

# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Planning and Development Amendment Bill 2009 (No 2)

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(Prepared by Parliamentary Counsel's Office)

## Planning and Development Amendment Bill 2009 (No 2)

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### **A Bill for**

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

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Planning and Development Amendment Act 2009 (No 2)*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

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

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

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## Part 2                      Planning and Development Act 2007

### 3                      Legislation amended—pt 2

This part amends the *Planning and Development Act 2007*.

### 4                      Minister's powers in relation to draft plan variations Section 76 (5) and (6)

*substitute*

- (5) If the Minister directs the withdrawal of a draft plan variation by the planning and land authority under subsection (3) (b) (v), the authority must prepare a notice stating that the draft plan variation is withdrawn.
- (6) The following are notifiable instruments:
- (a) an approval under subsection (3) (a);
  - (b) a direction under subsection (3) (b);
  - (c) a notice under subsection (5).

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

- (7) The planning and land authority must also publish the notice under subsection (5) in a daily newspaper.

### 5                      Definitions—pt 5.4 Section 86, definition of *limited consultation*

*substitute*

*limited consultation*—see section 90.

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**6 What are *technical amendments* of territory plan?  
Section 87 (e)**

*substitute*

- (e) a variation required to bring the territory plan into line with the national capital plan;
- (f) a variation to omit something that is obsolete or redundant in the territory plan;

**Examples—obsolete or redundant things**

- 1 a structure plan that is no longer relevant because all the land that the structure plan applies to ceases to be in a future urban area
- 2 a provision of the territory plan that has become redundant because of the enactment of a law that applies in the Territory

*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).

- (g) a variation to clarify the language in the territory plan if it does not change the substance of the plan.

**7 Is consultation needed for technical amendments?  
New section 88 (1) (c)**

*insert*

- (c) a variation to clarify the language in the territory plan if it does not change the substance of the plan.

**8 Making technical amendments  
Section 89 (2)**

*substitute*

- (2) The planning and land authority may put the plan variation (incorporating any amendments made to the variation following the limited consultation) in writing.

**9 New section 116A**

*insert*

**116A Code track—effect of s 134 on development approval**

- (1) This section applies if—
- (a) the authorised use of the land, or an existing building or structure on the land, is exempt under section 134 (1) (Exempt development—authorised use); and
  - (b) a development application for a development proposal in the code track is made in relation to the land; and
  - (c) if the proposed development were carried out, the authorised use of the land, or an existing building or structure on the land, would stop being exempt under section 134 (2) or (3).
- (2) In deciding the development application, the decision-maker—
- (a) must consider the application in the context of the authorised use of the land, and existing buildings or structures on the land; and
  - (b) must not refuse to approve the application only on the ground that, if the application were an application for the authorised use of the land or existing buildings or structures on the land, the application would be refused; and

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- (c) must not approve the application on a condition only because, if the application were an application for the authorised use of the land or existing buildings or structures on the land, the application would only be approved on the condition.

**10 New section 120A**

*insert*

**120A Merit track—effect of s 134 on development approval**

- (1) This section applies if—
  - (a) the authorised use of the land, or an existing building or structure on the land, is exempt under section 134 (1) (Exempt development—authorised use); and
  - (b) a development application for a development proposal in the merit track is made in relation to the land; and
  - (c) if the proposed development were carried out, the authorised use of the land, or an existing building or structure on the land, would stop being exempt under section 134 (2) or (3).
- (2) In deciding the development application, the decision-maker—
  - (a) must consider the application in the context of the authorised use of the land, and existing buildings or structures on the land; and
  - (b) must not refuse to approve the application only on the ground that, if the application were an application for the authorised use of the land or existing buildings or structures on the land, the application would be refused; and

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- (c) must not approve the application on a condition only because, if the application were an application for the authorised use of the land or existing buildings or structures on the land, the application would only be approved on the condition.

