

2020

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

PLANNING AND DEVELOPMENT AMENDMENT BILL 2020

**EXPLANATORY STATEMENT
and**

**HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Mick Gentleman MLA
Minister for Planning and Land Management**

PLANNING AND DEVELOPMENT AMENDMENT BILL 2020

The Bill is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

INTRODUCTION

This explanatory statement relates to the Planning and Development Amendment Bill 2020 (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not intended to be, a comprehensive description of the Bill. What is written about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW OF THE BILL

The purpose of this Bill is to facilitate the establishment of a University of New South Wales (UNSW) campus in the ACT. It does this primarily by amending three pieces of legislation, being:

- *Planning and Development Act 2007*
- *Planning and Development Regulation 2008*
- *Land Titles Act 1925*.

University of New South Wales Canberra City Campus

The ACT Government has been growing our education sector to strengthen Canberra's position as the Knowledge Capital. Universities play a pivotal role in the ACT economy and in city building and the UNSW City Campus will facilitate a significant step forward in these endeavours.

Tertiary education is the ACT's leading services export at \$1 billion annually, with our tertiary and research sector contributing well over \$3 billion to the economy and employing approximately 20,000 people.

The UNSW Canberra City Campus will anchor the establishment of a new education and innovation precinct and be home to teaching, research, and collaborative industry activities. It is expected to generate 2,000 jobs, attract 6,000 local, national and international students to Canberra, and bring up to \$3 billion in economic benefit for the ACT economy.

Summary of amendments to the *Planning and Development Act 2007*

The amendments to the *Planning and Development Act 2007* have three distinct objectives.

The first amendments have been inserted into the Bill to give the planning and land authority the power to grant a market value lease to UNSW for less than market value.

The second series of amendments introduces restrictions on leases granted to UNSW. These restrictions are in place to ensure that the university does not seek to transfer or vary the lease for 20 years from the date the lease is granted, and thereafter, may only do so with the consent of the planning and land authority.

The final amendment to the Act sets out the conditions that must be fulfilled if there is to be an assignment or transfer of the lease after the initial 20 year period, including Executive approval and, for a dealing which seeks to transfer ownership of a lease, the transferee must be a vocational or tertiary education provider registered under Commonwealth legislation.

Summary of amendments to the *Planning and Development Regulation 2008*

The amendments to the *Planning and Development Regulation 2008* are technical amendments to the direct sale provisions, which complement the amendments to the *Planning and Development Act 2007*. These amendments make it explicit that a direct sale to UNSW requires the approval of the Executive, and that the usual direct sale criteria which would apply to non-government educational establishments are displaced. Lastly, a new section has been inserted into the regulation which sets out the criteria that UNSW must meet in order to apply for a direct sale.

Summary of amendments to the *Land Titles Act 1925*

The Bill makes two minor amendments to the *Land Titles Act 1925*.

The first amendment directs the Registrar-General to make an entry in the register of the special restriction which applies to leases granted to UNSW.

The second amendment is a sunset provision which removes the new section from the Act should UNSW decide not to proceed with establishing a campus in the ACT, and sunset provisions are also in each piece of legislation amended by this Bill.

CONSULTATION ON THE PROPOSED APPROACH

Consultation on the Bill was conducted internally with ACT Government directorates and in conjunction with UNSW.

Consultation and negotiation with UNSW led to the development of this Bill, as well as the precinct deed which sets out the rights and obligations of the proposed development of the campus.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

This Bill does not engage any human rights.

APPENDIX A

Planning and Development Amendment Bill 2020

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Planning and Development Amendment Bill 2020**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

OUTLINE OF PROVISIONS OF THE BILL

Part 1 Preliminary

Clause 1 Name of Act

This clause provides for the name of the Act, being the *Planning and Development Amendment Act 2020*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commences on a day fixed by the Minister by written notice. Subsection 2 provides for an automatic commencement two years after the Act is notified.

Clause 3 Legislation amended

This clause lists the legislation which is amended by the Act.

Part 2 Planning and Development Act 2007

Clause 4 Section 243 heading

This clause substitutes a new heading for section 243 of the *Planning and Development Act 2007*. The heading has been changed as it better describes the section with the addition of a new subsection.

Clause 5 New section 243 (2)

This clause inserts a provision to make regulations for matters which must, or must not, be included in a lease granted by a direct sale.

Clause 6 Payment for leases New section 246 (2) (g)

This clause permits the planning and land authority to grant a market value lease to the University of NSW for financial consideration which may be less than market value.

