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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PLANNING AND DEVELOPMENT (CONSEQUENTIAL AMENDMENTS) BILL 2007

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Planning
Mr Andrew Barr MLA

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Outline

The Planning and Development (Consequential Amendments) Bill 2007 (***the Consequential Amendments Bill***) makes a number of amendments to various Acts and Regulations consequent on the Planning and Development Bill 2006 (***the Planning and Development Bill***).

The Consequential Amendments Bill makes four types of amendments:

1. Policy-based amendments

   These amendments are to ensure that other territory legislation is consistent with the policy and processes of the Planning and Development Bill. For example, the *Heritage Act 2004* and *Tree Protection Act 2005* have been amended to reflect the referral entity requirements under the new track-based development approval (***DA***) system. Parts of the *Environment Protection Act 1997* and *Public Health Act 1997* have been revised to be compatible with the new process for environmental impact statements required for developments in the impact track under the Planning and Development Bill.

2. Territory Plan terminology amendments

   The new Territory Plan is to commence together with the *Planning and Development Act 2007*. The new Territory Plan uses new terminology to describe planning controls for planning, development and land use in the Territory. Consequential amendments to other Acts and Regulations are necessary to update these references.

   For example, mentions of various land use policies under the previous Territory Plan have been changed to the appropriate zones under the new Territory Plan.

   The policy underlying the Territory Plan has not changed in this new revision. As such, the consequential amendments that follow are also policy-neutral.

3. Technical amendments

   These amendments typically involve substituting references to the *Land (Planning and Environment) Act 1991* (**Land Act**) with the *Planning and Development Act 2007*. Some provisions have been subject to editorial amendment to enhance comprehensibility and consistency with current legislative drafting practice.

4. Amendments to the *Planning and Development Act 2007*

   The Consequential Amendments Bill also makes editorial amendments to the *Planning and Development Act 2007*. These amendments correct typographical and reference errors, make minor technical changes and also clarify the operation of

certain provisions. Amendments to the *Planning and Development Act 2007* are also made as a result of policy-based amendments to the *Public Health Act 1997.*

The Consequential Amendments Bill does not repeal any legislative instrument.

Schedule 1 lists and provides the necessary amendments to existing legislation to give effect to the purposes listed above.

Consultation

The Consequential Amendments Bill's main impetus is to play a role in giving effect to the planning system reforms primarily delivered through the *Planning and Development Act 2007*. Consultations on those reforms focussed on the reforms provided in that Act but also encompassed the subsidiary and consequential amendments provided for in this Bill. Separate consultations were therefore not made in respect of this Bill, but rather, the reforms delivered were included as part and parcel of the wider reform package consultations. There has, however, been consultation with the agencies for the legislation amended by this Bill.

Human rights implications

New section 388A of the *Planning and Development Act 2007*, inserted by item 1.139, engages the right to privacy under section 12 of the *Human Rights Act 2004* (***HRA***). This provision requires the Commissioner for ACT Revenue to disclose a taxpayer's name and address if requested by the Planning and Land Authority. The power for the Commissioner for ACT Revenue to disclose the information is found in the *Taxation Administration Act 1999*, section 97(c).

This section contains constraints on the nature of the information collected and the purposes for which it may be used. Only a person's name and address may be disclosed; no financial or other personal information can be given. The information can only used for the purposes of exercising a function under the *Planning and Development Act 2007*. The benefits to the territory community through the effective operation and enforcement of *Planning and Development Act 2007* outweigh any minimal and reasonable trespass on an individual's privacy and is therefore justifiable under section 28 of the *HRA*.

The Planning and Land Authority is also bound by the Information Privacy Principles (***IPP***) contained in the *Privacy Act 1998* (Cwth). The IPP regulate the collection, use and disclosure of personal information. New section 388A is drafted to ensure compliance with these requirements.

Financial implications

The costs of implementation of the Consequential Amendments Bill will be met within existing resources. There will be no net impact on Territory revenue.

References to the *Planning and Development Act 2007*

The Planning and Development Bill 2006 was notified on the Australian Capital Territory legislation register in 2006. It is anticipated that if the Bill is passed, the subsequent law it will give effect to will indicate that its title is the *Planning and Development Act 2007*. Legislation naming convention requires the Act's name reflects the year it commenced. Therefore, in this explanatory statement, this Act is referred to as the *Planning and Development Act 2007.*

Clause Notes

Clause 1 — Name of Act — this clause states the title of the Act, which is the *Planning and Development (Consequential Amendments) Act 2007.*

Clause 2 — Commencement — this clause states that the Act commences when the *Planning and Development Act 2007* commences, except for provisions identified as a special commencement provision. The only special commencement provision is a technical amendment to the *Planning and Development Act 2007* in item 1.124, explained below.

