

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Planning and Development (Concessional Leases) Amendment Bill 2010

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(Prepared by Parliamentary Counsel's Office)

Planning and Development (Concessional Leases) Amendment Bill 2010

A Bill for

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

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 (Concessional Leases) Amendment Act 2010*.

2 Commencement

This Act commences on the 7th day after its notification day.

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

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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 Section 235

substitute

235 Meaning of *lease*—Act

In this Act:

lease means a lease (other than a sublease) of territory land—

- (a) granted under this Act; or
- (b) granted or arising under the *Unit Titles Act 2001*.

Note Some leases are taken to have been granted under this Act and so come within this definition of *lease* (see s 456).

235A Meaning of *concessional lease etc*—Act

(1) In this Act:

concessional lease—

- (a) means a lease granted for a consideration less than the full market value of the lease, or for no consideration; and
- (b) includes the following leases:
 - (i) a consolidated or subdivided concessional lease;
 - (ii) a further concessional lease;

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(iii) a regranted concessional lease; and

(c) does not include a lease that is not concessional.

Note 1 A lease that is granted as a concessional lease must include a statement that the lease is concessional (see s 238 (2) (a)).

Note 2 The concessional status of a concessional lease may only be removed by a variation of the lease (see div 9.4.2).

not concessional—a lease is ***not concessional*** if the lease is mentioned in schedule 5, part 5.2.

possibly concessional—a lease is ***possibly concessional*** if the lease—

(a) was granted before 31 March 2008; and

(b) does not state that the lease is a concessional lease or not concessional; and

(c) is mentioned in schedule 5, part 5.3, unless the lease is not concessional.

Note Certain leases granted after 30 March 2008 under the *Land (Planning and Environment) Act 1991* are also possibly concessional (see s 459B).

(2) For subsection (1), definition of ***concessional lease***, paragraph (a), 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.

(3) In this section:

consolidated or subdivided concessional lease means 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.

further concessional lease means a further lease if the surrendered lease was a concessional lease.

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regranted concessional lease means a regranted lease (whether the regrant is on the same or different conditions) if the surrendered lease was a concessional lease.

5 Granting leases Section 238 (2) (a)

substitute

(a) a statement that—

- (i) if the lease is a concessional lease—the lease is concessional; or
- (ii) if the lease is not concessional—the lease is not concessional; and

Examples—statement

- 1 a provision in a lease
- 2 a notation or stamp on a lease

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).

6 Restrictions on dealings with certain leases Section 251 (3) to (7)

substitute

- (3) If this section applies to a lease, the planning and land authority must tell the registrar-general that it applies.

Note If the planning and land authority tells the registrar-general that this section applies to a lease, the registrar-general must include a memorial in the register to that effect (see *Land Titles Act 1925*, s 72D).

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- (4) If a memorial stating that this section applies to the lease is included in the register under the *Land Titles Act 1925*, the lessee, or anyone else with an interest in the lease, must not, during the restricted period for the lease, deal with the lease without the written consent of the planning and land authority under section 252.

Note **Memorial**—see the *Land Titles Act 1925*, dictionary.

- (5) However, a regulation may exempt a lease from this section, whether generally or in relation to a particular dealing.
- (6) A dealing in relation to a lease to which this section applies that is made or entered into without consent has no effect.
- (7) However, subsection (6) does not apply to a dealing registered under the *Land Titles Act 1925*.

Note The registration of an interest in land under the *Land Titles Act 1925* takes priority over any other interest in the land, subject to some exceptions (see that Act, s 58).

7 Grant of further leases

Section 254 (3) and note

substitute

- (3) A further lease granted under this section must include a statement that—
- (a) if the lease is a concessional lease—the lease is concessional;
or

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(b) if the lease is not concessional—the lease is not concessional.

Examples—statement

- 1 a provision in a lease
- 2 a notation or stamp on a lease

Note 1 A grant must be lodged with the registrar-general under the *Land Titles Act 1925* (see *Land Titles Act 1925*, s 17 (2)).

