

Land (Planning and Environment) Amendment Bill 2000 (No.3)

Explanatory Memorandum

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Outline

This is an amending Bill. It amends the Land (Planning and Environment) Act 1991 (the Act). The amendments establish the position of Chief Planner for the Australian Capital Territory and provide for the ACT Planning Authority (the Authority) under S.33 of the Act to be constituted by the Chief Planner. The amendments provide for the independence of the ACT Planning Authority and require any ministerial direction of the Authority to be tabled in the Legislative Assembly. Ministerial direction of the Authority is only allowed under specific criteria. The Bill also allows the Assembly to direct the Minister to direct the Authority in relation to these criteria. The amendments outline the obligations on the Authority in responding to a ministerial direction and also provide for the Chief Planner to employ staff under the Chief Planner's control. Finally the amendments provide for the term of appointment of the Chief Planner, specify conditions in relation to eligibility, determination of remuneration and allowances, disclosure of interests and grounds for termination of appointment

Clause Notes

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| Clauses 1, 2 & 3 | Formal clauses that deal with the short title of the Bill, its commencement and identifies the Land (Planning and Environment) Act 1999 as the Act being amended. |
| Clause 4 | Amends S.5 to provide for the definition of the position of Chief Planner for the Australian Capital Territory |
| Clause 5 | Amends S.33 to provide for the Chief Planner to perform the role of the Australian Capital Territory Planning Authority (the Authority). S.33(2) and S.33(3) are deleted as they currently provide for the role of the Authority to be performed by a public servant responsible to the Minister. New subsection (2) is substituted to provide for the Chief Planner to perform the functions of the Authority. |

Clause 6

Amends S.36 to delete S.36(2) and S.36(3). These subsections require the Authority to act in accordance with any Executive or Ministerial written direction made under S.37. These subsections are no longer necessary as S.37 is repealed by this Bill and new sections providing for the independence of the Authority and revised Ministerial direction powers are substituted.

Clause 7

Repeals S.37. S.37 allows for the Executive or the Minister to make written directions to the Authority in relation to the policies and functions performed by the Authority, the review of the Territory Plan or any part of the Plan or about any other aspect of the Authority's functions. This section is no longer required and new S.37 and 37(A) substituted to ensure the independence of the Authority in the performance of all of its functions except where a specific written direction is made by the Minister to the Authority.

New S.37 provides for the Authority to not be subject to any directions by the Executive or the Minister in performing its functions except for directions made under existing S.26 or new S.37(A). Existing S.26 relates to directions made by the Executive in response to a draft Plan variation submitted by the Authority.

New S.37(A) alters the existing arrangements for the Executive or the Minister to direct the Authority in relation to the policies and objectives the Authority should pursue, in relation to the review of the Plan or any part of the Plan and in relation to any other aspect of its performance. New S.37(A) provides for the Minister to be able to direct the Authority on the same grounds that are provided for under existing S.37(1) but also requires the Minister to table a copy of each direction made in the Legislative Assembly within 6 sitting days of giving it.

New S.37(A) also allows the Legislative Assembly to direct the Minister, by resolution, to direct the Authority under the provisions outlined in new S.37. The Minister must give the direction outlined by the Assembly in the resolution as soon as practicable.

New S.37(A) further requires the Authority to comply with a direction received under this section and to produce a report for the Minister stating the action taken or planned to be taken in response to the direction. The Minister is required to table in the Assembly any such report within 6 sitting days of receiving it.

Clause 8

Removes subsection (3) from S.38. This subsection currently requires the Authority to seek the Ministers approval before

entering into a contract worth greater than \$100,000. As this subsection would place an undue constraint on the Authority's independence, it is omitted.

Clause 9

Repeals S.40. This section currently allows the Authority to delegate any of its powers to a public servant. New S.40 establishes a new delegation structure which reflects the independence of the Authority and its staff.

Clause 10

Section 40 is amended by adding a new subsection (2) which ensures that the Chief Planner is able to appoint and manage his or her staff independently.

Clause 11

Inserts a new division 2.4A – Chief Planner. This new division establishes the position of Chief Planner for the Australian Capital Territory. The division outlines that the Chief Planner is appointed by the Executive and that the term of appointment is no longer than 5 years. The term of appointment must be specified in the instrument appointing the Chief Planner.

The new division requires that a public employee is not eligible to be appointed Chief Planner. This is to ensure that the Chief Planner has the independence to effectively perform the functions of the ACT Planning Authority. This does not apply in relation to a person acting in the position of Chief Planner.

The new division provides for the remuneration and allowances of the Chief Planner to be determined under the *Remuneration Tribunal Act 1995*. It also provides for other conditions of employment not provided for in the Act to be decided by the Executive.

The new division outlines the requirements on the Chief Planner to disclose to the Minister all direct and indirect financial interests. The Chief Planner is also required under this division to give written notice to the Minister of any direct or indirect financial interest in an issue which the Authority is considering or about to consider.

Under this division the Chief Planner cannot accept certain public offices, private business duties, duties as a director of a corporation or continue in any private professional practise except with the Minister's written profession. These requirements do not relate to duties required of the position of Chief Planner.

The new division outlines the grounds for ending of the Chief Planners appointment by the Minister. These relate to physical or mental incapacity or bankruptcy. The Minister must

also end the Chief Planners appointment if the Legislative Assembly by resolution declares the Chief Planner should be removed on the ground of proved misbehaviour or proved physical or mental incapacity.

Clause 12

Amends the *Remuneration Tribunal Act 1995* to provide for the position of Chief Planner.