

2013

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**PLANNING, BUILDING AND ENVIRONMENT
LEGISLATION AMENDMENT BILL 2013**

EXPLANATORY STATEMENT

**Presented by
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Minister for Environment and Sustainable Development
EXPLANATORY STATEMENT**

This explanatory statement relates to the *Planning, Building and Environment Legislation Amendment Bill 2013* (the bill) as presented to the Legislative Assembly. It has been prepared in order 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 Legislative Assembly.

Background

Planning, building and environment legislation has historically been amended by a number of methods, as follows:

- the usual Act amendment process,
- by modification using regulation (commonly referred to as a ‘Henry the Eighth’ amendment),
- through the Statute Law Legislation Bill process, and
- as a consequence of other legislation. For example, the *ACT Civil Administrative Tribunal Legislation Amendment Act 2008* made consequential amendments to the *Building Act 2004*.

These ways of amending legislation in the Planning Portfolio, while effective, can be confusing for community, industry and government users of the legislation. An omnibus planning, building and environment legislation amendment bill enables more minor matters to be dealt with expediently and consolidates amendments into one place, making the amendment process more user-friendly and accessible. It provides greater flexibility in drafting amendments to planning, building and environment legislation and helps to minimise costs associated with keeping the legislation up-to-date.

Under guidelines approved by the government, the essential criteria for the inclusion of amendments in the bill are that the amendments are minor or technical and non-controversial, or reflect only a minor policy change. During development of the bill, relative government Directorates are consulted and when necessary, industry and the community may be consulted.

The bill forms an important part of maintaining and enhancing the standard of ACT building and planning law. It enables legislative amendments and repeals to be made that would generally not be of sufficient importance to justify separate legislation. The amendments are also inappropriate to be made as editorial amendments under the *Legislation Act 2001*, chapter 11 (which provides for the republication of Acts and statutory instruments).

This is the fourth planning, building and environment legislation amendment bill. The first bill was passed by the Assembly in June 2011 and through that bill 8 individual Acts were amended. The second bill was passed in December 2011 and delivered two key outcomes: pre-DA community consultation and the requirement to have a sign about building work on the building site. The third bill was passed in May 2012 and delivered a number of key outcomes, including clarifying estate development plans and allowing consolidation of rural leases. This demonstrates the effectiveness of the omnibus bill process as a tool that collates amendments to legislation relative to planning, building and the environment. Without this bill process, these amendments could have been spread over a number of amendment bills and possibly delayed. In this way, this omnibus bill helps to effectively maintain the

statute book. Previous bills can be accessed on the ACT Legislation Register at www.legislation.act.gov.au.

Well maintained legislation greatly enhances access to it by making it easier to find in an up-to-date form and easier to read and understand. This bill and future such bills facilitate keeping laws as up-to-date as possible to reflect technological and societal change both of which can happen rapidly in today's world.

Overview of Bill

The bill amends the:

- *Building Act 2004*
- *Building (General) Regulation 2008*
- *Construction Occupations (Licensing) Regulation 2004*
- *Districts Act 2002*
- *Electricity (Safety) Regulation 2004*
- *Planning and Development Act 2007*
- *Planning and Development Regulation 2008*
- *Public Place Names Act 1989*
- *Unit Titles Act 2001*
- *Water Resources Act 2007*

The bill contains minor policy, technical and editorial amendments.

Minor policy amendments

The bill contains two minor policy amendments.

Clause 6 amends section 69(4) of the *Building Act 2004*. Section 69 relates to certificates of occupancy for building work issued by the construction occupations registrar. Where building work has been completed, the owner of a parcel of land may apply to the construction occupations registrar for a certificate to state that this work has been completed in accordance with prescribed requirements under the Building Act and is fit for occupation and use as a building of the class stated in the approved plans for that building work.