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).

**8 Decision about whether lease concessional
New section 257 (2A)**

insert

- (2A) The planning and land authority must decide that the lease is not concessional unless satisfied that the lease is a concessional lease.

9 Section 257 (3), new note

insert

Note 2 The time for making an application for review of a deemed decision is 20 working days after the end of the 20 working-day period mentioned in s (4) (see s 409A).

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10 Section 257 (4)

substitute

- (4) If the planning and land authority is taken to have decided that a lease is a concessional lease under subsection (3), the authority may, within 20 working days after the deemed decision is taken to have been made, decide that the lease is not concessional under subsection (1) despite the deemed decision.

Note Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the planning and land authority will not be able to decide that the lease is not concessional if the ACAT has decided an application for review of the deemed decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

11 New section 257 (6)

after the note, insert

- (6) The *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision) does not apply to this section.

12 New section 258 (2A)

insert

- (2A) The planning and land authority must decide that the lease is not concessional unless satisfied that the lease is a concessional lease.

13 New sections 258A to 258C*insert***258A Application for decision about whether certain leases are concessional**

- (1) This section applies to a lease if—
- (a) the lease was granted before 31 March 2008; and
 - (b) the lease does not expressly state that the lease is a concessional lease; and
 - (c) the planning and land authority made a decision (the *original decision*), whether before or after 31 March 2008, that the lease is a concessional lease; and
 - (d) the original decision is stated in a memorial.

Note **Memorial**—see the *Land Titles Act 1925*, dictionary.

- (2) The lessee of the lease may apply to the planning and land authority for a decision about whether the lease is a concessional lease or not.

258B Making other decisions about concessional status of certain leases

- (1) On application by the lessee under section 258A, the planning and land authority may decide whether the lease is a concessional lease or not.
- (2) However, the planning and land authority must not make a decision under subsection (1) unless—
- (a) the authority is satisfied that—
 - (i) there is additional relevant information about the concessional status of the lease; or

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- (ii) there is information to indicate that the authority made a formal error when it made the original decision; and

Note **Formal error**—see the dictionary.

- (b) the authority has—

- (i) given written notice (the **application notice**) of the application to each person (other than the lessee) with a registered interest in the lease; and
- (ii) in the application notice, invited the person to give written representations about the application to the authority at a stated address by not later than the end of a stated period of not less than 15 working days after the date the notice is given to the person; and
- (iii) considered any representations made in the time given in the application notice.

- (3) The planning and land authority must decide that the lease is not concessional unless satisfied that the lease is a concessional lease.
- (4) However, if the planning and land authority has not made a decision on the application at the end of the period of 15 working days after the day the period for making representations given in the application notice ends, the authority is taken to have decided (the **deemed decision**) that the lease is a concessional lease.

Note 1 A lessee has a right to apply for review of a decision under this provision (see ch 13 and sch 1).

Note 2 The time for making an application for review of a deemed decision is 20 working days after the end of the 20 working-day period mentioned in s (5) (see s 409A).

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- (5) If the planning and land authority is taken to have decided that a lease is a concessional lease under subsection (4), the authority may, within 20 working days after the day the deemed decision is taken to have been made, decide that the lease is not concessional under subsection (1) despite the deemed decision.

Note Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the planning and land authority will not be able to decide that the lease is not concessional if the ACAT has decided an application for review of the deemed decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

- (6) The planning and land authority must give written notice of the decision under subsection (1) to the applicant and anyone else with an interest in the lease to which the decision relates.

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

- (7) The *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision) does not apply to this section.

- (8) In this section:

original decision—see section 258A (1) (c).

