# Planning and Development Regulation 2008

# SL 2008-2

## Regulatory Impact Statement

**Prepared in accordance with the**
***Legislation Act 2001,* section 34**

# ACT Government's Planning System Reform legislative package

# REGULATORY IMPACT STATEMENT

# *Planning and Development Regulation 2008*

## Introduction

The ACT Government initiated in 2003 a comprehensive reform of the Territory's planning and leasehold administration system. The *Ministerial Statement of Planning Intent* of 2003 foreshadowed reforms covering a range of areas, including streamlining the development assessment system; more effective and transparent management of the leasehold estate; and overhauling the *Land (Planning and Environment) Act 1991* and the *Territory Plan*.

In December 2004 the Government launched the Planning System Reform Project, and in May 2005 released a *Directions Paper* along with four *Technical Papers* detailing options for reform in key areas.

After an extended and comprehensive consultation with the public, key industry stakeholders and government over more than two years in total, the *Planning and Development Act 2007* was passed by the Legislative Assembly in September 2007.

The new Act replaced the existing *Land (Planning and Environment) Act 1991* and the *Planning and Land Act 2002*, and various subordinate laws including regulations and a great many disallowable instruments.

A series of regulations under the *Planning and Development Act 2007* (the authorising law) will need to be in place for the commencement of the Act early in 2008. These include:

- *Planning and Development Regulation 2007*
- *Building (General) Regulation 2007*
- *Building (Unsubstantiated Work) Regulation 2007*
- *Magistrates Court (Building Infringement Notices) Regulation 2007*
- *Magistrates Court (Planning and Development Notices) Regulation 2007*

## Scope of this Regulatory Impact Statement

The regulation deals with matters that were either foreshadowed in the original Regulatory Impact Statement for the principal Act considered by Cabinet or that have emerged in response to concerns expressed by stakeholders in the consultation that accompanied the development of the Act.

The legislative reform introduced by the Act is comprehensive, and the measures included in the regulations reflect this. It is important to emphasize that the regulations are an integral part of a single package of planning reforms. The problems the regulations address and the policy objectives they support, are the same as those that apply to the principal Act, which was addressed in detail in the original RIS and consultations for the principal Act.

As an integral part of a single legislative package, the regulations have to been developed more or less contemporaneously with the principal Act and give effect to matters the Act allows to be prescribed by regulation.

This regulatory impact statement complies with the requirements for a subordinate law as set out in Part 5.2 of the *Legislation Act 2001*.

## Problem identification

The planning and land system affects all ACT residents, government agencies and businesses operating in the ACT. It governs the provision of the Territory's built environment. It provides the physical infrastructure that underpins the economy and the built environment that directly influences our lives. Some 95% of people work in buildings and 90% of product and services are generated there. Some 8% of the workforce is engaged in this industry. The impact on our non-working lives, via well-planned cities and neighbourhoods is even greater. For most Australians, property represents their greatest material asset.

Australia's building and construction industry contributes 14.4% of the Gross Domestic Product (6.8% supply network, 3.6% project based firms, 4.0% property sector). The property sector includes firms, individuals and organisations that develop, commission, own, manage and lease buildings and infrastructure.[1] The certified building work in 2004-05 in the ACT was valued at $1.3 billion for 4335 building approvals[2]. In 2006-07 ACTPLA issued 4808 Development Approvals, consisting of 3923 for single dwelling and 885 for other types of development.[3]

The planning system relies on formal application and decision-making processes, ending in approval or refusal of the application. It also includes the construction and ultimate approval of the building for use. During this process, the planning authority applies statutory planning rules in various forms to assess the application. This process often involves integration of the requirements of other authorities (referral authorities) to ensure that their objectives are achieved and rules observed. The overall process can. be long, complicated and costly.

[1] *Built Environment Sector Outlook*, P. W. Newton, CSIRO Division of Building, Construction and Engineering, Melbourne, 1999.

[2] From building Certifiers' reports to the ACT Planning and Land Authority

[3] *Annual Report 2006-07,* ACT Planning and Land Authority.

Prior to the Government's reforms, it was widely acknowledged that people using the ACT's planning system often found it to be slow, cumbersome, inconsistent and confusing. The planning authority found that many rules and requirements were unworkable, while some practices lacked a clear statutory basis. Debate in the Legislative Assembly on the Government's proposed reforms clearly showed there was broad agreement that there was significant regulatory failure and inefficiencies in the legislative framework governing planning in the ACT.

The Regulatory Impact Statement for the principal legislation (the *Planning and Development Bill 2006*)[4] pointed out that discussion with industry, business and community groups, as well as at the national level through the Development Assessment Forum (DAF), suggested that the development assessment process in all Australian jurisdictions required improvement in three key areas. These areas were *complexity, timeliness and efficiency*. Also, there was a need to ensure planning outcomes met community agreed objectives, including sustainability.

### *Complexity*

It is appropriate that applications for sensitive, controversial and complex developments should require significant safeguards. Similarly, simple, minor or clearly benign development applications should be facilitated with minimal red tape. However, under the planning system before the Government's reforms, often the rules did not sufficiently distinguish between the differing impacts and risks associated with simple and complex proposals, and as a result, time and effort was often spent disproportionately and inefficiently on straightforward applications. The approach to agency referrals added another layer of complexity to this. In 1999, private building certifiers replaced ACTPLA as the body empowered to issue building approvals in the ACT. However, the potential savings and efficiencies in this were not maximised due to a lack of coordination between the planning and building approval processes.

