

1996

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

LAND (PLANNING AND ENVIRONMENT) (AMENDMENT) BILL (NO 4) 1996

EXPLANATORY MEMORANDUM

Circulated by Authority of Gary Humphries MLA

Minister for the Environment, Land and Planning

Outline

The Land (Planning and Environment) (Amendment) Bill (No.4) 1996 (the Bill) amends certain provisions of the Land (Planning and Environment) Act 1991 (the Principal Act).

The Principal Act establishes a regime for dealing with land, planning, heritage and environment matters.

In 1995, the Inquiry into the Administration of the ACT Leasehold, established under the *Inquiries Act 1991*, made a number of significant recommendations in relation to planning and land administration practices in the Australian Capital Territory. The Bill gives effect to a large number of those recommendations, and also to the recommendations of the Red Tape Task Force Report and the Mant/Collins Review of Planning Functions and Structures.

The Bill provides for changes to:

- the structure of the agency administering the Territory Plan and the leasehold system;
- the conduct of Preliminary Assessments under Part IV;
- the grant of further leases under Part V;
- the charges applicable to variations of leases under Part VI;
- the process for notification and consideration of applications under Part VI, and for review of decisions under that Part; and
- the provisions for enforcement of the Principal Act and leases.

With the merging of the planning and leasehold management functions into a single administrative Group, the composition of the ACT Planning Authority has been altered to reflect the joint functions of the two former areas. There will no longer be a formal position of Chief Planner constituting the Authority - that function will be performed by the head of the administrative Group responsible for planning and administration of leasehold.

The process for requiring, notifying and assessing Preliminary Assessments under Part IV has been simplified by clarifying and streamlining the provisions relating to the giving of notice and public consultation.

Sections 171 and 172 of the Act have been amended, and new provisions inserted, to provide for a simple and certain process for the granting of further leases at any time, rather than requiring the lease to be within the last 30 years of its original term. The Principal Act will provide for the granting of further leases for rural purposes.

The Bill repeals section 184 of the Principal Act and inserts new provisions relating to the charge applicable to all variations of leases. Not only is the methodology for assessment of the charge (now to be known as the "change of use charge") changed by the Bill but, where the lease is held on the basis of payment of rent other than a nominal rent, provision is made for the imposition of the charge as an increase in rent payable under the lease. Any remission of, or increase in, the charge is to be provided for in a disallowable instrument.

The Bill substantially amends Part VI of the Principal Act by simplifying the application, notification, approval/refusal and appeals provisions. Applications comprising several different activities will not require separate applications, notification, approvals and appeals for each of those activities, but will be dealt with as composite applications. Notification and appeal provisions have been reviewed, and the provision for identification of exclusion of those requirements or rights in the Territory Plan has been removed. Under the new provisions, the standing of third parties to seek review of decisions under Part VI is restricted to persons who have an interest that is substantially and adversely affected.

The Bill inserts a new Division 4A into Part VI providing for the Commissioner for Land and Planning. The Commissioner is an independent office empowered to make decisions relating to applications for approvals and orders under Part VI. Decisions in relation to some matters may be taken by the Minister (or a delegate) rather than the Commissioner, and the Minister is to have the power to “call in” certain matters subject to a notification requirement.

The Bill also makes a number of amendments to the Principal Act simplifying and clarifying various processes or requirements, and correcting existing errors or anomalies.

In line with the amendments to the Principal Act, the Bill makes consequential amendments to other Acts.

Financial Implications

The Bill may have some positive revenue impact if changes to the charges imposed on lease variations, and the granting of further leases, result in increased development activity.

CLAUSE NOTES

PART I - PRELIMINARY

Clauses 1 and, 2 - Short Title, and Commencement - are machinery provisions that specify the short title of the Bill, and provide for the commencement of the Bill.

PART II - LAND (PLANNING AND ENVIRONMENT) ACT 1991

Clause 3 - Principal Act - identifies the Act being amended.

Clause 4 - Interpretation - amends section 4 by omitting the references to Schedule 4 in the definition of “controlled activity” and adding the definitions of “Commissioner” (the Commissioner for Land and Planning appointed under section 274A), “public land” and “public street”.

Clause 5 - Interpretation - amends section 5 by omitting the definition of “Chief Planner”.

Clause 6 - Object - amends section 7. Subsection 7(2) is amended by the removal of the requirement that the Territory Plan identify an area of public land for each of the purposes specified in section 193. Paragraph 7(3)(c) is repealed, so that the Territory Plan will no longer specify activities requiring approval under Part VI or identify circumstances in which decisions under Part VI may not be appealed by third parties. Paragraph 7(3)(f) is amended to clarify the provision under which the purposes of public land are specified.

Clause 7 - Effect of Plan - amends section 8 which provides that the Territory, the Executive, a Minister or a Territory authority may not do anything inconsistent with the Territory Plan. The transitional provision in subsection 8(2), excluding design and siting approvals existing at the date of commencement of section 8 of the Principal Act from the operation of the section, is no longer required.