258C Authority may make another decision about whether certain leases concessional on own initiative

- (1) This section applies to a lease if—
- (a) the lease was granted before 31 March 2008; and
 - (b) the lease does not expressly state that the lease is a concessional lease; and

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- (c) the planning and land authority made a decision (the ***original decision***) that the lease is concessional, whether before or after 31 March 2008, and the decision is stated in a memorial.

Note **Memorial**—see the *Land Titles Act 1925*, dictionary.

- (2) The planning and land authority may, on its own initiative, decide whether the lease is concessional or not.
- (3) However, the planning and land authority must not make a decision under subsection (2) unless—
- (a) the authority is satisfied that—
- (i) there is additional relevant information about the concessional status of the lease; or
- (ii) there is information to indicate that the authority made a formal error when it made the original decision; and

Note **Formal error**—see the dictionary.

- (b) the authority has—
- (i) given written notice (the ***lease decision notice***) of the authority's intention to make a decision under subsection (2) to each person with a registered interest in the lease; and
- (ii) in the lease decision notice, invited the person to give written representations about the proposed decision to the authority at a stated address by not later than the end of a stated period of not less than 15 working days after the date the notice is given to the person; and
- (iii) considered any representations made in the time given in the lease decision notice.

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- (4) The planning and land authority must decide that the lease is not concessional unless satisfied that the lease is a concessional lease.
- (5) Also, if the planning and land authority gives a lease decision notice in relation to a lease, the authority must make a decision under subsection (2) in relation to the lease not later than 15 working days after the day the period for making representations given in the lease decision notice ends.
- (6) The planning and land authority must give written notice of the decision under subsection (2) to each person with an interest in the lease to which the decision relates.

Note 1 If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

Note 2 A lessee has a right to apply for review of a decision under this provision (see ch 13 and sch 1).

14 Section 259

substitute

259 Lodging notice of decision about concessional status of lease

- (1) This section applies if—
 - (a) the planning and land authority makes a decision that a lease is a concessional lease or is not concessional; and
 - (b) either—
 - (i) no application is made to the ACAT for review of the decision that the lease is a concessional lease or is not concessional within the time allowed for applications; or

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(ii) an application for review of the decision is made and the ACAT—

(A) confirms, varies or substitutes the decision; or

(B) remits the matter for reconsideration by the planning and land authority and the planning and land authority decides that the lease is a concessional lease or is not concessional.

Note The planning and land authority may decide whether a lease is concessional under s 257, s 258, s 258B or s 258C.

(2) The planning and land authority must lodge notice that the lease is a concessional lease or is not concessional with the registrar-general for registration under the *Land Titles Act 1925*.

Note The registrar-general must register an instrument lodged in registrable form (see *Land Titles Act 1925*, s 48 (1)).

259A Lodging notice of deemed decision about concessional status of lease

(1) This section applies if—

(a) the planning and land authority is taken to have made a decision that a lease is concessional under section 257 (3) or section 258B (4); and

(b) the 20 working-day period mentioned in section 257 (4) or section 258B (5) for the decision has ended; and

(c) either—

(i) no application is made to the ACAT for review of the decision that the lease is a concessional lease within the time allowed for applications; or

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- (ii) an application for review of the decision is made and the ACAT—
 - (A) confirms, varies or substitutes the decision; or
 - (B) remits the matter for reconsideration by the planning and land authority and the planning and land authority decides that the lease is a concessional lease or is not concessional.
- (2) The planning and land authority must lodge notice that the lease is a concessional lease or is not concessional with the registrar-general for registration under the *Land Titles Act 1925*.

Note The registrar-general must register an instrument lodged in registrable form (see *Land Titles Act 1925*, s 48 (1)).

259B Non-concessional status of leases

- (1) This section applies to a lease that is not concessional if—
 - (a) the lease states that the lease is not concessional; or
- Examples**
- 1 a lease that includes a statement, for example as a condition of the lease or a notation or stamp on the lease, that the lease is not concessional
 - 2 a memorial stating that a lease is not concessional
- 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).
- (b) the planning and land authority has lodged a notice that the lease is not concessional with the registrar-general for registration under the *Land Titles Act 1925*.
 - (2) The planning and land authority must not make a decision that would change the lease's status as not concessional.