Section 69(4) is an evidentiary provision, which provides that certificates issued under some other Acts are sufficient in and of themselves to satisfy prescribed requirements for building work. The proposed amendment provides that a certificate may be issued by the construction occupations registrar to certify that gas fitting work has been completed in accordance with prescribed requirements. A certificate under the *Gas Safety Act 2000* is evidence of the fact that the gas fitting work carried out in building work complies with the prescribed requirements. This clause adds certainty to the historical practice of citing a certificate of compliance under s 9(1)(b) of the Gas Safety Act for the purposes of s69 of the Building Act in relation to building work involving gas fitting work

Clause 13 amends section 211(5) of the *Planning and Development Act 2007*. Under section 211 of the Planning and Development Act, the Minister may exempt a development application from a requirement to include an Environmental Impact

Statement (EIS) if satisfied that the expected environmental impact of the proposal has already been sufficiently addressed by another study. This exemption expires after 18 months.

One way of addressing this requirement is through a study completed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). EPBC Act approvals may last longer than 18 months. The amendment ensures that the Minister's exemption does not expire before the EPBC Act approval expires. The exemption will last for 18 months or for the duration of the EPBC approval, whichever is longer.

This amendment applies to section 211 approvals that are currently in place, as well as section 211 approvals in the future. This means that current section 211 approvals which would otherwise expire after 18 months now last for the duration of the EPBC approval. In this sense, the amendment has a retrospective effect.

For these current approvals, development proponents with EPBC approvals will no longer be required to apply for a second section 211 approval or prepare an EIS after 18 months. This does have the effect of potentially limiting the ability of the public to be consulted on any such EIS. However, while the EPBC approval remains valid, there is a strong possibility that a further section 211 approval would be granted in any event. By ensuring that the section 211 approval does not expire before the EPBC approval ends, the application process is made more streamlined and efficient, and removes administrative duplication. In practical terms, there is therefore no material disadvantage to the community.

Technical and editorial amendments

The bill contains a number of technical and editorial amendments to Acts and Regulations. Many of these amendments are corrections of incorrect cross-referencing. For example, clause 8 corrects an incorrect reference to the repealed *Building Regulation 2004* in section 35(3) the *Construction Occupations (Licensing) Regulation 2004*, so that the definition of 'relevant asbestos qualification' refers to the current *Building (General) Regulation 2008*.

The bill also repeals some redundant legislation. The *Electricity (Greenhouse Gas Emissions) Act 2004*, *Electricity (Greenhouse Gas Emissions) Regulation* and related instruments supported the ACT Greenhouse Gas Abatement Scheme. This scheme ended on 1 July 2012 with the commencement of a national price on carbon in the Commonwealth *Clean Energy Act 2011*.

The bill has been assessed against the *Human Rights Act 2004* and no issues identified.

Outline of Provisions

Part 1 – Preliminary

Clause 1 — Name of Act

This clause names the Act as the *Planning, Building and Environment Legislation Amendment Act 2013*.

Clause 2 — Commencement

This clause provides for the bill's commencement. The Act commences on the day after its notification day.

Clause 3 — Legislation amended

This clause names the legislation that the bill amends. The bill amends:

- *Building Act 2004*
- *Building (General) Regulation 2008*
- *Construction Occupations (Licensing) Regulation 2004*
- *Districts Act 2002*
- *Electricity (Safety) Regulation 2004*
- *Planning and Development Act 2007*
- *Planning and Development Regulation 2008*
- *Public Place Names Act 1989*
- *Unit Titles Act 2001*
- *Water Resources Act 2007*.

Clause 4 – Legislation repealed

This clause names the legislation that the bill repeals.

The bill repeals redundant Territory legislation, which supported the ACT Greenhouse Gas Abatement Scheme. This scheme ended on 1 July 2012 with the commencement of a national price on carbon in the *Clean Energy Act 2011* (Cwlth). The legislation is therefore no longer required.

The bill repeals:

- *Electricity (Greenhouse Gas Emissions) Act 2004*
- *Electricity (Greenhouse Gas Emissions) Regulation 2004*
- All other legislative instruments under the *Electricity (Greenhouse Gas Emissions) Act 2004*.

Part 2 Building Act 2004

Clause 5 — Certificates of occupancy, section 69(4)(b)

This clause amends section 69(4)(b) of the *Building Act 2004*.

Section 69 relates to certificates of occupancy for building work issued by the construction occupations registrar. Where building work has been completed, the owner of a parcel of land may apply to the construction occupations registrar for a certificate to state that this work has been completed in accordance with prescribed

requirements under the Building Act and is fit for occupation and use as a building of the class stated in the approved plans for that building work.