Clause 8 - Effect of draft Plan variations - amends section 9 by omitting paragraph (c) from the definition of “defined period” in subsection 9(3). The paragraph is not required given the amendment to subsection 26(6).

Clause 9 - Preparation of variations - amends section 15 by omitting subsection 15(3). The requirement that variations to the Territory Plan have regard to the Metropolitan Policy Plan is no longer required.

Clause 10 - Substitution - repeals section 16 and inserts a new section 16 requiring the Planning Authority to consider any recommendation of the Conservator in relation to a draft Plan variation and to consult with the Conservator in relation to Plan variations affecting public land (except where the variation gives effect to a recommendation of the Conservator under section 192).

Clause 11 - Public consultation - amends section 19 by adding a new paragraph 19(1)(ba) requiring comments from the National Authority to be made available for public inspection.

Clause 12 - Public inspection of comments - amends section 21 by omitting subsection 21(1). The provision is no longer required, as the requirement to make comments on a draft variation available for inspection has been placed within section 19.

Clause 13 - Revision, deferral or withdrawal of draft Plan variations - amends section 22 to clarify the requirement to notify a decision to revise, defer or withdraw a draft Plan variation. Subsection 22(6) is omitted and replaced with subsection 22(2A) which removes the specification that notice in a daily newspaper is to be given on a Saturday. Subsection 22(5) has also been amended to provide that notice of a revival of a draft Plan variation is to be published in a daily newspaper as well as in the Gazette.

Clause 14 - Submission of draft Plan variation to Executive - makes minor amendments to section 24 to clarify its meaning.

Clause 15 - Executive powers - amends section 26 by omitting subsections 26(4) and (5) and substituting new subsections 26(4), (5) and (6) which clarify the effect of the exercise by Executive of its power to revoke an approval of a draft Plan variation and the requirement to notify directions on a draft variation given to the Planning Authority.

Clause 16 - Consideration of Plan variation by Legislative Assembly - amends subsections 29(1), (6) and (8) and paragraph 29(9)(a) to achieve consistency with other provisions in Part II, and inserts a new subsection 29(9A) requiring that notification of withdrawal of a provision of a Plan variation also be published in a daily newspaper.

Clause 17 - Plan variations in relation to defined land - amends subsection 32(2) to make it clear that the provision relates to all or part of a parcel of defined land. Subsection 32(4) is amended to provide for the cessation of the status of land as defined land upon variation of the Plan.

Clause 18 - Subdivision heading - omits the heading of Subdivision A of Division 4 of Part II.

Clause 19 - Establishment - amends section 33 to provide that an Executive Office constituting the Planning Authority will be created and maintained, the duties of which include performing the functions of the Planning Authority.

Clause 20 - Repeal - repeals section 34, removing the requirement that the Authority be constituted by the Chief Planner.

Clause 21 - Executive policy directions - repeals subsections 37(1) and (2) and inserts a new subsection 37(1) setting out the written directions that may be given by the Executive or the Minister to the Authority.

Clause 22 - Repeal - repeals section 42 of the Principal Act. Subclause (2) preserves the validity of any action taken by the Authority before the date of commencement of this clause.

Clause 23 - Repeal - repeals Subdivision B of Division 4 of Part II, so that there is no longer to be a person appointed to be the Chief Planner.

Clause 24 - Constitution - amends paragraph 97(1)(a) of the Principal Act by replacing the reference to “Chief Planner” with a reference to “Authority”.

Clause 25 - Directions - corrects a typographical error in section 113.

Clause 26 - Submission to Minister - amends section 116 by providing for the imposition of a determined fee.

Clause 27 - Substitution - Public inspection - repeals section 117 and inserts a new section 117 to simplify the procedure for consideration of Preliminary Assessments. Notification is to be undertaken by the Environment Minister, not by the proponent, and the costs incurred by the Territory in notifying the preliminary assessment are to be paid to the Territory by the proponent.

Clause 28 - Directions - amends section 123 in relation to directions from the Minister to the proponent that an Assessment be made.

Clause 29 - Interpretation - amends section 159 by omitting the definitions of “public land” and “Territory Land”, and inserting definitions for “consolidation”, “rural lease” and “subdivision”. Subsection 159(3), which brings the surrender and regrant of a lease within the meaning of a variation of a lease, is omitted and restated in a new section 184.

Clause 30 - Granting of leases - amends section 161 by inserting new subsections 161(2A) and (2B). Those provide that the Executive may specify classes of persons eligible or ineligible for the grant of a lease by auction, tender or ballot under section 161 and that, if only one person is eligible as a result of such a restriction, the Executive may grant a lease to that person by direct grant under paragraph 161(1)(d).

Clause 31 - Repeal - repeals section 165.

Clause 32 - Eligibility for certain classes of leases - extends the operation of section 167 to require not only lessees but other persons having an interest in the lease to obtain the consent of the Minister to certain dealings in leases to which the section applies.