Clause 3 — Legislation amended — provides that the Act amends the legislation in Schedule 1.

Schedule 1 — Consequential amendments — provides for the consequential amendments to a range of existing legislation. The affected legislation is as follows:

Administrative Appeals Tribunal Act 1989
Administrative Decisions (Judicial Review) Act 1989
Casino Control Act 2005
Cemeteries and Crematoria Regulation 2003
Civil Law (Sale of Residential Property) Act 2003
Civil Law (Sale of Residential Property) Regulation 2004
Commissioner for the Environment Act 1993
Community Title Act 2001
Duties Act 1999
Electoral Act 1992
Emergencies Act 2004
Environment Protection Act 1997

Environment Protection Regulation 2005
Gaming and Betting Act 1906
Gungahlin Drive Extension Authorisation Act 2004
Hawkers Act 2003
Heritage Act 2004
Lands Acquisition Act 1994
Land Titles Act 1925
Land Titles (Unit Titles) Act 1970
Leases (Commercial and Retail) Act 2001
Legislation Act 2001
Nature Conservation Act 1980
Planning and Development Act 2007
Public Health Act 1997
Public Roads Act 1902
Roads and Public Places Act 1937
Road Transport (Offences) Regulation 2005
Road Transport (Safety and Traffic Management) Regulation 2000
Tree Protection Act 2005
Trustee Act 1925
Unit Titles Act 2001
Unit Titles Regulation 2001
Utilities Act 2000

An explanation of the main elements of the amendments for each affected piece of legislation now follows.

Part 1.1 — *Administrative Appeals Tribunal Act 1989* — this part contains both policy-based and technical amendments. Items 1.1, 1.7 and 1.9 are purely technical amendments substituting references to the *Land Act* with the *Planning and Development Act 2007*.

Items 1.2 and 1.5 remove references to 'concurring authorities' from the sections 24(5) and 28(4). Concurring authorities were defined in the *Land Act*, as enacted, as entities whose approval was needed in order to conduct a controlled activity. This concept was abolished by the *Land (Planning and Environment) (Amendment) Act (No 3) 1996*, which therefore removed a class of previously appealable decisions. The concept has not been revived in the new DA system under the *Planning and Development Act 2007.* As such, these references have been omitted.

Item 1.4 is consequent on the omission of section 28(5) by item 1.5. The effect of these two amendments is to move section 28(5) to an explanatory note following section 28(2). This reflects current legislative drafting practice.

Item 1.6 inserts new section 28A (entities notified about planning and development decisions may be joined). This provision allows an 'interested entity' who is entitled to receive notice of a decision under the *Planning and Development Act 2007* to be joined as a party to a proceeding before the tribunal. Interested entities for each type of primary decision are listed in column 5 of schedule 1 of the *Planning and Development Act 2007.* Common interested entities are the approval holder, an entity that made a representation in relation to a development application, or the Planning and Land Authority. New section 28A replaces section 28(3), which has been omitted by item 1.5. The amendment of section 28(1)(d) by item 1.3 is also consequent on the insertion of new section 28A.

Item 1.8 inserts transitional provisions to section 37. The amendments ensure that the requirement for the Planning and Land Authority to provide documentation to the tribunal within 14 days continues to apply to decisions made under the *Land Act.*

Item 1.10 inserts new section 49DA (applications for review if decision reconsidered). This provision applies where a DA has been refused by the Planning and Land Authority and a person both appeals to the tribunal and applies for reconsideration under the *Planning and Development Act 2007*, division 7.3.10. If the Planning and Land Authority substitutes another decision before the tribunal makes a decision, section 49DA deems the decision to be reviewed by the tribunal to be the Authority's substitute decision rather than the original decision.