## **11 New section 129A**

*insert*

### **129A Impact track—effect of section 134 on development approval**

- (1) This section applies if—
  - (a) the authorised use of the land, or an existing building or structure on the land, is exempt under section 134 (1) (Exempt development—authorised use); and
  - (b) a development application for a development proposal in the impact track is made in relation to the land; and
  - (c) if the proposed development were carried out, the authorised use of the land, or an existing building or structure on the land, would stop being exempt under section 134 (2) or (3).
- (2) In deciding the development application, the decision-maker—
  - (a) must consider the application in the context of the authorised use of the land, and existing buildings or structures on the land; and
  - (b) must not refuse to approve the application only on the ground that, if the application were an application for the authorised use of the land or existing buildings or structures on the land, the application would be refused; and

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- (c) must not approve the application on a condition only because, if the application were an application for the authorised use of the land or existing buildings or structures on the land, the application would only be approved on the condition.

## **12 New section 131B**

*insert*

### **131B Development proposal for lease variation other than in designated area**

- (1) This section applies to a development proposal that is a variation of a lease other than a lease in a designated area.
- (2) The development proposal must be dealt with under the provisions of this Act that apply to the merit track unless—
  - (a) the territory plan requires the proposal to be dealt with under another track; or
  - (b) the impact track applies to the proposal under section 123 (Impact track applicability).
- (3) However, if the development proposal is a variation to a lease to add an additional authorised use under the lease, the proposal must be dealt with under the provisions of this Act that apply to the track that applies to the proposed additional authorised use under the territory plan.

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**13 Section 133**

*substitute*

**133 What is an exempt development?**

In this Act:

***exempt development***—

- (a) means development that is exempt from requiring development approval under—
  - (i) the relevant development table; or
    - Note 1* Development tables are dealt with in s 54.
    - Note 2* ***Relevant development table***—see the dictionary.
  - (ii) section 134; or
  - (iii) a regulation; but
- (b) for paragraph (a) (i) and (iii)—does not include development on land if—
  - (i) the development is inconsistent with a provision of a development approval for other development on the land; and
  - (ii) the development approval is given on the condition that the provision is complied with.

**Example—condition that provision complied with**

Development plans do not include windows in the front wall. The approval is expressed to be subject to the condition that the front wall not have windows.

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**Example—not a condition that provision complied with**

Development plans do not include windows in the front wall. The approval is given without explicit mention of windows in the front wall being a condition of the approval.

*Note 1* An approval may be given subject to conditions, see s 165.

*Note 2* 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).

**14 Exempt development—authorised use  
Section 134, new note**

*after section 134 (8), insert*

*Note* As the use of land, or a building or structure on the land, is development (see s 7), if the use of the land, or a building or structure on the land, stops being exempt under this section, development approval will be required for the use. Once development approval has been given for the use, it continues indefinitely unless it ends under s 186 (see also s 188). A further development approval will not be required for use of the land, or a building or structure on the land, unless the existing development approval does not cover a proposed new use of the land, or a building or structure on the land.

**15 What is *publicly notifies* for ch 7?  
Section 152 (2) (a)**

*substitute*

- (a) under section 155 (Major public notification) and, if the development proposal is, or includes, a lease variation—section 154 (Public notice to registered interest holders) (if applicable);



**16 New section 154 (3)**

*insert*

- (3) The validity of a development approval is not affected by a failure by the planning and land authority to comply with this section.

**17 New division 7.3.4A**

*insert*

**Division 7.3.4A Notice of development applications to registrar-general****157A Notice of development applications**

- (1) The planning and land authority must give written notice of each development application lodged with the authority to the registrar-general for recording under the *Land Titles Act 1925*, part 8A (Record of administrative interests).
- (2) The notice under subsection (1) must include the following:
- (a) a description of the development;
  - (b) the assessment track under which the development is to be assessed;
  - (c) the approval status of the application;

**Examples—approval status**

- 1 pending
- 2 approved
- 3 approved on conditions

*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).

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- (d) anything else prescribed by regulation.
- (3) If the approval status of a development application changes, the planning and land authority must give written notice to the registrar-general of the change.

**18 Direction that development applications be referred to Minister  
Section 158 (3)**

*substitute*

- (3) If the Minister gives a direction under subsection (1) in relation to an application, the planning and land authority—
  - (a) must take no further action that would lead to a decision by the authority on the application; but
  - (b) may continue to take procedural steps in relation to the application, unless the Minister's direction under subsection (1) directs the authority not to take a procedural step.

