

**2018**

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

**PLANNING, BUILDING AND ENVIRONMENT  
LEGISLATION AMENDMENT BILL 2018**

**EXPLANATORY STATEMENT**

**Presented by  
Mick Gentleman MLA  
Minister for the Environment and Heritage**

## PLANNING, BUILDING AND ENVIRONMENT LEGISLATION AMENDMENT BILL 2018

### Introduction

This explanatory statement relates to the Planning, Building and Environment Legislation Amendment Bill 2018 (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 Assembly.

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

### Overview of the bill

The purpose of the bill is to make a range of amendments to improve the operation of four pieces of legislation administered by the Environment, Planning and Sustainable Development Directorate (*EPSDD*), namely:

- *City Renewal Authority and Suburban Land Agency Act 2017*;
- *Heritage Act 2004*;
- *Nature Conservation Act 2014*; and
- *Planning and Development Regulation 2008*.

This bill is an omnibus bill to enable minor legislative amendments related to EPSDD's portfolio responsibilities to be dealt with expediently and to consolidate amendments into one place, making the amendment process more accessible. The omnibus bill process helps to ensure that the government can be agile and responsive to changing circumstances and to ensure that legislation remains up-to-date.

### Summary of amendments to the *City Renewal Authority and Suburban Land Agency Act 2017*

- The bill amends the *City Renewal Authority and Suburban Land Agency Act 2017* to provide that the City Renewal Authority and Suburban Land Agency may delegate their functions to their CEOs, who may further subdelegate the functions.
- Section 65 of the Act requires the Minister to determine affordable, community and public housing targets for new residential developments. The bill amends the wording of section 65, retaining its intent of providing ministerial targets for affordable, community and public housing, but clarifying its wording. The amended section clarifies that the targets apply to construction of new residential dwellings on unleased or government-owned land and will permit the targets to be expressed as absolute numbers rather than percentages.

### **Summary of amendment to the *Heritage Act 2004***

- The bill amends section 49 of the *Heritage Act 2004*. Section 49 allows the ACT Heritage Council (the **council**) to make a decision on a proposal to cancel heritage registration of a place or object. The council can either decide to end the registration or to not end the registration.
- Section 49 (2) of the Heritage Act provides that a decision may only be made under section 49 if the council is satisfied on reasonable grounds that the place or object no longer has heritage significance. The bill amends section 49 to provide that a decision to end registration may only be made if the place or object no longer has heritage significance, and removes the requirement that this be a consideration when deciding not to end registration.
- Consultation on this amendment occurred with the National Trust of Australia (ACT) and the Office of Aboriginal and Torres Strait Islander Affairs.

### **Summary of amendments to the *Nature Conservation Act 2014***

- The bill amends sections 119 and 161 of the *Nature Conservation Act 2014* to only require consultation with a lessee or custodian on a draft native species conservation plan or controlled native species management plan if the plan requires them to undertake activities to either conserve or manage a native species and not in situations where the lessee or custodian is merely permitted to undertake activities.
- The bill amends section 331 (3) of the Nature Conservation Act to provide that a conservator's direction must not be inconsistent with a listed plan.

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

- The bill amends section 7 of the *Planning and Development Regulation 2008* so that lessees of all blocks within the same section as a draft Territory Plan variation are prescribed as people notified, therefore requiring the Planning and Land Authority to issue them with a consultation notice.
- The bill replaces the specific references to Community Housing Canberra Limited in sections 130 and 142 of the regulation with a generic reference to 'registered community housing providers' to account for the fact that in the future there will be other community housing providers operating in the ACT. Consultation on this amendment occurred with Community Housing Canberra Limited.

## Human rights implications

None of the amendments contained in the bill have a significant impact on human rights.

Clause 15 of the bill has a positive impact on the right to freedom of expression found in section 26 (2) of the *Human Rights Act 2004*.

Section 16 (2) of the Human Rights Act provides that—

Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her.

The right to freedom of expression incorporates a right to freedom to receive information. In particular, it includes a positive right to access government-held information.