Clause 33 - Grant of further lease for residential purposes - amends section 171 to simplify the procedure for obtaining the grant of a further lease for residential purposes. Those leases may now be granted at any time upon application and payment of the determined fee, and surrender of the existing lease. If the term of the further lease is not greater than the term of the existing lease, the determined fee may not exceed the cost of granting the lease.

Clause 34 - Insertion - inserts a new section 171A providing for the grant of a further lease for rural purposes. Those leases may be granted at any time, on surrender of the existing lease. The applicable fee, the term of the new lease and any conditions applicable to the grant of the lease will be set out in a disallowable instrument.

Clause 35 - Grant of further lease for purposes other than residential or rural - amends section 172 to simplify the procedure for the grant of a further lease for purposes other than residential or rural. Those leases may be granted at any time upon application, payment of the determined fee and surrender of the existing lease. If the term of new lease does not exceed the term of the existing lease, the determined fee may not exceed the cost of granting the lease.

Clause 36 - Insertion - Grant of further lease - unit titles - inserts section 172A which provides that, in respect of a lease of a unit or common property the subject of a units plan under the *Unit Titles Act 1970*, the Executive may not grant a further lease unless the corporation makes a joint application on behalf of the lessees of all of the units and on its own behalf. The Executive must grant a further lease for all of the units and the common property, and all for the same term. The surrender of leases under sections 171, 171A or 172 will not affect the registration of the units plan.

Clause 37 Lessee's rights in respect of improvements - amends section 173 to clarify its provisions and to extend its application to pastoral improvements undertaken on rural leases. A new subsection 173(5A) is inserted to apply the section to the withdrawal of all or part of the land subject to a lease.

Clause 38 - Determination of value of improvements - amends section 174 in relation to the assessment of compensation for improvements under section 173, to ensure that land withdrawn from a lease is valued at the appropriate time.

Clause 39 - Use of land for leased purpose - amends section 175 to make it clear that residential leases allow the conduct of a home business or home occupation. A new subsection 175(3) provides that the regulations may prescribe certain development or activities for which land may be used notwithstanding the purpose authorised by a lease.

Clause 40 - Certificates of compliance - amends section 179 by the insertion of subsections 179(1A), (1B) and (1C) to provide for the issue of partial certificates of compliance where building and development required under a lease is partially complete.

Clause 41 - Transfer of land subject to building and development provision - amends section 180 to provide that the Minister may consent to a dealing in a lease, subject to a building and development provision that has not been complied with, after taking into account any matters determined by a disallowable instrument.

Clause 42 - Mortgage of leasehold subject to building and development provision - makes a minor amendment to section 181.

Clause 43 - Substitution - repeals section 184 and substitutes new sections 184, 184A, 184B and 184C. The new provisions apply to applications for variation of a lease made on and after the commencement of this amendment.

- **Section 184 - Application to surrender and regrant of leases** - provides that a reference in this Division to the variation of a lease is to be read as including the surrender of a lease and the grant of a new lease or leases subject to different provisions, except where the new lease is granted under section 171, 171A or 172.
- **Section 184A - Variation of lease for nominal rent - change of use charge** - provides for the charge applicable to the variation of a lease under which the lessee is liable to pay a nominal rent 'if and when demanded'. It provides that the Executive shall not execute a variation of a lease for nominal rent unless the lessee pays to the Territory any change of use charge determined, subject to section 184B. The lessee is to pay 75% of the increase in the value of the lease as set out in subsection 184A(2). Subsection 184A(3) provides that no change of use charge is payable if the value of the lease falls or does not change as a result of the variation to the lease.
- **Section 184B - Remission or increase of change of use charges** - provides that the charge payable under section 184A may be remitted if the lease or the variation is the subject of a regulation made under subsection 184B(2) or (4). Under subsection 184B(5), such a regulation cannot take effect before the last day on which it could have been disallowed under section 6 of the *Subordinate Laws Act 1989*.
- **Section 184C - Variation of rental leases - reappraisal upon variation** - provides that the Executive shall not execute a variation of a lease for which rent greater than a nominal rent is payable unless any rent and additional rent payable under the lease is paid up to the date of the variation. Upon variation, the rent payable under the lease is to be reappraised to reflect any increase in value, and thereafter rent will be reassessed in accordance with the existing provisions of the lease.

Clause 44 - Variation of lease to pay out rent - amends section 186 by adding a new paragraph 186(1)(d) requiring the lessee to pay to the Territory an amount determined by a disallowable instrument. That paragraph provides for a lessee of a rental lease to pay to the Territory a premium in exchange for a lease for nominal rent.

Clause 45 - Insertion - No variations to extend term - inserts section 186A, which provides that the Executive will not vary a lease to extend the term of the lease.