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259C Concessional status of leases

- (1) This section applies to a concessional lease if—
- (a) the lease states that the lease is a concessional lease; or

Examples

- 1 a lease that includes a statement, for example as a condition of the lease or a notation or stamp on the lease, that the lease is a concessional lease
- 2 a memorial stating that a lease is a concessional lease

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).

- (b) the planning and land authority has lodged a notice that the lease is a concessional lease with the registrar-general for registration under the *Land Titles Act 1925*.
- (2) The planning and land authority must not make a decision that would change the lease's status as a concessional lease.
- (3) This section is subject to—
- (a) a decision about whether a lease is a concessional lease under section 258B or section 258C; and
- (b) a variation of the lease to remove the concessional status of the lease under division 9.4.2.

259D Concessional status guidelines

- (1) The planning and land authority may make guidelines (the ***concessional lease guidelines***) setting out information to assist people to decide whether a lease is a concessional lease, is not concessional or is possibly concessional.

- (2) A person who is deciding whether a lease is a concessional lease, is not concessional or is possibly concessional may have regard to the concessional lease guidelines but is not bound by the guidelines.
- (3) A concessional lease guideline is a notifiable instrument.

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

**15 Application—div 9.4.2
Section 260**

after

the application

insert

is for or

16 New section 260A

insert

260A Removal of concessional status by variation of lease

The concessional status of a lease may only be removed by a variation of the lease.

Example

surrender of a concessional lease and regrant of a new lease that is not concessional

Note 1 A variation of a lease is a development (see s 7).

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).

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**17 Development approval of application about concessional lease subject to condition
Section 262**

after

the Territory

insert

or a territory entity

18 New section 262 (2)

after the notes, insert

- (2) A payout amount is taken to be paid to the Territory or a territory entity if the amount is waived by the Treasurer under the *Financial Management Act 1996*, section 131, or part of the amount is waived and the rest of the amount is paid.

**19 Working out amount payable to discharge concessional leases
Section 263 (1)**

after

the Territory

insert

or a territory entity

20 Restrictions on dealings with concessional leases
New section 265 (3)

insert

- (3) However, subsection (2) does not apply to a dealing registered under the *Land Titles Act 1925*.

Note The registration of an interest in land under the *Land Titles Act 1925* takes priority over any other interest in the land, subject to some exceptions (see that Act, s 58).

21 No variation of certain leases for 5 years
New section 275 (4) and (5)

insert

- (4) However, the planning and land authority may consent to the variation if the variation does not limit, add or remove an existing authorised use of the land.

- (5) In this section:

authorised use, of land—

- (a) means a use authorised (whether expressly or by implication) by a lease; and
- (b) includes a use authorised by a lease that expired not more than 6 months before the use if the lease is renewed within 6 months after the expiry.

22 Transfer of land subject to building and development provision
Section 298 (6)

omit

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23 New section 409A

insert

409A ACAT review—time for making application for deemed decisions

- (1) This section applies to a reviewable decision under section 257 (3) (Decision about whether lease concessional) or section 258B (5) (Making other decisions about concessional status of certain leases).
- (2) The application for review must be made not later than 20 working days after—
 - (a) for a decision to which section 257 (3) applies—the 20 working-day period mentioned in section 257 (4); or
 - (b) for a decision to which section 258B (4) applies—the 20 working-day period mentioned in section 258B (5).

24 New section 455A

insert

455A Transitional—concessional leases under repealed Act

- (1) For the repealed Act, section 159A, definition of *concessional lease*, paragraph (a) a payment mentioned in subparagraph (i) or (ii) was *made* if the amount was paid to the Territory, a territory entity, the Commonwealth, a Commonwealth entity or the entity that originally granted the lease.