Clause 15 of the bill increases the requirements on the Planning and Land Authority to issue consultation notices to each lessee of each block in a section to which a draft territory plan variation applies, positively impacting on the right to receive information. The effect of clause 15 is that a greater number of residents will be made aware of draft Territory Plan variations affecting neighbouring blocks, which may also have an impact on them.

Clauses 11 to 13 may have the appearance of a minor limitation on the right to freedom of expression in section 16 (2) of the Human Rights Act by restricting consultation requirements for draft native species conservation plans and draft controlled native species management plans; however, the bill still requires the Conservator of Flora and Fauna to consult with relevant people where a draft plan requires the person to do or not do something. Consultation requirements under existing sections 120 and 162 of the Nature Conservation Act remain untouched. Section 120 requires public consultation on a draft native species conservation plan, while section 162 requires public consultation on a draft controlled native species management plan. Public consultation notices for draft plans are required to be notified on the Legislation Register under sections 120 (3) and 162 (3) of the Nature Conservation Act and the *Legislation Act 2001*.

## OUTLINE OF PROVISIONS OF THE BILL

### **Part 1 Preliminary**

#### **Clause 1 Name of Act**

This clause provides that the name of the Act is the *Planning, Building and Environment Legislation Amendment Act 2018*.

#### **Clause 2 Commencement**

This clause provides for the commencement of the Act. The Act commences on the day after its notification day.

#### **Clause 3 Legislation amended**

This clause provides that the Act amends the *City Renewal Authority and Suburban Land Agency Act 2017*, *Heritage Act 2004*, *Nature Conservation Act 2014* and *Planning and Development Regulation 2008*.

### **Part 2 City Renewal Authority and Suburban Land Agency Act 2017**

#### **Clause 4 New section 14A**

Section 19 of the *City Renewal Authority and Suburban Land Agency Act 2017* provides that the City Renewal Authority Board may delegate the authority board's functions to the authority CEO. There is currently no explicit power to delegate the authority's functions (as opposed to the authority board's functions).

This clause inserts new section 14A into the *City Renewal Authority and Suburban Land Agency Act* to provide that the authority may delegate its functions to the authority CEO, and that the authority CEO may subdelegate the authority's functions to an authorised person.

#### **Clause 5 Establishment of governing board for authority Section 15, new note**

This clause inserts a standard note into section 15 of the *City Renewal Authority and Suburban Land Agency Act*, referring to the provisions of the *Financial Management Act 1996* relating to the appointment of governing board members.

#### **Clause 6 New section 44A**

Section 49 of the *City Renewal Authority and Suburban Land Agency Act* provides that the Suburban Land Agency Board may delegate the agency board's functions to the agency CEO. There is currently no explicit power to delegate the agency's functions (as opposed to the agency board's functions).

This clause inserts new section 44A into the City Renewal Authority and Suburban Land Agency Act to provide that the agency may delegate its functions to the agency CEO, and that the agency CEO may subdelegate the agency's functions to an authorised person.

**Clause 7      Establishment of governing board for agency  
Section 45, new note**

This clause inserts a standard note into section 45 of the City Renewal Authority and Suburban Land Agency Act, referring to the provisions of the *Financial Management Act 1996* relating to the appointment of governing board members.

**Clause 8      Section 65**

Section 65 of the City Renewal Authority and Suburban Land Agency Act requires the Minister to determine the minimum percentage target of a development that will be affordable, community and public housing.

The wording of section 65 has proved problematic in application as it does not specify to which type of development the housing targets apply, such as the building of dwellings. It has also proved difficult to determine the minimum percentage of a development that will be affordable, community and public housing, rather than the minimum number of dwellings within a development that will achieve the housing target. This is because percentage housing targets don't take into account small-scale private development within a suburb, such as knockdown rebuilds. Providing a housing target as a number rather than a percentage, meanwhile, provides certainty as to how many dwellings the government is aiming to achieve in the categories of affordable, community and public housing.

This clause amends section 65, clarifying its wording while retaining the intent of providing ministerial targets for affordable, community and public housing.

Amended section 65 (1) clarifies that the targets apply to the *building of dwellings*:

- (a) on land leased by the Territory, or unleased territory land, in an urban renewal precinct;
- (b) on land leased by the Territory, or unleased territory land, in connection with urban renewal other than in an urban renewal precinct; and
- (c) in a new suburb.