Clause 42 also inserts a new Division 3A containing sections 187 to 187B:

Insertion Division 3A - Consolidation and subdivision

- **Application - nominal rent lease of Territory Land** - a new section 187 provides that Division 3A applies only in relation to the consolidation and subdivision of nominal rent leases.
- **Consolidation and subdivision - change of use charge** - section 187A provides for the calculation and imposition of a change of use charge in relation to the consolidation or subdivision of leases. The provision is similar in content to section 184A.
- **Consolidation and subdivision - remission or increase of change of use charge** - section 187B provides for the remission of, or increase in, change of use charges in relation to the consolidation or subdivision of leases under this Division. The provision is similar in content to section 184B.

Clause 46 - Termination of leases - amends section 188 to provide that notice of termination of a lease is to be served on the Registrar-General and any person having a registered interest in the land. However, the validity of a termination will not be affected by failure to serve that notice.

Clause 47 - Recommendations to the Authority - amends section 192 by clarifying the reference in subparagraph 192(b)(i) of the Principal Act to a variation of the boundaries of an area of public land.

Clause 48 - Reserved areas - amends section 193 to reflect the fact that reservation of an area of public land for each of the purposes set out in section 193 is no longer mandatory, as paragraph 7(2)(b) of the Principal Act has been omitted.

Clause 49 - Access to leased land from public streets and car parks - amends paragraphs 216(1)(a) and (b) by replacing references to "public road" with "public street".

Clause 50 - Notification of certain leases to Legislative Assembly - amends section 216A of the Principal Act by omitting subsection (2). That subsection is not required given the repeal of section 165. Subsections (3) and (4) are amended accordingly.

Clause 51 - Interpretation - amends section 222. The definitions of “application”, “approval” and “objection” are amended to take into account the repeal of sections 235, 240 and 241, and the changes to section 226 requiring applications to be for “development” rather than for a “controlled activity”. New definitions of “building”, “consolidation”, “development”, “relevant authority”, “subdivision” and “structure” are inserted. Subsections 222(3) and (4) are omitted and new subsections 222(3) and (4) inserted clarifying, for the purposes of Part VI, what may be taken to constitute a variation of a lease, and specifying that the regulations may prescribe activities that are to be taken not to be “development” for the purposes of that Part.

Clause 52 - Repeal - repeals section 223. That section, which defined concurring authorities for the purposes of Part VI, is no longer required given the repeal of all provisions relating to concurring authorities.

Clause 53 - Repeal - repeals Subdivision A of Division 2 of Part VI. That Subdivision defined controlled activities for the purposes of Part VI, and is no longer required given the introduction of approvals for “development”.

Clause 54 - Offence - development - amends section 225 by omitting subsection 225(1) and inserting a new subsection 225(1) making it an offence to undertake a development otherwise than in accordance with an approval. Subsection 225(2) is amended to refer to “development” rather than a “controlled activity”.

Clause 55 - Application to undertake development - amends section 226 to provide for applications for “development” rather than for a “controlled activity”.

- Appropriate reference changes are made in subsection 226(1).
- Subsection 226(2) is omitted, and new subsections (2), (2A) and (2B) inserted to provide for the proper execution of applications, and allowing a lessee or the Minister to appoint, in writing, a person to act in relation to an application.
- Subsection 226(3) is amended, subsection 226(4) omitted and a new subsection (4) inserted. Those subsections now provide that an application may be altered at any time, but the applicant is to be notified and, if the alteration occurs after notification under section 229, the application is to be notified again.
- Subsection 226(5) is inserted to allow an application for development to be made for a development that has been undertaken without approval. This will allow an approval to be given to an existing building, structure or activity.

Clause 56 - Restrictions on inspection of applications - makes amendments to section 228 to provide for the exclusion of applications for “development”, rather than for “controlled activities”, from public access.

Clause 57 - Notice of application - omits paragraph 229(1)(c) and subsection 229(2) of the Principal Act to remove references to “concurring authorities” and exclusions of third party appeals under paragraph 7(3)(c). The provisions in relation to the erection of signs giving notice of an application have been amended.

- Subsection 229(2) is omitted and a new subsection (2) substituted. That provision no longer refers to exclusion of appeals under paragraph 7(3)(c), as that paragraph has been repealed.
- A new paragraph 229(4)(ab) is inserted requiring applications that relate to public land to be referred to the Conservator. Paragraph 229(4(a) is amended to make it consistent with paragraph (4)(ab).
- Subsections 229(5), (5A) and (6) are omitted and new subsections (5), (6), (6A) and (6B) substituted. The Minister is to be responsible for erecting a sign in relation to an application, and it will be an offence to tamper with or prevent or restrict access to a sign. The validity of an approval will not be affected by the Minister’s failure to comply with subsection (5).

Clause 58 - Substitution - Determination of applications - repeals section 230 and inserts new sections 229A and 230.