### *Timeliness*

One of the chief concerns of both the development industry and ordinary "mum and dad" applicants was the timeliness of planning decisions and particularly the time taken in some public notification and third party appeal processes. The streaming of applications into clear development tracks will ensure that public notification and third party appeals are matched to the actual significance and impact of the development proposal. While recognising that planning authorities must check and verify compliance with development conditions and building standards prior to occupation, it was clear a more efficient and targeted approach was needed.

### *Efficiency*

The previous planning system was inefficient in that time and other resources were spent on minor development proposals that could be exempted, subject to appropriate safeguards, from the full planning and building approval processes.

In 2004-05 the ACT Planning and Land Authority spent $38.7m on the administration of the planning system. Employment cost constituted 55% of this expenditure.

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[4] Regulatory Impact Statement - Planning System Reform Project, Attachment G, Submission to Cabinet, 21 November 2005

Development and building administration engages some 115 full time equivalent staff representing 36% of all staff. Fees recouped about 1/3 of the service costs. Even a modest improvement in efficiency could result in a significant saving to the government, and to industry and the community.

## The Government's policy response
## *- a simpler, faster and more effective planning system*

In the light of these problems the Government launched the Planning System Reform Project in December 2004, and announced its aim was:

> *to create a contemporary planning and land administration system, processes and practices that will provide greater certainty, clarity and consistency and which is flexible, timely, less repetitious and administratively manageable.*

In particular, the Government wanted to ensure that the planning system reforms saved homeowners and industry time and money, and to give greater certainty about what they needed to do if they require development approval.

The new planning system thus reduces red tape and introduces appropriate levels of assessment, notification and appeal rights. The new planning system is easier to understand, and clarifies what does and does not need approval, what is required for a development application and how this will be assessed.

The regulations that are the subject of this RIS set out a range of administrative and machinery matters which assist in providing certainty and clarity of processes and requirements under the Act. The regulations are consistent with the policy objectives for the authorising Act.

## Means of achieving the government's objectives

As indicated in the introduction to this RIS, the regulations considered here are part of an integrated legislative reform package, the content of which was subject to Cabinet approval and a very extensive and extended consultation process.

The RIS for the *Planning and Development Bill* accepted by Cabinet indicated there was no feasible alternative to the legislative approach of the proposed Bill. Retaining or amending the previous legislation was not tenable in view of the broad demand for changes to the planning system and the inability of the previous system to achieve Government policy. This was particularly true in relation to streamlining the development approvals process and cutting unnecessary controls and red tape.

Land use planning is a complex process. It requires the coordination of development assessment decisions taken at different times and by different agencies and stakeholders that would otherwise be made independently of one another. It also requires coordination with the building approval process and leasehold administration.

Given that this involves complex interrelationships between land tenure, property rights, and often competing private and community interests, it is not possible to do this other than by establishing clear statutory rules with respect to rights, obligations and procedures.

## Consistency with COAG National Reform Agenda

The ACT is the first jurisdiction to substantially adopt the of the leading practice model for development assessment which arose out of national consultation and research by the intergovernmental Development Assessment Forum (DAF). All State, Territory and Commonwealth Planning Ministers have endorsed the DAF proposals as a leading practice model.

The ACT planning system reforms also implement strategies consistent with the Council of Australian Government (COAG) National Reform Agenda announced on 10 February 2006 and reaffirmed at its meeting of 20 December 2007. These include streamlining and cutting unnecessary red tape in the areas addressed by the ACT Government's planning system reforms.

The COAG National Reform Agenda includes three cross-jurisdictional regulatory hot spots addressed by the planning system reforms:

- streamlining **development assessment** process to reduce the costs facing business and deliver positive economic, social, and environmental outcomes for the entire community;

- ensuring an **environmental assessment** and approvals process to ensure that the environmental impacts of proposed developments are well understood and the need for mitigation can be clearly identified without unnecessarily impeding economic activity;

- delivering continued regulatory reform on **building regulation** matters as part of a strong commitment by all jurisdictions to a nationally consistent Building Code of Australia based on minimum necessary regulation.

## Consultation

The ACT legislation for planning system reform has been the subject of extensive and protracted consultation. Since 2004, there has been extensive consultation with all stakeholder groups. Key concepts and issues have been discussed thoroughly with the business community, environmental groups and professional organisations.

The Government's initial consultation invited comments on a Directions Paper and four associated technical papers relating to four areas of planning reform. More than 60 stakeholders made a submission and over 260 comments were documented. The Government reviewed these comments, as well as those of the former Planning and Land Council and an expert reference group, and decided which direction the reforms should take. These reforms were reflected in the legislation.

There was also extensive consultation in relation to the Exposure Draft of the *Planning and Development Bill 2006*. The ACT Planning and Land Authority between 13 July and 31 August 2006 conducted stakeholder workshops and public briefings, through the community councils. Twenty-seven submissions on the Bill were received from stakeholders and considered. In addition, comments were recorded from meetings and also were considered.

The Legislative Assembly's Planning and Environment Committee, in its *Report No. 22 of 2006* (*Exposure Draft Planning and Development Bill*) made 48 recommendations in relation to the exposure draft of the Bill, primarily focused on the refinement or clarification of particular provisions, and responding to key matters raised by stakeholders during its inquiry. The Government, as a result of the Committee's recommendations, made significant refinements to the Bill.