- (2) An amount is taken to have been paid to the Territory, a territory entity, the Commonwealth, a Commonwealth entity or the entity that originally granted the lease if the amount was waived by the Treasurer under the *Financial Management Act 1996*, section 131, or part of the amount was waived and the rest of the amount was paid.

25 New section 456B

insert

456B Transitional—certain City Area Leases Act 1936 leases

- (1) This section applies to a lease—
- (a) granted or continued, or purported to be granted or continued, under the *City Area Leases Act 1936*; and
 - (b) in force immediately before 2 April 1992; and
 - (c) to which the *City Area Leases Act 1936*, section 18 (Rent) applies.
- (2) Despite the repeal of the *City Areas Leases Act 1936*, that Act, section 18 applies to the lease from 2 April 1992.

**26 Transitional—applications for certain grants before commencement day
New section 458 (3) (aa)**

before paragraph (a), insert

- (aa) must include a statement that—
- (i) if the lease is a concessional lease—the lease is concessional;
or

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- (ii) if the lease is not concessional—the lease is not concessional;
and

Examples—statement

- 1 a provision in a lease
- 2 a notation or stamp on a lease

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).

27 Transitional—contracts before commencement day to grant leases
New section 459A (3) (aa)

before paragraph (a), insert

- (aa) must include a statement that—
- (i) if the lease is a concessional lease—the lease is concessional;
or
 - (ii) if the lease is not concessional—the lease is not concessional;
and

Examples—statement

- 1 a provision in a lease
- 2 a notation or stamp on a lease

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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28 New section 459B*insert***459B Transitional—certain possibly concessional leases granted after 30 March 2008**

- (1) Without limiting section 235A (1), definition of *possibly concessional*—
- (a) a lease is *possibly concessional* if the lease—
 - (i) was granted after 30 March 2008; and
 - (ii) was granted under the repealed Act; and
- Note* A lease may be granted under the repealed Act after 30 March 2008 under s 458 and s 459A.
- (iii) does not state that the lease is a concessional lease or not concessional; and
 - (iv) is mentioned in schedule 5, part 5.3; but
- (b) a lease is not *possibly concessional* if the lease is not concessional.
- (2) However, a lease mentioned in schedule 5, part 5.2, item 19 is possibly concessional if it satisfies the requirements in subsection (1) (a).

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29 Reviewable decisions, eligible entities and interested entities
Schedule 1, new item 19A

insert

19A	decision under s 258B or 258C that lease is, or is not, concessional	planning and land authority	lessee	
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30 New schedule 5*insert***Schedule 5 Leases that are not concessional and possibly concessional***(see s 235A, defs not concessional and possibly concessional)***Part 5.1 Interpretation****5.1 Definitions—sch 5**

In this schedule:

deal—see section 234.

incorporated association means an association incorporated under the *Associations Incorporation Act 1991* or a law of another jurisdiction corresponding, or substantially corresponding, to that Act.

rental lease—see section 234.

residential lease—see section 234.

rural lease—see section 234.

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Part 5.2 Leases that are not concessional

column 1 item	column 2 lease
1	<p>a lease that neither states that the lease is a concessional lease nor is possibly concessional</p> <p>Examples—states that lease is a concessional lease</p> <p>1 a lease that includes a statement, for example as a condition of the lease or a notation or stamp on the lease, that the lease is concessional</p> <p>2 a memorial stating that a lease is concessional</p>
2	a consolidated or subdivided lease or further or regranted lease, other than a lease mentioned in section 235A (1), definition of <i>concessional lease</i> , paragraph (b)
3	a rural lease
4	a lease over land that, immediately before the grant of the lease, was owned, controlled or held by the housing commissioner under the <i>Housing Assistance Act 2007</i>
5	<p>a lease granted to the Territory or a territory entity</p> <p><i>Note</i> Territory entity—see the dictionary.</p>
6	a residential lease
7	<p>a rental lease granted for commercial purposes after 1 January 1974 if the rent was paid out—</p> <p>(a) in accordance with a law in force in the Territory; or</p> <p>(b) by agreement between the Commonwealth or the Territory and the lessee</p> <p>Examples—commercial purposes</p> <p>1 industrial</p> <p>2 business</p>