- Section 229A requires the Minister to refer an application to the Commissioner for Land and Planning if it is within a class of applications prescribed in a disallowable instrument. Where an application is referred to the Commissioner, he or she is empowered to approve or refuse the application under section 230 (section 222 defines the “relevant authority” for the purposes of section 230 as being the Commissioner in this case) - the administration of Part VI up to the point of making a decision remains with the Minister. If an application is not within a class declared in a disallowable instrument, the application may nonetheless be referred to the Commissioner. The Minister may, at any time prior to determination by the Commissioner, revoke the referral and determine the application. A copy of any revocation made must be published in the Gazette within 21 days of the notice of revocation.
- Section 230 provides that the “relevant authority” may approve or refuse to approve an application - either the Minister or the Commissioner. Subsection 230(2) provides that an application is to be taken to be refused if a decision has not been made within the prescribed period, and subsection (3) sets out the circumstances in which an approval can be made after the expiration of the prescribed period. An application may now be approved at any time before the earlier of:
 - the Administrative Appeals Tribunal has finally dealt with an application under section 275 to review a deemed refusal; and

- 6 months after the date of the application, unless an Assessment or a variation to the Territory Plan has been required, in which case the period is 12 months.

Subsection 230(4) provides that an application for development that is not consistent with the relevant lease will not take effect until the lease is varied to permit the development.

Clause 59 - Matters to be considered - amends section 231 of the Principal Act to reflect the making of applications for “development” rather than for a “controlled activity”.

Clause 60 - More information - amends section 233 of the Principal Act to provide for the “relevant authority” to request further information on an application and approve a request for an extension of time in which to provide that information.

Clause 61 - Effect of failure to furnish further information - amends section 234 to provide that, where a person fails to furnish information in accordance with a notice under subsection (1), the relevant authority is, for the purposes of enabling the applicant to appeal to the Administrative Appeals Tribunal under section 275, taken to have refused the application for development.

Clause 62 - Repeal - section 235 is repealed. The section, which outlined the duties of concurring authorities, is no longer required given the repeal of all other provisions relating to concurring authorities.

Clause 63 - Objections -general - amends section 237 to reflect the making of applications for “development” rather than for a “controlled activity”.

Clause 64 - Repeal - sections 240 and 241 are repealed. Those sections are not required given the repeal of other provisions relating to concurring authorities.

Clause 65 - Application approved - notification of decision - Section 242 is repealed and replaced with a new section 242 which requires the Minister to give written notice to the applicant of an approval by the relevant authority, including the date on which the approval takes effect. Where the approval is for a lease variation, the Minister is also required to give written notice to the Registrar-General.

Clause 66 - Notification of approval or refusal of application - amends section 243 to reflect the making of applications for “development” rather than for a “controlled activity”, and to remove references to concurring authorities and decisions by the Executive under sections 240 and 241. Subsections (1) and (4) set out the notification requirements where an application has been approved or refused. A new subsection 243(6) is inserted requiring notices under this section to comply with the Code of Practice in force under subsection 25B(1) of the *Administrative Appeals Tribunal Act 1989*.

Clause 67 - Notification where more than 1 objector - amends section 244 by removing references to decisions by the Executive, given the repeal of sections 240 and 241.

Clause 68 - Conditional approvals - amends section 245 to reflect the making of applications for “development” rather than for a “controlled activity”, and to delete references to the repealed sections 240, 241 and 246. References to “Minister” are replaced by references to “relevant authority”.

Clause 69 - Repeal - repeals section 246, which related to decisions of concurring authorities.

Clause 70 - Minor amendments - amends section 247 to reflect the making of applications for “development” rather than for a “controlled activity” and the repeal of section 235, and to substitute “relevant authority” for “Minister”. The section no longer excludes minor amendments to approvals relating to variations of leases or the subdivision or consolidation of parcels of land.

Clause 71 - Corrections - amends section 248 of the Principal Act to replace “Minister” with “relevant authority”.

Clause 72 - Approval - when takes effect - amends section 249 to make the effect of an approval of a development subject to any conditions imposed on the approval by the relevant authority under paragraph 245(3)(d), and to take into account the repeal of sections 240 and 241.

Clause 73 - Substitution - repeals section 250 and substitutes a new section 250 to reflect the making of applications for “development” rather than for a “controlled activity”.

Clause 74 - Expiration of approvals - amends section 251 to reflect the making of applications for “development” rather than for a “controlled activity”.

Clause 75 - Extension of time - amends section 252 to reflect the making of applications for “development” rather than for a “controlled activity”.

Clause 76 - Repeal - repeals section 254. A “controlled activity” for the purposes of Part VI is now defined in section 4 of the Principal Act.

Clause 77 - Application for order - amends section 256 to require an application for an order to be in the form required by the Minister, and to clarify the matters set out in subsection 256(5). Subsection (5) now refers to the activity of “development” and also enables the making of a number of specific orders

Clause 78 - Insertion - inserts a new Division 4A after Division 4 of Part VI. It provides for the appointment and tenure of the Commissioner for Land and Planning.

- **Section 274A - Commissioner for Land and Planning** - provides that there will be a Commissioner for Land and Planning appointed by the Minister by instrument.