In addition, further consultation on the draft regulations was carried out in January – February 2008, and comments received were taken into account.

## Key costs and benefits

The overall costs and benefits for the Government's package of legislative reforms to the planning system were considered in the Regulatory Impact Statement provided to Cabinet in November 2005.

The proposed *Planning and Development Regulation 2008* provides the detail that will facilitate the delivery of some of the key benefits, particularly the streamlining of Development Approvals and the exemption or code assessment of a substantial number of approvals.

This section provides details on the key costs and savings. Other costs and benefits are outlined in the summary table provided in the next section of this RIS.

Reducing the number of proposals that require approval (reducing red tape and costs) is a key policy objective of the Government's reform of the planning system. This was explicitly foreshadowed in the Cabinet decision, public consultation and RIS for the principal Act.

### DA exemptions

Section 20 of the proposed regulation defines developments that can be exempted from development approval. Schedule 1 specifies general criteria that apply in order for a designated development to be exempted from requiring a DA, and also provides extensive lists of designated exempt developments (see the explanatory statement for details of what is covered). The most significant exemptions are:

#### *Minor building works*

Schedule 1 provides that certain designated minor building works will be exempt from development approval (but work must be certified as complying with the Building Code of Australia). These minor works are mostly for what is known under the building code as "Class 10 structures". These consist of:

- non-habitable buildings, e.g. private garages, carports, sheds etc. (10a structures); and
- other minor works, e.g. fences, masts, antennae, retaining walls, free standing walls, etc (10b structures).

In 2006-07 ACTPLA dealt with a total of 1686 development applications for class 10 works[5], which consisted of:

- 1179 10a structures
- 507 10b structures

Fees currently charged for a class 10 DA vary depending on the estimated cost of the works as follows:

- $137.00 for works costing $1501 - $5000; and
- $148.50 for works costing $5001 - $20000

Using an average fee for class 10 applications of $142.75, it is estimated that the DA exemptions provided in the proposed regulation for class 10 structures will therefore result in *savings to applicants of around $241,000 per year*.

***New houses on new residential land***

Schedule 1 also permits new single dwellings built on new residential land (i.e. on a block on which another dwelling has not been built) to be exempted from development approval provided that the building complies with the relevant codes (Residential Zones Single Dwelling House Development Code and any applicable precinct code) and the general exemption criteria set out in Schedule 1.

In 2006-07 ACTPLA issued 660 development approvals for new single dwellings in new areas[6] (known as class 1 structures under the building code).

Fees currently charged for class 1 structures vary depending on the estimated cost of the works as follows:

- $609.80 for works costing $150,000 - $250,000
- $863.10 for works costing $250,000 - $ 500,000

Using an average fee for class 1 applications of $736.90, it is estimated that the DA exemptions provided in the proposed regulation for class 1 structures will therefore result in *savings to applicants of around $486,000 per year*. These savings will be offset in part by the fact that these single dwellings will still require building approval under the Building Act 2004. Building certifiers will be required to check that the single dwelling is exempt (ie that it complies with the relevant codes) before issuing a building approval in respect to the dwelling. This transfer to certifiers of the role of vetting dwellings for compliance with planning parameters will probably see certifiers charge additional fees to compensate for the additional regulatory burden. In practice undertaking that burden could add 2 hours to the assessment time for a BA, therefore adding less than $500 to the certifier's fee. However some certifiers may also charge a premium to compensate for the added risk they take in vetting plans for DA exemption. That could add more than a further $100 to their fees.

[5] Data from the BRIMS Data Base, 1 July 2006 – 30 June 2007, ACTPLA

[6] Data from the BRIMS Data Base, 1 July 2006 – 30 June 2007, ACTPLA

Other DA exemptions in relation to signs, certain lease variations and rural leases generally, and designated Territory developments (e.g. minor public works, vegetation works, waterway protection works etc) will deliver other not quantified savings to applicants (including where the Territory is the applicant).

Of course, these savings represent a loss of revenue to the Territory. The Government acknowledged this as a consequence of its planning system reforms and it was taken into account in the RIS for the principal Act.

## Consistency with the policy objectives of the authorising law and impact analysis

The proposed regulation is consistent with the Legislative Assembly's Scrutiny Committee principles, and with the policy objectives of the *Planning and Development Act 2007*.

The following table provides in summary form:

1) a brief description of the purpose and function of the provisions;
2) a statement on consistency of the provisions with the policy objectives of the authorising law;
3) an indication of whether the provisions are
   a) existing ones carried over unchanged, or carried over as streamlined versions of existing provisions, from previous legislation (Act, regulation or disallowable instrument); or
   b) new ones consistent with objectives of the new Act and arising out of consultation etc;
4) a general statement of the costs and benefits of the provision.