Clause 7 Restrictions on dealings with certain leases New section 251 (2) (c)

This clause clarifies that the provisions of section 251 which restrict dealings with certain types of leases do not apply to a lease granted to the University of NSW. Given the specialised nature of higher education facility leases, the provision of section 251 have been displaced by unique restrictions which are particular to the University of NSW.

Clause 8 New sections 252A and 252B

This clause inserts new section 252A, which introduces restrictions for all dealings with a lease granted to the University of NSW for a period of 20 years from the date the lease is granted. After the 20 year period has expired, the consent of the planning and land authority will be required to deal with the lease. Subsection (6) of the clause clarifies that consolidation is not included in the definition of 'deal' with a lease.

This clause also inserts new section 252B, which includes the conditions the planning and land authority must abide by when providing consent to dealings under new section 252A. Dealings cannot be entered into without approval from the Executive, and for dealings which seek to transfer ownership of the lease the transferee must be a vocational or tertiary education provider registered under Commonwealth legislation.

Clause 9 New section 423A

This clause lists parts of this *Planning and Development Amendment Act 2020* which will expire if a lease is not granted within five years of the Act commencing. Should the University of NSW decide not to proceed with establishing an ACT campus, this sunset clause is desirable to keep the legislation uncluttered and up-to-date.

Clause 10 Reviewable decisions, eligible entities and interested entities Schedule 1, item 16, column 2

This clause inserts an exception for the University of NSW in schedule 1 of the Act to clarify that a decision not to grant the university a lease by way of direct sale is not a reviewable decision.

Clause 11 Market value leases and leases that are possibly concessional Schedule 5, part 5.2, new item 14A

This clause amends schedule 5 of the Act to insert a new item which clarifies that leases granted to the University of NSW are market value leases.

Clause 12 Dictionary, new definition of University of NSW

This clause inserts a definition for University of NSW into the dictionary of the Act, being the university established under the *University of New South Wales Act 1989* (NSW).

Part 3 Planning and Development Regulation 2008

Clause 13 New section 102A

This clause inserts a new provision in the *Planning and Development Regulation 2008* to identify the land which will form the University of NSW campus.

Clause 14 Direct sales requiring approval by Executive—Act, s 240 (1) (a) New section 105 (da)

This clause inserts a new subsection into section 105 of the *Planning and Development Regulation 2008* to confirm that leases granted to the University of NSW require approval from the Executive.

Clause 15 Direct sale criteria for non-government educational establishments—Act, s 240 (1) (a) (i) New section 108 (4A)

This clause inserts a new subsection into section 108 of the *Planning and Development Regulation 2008* to clarify that the direct sale provisions for non-government educational establishments do not apply for direct sales of land which constitute the University of NSW campus.

Clause 16 New section 111A

This clause inserts a new section into the *Planning and Development Regulation 2008*, which sets the criteria for a direct sale of land to the University of NSW which will form the future UNSW campus.

Clause 17 New division 5.1.5

This clause inserts a new division into the *Planning and Development Regulation 2008*. The new division contains one new section which sets out conditions which are required to be in a lease granted to the University of NSW for the UNSW campus.

Clause 18 New section 402A

This clause lists parts of this *Planning and Development Amendment Act 2020* which will expire if a lease is not granted within five years of the Act commencing. Should the University of NSW decide not to proceed with establishing an ACT campus, this sunset clause is desirable to keep the legislation uncluttered and up-to-date.

Clause 19 Dictionary, note 3

This clause inserts the term **University of NSW** into note 3 of the dictionary. Note 3 is a signpost which informs readers to look for this definition in the *Planning and Development Act 2007*.

Clause 20 Dictionary, new definitions

This clause inserts signpost definitions for **UNSW campus** and **UNSW precinct deed** into the regulation's dictionary.

Schedule 1 Land Titles Act 1925 – other amendments

Clause [1.1] New section 72D (1) (aa)

This clause inserts a new section into the *Land Titles Act 1925* which directs the registrar-general to enter the specific restriction relating to the University of NSW created by clause 8 of this Bill into the register.

Clause [1.2] New section 178C

This clause inserts a new provision which removes new section 72D (1) (aa) from the *Land Titles Act 1925* should the corresponding provision in the *Planning and Development Act 2007* expire. Should the University of NSW decide not to proceed with establishing an ACT campus, this sunset clause is desirable to keep the legislation uncluttered and up-to-date.