Part 1.2 — *Administrative Decisions (Judicial Review) Act 1989* — item 1.11 provides a technical amendment to section 8(2)(b)(iii) substituting the reference to the *Land Act* with the *Planning and Development Act 2007.*

Item 1.12 inserts transitional provisions to section 8 of the *Administrative Decisions (Judicial Review) Act 1989.* Subsection (4) applies section 8(2) to decisions made under the *Land Act* which are the subject of judicial review after the commencement of the *Planning and Development Act 2007.*

Part 1.3 — *Casino Control Act 2005* — item 1.13 provides a technical amendment to section 62(2) substituting the reference to the *Land Act*, sections 8 and 9, with the *Planning and Development Act 2007*, sections 49, 64 and 71. This ensures that this Act may designate an area to be a casino notwithstanding the Territory Plan or a draft variation at any stage of the variation process.

Part 1.4 — *Cemeteries and Crematoria Regulation 2003* — item 1.14 provides a technical amendment to the note of section 18(5) substituting the reference to the *Land Act* with the *Planning and Development Act 2007.*

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Part 1.5 — Civil Law (Sale of Residential Property) Act 2003 — items 1.15, 1.18–1.21, 1.26 and 1.28 replace the use of the term 'lease' in the Act with the newly defined term 'territory lease' in the *Legislation Act 2001* (see item 1.99, below). This Act had previously applied the definition of 'lease' in the *Land Act*, section 159, which had the same effect as the new definition of 'territory lease'.

Item 1.17 amends the definition of 'unapproved structure'. The definition, as currently worded, implies that structures are approved under the *Building Act 2004* and/or the *Land Act*. However, approvals under the *Building Act 2004* and the *Planning and Development Act 2007* (replacing the *Land Act*) only permit the carrying out building or development work to give effect to the plans, rather than approve the completed structure. The amendments clarify this technical anomaly.

However, a structure is unapproved under this updated definition if no Certificate of Occupancy has been issued for the use of the completed structure under the *Building Act 2004*, section 69. Similarly, if the completed structure does not comply with the DA, then the structure is unapproved for the purposes of this Act. Structures that are exempt from building or development approval continue to fall outside the definition of an 'unapproved structure'.

Items 1.22, 1.23, 1.25 and 1.27 make technical amendments to update the legal basis for the energy efficiency rating guidelines. These guidelines establish the 'star' rating system disclosed before the sale or sublease of residential property. They were previously adopted under the Territory Plan but have been removed following its restructure. To ensure the continued operation of the guidelines, item 1.25 allows the Planning and Land Authority to remake the guidelines as a disallowable instrument. This change is picked up by the definitions in items 1.22, 1.23 and 1.27.

Item 1.24, in new paragraph (ga), exempts premises that must be demolished under a controlled activity order under the *Planning and Development Act 2007* from the energy efficiency rating requirements.

Items 1.16 and 1.29 substitute references to the *Land Act* with the *Planning and Development Act 2007*, section 226, for the definition of a sublease.

Part 1.6 — *Civil Law (Sale of Residential Property) Regulation 2004* — item 1.30 provides a technical amendment to the building and compliance inspection report requirements in section 7. The reference to the *Land Act*, part 4, is replaced with a reference to the *Planning and Development Act 2007*, chapter 7 (Development approvals).

Item 1.31 provides similar reference updates in the list of lease conveyancing inquiry documents in section 9. Paragraph (f) — which requires a statement about any application

for dual occupancy — is amended to remove the incorrect reference to the Territory Plan, replacing it with a reference to the *Planning and Development Act 2007* consistent with the other paragraphs.

Part 1.7 — *Commissioner for the Environment Act 1993* — item 1.32 provides a technical amendment to section 12(2)(e) substituting the reference to the *Land Act* with the *Planning and Development Act 2007*, chapter 8 (Environmental impact statements and inquiries).

Part 1.8 — *Community Title Act 2001* — items 1.33 and 1.34 provide technical amendments substituting references to the *Land Act* with the *Planning and Development Act 2007*. Item 1.35 omits the redundant definition of *Land Act* from the Dictionary.

Part 1.9 — *Duties Act 1999* — item 1.36 provides technical amendments substituting references to the *Land Act*, section 178, with the *Planning and Development Act 2007*, section 293. The section has also undergone editorial amendment to improve readability.

Part 1.10 — *Electoral Act 1992* —items 1.37 provides a technical amendment substituting references to the *Land Act* with the *Planning and Development Act 2007*. Item 1.38 replaces the reference to a lease as defined in the *Land Act* with the equivalent term 'territory lease', which has been newly inserted into the *Legislation Act 2001* (see item 1.99, below). Item 1.39 amends the Dictionary to refer to this definition in the *Legislation Act 2001*.