## Summary of costs and benefits of the proposed *Planning and Development Regulation 2008*

| **Chapter: 2 *Strategic environmental assessments*** | | | | |
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| **Section** | **Brief Description** | **Consistency with Act** | **Costs** | **Benefits** |
| Sections 10 - 17 | Sets out steps for strategic environmental assessment (SEA), including minimum content and scoping of an SEA, consultation requirements, and weighting of recommendations in an SEA.<br><br>Responsibility for preparing SEA lies with ACTPLA. | Detail is substantially new but consistent with the policy behind Part 5.6 of the Act. The Government's Direction's Paper for planning reform flagged SEA and this was developed in response to consultation for the Act.<br><br>The Act and this regulation give SEA a clear statutory basis. | Costs primarily accrue to government, mainly ACTPLA.<br><br>Costs are expected to be in same order of magnitude as for current major strategic planning studies (such as a major urban land release program like Molongolo). | Benefits to business and community include greater transparency and certainty of strategic planning processes.<br><br>More rigorous up front consideration of synergistic and cumulative impacts of major developments will avoid cost of duplicating environmental assessment for later stages of a major development. |
| **Chapter: 3 *Development Approvals*** | | | | |
| Part 3.1 Exemptions from requirement for development approval | | | | |
| Section 20 Schedule 1 (exemption from DA) | Section 20 defines what developments can be exempted from development approval under the regulation as matters listed in Schedule | Schedule 1 incorporates existing exempt development, but expands and rationalizes the list | | This exempt category will provide significant savings in time and effort for thousands of ACT residents each |

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| | 1.<br><br>These include certain small-scale or less complex proposals which will need no development application (and in some cases no building approval) e.g. construction, installation of minor attachments to building (such as a chimney, vent, skylight solar panels, pergolas, etc), or non-habitable structures such as sheds and garages of defined size, fences, etc.<br><br>Exemptions will also apply to: single residential dwellings on new residential land, certain lease variations, and certain developments on a rural lease.<br><br>Refer to the explanatory statement for details of matters exempted under Schedule 1 of the proposed regulation. | substantially.<br><br>Reducing the number of proposals that require approval is a key policy objective of the Government's reform of the planning system, and the exemptions in schedule 1 were explicitly foreshadowed in the Cabinet decision, consultation and RIS for the Act.<br><br>Note - the exemptions will also support the Government's policy objectives for affordable housing in the ACT. | For some proposals there will be the cost of obtaining building approval (from a private building certifier), but this not a new cost as a BA is currently required. | years who are currently required to obtain development and building approvals for minor proposals. There will also be savings in holding costs, as minor developments will not need to wait for approvals.<br><br>It is estimated that approximately 1700 minor class 10 DA applications per year (private garages, carports, sheds, fences, antenna, retaining walls etc) will no longer be required. The estimated saving to applicants will be approx $241,000.<br><br>New houses on new residential land that comply with code requirements are exempt from development approval but require building approval. This will provide significant |

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| | | | | savings in time, effort and fees to ACT residents purchasing or building new homes in new residential areas.<br><br>Approximately 13.5% of current DA applications are for new houses on new residential land. Therefore, it is estimated that around 660 houses per year will be exempted, with an estimated cost saving in avoided DA fees of $486,000 per year. |
| Part 3.2 Development applications | | | | |
| Section 25 (exemption from survey certificate) | Section 139 of the Act sets out the form and information that must be included when an application for development approval is made.<br><br>One of these requirements is that the application includes a survey certificate of the land that is the subject of the application. | Consistent with the policy objectives of the Act and is aimed making the approval process simpler and faster. | No new costs. | These exemptions will provide financial savings of around $500 per survey certificate (as well as in time and effort) for ACT residents covered by the provisions. |

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| | The regulation provides and exemption from this in certain circumstances e.g. a DA for demolition of a building, small additions to existing residential, commercial and industrial buildings, minor public works on unleased land, or land leased to the Territory. | | | |
| Section 26 Schedule 2 (referral of development applications) | Schedule 2 sets out when ACTPLA must refer a development application to a specified entity (government agency or a utility) for its advice. | Consistent with the policy objectives of the Act and is aimed making the approval process faster (advice must be provided with 15 days) It also provides greater certainty for applicants referral entities and ACTPLA.<br><br>There has been extensive consultation and negotiation on the content of this schedule as part of the consultation on the Act. | Referral entities are already consulted and have appropriate administrative processes. Referral categories are now more clearly defined by the proposed regulation. | Costs are off set by the entities having greater certainty that their advice will be sought on a prescribed DA, and that that advice will be considered. |
| Section 27 (Public notification of merit track developments) | The effect of this section is that all development proposals in the merit track must be notified in accordance with the Act. A development proposal in the merit track in relation to a | Consistent with the policy objectives of the Act and is aimed making the approval process simpler and faster. Reducing the number of proposals | This will not impose appreciable costs on the community; rather there will be less extensive notification than under the current | This will provide saving to affected applicants for notification in certain merit track developments. There will still be some |

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| | matter mentioned in schedule 2 has limited public notification requirements. The types of development proposals subject to limited notification include: The erection, alteration or demolition of a single dwelling, if the development would not result in more than 1 dwelling being on a parcel of land; The erection or alteration of dwellings or buildings on land that has ceased to be in a future urban area under the Act, | that require the full notification process is a key policy objective of the Government's reform of the planning system. | system. Notification for DA exempt works and code assessable works will generally not be required.<br><br>ACTPLA currently charges a fee of $229.70 per notification. | limited notification requirements (e.g. of owners of adjoining properties) but not major notification (i.e. newspaper notices and erection of signs at the property).<br><br>It is expected that around 48%, of developments will be code track or exempt under the new system. This equates to approx 2350 application per year that will not require public notification.<br><br>Merit track applications are estimated to be 52% or around 2500 per year. Of these it is estimated that 75% will require minor notification, with the remaining 25% requiring major notification. |
| Section 28 (Public consultation period) | Section 157 of the Act leaves specification period of public consultation to that prescribed by regulation. Section 28 of the regulation | Consistent with the policy objectives of the Act and is aimed making the approval process simpler and | This will not impose appreciable costs on the community. The only cost would be the need for a | Any minor costs arising from time constraints are balanced against the interests of the |