**Examples—procedural steps**

- 1 entity referral under div 7.3.3 (Referral of development applications)
- 2 public notification under div 7.3.7 (Extensions of time for deciding development applications)

*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).

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**19 Notice of approval of application  
Section 170 (1) (c)**

*substitute*

- (c) if the application approved does not relate to a variation of a lease—to the registrar-general for recording under the *Land Titles Act 1925*, part 8A (Record of administrative interests); and

**20 When development approvals take effect—ACAT review  
Section 178 (2) (b)**

*substitute*

- (b) the day after the day the approval is confirmed by the ACAT, whether completely or partly and whether or not the confirmation is appealed.

**21 When development approval takes effect—activity not allowed by lease  
Section 179 (2) (c) (i)**

*substitute*

- (i) the approval is confirmed by the ACAT, whether completely or partly and whether or not the confirmation is appealed; or

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**22 When development approval takes effect—condition to be met**  
**Section 180 (2) (c) (i)**

*substitute*

- (i) the approval is confirmed by the ACAT, whether completely or partly and whether or not the confirmation is appealed; or

**23 When development approval takes effect—application for reconsideration**  
**Section 182 (2) (c) (i)**

*substitute*

- (i) the approval is confirmed by the ACAT, whether completely or partly and whether or not the confirmation is appealed; or

**24 End of development approvals other than lease variations**  
**Section 184 (2) (f)**

*substitute*

- (f) if the approval relates to land comprised in a lease that requires the development to be completed within a stated time—
  - (i) the development is not completed within the stated time; or
  - (ii) if the stated time has been extended under section 298B—the development is not completed within the extended time; or

**25 End of development approvals for use under licence or permit  
Section 187 (2) (d), except note**

*substitute*

- (d) if the licence or permit has expired and has not been renewed within 6 months after the day of expiry; or
- (e) the licence or permit ends other than by expiring.

**26 Applications to amend development approvals  
Section 197 (1), new note**

*insert*

*Note* If the development proposal changes in accordance with the development approval condition requiring the change, the change is covered by the approval, so this section does not apply.

**27 Deciding applications to amend development approvals  
Section 198 (1), example**

*omit*

floor

*substitute*

room

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**28 Section 198 (2)**

*substitute*

- (2) However, section 162 (3) (Deciding development applications) does not apply to the application.
- (2A) The planning and land authority must refuse to amend the development approval if satisfied that—
- (a) the changed development proposal and the original development proposal would be in different assessment tracks; or
  - (b) the changed development proposal would be in breach of a condition imposed by a court or tribunal.

**29 Development applications for developments undertaken without approval  
New section 205 (1A)**

*insert*

- (1A) If the development becomes an exempt development—
- (a) the development is taken to have been an exempt development since the development was started; but
  - (b) the exemption of the development does not affect any proceeding under this part, whether or not the proceeding starts before the development became exempt.

**30**      **Definitions—ch 9**  
**Section 234, definition of *rental lease***

*omit*

nominal

*substitute*

a nominal

**31**      **Meaning of *concessional lease* and *lease*—Act**  
**Section 235 (1), definition of *concessional lease*,**  
**paragraph (a)**

*omit*

to the Territory

**32**      **Section 235 (2)**

*substitute*

- (2) For subsection (1), definition of *concessional lease*, paragraph (a)—
- (a) a payment has been *made* if it was paid to the Territory, a territory entity, a Commonwealth entity or the entity that originally granted the lease; and
  - (b) it does not matter whether the consideration for the grant of the lease was paid as a lump sum or is payable under the lease as rent.

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**33 Section 235 (3), new definitions**

*insert*

***Commonwealth entity*** means—

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

***territory entity*** means—

- (a) a territory authority; or
- (b) a territory instrumentality; or
- (c) a territory-owned corporation.

**34 New section 238A**

*insert*

**238A Lease conditional on approval for stated development**

- (1) This section applies to a lease granted under section 238 if—
  - (a) a provision of the lease requires the lessee to obtain the approval of the planning and land authority to undertake development on the land comprised in the lease; and
  - (b) the development is exempt development.
- (2) The lessee does not require the planning and land authority's approval for the development.