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column 1 item	column 2 lease
8	<p>a lease (the <i>individual lease</i>) granted for no consideration if—</p> <ul style="list-style-type: none"> (a) the individual lease is granted following the subdivision of a lease (the <i>head lease</i>) held by the person to whom the individual lease is granted; and (b) the person has provided infrastructure on the land leased under the head lease
9	<p>a lease granted under the <i>City Area Leases Act 1936</i> if the lease was—</p> <ul style="list-style-type: none"> (a) granted before 1 January 1971; and (b) not granted for— <ul style="list-style-type: none"> (i) zero rent; or (ii) nominal rent; or (iii) rent similar to nominal rent. <p><i>Note</i> Nominal rent—see the dictionary.</p>
10	<p>a lease granted under the <i>Leases (Special Purposes) Ordinance 1925</i> if the lease was—</p> <ul style="list-style-type: none"> (a) granted before 1 January 1971; and (b) not granted for— <ul style="list-style-type: none"> (i) zero rent; or (ii) nominal rent; or (iii) rent similar to nominal rent. <p><i>Note</i> Nominal rent—see the dictionary.</p>

EXPOSURE DRAFT

column 1 item	column 2 lease
11	<p>a lease that states that the lease is not concessional</p> <p>Examples</p> <p>1 a lease that includes a statement, for example as a condition of the lease or a notation or stamp on the lease, that the lease is not concessional</p> <p>2 a memorial stating that a lease is not concessional</p>
12	<p>a lease granted to an entity, other than the Territory or a territory entity, if—</p> <p>(a) the lease expressly states that the lease commenced, or is taken to have commenced, on a day (the <i>lease commencement day</i>) earlier than the day the lease was granted; and</p> <p>(b) the land comprised in the lease was occupied by the Territory or a territory entity on the lease commencement day</p> <p><i>Note</i> Territory entity—see the dictionary.</p>
13	<p>a lease granted to the Commonwealth or a Commonwealth entity</p>
14	<p>a lease granted to an entity, other than the Commonwealth or a Commonwealth entity, if—</p> <p>(a) the lease expressly states that the lease commenced, or is taken to have commenced, on a day (the <i>lease commencement day</i>) earlier than the day the lease was granted; and</p> <p>(b) the land comprised in the lease was occupied by the Commonwealth or a Commonwealth entity on the lease commencement day</p> <p><i>Note</i> Commonwealth entity—see the dictionary.</p>

EXPOSURE DRAFT

column 1 item	column 2 lease
15	<p>a lease granted under the <i>City Area Leases Act 1936</i> if, on 1 July 2009—</p> <ul style="list-style-type: none"> (a) the lessee of the lease is the holder of a club licence under the <i>Liquor Act 1975</i>; and (b) at least 75% of the area of the land comprising the lease is located in— <ul style="list-style-type: none"> (i) a commercial zone under the territory plan; or (ii) a designated area under the Australian Capital Territory (Planning and Land Management) Act 1988 (Cwlth); and <p>Example</p> <p>30% of land comprised in a lease is located in a commercial zone and 50% of land is located in a designated area</p> <ul style="list-style-type: none"> (c) the lease does not state that there is a restriction on dealing with the lease; and (d) the lease authorises the land comprised in the lease to be used for both— <ul style="list-style-type: none"> (i) a licensed club under the <i>Liquor Act 1975</i>; and (ii) a commercial purpose unrelated to the club <p>Examples—commercial purpose</p> <ul style="list-style-type: none"> 1 a shop under the territory plan 2 a non-retail commercial use under the territory plan 3 a commercial accommodation use under the territory plan
16	a lease granted to the Australian National University established under the <i>Australian National University Act 1991</i> (Cwlth)
17	a lease granted under the <i>Land (Planning and Environment) Act 1991</i> , section 164 (Special leases) if the lease was granted not more than 5 years beforehand
18	a lease granted under the <i>City Area Leases Act 1936</i> for commercial purposes