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| | sets this as:<br>• 10 working days after an application in the merit track is publicly notified; or<br>• 15 working days after an application in the impact track or in the merit track and prescribed by regulation, is publicly notified | faster. | person wishing to make a representation to do so in a timely manner. | proponent and the community in ensuring a more timely process for determining development applications.1 |
| Section 29 (Conditions for code track proposals) | Section 165 (4) of the Act requires that code track proposal must not be approved subject to a condition unless the condition is prescribed by regulation.<br><br>Section 29 of the regulation sets out the standard conditions that may be attached. These include things such as: the development be completed within a designated time; certain basic steps to minimize the environmental impact of the proposal be taken; documentation be retained; approvals of other relevant authorities be obtained; a bond be entered into as a guarantee of performance | These requirements are the common sorts of conditions that planning authorities would impose.<br><br>Reducing the number of proposals that require complex approvals and moving as many simple developments into the code track is one of the key policy objectives of the Government's reform of the planning system. | This will not impose appreciable costs on the community. These sorts of requirements are routinely imposed by any development approval under the present system. | Code track assessment simplifies the approval process for less complex projects. The list of conditions will provide greater certainty on standard conditions that may be imposed. |
| ***Chapter: 4 Environmental impact statements and inquiries*** | | | | |

| *Part 4.1 Environmental impact statements* | | | | |
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| Part 4.1 (environmental impact statements)<br><br>Section 50<br><br><br><br><br><br><br><br>Sections 51 – 55<br><br><br><br><br><br><br><br><br>Section 56 | Part 4.1 sets out detail on various matters in relation to an EIS as provided for in the Act.<br><br>Section 50 sets out what must be included in an EIS, including a description of the proposal and any alternatives, assessment of the expected environmental impacts, and any proposed measures to prevent, mitigate or offset the impacts.<br><br>Sections 51 – 55 set out various matters related to the scoping of an EIS, including the content of the scoping document to be prepared by ACTPLA, entities that must be consulted in the preparation of the scoping document, procedures and timeframes for consultation.<br><br>This section provides for ACTPLA to maintain a list of consultants for environmental impact statements and sets out how a person may be added to this list. | A key policy objective of the Act is to ensure that the level of environmental assessment required for a development proposal is commensurate with the significance of the development. The two-stage system of environmental assessment under the previous legislation evolved into one in which most preliminary assessments became de facto EISs. This imposed unnecessary costs and lengthened approval times considerably on many less complex projects that did not warrant such onerous environmental assessment.<br><br>The matters dealt with in this Part of the regulation are fully consistent with the policy objectives of the Act and are aimed ensuring the scope of | The project specific scoping for an EIS will enable upfront identification of studies, investigations and other information requirements. Costs of such investigations will be targeted to the project type and scope, rather than generic studies and information required under the current process. The removal of mandatory Preliminary Assessments eliminates costs for a number of projects. Agreement to the EPBC Act bilateral assessment process will avoid or reduce duplication of EIS costs. | For less complex development proposals (the vast majority) the costs of environmental assessment will be reduced. Environmental assessment for non-major proposals will be integrated into the code and DA requirements, and the cost and time required to preparation and assessment of mandatory preliminary assessments has been removed.<br><br>The new framework established under the Act and regulations will provide greater certainty to develop proponents, government and the community with respect to requirements, timeframes and consultation processes, etc. |

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| | | each assessment is matched to the specific nature and circumstances of a proposed major development.<br><br>Many of the matters covered by an EIS were previously included by environmental assessments under the Land Act 1991. | | |
| *Part 4.2 – Inquiry panels* | | | | |
| Sections 70 - 78 | The Act (Part 8.3) provides that the Minister may establish an inquiry panels for the purpose of considering aspects of an EIS given to the Minister.<br><br>The intention of this part of the Act is to establish a flexible, informal procedure for public inquiries. As such the new Act does not carry forward the more onerous powers given to inquiries under the previous Land Act, e.g. the old provisions relating to warrants and contempt were not included in the new Act. Nevertheless, the procedures for inquiries are not radically different form previously. | The provisions in this Part are consistent with the policy objectives of the Act to reduce red tape and make the assessment system clearer.<br><br>The proposals on inquiry panels were not controversial and did not receive a great deal of comment during the consultations. | Costs of inquiry panels under the new system would be commensurate with those under the old system.). | The costs to the ACT of the conduct of an inquiry about an EIS are recoverable from the proponent of the development proposal. (s233 of Act)<br><br>The new system ensures that the Minister must appoint a panel of inquiry (if the minister forms the view that this is needed) within 15 working days of an EIS being given to the Minister by ACTLA after it has assessed the EIS. An inquiry |