**35**      **Restriction on direct sale by authority**  
**Section 240 (2)**

*substitute*

- (2) The Executive may approve the grant by direct sale of a lease other than in accordance with criteria prescribed if satisfied that—
- (a) the grant meets 1 or more of the grant objectives; and
  - (b) a grant by a means other than direct sale—
    - (i) is not likely to meet any of the grant objectives; or
    - (ii) may meet 1 or more of the grant objectives but is unlikely to meet the objective to the same extent as the grant by direct sale of the lease.

**36**      **Section 240 (4), new definition of *grant objective***

*insert*

***grant objective***—each of the following is a ***grant objective***:

- (a) to benefit the economy of the ACT or region;
- (b) to contribute to the environment, or social or cultural features in the ACT;
- (c) to introduce new skills, technology or services in the ACT;
- (d) to contribute to the export earnings and import replacement of the ACT or region;
- (e) to facilitate the achievement of a major policy objective.

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**37 Payment for leases  
Section 246 (2) (a)**

*omit*

the full market

*substitute*

not less than the market

**38 Section 247 heading**

*substitute*

**247 Land must not be used other than for leased purpose**

**39 New section 247A**

*insert*

**247A Land must be used for leased purpose**

- (1) This section applies to a lease if—
  - (a) a purpose is authorised by the lease; and
  - (b) the lease does not include a condition requiring the lease to be used for the authorised purpose.
- (2) It is a condition of the lease that territory land, or a building or structure on the land, in relation to which the lease has been granted, whether before or after the commencement of this section, must be used for—
  - (a) if only 1 purpose is authorised—the purpose authorised by the lease; and

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- (b) if more than 1 purpose is authorised—at least 1 purpose authorised by the lease.

*Note 1* Beginning a use of land, or a building or structure on the land, is development and may require development approval (see s 7, def *development*, par (d) and s 8, def *use*, par (a)).

*Note 2* A breach of a lease is a controlled activity. See div 11.3.2 (Controlled activity orders on authority's initiative) for how the planning and land authority may deal with controlled activities.

*Note 3* If a lessee contravenes a lease, the planning and land authority may terminate the lease (see s 382 and s 384). On application by a person whose lease is terminated, the planning and land authority may authorise a payment to the person of a prescribed amount (see s 300).

- (3) This section does not apply to a lease if—

- (a) a residential purpose is an authorised purpose of the lease, and a building on the land the subject of the lease is a dwelling; or

- (b) the land, or a building or structure on the land, the subject of the lease cannot be used for any of the authorised purposes because—

(i) an approved development is not completed; and

(ii) the development approval—

(A) is current (including an extension of time); or

(B) has been expired for not more than 1 year; or

- (c) the land, or a building or structure on the land, the subject of the lease cannot be used for any authorised purpose because—

(i) a development is not completed; and

(ii) the development—

(A) does not require development approval; but

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- (B) does require building approval under the *Building Act 2004*, division 3.3 (Building approvals); and
  - (iii) the building approval—
    - (A) is current (including any extension of time); or
    - (B) has been expired for not more than 1 year; or
  - (d) the Territory land, or building or structure on the land, in relation to which the lease has been granted has not been used in accordance with subsection (2) for less than 1 year.
- (4) In this section:

**class**, for a building or structure, means the class of building or structure under the building code.

*Note* **Building code**—see the Legislation Act, dict, pt 1.

**dwelling**—

- (a) means a class 1 building, or a self-contained part of a class 2 building, that—
  - (i) includes the following that are accessible from within the building, or the self-contained part of the building:
    - (A) not more than 2 kitchens;
    - (B) at least 1 bath or shower;
    - (C) at least 1 toilet pan; and
  - (ii) does not have access from another building that is either a class 1 building or the self-contained part of a class 2 building; and
- (b) includes any ancillary parts of the building and any class 10a buildings associated with the building.

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*kitchen* does not include—

- (a) outdoor cooking facilities; or
- (b) a barbeque in an enclosed garden room.