- **Section 274B - Term of office** - provides that the Commissioner may hold office for a term not exceeding 5 years, but is eligible for reappointment.
- **Section 274C - Remuneration and allowances** - provides that the Commissioner will be paid as determined by the Minister instrument.
- **Section 274D - Leave of absence** - provides that the Minister may grant leave of absence to the Commissioner.
- **Section 274 E - Acting appointments** - provides that the Minister may appoint an acting Commissioner;
- **Section 274F - Resignation** - provides that the Commissioner may resign.
- **Section 274G - Suspension and removal of Commissioner** - provides for the suspension or removal of the Commissioner in certain circumstances.
- **Section 274H - Retirement** - provides that the Minister may, with the consent of the Commissioner, retire the Commissioner on the grounds of physical or mental incapacity.
- **Section 274I - Delegation** - provides that the Commissioner may delegate his or her powers to a public servant.
- **Section 274J - Protection from suit** - protects the Commissioner or a delegate of the Commissioner from actions in relation to acts or omissions in good faith.

Clause 79 - Review of decisions - amends section 275 to reflect the making of applications for “development” rather than for a “controlled activity” and the repeal of sections 240 and 241.

Clause 80 - Review - objectors, third parties - amends subsection 276(1) to reflect the repeal of sections 240 and 241. Subsection 276(4) is amended to provide that the interests of a person seeking review under that subsection must be substantially and adversely affected. Subsection 276(5) has been amended to reflect the making of applications for “development” rather than for a “controlled activity” and omits paragraph 276(5)(b).

Clause 81 - Notification of objectors - amends section 278 to reflect the repeal of section 235.

Clause 82 - Regulations - amends section 282 by the insertion of paragraph 282(da) providing for the exemption of certain development from the application of all or any of the provisions of Part VI or the regulations. Paragraph 282(f) is amended to reflect the repeal of section 235.

Clause 83 - Review of decisions - amends section 282A to reflect the amendments in relation to sections 171, 172, 179, 184, 186, 187A and 187B. Notice under subsections 282A(1), (2) and (3) is now required to be given to a person whose interests are substantially and adversely affected by the relevant decision.

Clause 84 - Repeal of Schedule - repeals Schedule 4. Applications for approval under Part VI will now be in relation to “development” as defined in section 222 rather than for a “controlled activity”.

Clause 85 - Schedule 5 - amends Schedule 5 by omitting items 2, 3, 5, 6 and 7, and by substituting new items 5 and 6 specifying that “undertaking a development” and having a building or structure erected without an approval are controlled activities.

PART III - AMENDMENTS TO OTHER LEGISLATION

Division 1 - Preliminary

Clause 86 - Interpretation - defines “commencement day” in this Part as the day on which the provision commences under section 2 of this Act.

Division 2 - Administrative Decisions (Judicial Review) Act 1989

Clause 87 - Interpretation - amends section 3 of the *Administrative Decisions (Judicial Review) Act 1989*. The amendment removes the right of a person to seek a statement of reasons under section 13 of the Act where the person considers that a decision made under the Principal Act is contrary to law. The amendment does not apply to applications made to the Supreme Court and not finally dealt with before this clause commences.

Division 3 - Building Act 1972

Clause 88 - Interpretation - defines “Principal Act” in this Division as the *Building Act 1972*.

Clause 89 - Interpretation - amends section 5 of the Principal Act by removing the reference to the *Land(Planning and Environment) Act 1991* from the definition of “storey” and inserting a definition of “Land Act”.

Clause 90 - Application - amends subsection 6(1) of the Principal Act by omitting “the design or siting of a building” and inserting “land use”.

Clause 91 - Grant of building permits - amends section 31 of the Principal Act to take account of the repeal of the *Buildings (Design and Siting) Act 1964* and refer to approvals under Division 2 of Part VI of the *Land (Planning and Environment) Act 1991*, as amended by this Bill. Approval of building work is prohibited unless any required approval is obtained. The amendment does not apply to approvals before the commencement of this clause.

Clause 92 - Application for building permits - external design and siting - amends section 38 of the Principal Act to further provide that external design and siting may be taken into account where building work forms part of a development not required to be approved under Division 2 of Part VI of the *Land (Planning and Environment) Act 1991*.

Clause 93 - Stop notices - amends section 43 of the Principal Act to take account of the repeal of the *Buildings (Design and Siting) Act 1964*. The amendment provides for a stop notice to be issued in relation to building work forming part of a development requiring approval under Division 2 of Part VI of the *Land (Planning and Environment) Act 1991* where that work is done without an approval or contrary to an approval or a condition of an approval. The amendment does not apply to building work being carried out before the commencement of this clause.

Clause 94 - Notice to carry out building work - amends section 46 of the Principal Act to take account of the repeal of the *Buildings (Design and Siting) Act 1964*. The amendment provides for a notice to be issued under section 46 in relation to building work forming part of a development requiring approval under Division 2 of Part VI of the *Land (Planning and Environment) Act 1991* where that work is done without an approval or contrary to an approval or a condition of an approval. The amendment does not apply to building work carried out before the commencement of this clause.