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| | This Part of the regulation provides: that ACTPLA may keep a list of persons interested and qualified to sit as a member of a panel; for disclosure of interests of panel members and dealing with conflicts of interest; the constitution of inquiry panels and functions including appointment of the presiding member; defines who is an interested person for the purpose of an inquiry and requires that an inquiry panel must conduct its inquiry in public. | | | panel must report within 60 days. This provides greater certainty and ensures that unreasonable delays will not be introduced. |
| ***Chapter: 5 Leases*** | | | | |
| Note: The provisions under Chapter 9 of the new Act deal with the process for leasehold administration for the Territory. Most of the leasing provisions in the Land Act were incorporated into the *Planning and Development Act* and so the leasehold administration framework remains largely unchanged in its fundamental features. A large number of provisions previously in disallowable instruments have been streamlined and are now included in the proposed regulation (Chapters 5 and 6). | | | | |
| *Part 5.1 Direct sale of leases* | | | | |
| Division 5.1.1 (Interpretation - part 5.1)<br><br>Sections 100 - 102 | Section100 defines various terms used in relation to the direct sale of leases.<br><br>Section 101 gives explains the meanings of "business-case criteria" in relation to the direct sale of a lease to a person and "business-case documentation" in relation to a proposed development by | The content of these sections was formerly in a Disallowable Instrument and will now be streamlined and placed in the regulation.<br><br>These provisions are essentially the same as the existing criteria | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. |

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| | a person.<br><br>Section 102 defines the City West Precinct by reference to section and block, and by reference to the City West precinct deed. | for the sale of direct leases, and are consistent with the Government's enunciated policy objectives for the new Act and regulations, including achieving greater certainty, clarity and consistency in the land administration system. | | |
| Division 5.1.2 (Direct sales approved by Executive)<br><br>Section 105 - 114 | Section 105 lists the types of direct sales that are prescribed as requiring approval by Executive (including to community use, supportive accommodation, non-government educational establishment, the housing commissioner, Territory and Commonwealth entities).<br><br>Subsequent sections set out the criteria for the direct sale of a lease for:<br>Commonwealth entities (s106);<br>non-government educational establishments (s107);<br>unallocated land for the housing commissioner (s108); Territory entities (s109); leases of contiguous unleased territory land that is | The content of these sections was formerly in a Disallowable Instrument and will now be streamlined and placed in the regulation.<br><br>These provisions are essentially the same as the existing criteria for the sale of direct leases, and are consistent with the Government's enunciated policy objectives for the new Act and regulations, including achieving greater certainty, clarity and consistency in the land administration | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. |

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| | public land (s110); City West precinct land for the Australian National University (s111); community uses (s112); supportive accommodation (113); and, rural leases (114) | system. | | |
| Division 5.1.3 (Direct sales approved by Minister)<br><br>Section 120 - 122 | Section 120 lists the types of direct sales requiring approval by the Minister (e.g. a lease to the Territory, a lease offered at auction or ballot but not sold, or where the contract of sale is rescinded before lease is granted).<br><br>Section 121 sets out the criteria for the direct sale of a lease to the Territory.<br><br>Section 122 sets out the criteria for direct sale of leases of contiguous unleased territory land other than public land. | The content of these sections was formerly in a Disallowable Instrument and will now be streamlined and placed in the regulation.<br><br>These provisions are essentially the same as the existing criteria for the sale of direct leases, and are consistent with the Government's enunciated policy objectives for the new Act and regulations, including achieving greater certainty, clarity and consistency in the land administration system. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. |
| | Section | | | |
| *Part 5.2 - Grants of leases generally* | | | | |
| Section 140 | Section 140 sets the period | This is an existing | Insomuch as there | Insomuch as there |

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| | for failure to accept and execute lease as 20 working days after the day ACTPLA notifies the person who is entitled to the grant of a lease that the lease is available for execution. | provision in the Land Regulations that will be carried over to the regulations under the new Act<br><br>Consistent with the Government's policy objectives of achieving greater certainty, clarity and consistency in the land administration system. | are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. | are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. |
| *Part 5.3 – Grants of further leases* | | | | |
| Section 150 | Section 254 (1)(f) of the Act provides for the regulations to prescribe the criteria for grant of further leases for unit title schemes. Section 150 of the regulation does this. | The criteria in were previously in the land Act and have now been carried over to Section 150 of the regulations under the new Act.<br><br>Consistent with the Government's policy objectives of achieving greater certainty, clarity and consistency in the land administration system. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. |
| Section 151 | Section 254 (1)(f) of the Act provides for the regulations to prescribe the criteria for grant of further leases for | The criteria in were previously in the Land Act and have now been carried over to | Insomuch as there are costs or benefits, they remain unchanged from the | Insomuch as there are costs or benefits, they remain unchanged from the |

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| | community title schemes. Section 151 of the regulation does this. | Section 151 of the regulations under the new Act.<br><br>Consistent with the Government's policy objectives of achieving greater certainty, clarity and consistency in the land administration system. | provisions under the previous leasehold administration legislation. | provisions under the previous leasehold administration legislation. |
| *Part 5.4 – Lease variations* | | | | |
| Section 160 | Section 273 (1) (a) of the Act provides that a lease must not be varied to reduce the rent payable to a nominal rent unless the lease is included in a class of leases prescribed by regulation.<br><br>Section 160 of the regulation prescribes applicable classes of lease. | The criteria in these provisions were previously in the Land Act and have been clarified and will be carried over to the regulations under the new Act.<br><br>Consistent with the Government's policy objectives of achieving greater certainty, clarity and consistency in the land administration system. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. |
| *Part 5.5 – Change of use charges* | | | | |
| Division 5.5.1 (Meaning of added value) Section 170 | Section 170 defines the meaning of added value for the purpose of determining a change of use charge, and | This is an existing provision in the Land Regulations that will be carried over to the | Insomuch as there are costs or benefits, they remain unchanged from the | Insomuch as there are costs or benefits, they remain unchanged from the |