**40 Failure to accept and execute lease  
Section 250 (4)**

*omit*

a copy of

**41 Restrictions on dealings with certain leases  
New section 251 (1) (c) (iii) and (iv)**

*insert*

- (iii) a lease—
  - (A) that was offered for sale under section 238 (1) (a) or (c) but not sold; and
  - (B) for which not less than the market value was paid for the subsequent direct sale; or
- (iv) a lease—
  - (A) that was sold under section 238 (1) (c) but the contract of sale was rescinded or otherwise ended before the lease was granted under the contract; and
  - (B) for which not less than the market value was paid for the subsequent direct sale; or

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**42 New section 251 (1A)**

*insert*

(1A) This section does not apply in relation to the following leases:

- (a) a concessional lease;
- (b) a rural lease;
- (c) a residential lease.

**43 Decision on rent payout lease variation application  
Section 272B (1) (a)**

*omit*

nominal

*substitute*

a nominal

**44 Section 272B (3)**

*omit*

planning and development authority

*substitute*

planning and land authority

**45 Power to decide rent payout applications deemed refused  
Section 272D (2)**

*omit*

nominal

*substitute*

a nominal

**46 Lease to be varied to pay out rent  
Section 273 (3)**

*omit*

rent of 5 cents each year

*substitute*

nominal rent

**47 Dealings with rural leases  
Section 284 (4)**

*substitute*

- (4) The planning and land authority must consent under this section to a dealing in relation to a lease if—
- (a) either—
- (i) the lessee's domestic partner or child is the person to whom—
    - (A) the lease is being assigned or transferred; or
    - (B) the land comprised in the lease, or part of it, is sublet; or

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- (C) possession of the land comprised in the lease, or part of it, is being given; or
- (ii) the holding period for the lease has ended; and
- (b) the person to whom the lease is to be granted has entered into an agreement with the Territory in accordance with section 283.

**48 Transfer of land subject to building and development provision**  
**New section 298 (2) (b) (v)**

*before the examples, insert*

- (v) the authority is satisfied that the transfer or assignment (the *relevant transfer or assignment*) of the lease is—
  - (A) by the Territory, a territory entity, the Commonwealth or a Commonwealth entity (each of which is an *entity*); and
  - (B) within the entity's functions; and
  - (C) necessary because of a change in a policy of the Territory, the Commonwealth or the entity that affects more than 1 transfer or assignment, or potential transfer or assignment, including the relevant transfer or assignment.

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**49 New section 298 (6)**

*insert*

(6) In this section:

***Commonwealth entity*** means—

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

***territory entity*** means—

- (a) a territory authority; or
- (b) a territory instrumentality; or
- (c) a territory-owned corporation.

**50 Section 298A heading**

*substitute*

**298A Application for extension of time to commence or complete works**

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**51 Section 298A (1)**

*omit*

building or development

*substitute*

works

**52 Section 298A (3) to (5)**

*substitute*

- (3) The application must be accompanied by the most recent assessment notice for rates for the land.

**53 Section 298B heading**

*substitute*

**298B Extension of time to commence or complete works**

**54 Section 298B (3)**

*omit*

may approve the extension only if

*substitute*

must approve the extension if

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**55 New section 298C***in part 9.9, insert***298C Extension of time to commence or complete works—  
required fee**

- (1) If the planning and land authority approves an extension of a stated time under section 298B, the approval is subject to the condition that the applicant pays the planning and land authority the amount, or the total of the amounts, (the *required fee*) for each year, or part year, of the period of extension of time approved, worked out as follows:

$$A \times \frac{D}{365} \times B$$

**Example**

Frank applies for an extension of time for 1 October 2009 to 31 December 2011 (2 years and 92 days). In Frank's case, the *Planning and Development Regulation 2008* prescribes A in the above formula to be 1 for the 1st year, 2 for the 2nd year and 3 for the 3rd year of the period of extension. The fee is worked out using the following formula: [1 x 365/365 x B] + [2 x 365/365 x B] + [3 x 92/365 x B].

*Note 1* The required fee may be waived under the *Financial Management Act 1996*, s 131.

*Note 2* 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).