Amended section 65 (2) provides that the Minister must determine housing targets for a development for the minimum *number* (rather than *percentage*) of dwellings that are affordable, community and public housing.

New section 65 (3) provides that a housing target determination made by the Minister under section 65 (2) must state the maximum number of dwellings anticipated to be built in a development.

New section 65 (4) provides for the application of a housing target. A housing target applies when the target is first determined, and continues through any lease granted over the land to which the target applies, until the target is met by the completion of all dwellings in the development that meet the housing target. This ensures that a housing target will not expire in situations where the government grants a holding lease to a developer. The housing target will continue to apply until the developer has completed all dwellings that meet the housing target.

New section 65 (5) provides for the description of a development within a housing target determination. A housing target determination may refer to a development by:

- (a) the development's block and section number; or
- (b) a name by which the development is known; or
- (c) in another way the Minister considers appropriate.

New section 65 (6) is a reproduction of existing section 65 (3), which provides that the Minister must seek the views of the Commissioner for Social Housing before determining a housing target.

A housing target determination is a notifiable instrument under new section 65 (7), which reproduces existing section 65 (4).

New section 65 (8) provides a signpost definition of the term ***dwelling***, referring the reader to section 5 of the *Planning and Development Regulation 2008*.

#### **Clause 9 Dictionary, note 2**

This clause inserts signposts into note 2 of the dictionary to the City Renewal Authority and Suburban Land Agency Act, referring the reader to the *Legislation Act 2001* definitions of certain defined terms that are used in section 65.

### **Part 3 Heritage Act 2004**

#### **Clause 10 Decision about cancellation proposal Section 49 (2)**

Section 49 of the *Heritage Act 2004* allows the ACT Heritage Council (the ***council***) to make a decision on a proposal to cancel heritage registration of a place or object. The council can either decide to end the registration (section 49 (1) (a)) or to not end the registration (section 49 (1) (b)).

Section 49 (2) of the Heritage Act provides that a decision may only be made under section 49 if the council is satisfied on reasonable grounds that the place or object no longer has heritage significance.

The consideration of whether a place or object no longer has heritage significance is relevant to a decision to *end* heritage registration; however, it is not relevant to a decision to *not end* registration. This clause amends section 49 (2) to provide that the council's decision to end registration may only be made if the place or object no longer has heritage significance, and to remove the redundant requirement that this be a consideration when deciding not to end registration.

## **Part 4                      Nature Conservation Act 2014**

### **Clause 11    Section 119**

Section 119 of the *Nature Conservation Act 2014* provides the Conservator of Flora and Fauna (the **conservator**) with consultation requirements for a draft native species conservation plan for stated land. For leased land the lessee of the affected land must be consulted; for unleased land or public land, the custodian of the affected land must be consulted.

In practice, draft native species conservation plans are likely to cover the whole of the ACT, and the consultation requirements in section 119 are not practical.

This clause amends section 119 to only require consultation with a relevant person if a draft native species conservation plan requires the person to do or not do something. **Relevant person** is defined in section 119 (3) to mean for leased land, the lessee of the land; and for unleased or public land, the custodian of the land.

New section 119 (2) provides that the conservator need not consult a relevant person in relation to something the person may (not must) do under the plan, even though, if done, the plan may require that the thing must be done in a particular way.

Existing section 120 of the Nature Conservation Act will still require public consultation on a draft native species conservation plan, including that it be notified on the Legislation Register under section 120 (3).

### **Clause 12    Draft controlled native species management plan— consultation with lessee and custodian Section 161 (1)**

Section 161 of the Nature Conservation Act provides the consultation requirements for a draft controlled native species management plan for stated land. The conservator must consult with the relevant person for the land if the draft plan requires or permits the relevant person to do or not do something. **Relevant person** is defined in section 161 (2) to mean for leased land, the lessee of the land; and for unleased or public land, the custodian of the land.

In practice, draft controlled native species management plans are likely to cover the whole of the ACT, and the consultation requirements in section 161 are not practical.

This clause amends section 161 (1) to only require consultation with a relevant person if a draft native species conservation plan requires the person to do or not do something, removing the requirement to consult if the plan merely permits a person to do or not do something.

