

2003

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

LAND (PLANNING AND ENVIRONMENT)
(COMPLIANCE) AMENDMENT BILL 2003

REVISED VERSION

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Planning
Mr Simon Corbelli MLA

LAND (PLANNING AND ENVIRONMENT) (COMPLIANCE) AMENDMENT BILL 2003

Outline

The *Land (Planning and Environment)(Compliance) Amendment Bill 2003* (the "Compliance Bill") provides for the amendment to the *Land (Planning and Environment) Act 1991* (the "Land Act") and subordinate laws for the purpose of improving planning and leasing compliance powers. It also provides for more streamlined resolution of minor building encroachment issues.

The objective of the amendments is to empower departmental officers to impose a range of immediate and simple sanctions on lessees who contravene their lease, and to improve the effectiveness of monitoring development activity. The amendments will assist in addressing the increasing number of compliance complaints received.

The Land Act does not currently provide an effective intermediate range of sanctions against developers or lessees who build in contravention of, or in the absence of, a development approval, or who conduct activities in breach of their lease. At times it has been necessary to invoke powers in related legislation. These amendments will bring those powers and associated sanctions within the Land Act.

In respect of resolving encroachment issues, the Bill provides for related amendments to the *Roads and Public Places Act 1937* and the *Roads Act 1902*. The Bill also makes a number of minor technical and corrective amendments.

The main amendments affected by this Bill are broadly categorised in the accompanying Table 1 as follows:

1. Amendments to the Land Act to provide greater clarification written in contemporary language

The Bill includes a number of amendments to the Orders process that provide an intermediate range of penalties, a clearer structure and better clarity to existing provisions.

2. Provide for the planning and land authority to make orders at its own initiative

Currently the planning and land authority [or delegate] can only apply for an Order as a *person*, and not in its own right. The Bill explicitly provides for this power.

3. Provide for the resolution of minor encroachment issues by streamlined approval processes

Currently, development applications for minor lease boundary variations to eliminate building encroachments need to be notified. Appeal rights also apply. If the proposed lease boundary variation is also over an existing public road, the proposal to close the road must be notified under the *Public Roads Act 1902*. In the case of such a boundary variation to eliminate an encroachment, the Bill removes the requirement for the notification processes.

In cases where it is not appropriate to vary the lease boundary to eliminate an encroachment (eg for an awning over a shopfront public footpath), the Bill removes the requirement for the lessee to have both a permit under the *Roads and Public Places Act 1937* and a licence under the *Land (Planning and Environment) Act 1991*. Either a permit or a licence for the unleased land would be sufficient.

4. Deferral of rectification work cost

In cases where the land authority undertakes rectification work on a lease, it is entitled to recover the cost from the occupier or lessee of the land. The Bill provides for the lessee to apply to the authority to have the repayment of the cost deferred. If agreed, the repayment is secured by registering a charge against the lease. Interest is payable on the deferred repayment. The criteria for determining circumstances for deferred payment will be a disallowable instrument yet to be drafted and when available will be tabled in the Assembly.

5. Provide for the planning and land authority to issue *prohibition notices*

The Bill provides for the planning authority to issue a prohibition notice in order to prevent or lessen irreversible damage being caused by, for example, unapproved development activities. The notice would have immediate effect.

Financial Implications

There are not material financial implications resulting from the Bill.