EXPOSURE DRAFT

column 1 item	column 2 lease
19	<p>a lease granted after 30 March 2008 that does not state that the lease is a concessional lease</p> <p><i>Note</i> Certain leases granted after 30 March 2008 under the <i>Land (Planning and Environment) Act 1991</i> are possibly concessional (see s 459B).</p>
20	<p>a lease granted before 31 March 2008 if—</p> <ul style="list-style-type: none"> (a) the lease was granted for a consideration less than the full market value of the lease, or for no consideration; but (b) 1 of the following payments was made to the Territory, a territory entity, the Commonwealth, a Commonwealth entity or the entity that originally granted the lease: <ul style="list-style-type: none"> (i) an amount in relation to the grant of the lease that was equal to the lease's market value at the time of payment or, if the amount was paid in parts, at the time of the last payment; (ii) an amount to reduce the rent payable under the lease to a nominal rent under the <i>Land (Planning and Environment) Act 1991</i>, section 186 (Variation of lease to pay out rent)
21	<p>a lease granted before 1 July 2007 if—</p> <ul style="list-style-type: none"> (a) the lessee applied in writing to the planning and land authority or the Minister to remove the concessional status of the lease; and (b) the planning and land authority or the Minister— <ul style="list-style-type: none"> (i) approved the application in writing before 31 March 2008, subject to payment of an amount (the application amount), decided by the planning and land authority or the Minister, equal to the lease's market value; and (ii) decided the application amount in writing, after 1 July 2007 and before 31 March 2008; and (c) the lessee did not pay the application amount before 31 March 2008; and

EXPOSURE DRAFT

column 1 item	column 2 lease
	(d) the lessee pays the application amount within 6 months after the commencement of this schedule
22	a lease prescribed by regulation

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).

Part 5.3 Possibly concessional leases

column 1 item	column 2 lease
1	a lease granted to a property trust or other corporation established by or in relation to a religious organisation that may hold property in accordance with an Act
2	a lease that states that the lease was granted under the <i>Leases (Special Purposes) Act 1925</i>
3	a lease that states that the <i>Land (Planning and Environment) Act 1991</i> , section 167 applies to the lease
4	a lease that includes a restriction on dealing with the lease under the lease
5	a lease granted after 31 December 1999 and before 31 March 2008
6	a lease that states that the lease was granted under the <i>Leases Act 1918</i>
7	a lease that states that the lease is subject to a restriction on the use of the land by the lessee
8	a lease granted to an incorporated association if— <ul style="list-style-type: none"> (a) the incorporated association is still the lessee; and (b) the lease states that the lease is subject to a requirement that the incorporated association occupy a minimum area of land

EXPOSURE DRAFT

column 1 item	column 2 lease
9	a lease— <ul style="list-style-type: none"> (a) granted to a club, whether or not the club is still the lessee; or (b) that authorises the land comprised in the lease to be used for a club
10	a lease granted to a community organisation that states that the lease was granted under the <i>Land (Planning and Environment) Act 1991</i> , section 163, whether or not the community organisation is still the lessee <i>Note</i> Community organisation —see the dictionary.
11	a lease granted to an incorporated association or community organisation over a unit in a units plan under the <i>Unit Titles Act 2001</i> if— <ul style="list-style-type: none"> (a) the lease (the original lease) that ended on registration of the units plan was granted to the incorporated association or community organisation; and (b) the incorporated association or community organisation occupies the unit— <ul style="list-style-type: none"> (i) for its own purposes; and (ii) in accordance with a condition in the original lease <i>Note</i> On registration of a units plan, the lease of the parcel of land over which the units plan is registered ends (see <i>Unit Titles Act 2001</i> , s 33).
12	a lease, other than a rural lease, granted for a term less than 99 years

Note A lease is not possibly concessional if it is a concessional lease or is not concessional (see s 235A (1), def **possibly concessional**).