Part 1.11 — *Emergencies Act 2004* — items 1.40–1.42 provide technical amendments substituting references to the *Land Act* with the *Planning and Development Act 2007*.

Part 1.12 — *Environment Protection Act 1997* — this part contains policy-based, technical and Territory Plan terminology amendments. Items 1.43–1.46 update the procedures for environmental authorisations and the preparation of an environmental impact statement (***EIS***, formerly known in this Act as an 'environmental assessment') to ensure consistency with the procedures found in the *Planning and Development Act 2007*, chapter 8 (Environmental impact statements and inquiries).

Item 1.46 amends section 94, which provides that an EIS or a public inquiry may be conducted in relation to an activity that is the subject of an environmental authorisation. The amendments to this section are editorial in nature, updating the use of terminology. 'Assessment' is replaced with 'EIS' and references to the *Land Act* have been replaced with the *Planning and Development Act 2007*.

Item 1.46 also inserts new section 94A. This section applies the EIS procedure contained in parts 8.2 (environmental impact statements) and 8.3 (inquiry panels) of the *Planning and*

Development Act 2007 to an EIS required under this Act. Importantly, subsections (1)(b) and (c) and (2)(a) and (b) mean that the Minister for section 94 and the Environment Protection Authority (rather than the Planning Minister and the Planning and Land Authority) are responsible for the EIS process under the *Planning and Development Act 2007*. An EIS under section 94A can only be required if the Environment Minister is satisfied that the activity is not the subject of a DA under the *Planning and Development Act 2007* (see s 94(3)(a)).

In summary, the EIS process as set out in the *Planning and Development Act 2007*, chapter 8 (Environmental impact statements and inquiries), is as follows:

- An application is made for an environmental authorisation under the *Environment Protection Act 1997;*
- The Minister on her or his own initiative, or at the Environment Protection Authority's request, may direct that an EIS be prepared;
- The Environment Protection Authority prepares an EIS scoping document;
- The proponent prepares the draft EIS;
- The Environment Protection Authority publicly notifies the EIS;
- The proponent finalises the EIS;
- The Environment Protection Authority reviews the final EIS and forwards it to the Minister;
- The Minister may decide to call for a public inquiry, present the EIS to the Legislative Assembly, or take no action; and
- The Environment Protection Authority decides whether to grant the application for environmental authorisation.

Item 1.43 amends section 49(1)(d), removing the provision allowing the Environment Protection Authority to request that the Minister establish an inquiry panel. A similar amendment is made by item 1.44 to section 49(5). These amendments have been made because the process for establishing an inquiry panel is now set out in the EIS process in the *Planning and Development Act 2007*, part 8.2 (explained above, and applied by new s 94A(2)). In this process, the Minister has the option of establishing a public inquiry following the receipt of an EIS from the Authority. The decision must be made within 15 days of the receipt of the EIS.

New subsection 49(6), which has been split from subsection (5) for clarity, ensures that the timeframe for the grant of an environmental authorisation takes proper account of the EIS process under the *Planning and Development Act 2007*. This is achieved by referring to the completion date of the EIS (defined in new subsection (7) with reference to section 203 of the *Planning and Development Act 2007*), rather than the date on which the Authority receives a response from the inquiry panel.

Item 1.44 also omits the existing form of section 49(6), which prevented the Environment Protection Authority from granting an environmental authorisation that requires a DA unless a DA had been granted. The omission of this provision gives the Authority the flexibility to grant an environmental authorisation prior to the granting of a development approval. This change is consistent with the DA process in the *Planning and Development Act 2007.* Proposals requiring environmental authorisation generally do not — but may — require development approval. This amendment will also minimise complexity and delay caused by the intersection of environmental authorisations and the DA process, consistent with the objectives of the new planning system.

Items 1.51 to 1.52 amend the Dictionary, adding and updating definitions to account for these changes.

Items 1.48 and 1.49 provide Territory Plan terminology amendments, translating previous land use policies into the relevant zones or precinct under the restructured Plan. Item 1.48 updates these references in item 8 of table 1.2, which defines class A activities for the purpose of environmental authorisations under section 42. Item 1.49 replaces 'river corridor land use policy' with 'river corridor zone' in the definition of *area of high conservation value* in the Dictionary.