Section 69(4) is an evidentiary provision, which provides that certificates issued under some other Acts are sufficient in and of themselves to satisfy prescribed requirements for building work. Section 69(4)(b) provides that a certificate signed by an inspector under the *Electricity Safety Act 1971* certifying that the electrical wiring work, as defined by the Electricity Safety Act, carried out in the building work complies with the prescribed requirements for the building work relating to electrical wiring work is evidence of this fact.

This clause amends section 69(4)(b) to omit the words “signed by an inspector”. Certificates for electrical wiring work are now processed electronically, and for reasons of efficiency, no longer require a handwritten signature. This amendment also makes section 69(4)(b) consistent with the similar section 69(4)(a), which applies to certificates under the *Water and Sewerage Act 2000*.

Clause 6 — New section 69(4)(c)

This clause amends section 69(4)(c) of the *Building Act 2004*.

Section 69 relates to certificates of occupancy for building work issued by the construction occupations registrar. Where building work has been completed, the owner of a parcel of land may apply to the construction occupations registrar for a certificate to state that this work has been completed in accordance with prescribed requirements under the Building Act and is fit for occupation and use as a building of the class stated in the approved plans for that building work.

This clause provides that a certificate may be issued by the construction occupations registrar to certify that gas fitting work has been completed in accordance with prescribed requirements. A certificate under the *Gas Safety Act 2000* is evidence of the fact that the gas fitting work carried out in building work complies with the prescribed requirements. This clause adds certainty to the historical practice of citing a certificate of compliance under s 9(1)(b) of the Gas Safety Act for the purposes of s69 of the Building Act in relation to building work involving gas fitting work.

Part 3 Building (General) Regulation 2008

Clause 7 — Exemption from part of Act Schedule 1, part 1.3, item 25, column 4

This clause amends the table at Schedule 1, part 1.3, item 25, column 4 of the *Building (General) Regulation 2008*.

The table sets out exempt building or building work (column 2), the provisions of the *Building Act 2004* which are exempted (column 3), and the conditions of exemption (column 4).

Item 25 lists the exempt building or building work as:

“handling of not more than 10 metres squared of bonded asbestos if handling incidental to work undertaken by person in occupation mentioned in column 4.”

This work is described as exempt from pt 3 (Building work), pt 5 (Building occupancy) and pt 6 (Residential buildings – statutory warranties, insurance and fidelity certificates).

The conditions of exemption include that the work is carried out:

“by a person who works in an occupation declared by construction occupations registrar under s47 and
by a person who has qualification declared by construction occupations registrar under s47.”

The reference to section 47 of the Building (General) Regulation is incorrect. Section 47 of the Regulation provides that the Minister may make an exempt building code, but does not address qualifications or occupations declared by the construction occupations registrar.

The clause makes a correction so that column 4 now refers to section 48 of the Building (General) Regulation, which applies to the declaration of occupations and qualifications for Schedule 1, part 1.3, item 25.

Part 4 Construction Occupations (Licensing) Regulation 2004

Clause 8 — Services that may be provided without licence, Section 35(3), definition of *relevant asbestos qualification*

This clause amends subsection 35(3) of the *Construction Occupations (Licensing) Regulation 2004*.

This subsection contains a list of definitions from other legislative instruments, including

“*relevant asbestos qualification*—see the Building Regulation 2004, section 7A (4).”

The *Building Regulation 2004* has been repealed.

The amendment makes a correction to this reference, so that a “relevant asbestos qualification” now means a qualification declared under the current *Building (General) Regulation 2008*, section 48(2).

Part 5 Districts Act 2002

Clause 9 – Divisions, sections and blocks, Section 6(3) and note

This clause amends section 6(3) of the *Districts Act 2002*.

Subsection 6(3) of the Districts Act currently provides, “The Minister must determine a distinguishing name for each division under the *Public Place Names Act 1989*, section 3 (1) (a).” This subsection does not create an obligation in itself, it merely refers to an obligation under another Act.

This clause amends section 6 of the Districts Act by replacing subsection 6(3) with a note referring to the Minister's obligations under section 3(1)(a) of the Public Place Names Act. This updates the section in accordance with current drafting practice.

