b) in any other case—

17 (i) the period, not less than 20 working days, when
18 representations may be made on the draft EIS under
19 section 217 (a) (ii); or

20 (ii) if the period is extended under section 219 (3)—the
21 period as extended.

1 **61 Representations about draft EIS**
2 **Section 219 (1), new note**

3 *insert*

4 *Note* If a draft EIS is lodged with a concurrent development application, a
5 representation about the draft EIS must be made in the concurrent
6 consultation period and at the same time as the person makes a
7 representation about the development application (see s 147AC (2)).

8 **62 Publication of representations about draft EIS**
9 **Section 220 (2) (b), except notes**

10 *substitute*

11 (b) give a copy of the representation to the proponent of the
12 development proposal as soon as practicable after the public
13 consultation period for the draft EIS ends.

14 **63 Revising draft EIS**
15 **Section 221 (2)**

16 *substitute*

17 (2) The planning and land authority must give the proponent written
18 notice of the revision period.

19 (2A) The proponent of the development proposal must revise the draft
20 EIS and give the revised EIS to the planning and land authority
21 within the revision period.

22 **64 New section 221 (4)**

23 *insert*

24 (4) In this section:

25 *revision period*, for a draft EIS publicly notified under section 217,
26 means a period of at least 30 days, but not more than 18 months,
27 after the day the public consultation period for the draft EIS has
28 ended.

1 **65 Authority consideration of EIS**
2 **Section 222 (1)**

3 *substitute*

- 4 (1) This section applies if the proponent of a development application
5 gives the planning and land authority—
6 (a) an EIS under section 221 within the time required by
7 section 221 (2); or
8 (b) an EIS in accordance with a notice under section 224 (2).

9 **66 EIS given to authority out of time**
10 **Section 223 (1)**

11 *substitute*

- 12 (1) This section applies if the proponent of a development proposal
13 gives the planning and land authority an EIS under section 221 more
14 than 18 months after the scoping document for the proposal is given
15 to the proponent under section 214.

16 **67 Chance to address unaddressed matters**
17 **Section 224 (1) (b)**

18 *substitute*

- 19 (b) the authority has not, under this section, given the proponent of
20 the development proposal—
21 (i) for a draft EIS that is lodged with a concurrent
22 development application—a written notice; or
23 (ii) in any other case—a second written notice.

1 **68 Section 224A**

2 *substitute*

3 **224A Rejection of unsatisfactory EIS**

4 (1) This section applies if the planning and land authority gives the
5 proponent of a development proposal 1 of the following under
6 section 224 (2):

7 (a) for a draft EIS that is lodged with a concurrent development
8 application—a written notice;

9 (b) in any other case—a second written notice.

10 (2) The planning and land authority must reject an EIS if—

11 (a) the proponent does not respond within the time stated in the
12 notice; or

13 (b) the proponent responds within the time stated in the notice but
14 the authority remains unsatisfied in relation to a matter
15 mentioned in section 222 (2) (a).

16 *Note* If the rejected draft EIS was lodged with a concurrent development
17 application, the development application is taken to have been refused
18 (see s 147AD).

19 **69 Restriction on direct sale by authority**
20 **New section 240 (1) (h)**

21 *before the note, insert*

22 (h) for a lease over an encroachment on adjoining territory land
23 under section 137AD (Applications for development
24 encroaching on adjoining territory land if development
25 prohibited)—the [territory plan](#) has been varied in accordance
26 with section 90B (Rezoning—development encroaching on
27 adjoining territory land).

70 Section 240 (4), new definitions

insert

adjoining territory land—see section 137AC (1) (a).

encroachment—see section 137AC (1) (b).

71 New chapter 22

insert

**Chapter 22 Transitional—Planning and
Development (Efficiencies)
Amendment Act 2016****491 Existing concurrent documents**

For section 147AA (1), a *concurrent document* does not include—

(a) a draft EIS given to the planning and land authority under section 216 before the day the *Planning and Development (Efficiencies) Amendment Act 2016* commences; or

(b) an application for an EIS exemption made under section 211B before the day the *Planning and Development (Efficiencies) Amendment Act 2016* commences.

492 Transitional regulations

(1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Planning and Development (Efficiencies) Amendment Act 2016*.

- 1 (2) A regulation may modify this chapter (including in relation to
2 another territory law) to make provision in relation to anything that,
3 in the Executive's opinion, is not, or is not adequately or
4 appropriately, dealt with in this chapter.
- 5 (3) A regulation under subsection (2) has effect despite anything
6 elsewhere in this Act or another territory law.

7 **493 Expiry—ch 22**

8 This chapter expires 2 years after the day it commences.

9 *Note* Transitional provisions are kept in the Act for a limited time.
10 A transitional provision is repealed on its expiry but continues to have
11 effect after its repeal (see [Legislation Act](#), s 88).

12 **72 Dictionary, definition of *code variation***

13 *substitute*

14 *code variation*, for part 5.4 (Plan variations—technical
15 amendments)—see section 87 (2) (a).

16 **73 Dictionary, new definitions**

17 *insert*

18 *concurrent consultation period*, for a concurrent development
19 application—see section 147AA.

20 *concurrent development application*—see section 147AA.

21 *concurrent document*, in relation to a concurrent development
22 application—see section 147AA.

23 **74 Dictionary, definition of *draft EIS***

24 *substitute*

25 *draft EIS*—see section 216 (2) (a).

1 **75 Dictionary, definition of *prohibited*, paragraph (a)**

2 *omit*

3 section 136 (2)

4 *substitute*

5 section 136

6 **76 Dictionary, definition of *representation*, paragraph (b)**

7 *before*

8 for chapter 8

9 *insert*

10 about a draft EIS,

1 **Part 3 Planning and Development**
2 **Regulation 2008**

3 **77 New section 25A**

4 *insert*

5 **25A Prescribed encroachment for development encroaching**
6 **on adjoining territory land—Act, s 137AC (1) (b)**

7 A distance of 20m is prescribed.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 March 2016.

2 Notification

Notified under the [Legislation Act](#) on 2016.

3 Republications of amended laws

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