Items 1.47, 1.50 and 1.53 provide technical amendments substituting references to the *Land Act* with the *Planning and Development Act 2007.* Item 1.54 omits the redundant definition of *Land Act*.

Part 1.13 — *Environment Protection Regulation 2005* — with the exception of the technical amendments in items 1.55 and 1.60 that flow from the new definition of 'territory lease' in the *Legislation Act 2001* (see item 1.99, below), this part provides Territory Plan terminology amendments. The amendments translate previous land use policies into zones. For example, item 1.56 replaces the reference to Water Use and Catchment Policies mentioned in section 41 with the Water Use and Catchment Code.

Similarly, item 1.58 amends table 2.1 in Schedule 2, changing references to land use policies in column 3 to the corresponding zones. Item 1.57 inserts a number of new definitions to clarify the meaning of the zones identified in table 2.1. Item 1.59 updates the definition of a 'major road' by reference to an area identified in the Territory Plan as being in the transport zone. Items 1.61–1.63 insert corresponding definitions in the Dictionary.

Part 1.14 — *Gaming and Betting Act 1906* — item 1.64 adds explanatory notes to the Dictionary explaining that the *Legislation Act 2001* defines certain terms used in the Act. This is to make the Dictionary consistent with current legislative drafting practice.

Item 1.65 updates the definition of 'owner' in the Dictionary, replacing the reference to a lessee of a lease granted under the *Land Act* with a lessee under a 'territory lease', as newly defined in the *Legislation Act 2001* (see item 1.99, below). This amendment therefore makes it clear that this Act also applies to *Unit Titles Act 2001* lessees, consistent with the Act's objectives.

Part 1.15 — *Gungahlin Drive Extension Authorisation Act 2004* — each item in this part substitutes references to the *Land Act* with the *Planning and Development Act 2007*. Item 1.67 also substitutes the term 'preliminary assessment' in section 8 with 'environmental impact assessment', to be consistent with the new terminology of the *Planning and Development Act 2007*. Item 1.69 provides an updated example in section 9(4), consistent with the new referral entity structure in the *Planning and Development Act 2007*.

The purpose of these amendments is only to maintain the status quo by ensuring that the operation of this Act is not affected by the repeal of the *Land Act* and the commencement of the *Planning and Development Act 2007*.

Part 1.16 — *Hawkers Act 2003* —item 1.71 provides a technical amendment to section 4(a)(i) substituting the reference to the *Land Act* with the *Planning and Development Act 2007*.

Part 1.17 — *Heritage Act 2004* — items 1.72, 1.74 and 1.78–1.80 provide technical amendments substituting the reference to the *Land Act* with the *Planning and Development Act 2007*.

Item 1.74 also replaces section 59, providing new notes explaining the interaction of the *Heritage Act 2004* with the DA framework under the *Planning and Development Act 2007*. Items 1.75 and 1.76 amend sections 60 and 61, respectively, to take into account the requirements and process for referral entity advice under section 146 of the *Planning and Development Act 2007*. That provision requires that referral entity advice be given within 15 working days of the request. Sections 60 and 61 have also been revised to omit provisions that would have duplicated provisions in the *Planning and Development Act 2007*.

Items 1.73 and 1.77 amend the examples in sections 25(1) and 62(1) to clarify that heritage guidelines and heritage directions can be issued independent of the DA process under the *Planning and Development Act 2007*, chapter 7 (Development approvals).

Part 1.18 — *Lands Acquisition Act 1994* — items 1.81 and 1.82 provide technical amendment to sections 50(1)(e) and 50(2) substituting the references to the *Land Act* with the *Planning and Development Act 2007*. Both provisions have also undergone editorial amendment to improve readability.

Part 1.19 — *Land Titles Act 1925* — items 1.83, 1.84 and 1.90 establish new powers for the registrar-general to keep and maintain a record of administrative interests. Administrative interests, as defined in new section 69A, are records of a decision or notification made under territory legislation that affects a parcel of leased land. These interests are legally independent of the land title and the indefeasibility attached to that title. That is, administrative interests are non-proprietary interests. As such, the administrative interests register operates in parallel with proprietary interests recorded on the Torrens title register, creating a central repository for information relating to the land.