- (2) However, if an extension (the *earlier extension*) of time has been approved, in working out the required fee for a further extension—
- (a) the formula for working out the required fee applies as if the period of extension included each earlier extension, other than—

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- (i) an earlier extension for which the required fee was waived under the *Financial Management Act 1996*, section 131; or
- (ii) an earlier extension prescribed by regulation; and
- (b) the required fee is reduced by—
  - (i) the amount of the required fee paid for each earlier extension; and
  - (ii) if part of the required fee was waived under the *Financial Management Act 1996*, section 131 for an earlier extension—the amount waived.
- (3) In this section:

**A** is the figure, not more than 5, prescribed by regulation for the relevant year of the period of extension.

*Note* Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48).

**B** is the amount of rates imposed under the *Rates Act 2004*, section 14 in relation to the land for the financial year in which the application is made.

**D** is the lesser of—

- (a) 365; and
- (b) the number of days for which the extension is sought in the relevant year.

*period of extension* means—

- (a) the period of extension applied for under subsection (2); or
- (b) if an application seeks extensions for 2 or more building and development provisions in a lease—the longest of the extensions sought.

**56**      **Content of controlled activity orders**  
**Section 358 (3) (c)**

*substitute*

- (c) to comply with a lease provision or development agreement;
- (ca) to restore any land, or a building or structure on the land, that has been altered, damaged or fallen into disrepair in breach of a lease provision or development agreement;

**57**      **New section 358 (3) (m)**

*insert*

- (m) not to do anything that is a controlled activity whether or not a controlled activity order has been, or could be, made under paragraphs (a) to (l).

**58**      **Entry on notice for rectification work and monitoring**  
**Section 391B (2)**

*substitute*

- (2) The planning and land authority may give an occupier of the premises written notice (an *intention to enter notice*) of the inspector's intention to enter the premises.

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**59 Section 391B (6)**

*omit everything before paragraph (a), substitute*

- (6) Before an inspector enters the premises in accordance with the intention to enter notice, the inspector must—

**60 New section 395B**

*insert*

**395B Authority may ask for information about leases from commissioner for revenue**

- (1) The planning and land authority may, in writing, ask the commissioner for revenue for the following information in relation to a lease:
- (a) the lessee's name;
  - (b) the lessee's home address or other contact address.

*Note* The planning and land authority may ask the commissioner for information in relation to more than 1 lease at a time. Words in the singular include the plural (see Legislation Act, s 145 (b)).

- (2) The commissioner for revenue must disclose the information required in a request made in accordance with subsection (1).

*Note* See also the *Taxation Administration Act 1999*, s 97 (c) for power to disclose the information.

- (3) The planning and land authority must not make a request under subsection (1) in relation to a lease more often than—
- (a) once every 3 months; or
  - (b) if a regulation prescribes a longer period—once each period.
- (4) Nothing in this section prevents the planning and land authority from asking for information under section 395A.

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(5) In this section:

*lease*—see section 235.

*lessee*—see section 234.

**61 When may inspector apply for rectification work order?  
Section 402C (e) (ii) and (iii)**

*substitute*

- (ii) an inspector, or an accompanying authorised person, has been refused entry in accordance with an intention to enter notice given under section 391B;
- (iii) a consent to the entry of an inspector or an accompanying authorised person to carry out the rectification work has been withdrawn;
- (iv) a consent to the entry or re-entry of an authorised person to carry out or complete the rectification work has been withdrawn.

**62 When may inspector apply for monitoring warrant?  
Section 402N (b) (i)**

*substitute*

- (i) an inspector has been refused entry in accordance with an intention to enter notice given under section 391B;

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**63 New section 404A**

*insert*

**404A Action in relation to seized thing**

- (1) An inspector who seizes a thing under section 392D (Power to seize things on entry under search warrant) may—
  - (a) remove the thing from the premises where it was seized to another place; or
  - (b) leave the thing at the premises but restrict access to it.
- (2) A person commits an offence if—
  - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (1) (b); and
  - (b) the person does not have an inspector's approval to interfere with the thing.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**64 ACAT review—people who made representations etc  
Section 409 (2)**

*omit*

4 weeks

*substitute*

20 working days



**65 Section 431**

*substitute*

**431 Expiry—ch 15**

- (1) This chapter (other than part 15.1, part 15.5 and section 467) expires 3 years after the commencement day.
- (2) Part 15.1, part 15.5 and section 467 expire 5 years after the commencement day.