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| | explains how this is to be worked out. | regulations under the new Act.<br><br>Consistent with the Government's policy objectives of achieving greater certainty, clarity and consistency in the land administration system. | provisions under the previous leasehold administration legislation. | provisions under the previous leasehold administration legislation. |
| Division 5.5.2 (Remission of change of use charges)<br><br>Sections 175 - 177 | Division 5.5.2 of the Regulation deals specifies requirements relating to the remission of change of use charges.<br><br>Section 278 of the Act requires that ACTPLA must remit all or part of a change of use charge for a variation of a lease as prescribed by regulation.<br><br>Section 175 of the regulation provides when this is must occur (i.e. when necessary and desirable to further a listed policy or for circumstances stated in policy direction).<br><br>Section 176 specifies that the of change of use charges to be remitted for the | The provisions in sections 175 -177are existing provisions in the Land Regulations that will be carried over to the regulations under the new Act.<br><br>Consistent with the Government's policy objectives of achieving greater certainty, clarity and consistency in the land administration system. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. |

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| Division 5.5.3 (Increase of change of use charge) | variation of a lease granted to the housing commissioner is 25% of the added value for the variation.<br><br>Section 177 provides that the Minister may make a policy direction about remission of change of use charges for section 175 (1) (b) or (2) (a) and that a direction is a disallowable instrument.<br><br>Section 180 defines the meaning of a recently commenced lease, in relation to the variation of a lease, and a definition of largest lease and re-grant of lease.<br><br>Section 181 prescribes the change of use charge for a variation of a concessional lease must be increased by 25% of the added value for the variation.<br><br>Section 182 prescribes the circumstances in which the change of use charge for a variation of a recently commenced lease must be increased by 25% of the added value for the variation. | The provisions in sections 180–182 are existing provisions in the Land Regulations that will be carried over to the regulations under the new Act. Section 180 has been slightly revised to clarify drafting.<br><br>Consistent with the Government's policy objectives of achieving greater certainty, clarity and consistency in the land administration system. | | |
| *Part 5.6- Discharge amounts for rural leases* | | | | |
| Sections 190-192 | Section 190 provides | The contents of | Insomuch as there | Insomuch as there |

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| | definitions for Part 5.6.<br><br>When a dealing with a rural lease is not to a lessee's domestic partner or child then a discharge amount is payable. The formula for calculating this is specified. Section 191 provides specifies this in relation to the discharge of rural leases other than a special Pialligo lease, while section 192 specifies the discharge amount for a special Pialligo lease. | sections 190-192 were previously in the Land Act and are to be transferred to the regulation under the new Act.<br><br>Consistent with the Government's policy objectives of achieving greater certainty, clarity and consistency in the land administration system. | are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. | are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. |
| *Part 5.7 - Transfer or assignment of leases subject to building and development provision* | | | | |
| Section 200<br><br>(Personal reasons for noncompliance with building and development provision) | Section 298 of the Act deals with the transfer or assignment of interests in territory land before the completion of development that is required by the Crown lease. ACTPLA may consent to the transfer or assignment if it is satisfied of certain matters, including that the lessee is unable for personal or financial reasons prescribed by regulation from comply with the building and development provision of the lease.<br><br>Section 200 prescribes the personal reasons under the Act that ACTPLA will accept | This is a new provision that gives effect to changes introduced by the new Act.<br><br>It recognizes that transfer of interests in land before completion of development should be permitted where there are genuine personal reasons.<br><br>Consistent with the policy objectives of the Act to reduce unnecessary red tape, of achieving | Costs to the Territory in dealing with such matters are likely to be reduced as a clearer and more responsive process for dealing with such cases is established. | This will benefit individuals who are able to establish personal reasons for non-compliance, will and permit the sale of the land in question. |

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| | for consenting to the transfer of a lease subject to a building and development provision. | greater certainty and clarity in land administration. | | |
| Section 201 (Matters for transfer or assignment of leases) | Section 201 prescribes the matters ACTPLA must consider before deciding whether or not to consent to a transfer of a lease, to determine whether the transferee is willing and able to comply with the building and development provision of the lease. | The content of this provision is a carry over from the Land Regulations but the drafting has been improved.<br><br>Consistent with the Government's policy objectives of achieving greater certainty, clarity and consistency in the land administration system. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. |
| *Part 5.8 - Surrendering and terminating leases* | | | | |
| Sections 210-211 | The Act (Section 299) provides that a lessee may surrender a lease or a lease may be terminated, and a refund may be payable. A payment of refund can only be made in accordance with criteria prescribed by regulation. The amount of the payment is also to be prescribed by regulation.<br><br>These sections apply only to a residential lease granted for not more than 3 | The content of this provision is a carry over from the Land Regulations but the drafting has been improved.<br><br>Consistent with the Government's policy objectives of achieving greater certainty, clarity and consistency in the land administration system. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. | Insomuch as there are costs or benefits, they remain unchanged from the provisions under the previous leasehold administration legislation. |