Clause 95 - Review by Administrative Appeals Tribunal - amends section 60 of the Principal Act to take account of the repeal of the *Buildings (Design and Siting) Act 1964* and refer to approvals under Division 2 of Part VI of the *Land (Planning and Environment) Act 1991* as amended by this Bill. The amendment does not apply to decisions made under the Principal Act before the commencement of this clause.

Division 4 - Gas Act 1992

Clause 96 - Application of the Land Act - amends section 76 of the *Gas Act 1992* to omit subsection (1) and insert a new subsection (1) providing that gas system construction is a development for the purposes of Part VI of the Land Act. Subsection (2) is also omitted.

Division 5 - Land Titles (Unit Titles) Act 1970

Clause 97 Interpretation - defines 'Principal Act' for the purposes of this Division as meaning the *Land Titles (Unit Titles) Act 1970*.

Clause 98 - Effect of cancellation of units plan - amends section 13 of the *Land Titles (Unit Titles) Act 1970* to reflect the amendment effected by the Bill to section 98 of the *Unit Titles Act 1970*.

Clause 99 - Duties of Registrar-General upon registration of order - amends section 14 of the *Land Titles (Unit Titles) Act 1970* to reflect the amendment effected by the Bill to section 98 of the *Unit Titles Act 1970*.

Clause 100 - Substitution - repeals section 25 of the *Land Titles (Unit Titles) Act 1970* and inserts a new section 25 which provides for the registration of instruments for the grant of further leases under section 171, 171A or 172 of the *Land (Planning and Environment) Act 1991*. The amendment does not affect an instrument executed under section 108 of the *Unit Titles Act 1970* before the commencement of this clause.

Division 6 - Lands Acquisition Act 1994

Clause 101 - Acquisitions to be in accordance with Act - amends section 18 of the *Lands Acquisition Act 1994* to provide that the Act applies to the acquisition of all or part of the land comprised in a lease.

Division 7 - Unit Titles Act 1970

Clause 102 - Interpretation - defines 'Principal Act' in this Division as the *Unit Titles Act 1970*.

Clause 103 - Other definitions - amends the definition of "lease" in section 5 of the Principal Act.

Clause 104 - Proposals for subdivision - effects a minor amendment to section 11 of the Principal Act.

Clause 105 - Approval of unit titles application - effects minor amendments to section 16 of the Principal Act and inserts a new paragraph 16(1)(da) providing for the approval of applications for approval of units plans in respect of rural leases. Proposals in relation to rural leases may be approved if they are in accordance with criteria set out in a disallowable instrument. The amendment applies only to applications made on or after the commencement of this clause.

Clause 106 - Court order for cancellation of units plan - amends section 97 of the Principal Act by inserting a new subsection (8) which provides for the Supreme Court, in making an order for the cancellation of a units plan, to take into account any variation of a lease made or applied for since it was granted. The amendment applies to any proceedings commenced but not concluded before the commencement of this clause.

Clause 107 - Effect of cancellation of units plan - amends section 98 of the Principal Act by omitting paragraph 98(1)(d) and inserting a new paragraph (1)(d) deeming the existence of a new lease over a parcel of land affected by the cancellation of a units plan. A new subsection (1A) provides that the deemed lease expires on the day the leases of units would have expired if not for the cancellation of the units plan. Other minor and consequential amendments to section 98 are also effected. The amendment to this section does not affect orders made under section 97, or a lease that had arisen by virtue of paragraph 98(1)(d), before the commencement of this clause.

Clause 108 - Expiry of terms of leases - amends section 105 of the Principal Act to continue in force the reference to section 108 of the Principal Act.

Clause 109 - Repeal - - repeals section 108 of the Principal Act. If an application has been made prior to the commencement of this clause to extend the term of leases of units and common property, and no decision has been made on the application, then the provisions of section 108 continue to apply to that application.

PART IV - REPEAL OF BUILDINGS (DESIGN AND SITING) ACT 1964

Clause 110 - Repeal - Repeals the *Buildings (Design and Siting) Act 1964* as amended.

PART V - TRANSITIONAL

Clause 111 - Interpretation - - defines "Principal Act" in this Part as the *Land(Planning and Environment) Act 1991*. The clause also defines "commencement day" for the purposes of this Part. Subclause (2) provides that references to a provision of Part VI of the Principal Act as in force before the commencement day include a reference to that provision as applied by section 5 of the *Buildings (Design and Siting) Act 1964*.

Clause 112 - Variation of the Territory Plan - provides that sections 9, 19, 21, 22 and 26 of the Principal Act continue to apply where notice of a draft Plan variation was given under subsection 19(1) before the commencement of this clause. Subclause (2) provides that section 29 as in force before the commencement day, continues to apply to any corresponding Plan variation where notice had been given under subsection 19(1).