31 Dictionary, new definitions

insert

Commonwealth entity means—

- (a) a body established under a Commonwealth Act; 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); or
- (d) a company in which a controlling interest is held by either of the following, or by both of the following together:
 - (i) the Commonwealth;
 - (ii) a Commonwealth company under the *Commonwealth Authorities and Companies Act 1997* (Cwlth).

community organisation means a corporation that—

- (a) has, as its principal purpose, the provision of a service, or a form of assistance, to people living or working in the ACT; and
- (b) is not carried on for the financial benefit of its members; and
- (c) does not hold a club licence under the *Liquor Act 1975*.

32 Dictionary, definition of *concessional lease*

substitute

concessional lease—see section 235A.

EXPOSURE DRAFT

33 Dictionary, new definitions

insert

memorial—see the *Land Titles Act 1925*, dictionary.

not concessional, in relation to a lease—see section 235A.

possibly concessional, in relation to a lease—see section 235A.

territory entity means—

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

Note ***Territory authority***, ***territory instrumentality*** and ***territory-owned corporation***—see the *Legislation Act*, dictionary, pt 1.

Part 3 Planning and Development Regulation 2008

34 Legislation amended—pt 3

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

35 Concessional leases Part 5.1A

omit

36 Definitions—pt 5.1 Section 100, definition of *Commonwealth entity*

omit

37 Section 100, definition of *territory entity*

substitute

territory entity does not include the housing commissioner.

38 Direct sales requiring approval by Executive— Act, s 240 (1) (a) Section 105 (a) (i), note

substitute

Note *Territory entity*—see the Act, dictionary.

39 Section 105 (a) (ii), note

substitute

Note *Commonwealth entity*—see the Act, dictionary.

EXPOSURE DRAFT

40 Section 105 (e), note*substitute**Note Community organisation*—see the Act, dictionary.**41 Direct sale criteria for territory entities—
Act, s 240 (1) (a) (i)
Section 106, note***substitute**Note Territory entity*—see the Act, dictionary.**42 Direct sale criteria for Commonwealth entities—
Act, s 240 (1) (a) (i)
Section 107 (1), note***substitute**Note Commonwealth entity*—see the Act, dictionary.**43 Direct sale criteria for community organisations—
Act, s 240 (1) (a) (i)
Section 112 (1), note***substitute**Note Community organisation*—see the Act, dictionary.**44 Direct sale criteria for supportive accommodation—
Act, s 240 (1) (a) (i)
Section 113 (1) (a), note***substitute**Note Community organisation*—see the Act, dictionary.**EXPOSURE DRAFT**

45 Section 142 heading*substitute***142 Exemptions from restrictions on dealings with certain leases—Act, s 251 (5)****46 Increase of change of use charge for concessional leases—Act, s 279 (1) and (2)
Section 181 (3), definition of *consolidated or subdivided concessional lease****omit*

235

substitute

235A

**47 Increase of change of use charge for recently commenced leases—Act, s 279 (1) and (2)
Section 182 (1) (b), note***omit*

235

substitute

235A

**48 Amount of refund on surrender or termination of certain leases—Act, s 300 (2)
Section 210 (1) (b), note***substitute**Note Community organisation*—see the Act, dictionary.**EXPOSURE DRAFT**

49 Dictionary, note 3

insert

- community organisation
- concessional lease (see s 235A)
- territory entity

**50 Dictionary, definitions of *Commonwealth entity*,
community organisation and *territory entity***

omit

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2010.

2 Notification

Notified under the Legislation Act on 2010.

3 Republications of amended laws

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