For example, a notification to the registrar-general of a DA for the use of land approved under the *Planning and Development Act 2007*, section 158(1)(a), would be recorded as an administrative interest. The Planning and Land Authority is required under the *Planning and Development Act 2007* to notify the registrar-general of some decisions in relation to a DA (see, for example, sections 165(1)(b) and (c), 181(5), 183(2) and 189(c)).

Item 1.83 amends section 14(1) to give the registrar-general the power to keep records of administrative interests. New section 69C, inserted by item 1.84, sets out the type of information that may be contained in an administrative interest record. The contents of the record will only relate to the specific decision or notification. If the record relates to a decision, the registrar-general may, under subsection (2), include the date of the decision, the particulars of the decision and the legislation under which the decision was made.

As set out in subsection (3), the information recorded may also include details of the lessee, the block and section of the property, the address of the property, and other information related to the land. However, subsection (4) limits the information that can be recorded under subsection (3) to only that which is already available from a public inquiry of the land titles register. Subsection (4) is intended to limit the amount of personal information that may be made available on the record.

New section 69D provides that neither the registrar-general nor the Territory can be held liable for omissions, misstatements or inaccuracies in an administrative interests record, as long as the registrar-general takes reasonable steps to inform the person who has been given access to the information under section 66 of this fact. The specific steps to be taken by the registrar-general may be prescribed by regulation.

Items 1.85 to 1.87 provide technical and editorial amendments substituting references to the *Land Act* with the *Planning and Development Act 2007*.

Item 1.88 replaces section 72C to ensure consistency with the *Planning and Development Act 2007*, chapter 9 (Leases and licences). The structure of the section has been revised to improve readability. Subsection (1)(b) provides that full compliance with the building and

development provision of a lease is required as a precondition to the registrar-general entering a memorial to that effect. Subsection (1)(c) makes it clear that a certificate of compliance issued by the Planning and Land Authority is conclusive evidence to the registrar-general that there has been compliance with the building and development provision.

Item 1.91 amends the definition of Crown lease to include a territory lease, as newly defined in the *Legislation Act 2001* (see item 1.99, below). Items 1.89 and 1.92 are consequent on the use of this new term.

Part 1.20 — *Land Titles (Unit Titles) Act 1970* — item 1.93 provides a technical amendment to section 29(1) substituting the reference to the *Land Act*, sections 171, 171A and 172 with the *Planning and Development Act 2007*, section 246.

Part 1.21 — *Leases (Commercial and Retail) Act 2001* — this part omits the definition of 'territory lease' from the Dictionary, as the term is now defined in the *Legislation Act 2001* (see item 1.99, below).

Part 1.22 — *Legislation Act 2001* — items 1.96, 1.97, 1.98 and 1.100 update existing definitions in the part 1 of the Dictionary, substituting references to the *Planning and Land Act 2002* or *Land Act* with the *Planning and Development Act 2007*.

Item 1.99 inserts a new definition of 'territory lease'. This definition has been moved from the *Leases (Commercial and Retail) Act 2001*. It is intended to provide a distinction throughout territory law between leases granted under territory legislation (the *Planning and Development Act 2007* and its predecessors, or the *Unit Titles Act 2001*) and leases granted by the Commonwealth or the Federal Capital Commission. Both types of lease come under the superordinate category of Crown lease (see *Land Titles Act 1925*, Dictionary, amended by item 1.91, above).

Part 1.23 — *Nature Conservation Act 1980* — this part provides technical amendments substituting references to the *Land Act* with the *Planning and Development Act 2007*.

Part 1.24 — *Planning and Development Act 2007* — Items 1.109, 1.112–1.117, 1.121, 1.124–1.138, 1.143–1.147, 1.150, 1.152, 1.153 and 1.155 provide editorial amendments to the parent *Planning and Development Act 2007*. These amendments correct typographical errors, make minor technical changes or provide redrafted provisions to conform with current drafting practice. More significant technical changes include item 1.112, which amends section 153 to require third party representations on DAs to be written, and item 1.114, inserting section 158(2A) to confirm that the statutory timeframe for processing DAs is not affected by the referral of the DA to the Minister. These changes are consistent with the DA framework in the *Planning and Development Act 2007*.

Item 1.124 is a technical amendment substituting a reference to the *Housing Assistance Act 1987* with the *Housing Assistance Act 2007*. As the *Housing Assistance Act 2007* has not yet commenced, item 1.124 is a special commencement provision (see clause 3). The commencement of this provision is the later of the commencement of the *Housing Assistance Act 2007* and the *Planning and Development Act 2007*.