**66 Transitional—development application lodged on or after commencement day for estate development plan given before commencement day  
Section 442C (1) (b)**

*omit*

planning and development authority

*substitute*

planning and land authority

**67 Transitional—status of leases and licences  
New section 456 (1A)**

*insert*

- (1A) This section also applies to the following leases granted or continued, or purported to have been granted or continued, under the repealed Act, whether or not in force immediately before the commencement day:

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- (a) a lease granted during a consolidation or subdivision involving the surrender of 1 or more previous leases if 1 or more of the previous leases was a concessional lease;
- (b) a concessional lease.

**68 Section 456A heading**

*substitute*

**456A Transitional—application for extension of time to commence or complete development**

**69 Section 456A (1)**

*omit*

building or development

*substitute*

a development

**70 Section 456A (4)**

*omit*

building and development

*substitute*

works

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**71 Section 456A (4) (b)**

*omit*

section 298A (3) (b)

*substitute*

section 298C (1)

**72 Section 456A (5)**

*omit*

building and development

*substitute*

works

**73 Schedule 1, item 2, column 4**

*omit*

applicant

*substitute*

applicant for development approval

**74 Schedule 1, item 3, column 2**

*omit*

to the extent that the decision

*substitute*

to the extent that the development proposal

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**75 Schedule 1, item 3, column 4**

*omit*

applicant

*substitute*

applicant for development approval

**76 Schedule 1, item 4, column 2**

*after paragraph (b), insert*

*Note* A decision under s 162 is reviewable only 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.

(see s 121 (2)).

**77 Schedule 1, item 5, column 4**

*omit*

applicant

*substitute*

applicant for development approval

**78 Schedule 1, item 25, column 2**

*omit*

nominal

*substitute*

a nominal

**79 Dictionary, new definition of *nominal rent***

*insert*

*nominal rent* means—

- (a) rent of 5 cents each year; or
- (b) if another nominal amount each year is prescribed by regulation—rent of the other nominal amount.

**80 Dictionary, definition of *nominal rent lease***

*omit*

for nominal

*substitute*

for a nominal

**81 Dictionary, definition of *variation*, paragraph (a) (iv)**

*substitute*

- (iv) does not include—
  - (A) the surrender of the lease and the grant of a further lease under section 254 (Grant of further leases); or
  - (B) a variation to a deed that requires development on land comprised in the lease that is incorporated into, or referred to in, the lease, if the deed is varied in a way that is provided for in the deed; and

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## Part 3 Planning and Development Regulation 2008

### 82 Legislation amended—pt 3

This part amends the *Planning and Development Regulation 2008*.

### 83 Exemptions from restrictions on dealings with certain leases—Act, s 251 (3) Section 142 (1) and note

*omit*

### 84 Section 142 (2) (e)

*omit*

### 85 Section 202 heading

*substitute*

### 202 Application for extension of time—earlier extension—Act, s 298C (2) (a) (ii)

### 86 Section 203 heading

*substitute*

### 203 Application for extension of time—general rule—Act, s 298C (3), def A

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**87 Section 203 (3), definition of *period of extension*, and note**

*substitute*

*period of extension*—see the Act, section 298C (3).

*Note* The Act, s 298C (3) defines *A* to be 5 if a lower figure is not prescribed.

**88 Section 204 heading**

*substitute*

**204 Application for extension of time—hardship reason—Act, s 298C (3), def A****89 Section 204 (4), definition of *period of extension***

*substitute*

*period of extension*—see the Act, section 298C (3).

**90 Section 205 heading**

*substitute*

**205 Application for extension of time—external reason—Act, s 298C (3), def A****91 Section 206 heading**

*substitute*

**206 Application for extension of time—lease transferred or assigned in special circumstances—Act, s 298C (3), def A**

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**92 Section 207 heading**

*substitute*

**207 Application for extension of time—certain leases granted before 31 March 2008—Act, s 298C (3), def A**

**93 Securing things seized under the Act, pt 12.3  
Section 403**

*omit*

**94 Criterion 5—compliance with lease and other development approvals  
Schedule 1, section 1.15 (1) (a)**

*omit*

**95 Schedule 1, section 1.15 (2) and examples**

*omit*

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**Endnotes**

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2009.

**2 Notification**

Notified under the Legislation Act on 2009.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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