A related amendment to the Public Place Names Act is made in clause 18 of the bill.

Part 6 Electricity Safety Regulation 2004

Clause 10 – Section 2

This clause amends section 2 of the *Electricity Safety Regulation 2004*.

Section 2 of the Electricity Safety Regulation applies to exemptions from inspection, and contains an incorrect reference to section 34 of the *Electricity Safety Act 1971*. Section 34 of the Electricity Safety Act applies to reporting by the electricity distributor. This clause amends the reference to section 4(2) of the Electricity Safety Act, which does address circumstances for exemptions from inspection prescribed by regulation.

Clause 10 also updates the drafting of section 2 of the Electricity Safety Regulation, without affecting its substance. Section 2 continues to provide that the wiring or a component of an electrical installation for a lift or escalator being installed on the load side of a circuit-breaker in the motor room for the lift or escalator is a prescribed circumstance, which is exempt from inspection.

Part 7 Planning and Development Act 2007

Clause 11 – Draft plan variations to be given to Minister etc, Section 69(2)(b)

This clause inserts a new section 69(2)(b) into the *Planning and Development Act 2007*.

Section 69 applies to draft territory plan variations and reporting to the Minister. Section 69(2)(b) currently states that the planning and land authority must give the Minister:

“a written report setting out the issues raised in any written comments (including consultation comments) about the variation”

New section 69(2)(b) provides that a written report must be given to the Minister setting out the issues raised in any consultation comments about a draft plan variation. This clarifies the obligation on the planning and land authority to report only on consultation comments about the variation, and not on unrelated comments made outside of consultation. This removes the ambiguity about what “written comments” may mean.

Clause 12 – Form of development applications, New section 139(2)(b)(ii)

This clause inserts a new section 139(2)(b)(ii) into the *Planning and Development Act 2007*.

Section 139(2)(b) addresses development applications made by someone other than the lessee of the land.

New section 139(2)(b)(ii) provides that if the land in the application is public land or unleased land and the development is a driveway verge crossing for a single or dual occupancy development, it may be signed by the custodian for the land or the planning and land authority.

Section 333 of the Planning and Development Act defines the custodian of the land as:

“ an administrative unit or other entity with administrative responsibility for land in the ACT that is unleased land, public land or both”

The Territory and Municipal Services Directorate has this administrative responsibility.

This amendment puts in place an administrative arrangement that previously existed under the former *Land (Planning and Environment) Act 1991*. The Land (Planning and Environment) Act has been repealed, and replaced by the Planning and Development Act. The arrangement is being put back in place for reasons of administrative efficiency.

Clause 13 – EIS not required if development application exempted, Section 211(5)

This clause amends section 211(5) of the *Planning and Development Act 2007*.

Under section 211, the Minister may exempt a development application from a requirement to include an Environmental Impact Statement (EIS) if satisfied that the expected environmental impact of the proposal has already been sufficiently addressed by another study. This exemption expires after 18 months.

One way of addressing this requirement is through a study completed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). EPBC Act approvals may last longer than 18 months. The amendment ensures that the Minister’s exemption does not expire before the EPBC Act approval expires. The exemption will last for 18 months or for the duration of the EPBC approval, whichever is longer.

This amendment applies to section 211 approvals that are currently in place, as well as section 211 approvals in the future. This means that current section 211 approvals which would otherwise expire after 18 months now last for the duration of the EPBC approval. In this sense, the amendment has a retrospective effect.

For these current approvals, development proponents with EPBC approvals will no longer be required to apply for a second section 211 approval or prepare an EIS after 18 months. This does have the effect of potentially limiting the ability of the

public to be consulted on any such EIS. However, while the EPBC approval remains valid, there is a strong possibility that a further section 211 approval would be granted in any event. In practical terms, there is therefore no material disadvantage to the community. By ensuring that the section 211 approval does not expire before the EPBC approval ends, the application process is made more streamlined and efficient, and administrative duplication does not occur.

Clause 14 – Extension of time to commence or complete works – required fee, Section 298C(3), definition of *period of extension*, paragraph (a)

This clause amends section 298C(3) of the *Planning and Development Act 2007*.