Item 1.139 inserts new section 388A into this Act. This provision allows the Planning and Land Authority to request a taxpayer's name and address from the Commissioner for ACT Revenue. A request can only be made if the Authority does not have the person's name or address, or is uncertain that its records about the person are current or accurate. This information would be requested in order to fulfil a statutory function under the *Planning and Development Act 2007*. This may include notifying lessees and/or occupiers of neighbouring blocks of a development application in the merit track, or in the course of taking compliance action under chapter 11 (Controlled activities) or chapter 12 (Enforcement) of the *Planning and Development Act 2007*, such as the issuing of controlled activity orders or rectification notices. This provision is necessary as the information held by the Commissioner may be more accurate and current than the information available to the Authority.

This power for the Commissioner to disclose this information is found in the *Taxation Administration Act 1999*, section 97(c), which allows disclosure 'in accordance with a requirement imposed under an Act'. New section 388A allows disclosure of the information consistent with the IPP (see especially IPP 11(1)(d)). The human rights implications of this amendment are discussed above.

Items 1.110, 1.111, 1.118–1.120, 1.122, 1.123 and 1.156 are consequent on the amendments to section 134 of the *Public Health Act 1997* (see part 1.25, below). Items 1.110 and 1.111 clarify the operation of section 124, which allows the Public Health Act Minister to place a development application into the impact track. Item 1.118 amends section 202 to distinguish an EIS required by the operation of section 124 (a ***section 124-related EIS***) from other environmental impact statements required under the Act. This distinction is important, because the basis for which a section 124-related EIS is considered to be complete is different to other EISs: see item 1.119, amending section 203, and item 1.120, inserting new section 203A. Item 1.122, amending section 218(2), also uses this distinction to specify which Minister to whom the EIS should be given. Item 1.123 inserts new section 221(2A). This applies where the Public Health Act Minister decides that there should be a public inquiry into the public health impacts of a proposal behind an EIS. If this decision is made, the Planning Minister must then establish the public inquiry.

Items 1.140–1.142, 1.148, 1.149, 1.151 and 1.154 replace references to an 'interested person' for the purposes of AAT review with the term 'interested entity'. An *entity* is

defined in the *Legislation Act 2001* as including 'an unincorporated body and a person (including a person occupying a position).' These amendments ensure that unincorporated associations also have procedural rights as interested parties under the *Planning and Development Act 2007*. It also ensures consistency with the use of the term 'eligible entity' in chapter 13 (Review of decisions) and schedule 1.

Part 1.25 — *Public Health Act 1997* — this part contains policy-based and technical amendments. Item 1.157 updates the terminology in section 124(4), replacing *preliminary assessment* with *EIS or inquiry*. The reference to the *Land Act,* part 6, has been substituted with the *Planning and Development Act 2007*, chapter 8 (Environmental impact statements and inquiries).

Item 1.158 amends section 134, giving the Public Health Act Minister the ability to initiate an EIS or call for an inquiry into a public health-related development proposal. The amendment is necessary to ensure consistency with the track-based development framework under the *Planning and Development Act 2007*. Subsections (1) and (2), together with section 124 of the *Planning and Development Act 2007*, allow the Public Health Act Minister to declare that the impact track applies to a development application if the Minister concludes that it is likely to have a significant effect on public health. All DAs in the impact track require an EIS (see *Planning and Development Act 2007*, section 126).

Subsections (3) and (4) give the Public Health Act Minister the choice to call for an inquiry panel in relation to a section 124-related EIS referred by the Planning and Land Authority. This choice can only be exercised within a limited timeframe and if the Planning Minister has not already established an inquiry panel under the *Planning and Development Act 2007*, section 221. This public inquiry option is only available for an EIS required as a result of a declaration by the Public Health Act Minister under subsections (1) and (2).

Under subsection (5) and new section 221(2A) of the *Planning and Development Act 2007* (see item 1.123), if the Public Health Act Minister requires a public inquiry under section 134(3), then the Planning Minister is required to establish the public inquiry into the public health implications of the relevant development proposal.

Amendments to the *Planning and Development Act 2007* are necessary as a result of the amendment to section 134 (see above, part 1.24).