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| | residential dwellings and a lease granted to a community organisation for community use.<br><br>Section 210 of the regulation prescribes the amount of refund.<br><br>Section 211 specifies the circumstances in which the prescribed amount in section 210 will be paid by ACTPLA. | | | |
| *Part 5.9 - Subletting of leases* | | | | |
| Section 220 | Section 308(2) of the Act deals with the power of lessee to sublet part of the leased land.<br><br>Section 220 of the regulation prescribes the criteria for the approval by ACTPLA of the subletting of a part of land comprised in a lease. | This is a new provision that gives effect to changes introduced by the new Act.<br><br>Consistent with the Government's policy objectives of achieving greater certainty, clarity and consistency in the land administration system. | Costs to the Territory in dealing with such matters are likely to be reduced as a clearer and more responsive process for dealing with such cases is established. | This will benefit individuals and developers who wish to sublet part of a lease by providing certainty and clarity as to requirements. |
| ***Chapter 6 - Concessional lease exclusions*** | | | | |
| Section 240 (concessional lease exclusions) | Section 235 of the Act defines concessional leases and also lists some types of lease that cannot be | This is an existing provision in the Land Act that will be carried over to the | Insomuch as there are costs or benefits, they remain unchanged | Insomuch as there are costs or benefits, they remain unchanged from the |

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| | concessional. Section 235 (1) (c) permits the regulations to prescribe other leases that cannot be concessional. Section 240 of the regulation prescribes other such excluded leases (including residential leases, commercial or industrial leases, leases granted to territory-owned corporations). | regulations under the new Act<br><br>The provision is consistent with the Government's enunciated policy objectives for the Act, including achieving greater certainty, clarity and consistency in the land administration system. | from the provisions under the previous leasehold administration legislation. | provisions under the previous leasehold administration legislation. |
| ***Chapter 7 - Controlled activities*** | | | | |
| Sections 300 & 301 | The Act includes a range of measures to investigate complaints and take action on controlled activities - Many provisions of the Land Act have been carried over into the proposed Act including orders, rectification notices, prohibition notices, injunctions and infringement notices.<br><br>Sections 300 & 301 specify the period that ACTPLA has to make a decision on an application for a controlled activity order under subsections 351(4) and 345(1)(b) under the Act is 20 working days. | The times specified in these provisions are similar to those in the Land Regulation. The existing requirements require to decisions to be made within 21 days. Consistent with policy of specify time limits in working days, the provisions refer to 20 working days.<br><br>These provisions are consistent with the policy objective of a providing greater clarity and certainty for process under the Act. | This will not impose appreciable costs on the community. Similar requirements are imposed under the present system. | ACTPLA has slightly greater time (few days) in which to make a decision on orders. |

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| ***Chapter 8 - Reviewable decisions*** | | | | |
| Sections 350 & 351 | Section 350 specifies that the merit track matters which are exempt from third party AAT review under the Act (decisions under section 162 to approve a development application in the merit track see Schedule 1, item 4, Column 2 [b]) are as set out in schedule 4, part 4.2 of the regulation.<br><br>Third parties may have a right to seek review of a decision to approve a development application in the merit or impact tracks (not the code track). This right depends on a number of factors set out in the legislation and which were extensively canvassed in the consultation on the new Act (see Explanatory statement for the *Planning and Development Bill*, Chapter 13 - Review of decisions).<br><br>Section 351 specifies the impact track matters which are exempt from third party AAT review under the Act (see Schedule 1, item 6, Column 2) are as set out in | The section 350 provisions carry over the existing exemptions in the regulations, including the exemption from third party appeals in relation to:<br>(a) the city centre (Civic); or<br>(b) a town centre; or<br>(c) an industrial zone.<br><br>The associated maps update the boundaries of the expanded Gungahlin Town centre in accordance with the revised Territory Plan.<br><br>These provisions are consistent with the policy objective of a providing greater clarity and certainty for process under the | This will not impose appreciable costs on the community. Similar requirements are imposed under the present system. | The regulation provides certainty and clarity and as such will provide a benefit to proponents of developments and the community. |

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| | schedule 4, part 4.3 of the regulation.<br><br>Schedule 4, part 4.3 prescribes the following as exempt from third party appeal: The building, alteration or demolition of public facilities on unleased territory land, including barbecues, seating and playground equipment, or related landscaping. | Act, and of streamlining the decision-making process for less complex projects. | | |
| ***Chapter 9 – Bushfire emergency rebuilding*** | | | | |
| Sections 370-375 | The *Land (Planning & Environment) (Bushfire Emergency) Regulations 2003* enabled the hundreds of buildings and structures destroyed or damaged by the 2003 bushfires to be demolished and the land cleared under a simplified procedure. The Land Bushfire Emergency Regulation worked in conjunction with the *Building (Bushfire Emergency) Regulations 2003*. Normally both a development application and building approval were required for demolition. The two sets of regulations reduced this to one process. | Consistent with the policy objectives of the Act to reduce unnecessary red tape, of achieving greater certainty and clarity in land administration.<br><br>These provisions are carried over from the *Land (Planning & Environment) (Bushfire Emergency) Regulations 2003.* | There are no new costs associated with carrying over these existing provisions. | The carryover of these provisions affects a very small number of lessees.<br><br>Of the many hundreds of homes affected by the 2003 bushfires, only approximately 10 of the original owners eligible to rebuild under the Land Bushfire Emergency Regulations had, as of 13 February 2008, not obtained a development approval. |

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| | The Land and Building Bushfire Emergency Regulations also provided a streamlined process for the rebuilding of structures and buildings damaged by the bushfires, provided the development or design was approved under the *Land Act* before the beginning of the bushfire emergency, and if it was rebuilt substantially in accordance with that previous approval. Where this was the case, the rebuilding was exempted from certain requirements under the Land Act. Streamlined approvals and exemptions only applied to the original owner of the block who wished to rebuild in accordance with the emergency regulations. | | | |