Clause 113 - Change in nature of the Authority - provides that the creation of the Executive office to perform the duties of the Authority, and the repeal of section 34 of the Principal Act, do not affect the validity of any delegations executed under section 40 of the Principal Act or anything done by the Authority before the commencement of this clause. Subclause (2) provides that section 42 of the Principal Act as in force before the commencement of this clause applies to anything done or omitted to be done by the Authority before the commencement day. Subclause (3) provides that the repeal of Subdivision B of Division 4 of Part II does not affect the validity of anything done by or in relation to the Chief Planner or the Planning Authority.

Clause 114 - Preliminary assessments - provides that, where a preliminary assessment has been prepared in accordance with a Minister's direction prior to the commencement day, the requirements for submission to the Minister and public notification in the Principal Act as in force before the commencement day continue to apply.

Clause 115 - Grant of further leases - specifies that where an application for the grant of a further lease under sections 171 or 172 has been made prior to the commencement day and no decision has been made, the application will be finalised in accordance with the amended provisions of section 171, 171A or 172.

Clause 116 - Lessee's rights in respect of improvements - provides that where a lease has expired, been terminated or surrendered prior to the commencement day, the provisions of sections 173 and 174 of the Principal Act as in force before that day continue to apply.

Clause 117 - Use of land for leased purpose - preserves the validity of a home business approval granted prior to the commencement day for the purposes of section 175 of the Principal Act as amended by this Bill.

Clause 118 - Certificates of compliance - where an application for a certificate of compliance is made prior to the commencement of this Act and no decision has been made, section 179 as amended by this Act applies to the application.

Clause 119 - Lease variations - provides that where a variation of a lease has been approved but not executed prior to the commencement of this Bill, section 184 of the Principal Act as in force before the commencement day applies in relation to the execution of the variation - the new sections 184A, 184B and 184C do not apply. Where the variation is to convert a rental lease to a nominal rent lease, the provisions of section 186 of the Principal Act as in force prior to the commencement day applies.

Clause 120 - Termination of leases and licences - where a notice of termination has been served prior to the commencement day, section 188 of the Principal Act as in force before that day applies.

Clause 121 - Applications for approval to conduct controlled activities - provides for the assessment of a "transitional application" - an application made under section 226 of the Principal Act but in respect of which no decision had been made or deemed to have been made before the commencement day. A "transitional application" includes an application to conduct a controlled activity referred to in Schedule 4 as in force before the commencement day, to conduct an activity declared under another Act to be a controlled activity for the purposes of that Schedule or under the Applied Part for the purposes of section 5 of the *Buildings (Design and Siting) Act 1964*.

The amendments effected by this Bill apply in relation to those applications as if they were applications for "development" and a reference to the prescribed period in subsection 230(2) as amended by this Bill were a reference to the period prescribed under subsection 230(4) of the Principal Act as in force on the day the application was made. That period includes any extension pursuant to the *Land (Planning and Environment) Regulations*. Subclause (3) provides for the "relevant authority" to approve a "transitional application". Subclause (4) continues the application of subsection 230(5) as in force before the commencement day in relation to a "transitional application" which has been refused or deemed to have been refused.

Clause 122 - Register of applications, approvals and orders - provides that section 227 of the Principal Act continues to apply to applications, approvals and orders made or given under the provisions of Part VI as in force prior to the commencement of this Bill.

Clause 123 - Approvals to conduct controlled activities - provides that for the purposes of Part VI of the Principal Act as amended by this Bill, an approval to conduct a controlled activity given prior to the commencement day is taken to be an approval to undertake a development. This clause does not apply if the approval had expired or been revoked before the commencement day.

Clause 124 - Orders made before commencement - where an order has been made prior to the commencement day, the provisions of the Principal Act as in force before that day continue to apply in relation to the order.

Clause 125 - Review of decisions (approvals and orders) - general - continues in force section 275 of the Principal Act as in force before the commencement day - in relation to an approval under section 230, a refusal to grant an extension of time under subsection 233(3), giving an approval subject to conditions under subsection 245(1) or refusing to amend an approval under subsection 247(2) - where decisions were made before the commencement day.

Clause 126 - Review of decisions (approvals and orders) - objectors and third parties - continues in force section 276 of the Principal Act as in force before the commencement day - in relation to a decision to approve an application under section 230, 240, 241 or 245 of the Principal Act - where decisions were made before the commencement day.

Clause 127 - Review of decisions (general) - subclauses (1)(a) and (2)(a) continue in force section 282A of the Principal Act as in force before the commencement day - in relation to a decision under section 117 or 184 of the Principal Act - where decisions were made before the commencement day.

Subclause (1)(b) and (2)(b) continue in force section 282A of the Principal Act as in force before the commencement day - in relation to a decision under section 117 of the Principal Act, as continued in force by clause 114 of this Bill, or 184 of the Principal Act as continued in force by clause 119 of this Bill - where decisions were made on or after the commencement day.