Part 1.26 — *Public Roads Act 1902* — items 1.161 and 1.162 amend sections 19(2) and 20(2). Under their current wording, these provisions permit the Minister to declare a public road partly closed without public notice if such closure is necessary to give effect to a 'minor development' to vary a lease to incorporate an encroachment over unleased territory land into the lease. The amendments define the scope of these sections using more

objective criteria, following the removal of the concept of a ‘minor development’ in the *Planning and Development Act 2007.*

The amended provisions refer to an ‘envelope of land’ that contains the encroachment. This means that is used to indicate that the area of road to be closed does not need to be exactly coextensive with the encroachment. This is to ensure that unreasonable cost and delay is not incurred by requiring surveyors to record each and every aspect of the encroachment. It will be satisfactory to record an area of manageably simple dimensions that encloses all the relevant encroachments. The area of road to be closed must be limited to a size and configuration that would not reasonably be subject to the grant of an independent territory lease. In all cases, the closure of part of the public road must not affect how the public uses the road or be adverse to public safety.

Item 1.163 amends the Dictionary to refer to the definition of a ‘territory lease’ as defined in the *Legislation Act 2001* (see item 1.99, above).

Part 1.27 — *Roads and Public Places Act 1937* — items 1.164 and 1.165 provide technical amendments to section 15T substituting references to the *Land Act* with the *Planning and Development Act 2007.*

Parts 1.28 and 1.29 — *Road Transport (Offences) Regulation 2005* and ***Road Transport (Safety and Traffic Management) Regulation 2000*** — these parts provide a Territory Plan terminology update substituting the term ‘multi-unit development’ with ‘multi-unit housing’. The definition of multi-unit housing, which relies on the definition of ‘dwelling’ in the Territory Plan, is provided in item 1.169. These affected provisions are in the context of offences and infringement notices for the unlawful parking of heavy vehicles on residential land.

Part 1.30 — *Tree Protection Act 2005* — items 1.172, 1.174 and 1.177–1.179 provide technical amendments substituting the reference to the *Land Act* with the *Planning and Development Act 2007.* Item 1.173 amends section 20(1)(b) relying on the definition of ‘development approval’ in the Dictionary, as updated by item 1.177.

Item 1.174 also replaces section 81, providing new notes explaining the interaction of the *Tree Protection Act 2005* with the DA framework under the *Planning and Development Act 2007.* Items 1.175 and 1.176 amend sections 82 and 83 to take into account the requirements for referral entity advice under section 146 of the *Planning and Development Act 2007.* That provision requires that referral entity advice be given within 15 working days of the request. Sections 82 and 83 have also been revised to omit provisions that would have duplicated provisions in the *Planning and Development Act 2007.*

Part 1.31 — *Trustee Act 1925* — this part replaces phrase 'property consisting of a lease of land granted under the *Land Act*' in section 27D(1) with 'property consisting of a territory lease'. 'Territory lease', as inserted into the *Legislation Act 2001* (see item 1.99, above), means a lease granted under the *Planning and Development Act 2007* or the *Unit Titles Act 2001*.

Part 1.32 — *Unit Titles Act 2001* — this part makes a number of editorial amendments. A number of items substitute references to the *Land Act* with the *Planning and Development Act 2007*.

Items 1.186 and 1.197 also replace references to 'Commonwealth' with 'Territory'. This occurs in the context of provisions conferring property rights as if the Commonwealth had granted a lease under the *Land Act*. The amendments reflect the practice that it is the Territory that grants a lease on behalf of the Commonwealth (see the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwth), section 29).

Items 1.187, 1.188, 1.201 and 1.202 provide terminology updates, replacing the term 'development covenant' with 'building and development provision', consistent with the *Planning and Development Act 2007*, chapter 9 (Leases and licences). Similarly, item 1.192 replaces the phrase 'Lease variation applications under Land Act' in the heading of section 166 with 'Development application to vary lease under Planning and Development Act'.

Part 1.33 — *Unit Titles Regulation 2001* — item 1.206 provides a technical amendment to section 8(1)(b) substituting the reference to the *Land Act*, part 6 with the *Planning and Development Act 2007*, chapter 7 (Development approvals). The language of the amended section is also updated to be consistent with the DA process under the *Planning and Development Act 2007*.

Part 1.34 — *Utilities Act 2000* — items 1.207 and 1.208 provide technical amendments to section 20(2) replacing the reference to the *Land Act* with the *Planning and Development Act 2007*.