Section 298C applies to calculation of fees for the extension of time to commence or complete building work. Section 298C(3) currently contains an error in the definition of ‘period of extension’, referring to s298C(2). This subsection does not define a ‘period of extension’. This clause corrects this error by inserting a reference to s298B of the Planning and Development Act, which does define a period of extension approved by the planning and land authority. An amendment has also been made to s298C(3)(b), to ensure that if an application seeks extensions for two or more building and development provisions in a lease, the fee calculation takes into account the longest of the extensions sought and *approved*. This ensures that proponents do not pay fees for extensions that have been sought and not approved by the planning and land authority.

Part 8 Planning and Development Regulation 2008

Clause 15 – When development approvals do not require amendment – Act, s198C(3), Section 35, new note

This clause inserts a new note into section 35 of the *Planning and Development Regulation 2008*.

Section 35 applies to circumstances in which a proponent does not have to amend a development approval.

This clause inserts a new note after section 35(4), referring to section 133 of the *Planning and Development Act 2007* and section 20 of the Planning and Development Regulation. These sections set out the framework for exempt development.

Clause 16 – Section 51 heading

This clause amends the heading in section 51 of the *Planning and Development Regulation 2008*, which prescribes entities relevant for preparation of scoping documents for an EIS.

The heading incorrectly refers to s212(3) of the *Planning and Development Act 2007*. Section 212(3) of the Planning and Development Act simply states that a scoping document is a notifiable instrument. The heading has been amended to refer to s212(4) of the Planning and Development Act, which provides that a regulation may prescribe entities the planning and land authority may consult in preparing a scoping document.

Part 9 Public Place Names Act 1989

Clause 17 – Meaning of public place, Section 2, definition of public place

This clause amends section 2 of the *Public Place Names Act 1989*. Section 2 defines a ‘public place’ for the purposes of the Act.

This clause amends the definition of ‘public place’ to include a geographical feature. This amendment has been made because the current definition does not expressly address geographical features. For some places, the geographical feature may be the most prominent feature or identifier of the place to the public.

Clause 18 – Minister to determine names, Section 3(1)

This clause amends section 3(1) of the *Public Place Names Act 1989*. It is related to the amendment to the *Districts Act 2002*, made in clause 9 of this Bill.

Section 3 applies to the power of the Minister to determine names. Section 3(1) previously stated that the Minister *may* determine the name of a division of Territory land, and a public place on Territory land. The term ‘may’ suggested that the Minister had a discretion on the naming of divisions, rather than an obligation as suggested in section 6(3) of the *Districts Act*.

This clause amends section 3(1) to provide that the Minister must determine the name of a division of Territory land, and may determine the name of a public place on Territory land. This ensures that the Minister’s obligation to name a division is clearly set out, and retains the Minister’s discretion in the naming of public places.

Clause 19 – Dictionary, new definition of division

This clause amends the Dictionary of the *Public Place Names Act 1989*.

It inserts a new definition of ‘division’, as defined under the *Districts Act 2002*, section 6. This ensures that there is appropriate cross-referencing between the two Acts.

Part 10 Unit Titles Act 2001

Clause 20 – Reviewable decisions, Schedule 1, item 1

This clause amends item 1 of the Reviewable Decisions table at Schedule 1 of the *Unit Titles Act 2001* to correct a numbering error.

Item 1 applies to the refusal to approve a unit title application on the grounds of inconsistency with the heritage register, and currently contains an incorrect reference to section 20(5) of the *Unit Titles Act*. Section 20(5) addresses refusal to approve an application if the lessee is in breach of the lease. Item 1 has been amended to refer to section 20(6) of the *Unit Titles Act*, which does address inconsistency with the heritage register.

Part 11 Water Resources Act 2007

Clause 21 – Water access entitlement – special provision for certain entitlements based on surviving allocations etc, Section 25(1) new note

This clause inserts a new note into section 25(1) of the *Water Resources Act 2007*.

Section 25 addresses water access entitlements. Section 25(1) currently refers to water access entitlements for certain existing licence holders under section 202 of the Water Resources Act. Section 202 is a transitional provision which expired in 2008. The note confirms this situation, confirms that as a transitional provision, section 202 continues to have effect after its repeal.