Existing section 162 of the Nature Conservation Act will still require public consultation on a draft controlled native species management plan, including that it be notified on the Legislation Register under section 162 (3).

### **Clause 13 New section 161 (1A)**

This clause inserts new section 161 (1A) into the Nature Conservation Act. New section 161 (1A) provides that the conservator need not consult a relevant person in relation to something the person may (not must) do under a draft controlled native species management plan, even though, if done, the plan may require that the thing must be done in a particular way.

### **Clause 14 Conservator's directions Section 331 (3)**

Section 331 of the Nature Conservation Act authorises the conservator to issue a direction to an occupier of land about the protection or conservation of a native species, ecological community or their habitat.

Section 331 (3) provides that a conservator's direction must be consistent with each of the following that applies to the species, community or habitat:

- a) a conservation advice;
- b) an action plan;
- c) a native species conservation plan; and
- d) a controlled native species management plan.

The requirement that a conservator's direction must be consistent with the above documents is not practical as it implies a need to ensure uniformity with, or even replication of, all measures in a plan. The conservator should not, however, have the power to issue a direction that is in direct contravention of a listed plan, therefore the conservator should not have the power to issue a conservator's direction that is inconsistent with a listed plan.

This clause amends section 331 (3) to remove the requirement that a conservator's direction *must be consistent* with the listed plans and instead provide that a conservator's direction *must not be inconsistent* with the plans.

## **Part 5 Planning and Development Regulation 2008**

### **Clause 15 People to be notified—Act, s 63 (5) (b) New section 7 (1) (aa)**

When preparing a draft territory plan variation, the Planning and Land Authority must undertake public consultation, which commences with issuing a consultation notice. Section 63 (5) of the *Planning and Development Act 2007* requires the Planning and Land Authority to give a copy of a consultation notice to each person prescribed by regulation.

Section 7 of the *Planning and Development Regulation 2008* prescribes the lessee of sections adjoining the section that is the subject of the draft territory plan variation as being required to be provided with a consultation notice, or in the case of rural blocks, the lessee of the adjoining block. Section 7 does not require the lessees of adjoining (non-rural) blocks within the same section to be provided with a consultation notice.

This clause inserts new section 7 (1) (aa) into the Planning and Development Regulation to provide that the lessees of each block within the same section as a draft territory plan variation are prescribed, and the Planning and Land Authority is required to issue them with a consultation notice. The existing requirements to notify the lessees of adjoining sections and rural blocks are retained in the Planning and Development Regulation.

**Clause 16 Certain direct sales not requiring approval—Act, s 240 (1) (d)  
Section 130 (1) (f)**

Section 130 of the Planning and Development Regulation prescribes Community Housing Canberra Limited ACN 081 354 752, to provide that a direct sale of land to that organisation does not require the approval of the Executive under section 240 (1) of the *Planning and Development Act 2007*.

This clause substitutes the specific reference to Community Housing Canberra Limited in section 130 (1) (f) with a generic reference to 'a registered community housing provider'. The purpose of this amendment is to recognise the entry of new community housing providers into the ACT market.

**Clause 17 Section 130 (2), new definitions**

This clause inserts new definitions of the terms **registered community housing provider** and **Community Housing Providers National Law (ACT)** into the Planning and Development Regulation as a result of the amendment made by clause 16. These definitions are based on the definitions of those terms in the *Housing Assistance Act 2007*.

**Clause 18 Exemptions from restrictions on dealings with certain leases—Act, s 251 (5)  
Section 142 (a)**

Section 142 of the Planning and Development Regulation prescribes Community Housing Canberra Limited ACN 081 354 752, to provide that a direct sale of land to that organisation is exempt from the restrictions in section 251 of the *Planning and Development Act 2007*.

This clause substitutes the specific reference to Community Housing Canberra Limited in section 142 (a) with a generic reference to 'a registered community housing provider'. The purpose of this amendment is to recognise the entry of new community housing providers into the ACT market.

**Clause 19 New section 142 (2)**

This clause creates new section 142 (2) of the Planning and Development Regulation, which contains a signpost definition of the term ***registered community housing provider***.