

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning and Development (Bilateral Agreement) Amendment Bill 2014

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(As presented)

(Minister for Planning)

Planning and Development (Bilateral Agreement) Amendment Bill 2014

A Bill for

An Act to amend the *Planning and Development Act 2007*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Planning and Development (Bilateral Agreement)*
3 *Amendment Act 2014*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on
8 the notification day (see [Legislation Act](#), s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see [Legislation](#)
11 [Act](#), s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see [Legislation Act](#), s 79).

15 **3 Legislation amended**

16 This Act amends the *Planning and Development Act 2007*.

17 *Note* This Act also amends other legislation (see sch 1).

18 **4 Contents of public register**
19 **New section 28 (1) (ba)**

20 *insert*

21 (ba) the offsets register;

22 *Note* **Offsets register**—see s 111V.

1 **5** **Meaning of *associated document*—pt 3.6**
2 **Section 30 (1) (j)**

3 *omit*

4 division 7.3.3

5 *substitute*

6 section 147A (Development applications involving protected matter
7 to be referred to conservator) or section 148 (Some development
8 applications to be referred)

9 **6** **New chapter 6A**

10 *insert*

11 **Chapter 6A** **Offsets**

12 **Part 6A.1** **Definitions**

13 **111A** **Meaning of *protected matter*—Act**

14 (1) In this Act:

15 *protected matter* means—

16 (a) a matter protected by the Commonwealth; or

17 (b) a declared protected matter.

18 (2) The Minister may declare a matter to be a protected matter
19 (a *declared protected matter*).

20 (3) A declaration is a disallowable instrument.

21 *Note* A disallowable instrument must be notified, and presented to the
22 Legislative Assembly, under the [Legislation Act](#).

1 **111B Meaning of *matter protected by the Commonwealth*—Act**

2 (1) In this Act:

3 *matter protected by the Commonwealth* means a matter protected
4 by a provision of the *Environment Protection and Biodiversity*
5 *Conservation Act 1999* (Cwlth), chapter 2 (Protecting the
6 environment), part 3 (Requirements for environmental approvals).

7 (2) In this section:

8 *matter protected* by a provision of the *Environment Protection and*
9 *Biodiversity Conservation Act 1999* (Cwlth), chapter 2, part 3—
10 see the *Environment Protection and Biodiversity Conservation*
11 *Act 1999* (Cwlth), section 34 (What is *matter protected* by a
12 provision of Part 3?).

13 *Note* The *Environment Protection and Biodiversity Conservation Act 1999*
14 (Cwlth), ch 2, pt 3 deals with taking action that would have a significant
15 impact on a matter of national environmental significance. Matters of
16 national environmental significance include—

- 17 (a) world heritage properties; and
18 (b) national heritage places; and
19 (c) wetlands of international importance (Ramsar wetlands); and
20 (d) threatened species and threatened ecological communities; and
21 (e) migratory species protected under international agreements; and
22 (f) nuclear actions; and
23 (g) water resources in relation to coal seam gas development and
24 large coal mining development.

25 **111C Meaning of *offset*—Act**

26 In this Act:

27 *offset*, for a development that is likely to have a significant adverse
28 environmental impact on a protected matter, means environmental
29 compensation for the likely impact.

30 *Note* *Significant* adverse environmental impact—see s 124A.

1 **Part 6A.2 Offsets policy**

2 **Division 6A.2.1 Definitions**

3 **111D Meaning of *Minister*—pt 6A.2**

4 In this part:

5 *Minister* means the Minister responsible for administering the
6 [Nature Conservation Act 1980](#).

7 **111E Meaning of *offsets policy*—Act**

8 In this Act:

9 *offsets policy* means a statement—

10 (a) describing—

11 (i) how environmental compensation may be made to offset
12 the impact of developments that have a significant
13 adverse environmental impact on protected matters; and

14 *Note Significant* adverse environmental impact—see s 124A.

15 (ii) suitable forms for offsets; and

16 (b) notified under—

17 (i) for an initial offsets policy—section 111F; or

18 (ii) for a revised offsets policy—section 111K (Draft revised
19 offsets policy—final version and notification).

1 **Division 6A.2.2 Initial offsets policy**

2 **111F Initial offsets policy**

3 (1) The Minister may make an initial offsets policy.

4 (2) The initial offsets policy is a notifiable instrument.

5 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

6 (3) The Minister may amend the initial offsets policy only by—

7 (a) reviewing and revising the offsets policy under section 111G
8 (Offsets policy—monitoring and review) to section 111K
9 (Draft revised offsets policy—final version and notification);
10 or

11 (b) making minor amendments to the policy under section 111L
12 (Offsets policy—minor amendments).

13 **Division 6A.2.3 Revised offsets policy**

14 **111G Offsets policy—monitoring and review**

15 (1) The Minister must monitor the effectiveness of the offsets policy.

16 (2) The Minister must consider, at least once every 5 years, whether the
17 offsets policy needs to be reviewed.

18 (3) In deciding whether the offsets policy needs to be reviewed, the
19 Minister must consult—

20 (a) the planning and land authority; and

21 (b) the conservator of flora and fauna.

22 (4) If the Minister decides that the offsets policy needs to be reviewed,
23 the Minister must review the offsets policy.

- 1 (5) In reviewing the offsets policy, the Minister must consult—
2 (a) the planning and land authority; and
3 (b) the conservator of flora and fauna.

4 **111H Draft revised offsets policy—Minister to prepare**

- 5 (1) This section applies if the Minister—
6 (a) reviews the offsets policy under section 111G; and
7 (b) considers that revisions of the offsets policy are appropriate.
8 (2) The Minister must prepare a draft offsets policy (a *draft revised*
9 *offsets policy*) incorporating the revisions.
10 (3) In preparing a draft revised offsets policy, the Minister must
11 consult—
12 (a) the planning and land authority; and
13 (b) the conservator of flora and fauna.

14 **111I Draft revised offsets policy—public consultation**

- 15 (1) If the Minister prepares a draft revised offsets policy, the Minister
16 must also prepare a notice about the draft revised offsets policy
17 (a *consultation notice*).
18 (2) A consultation notice must—
19 (a) state that—
20 (i) anyone may give a written submission to the Minister
21 about the draft revised offsets policy; and

- 1 (ii) submissions may be given to the Minister only during the
2 period starting on the day the consultation notice is
3 notified under the [Legislation Act](#) and ending 6 weeks
4 later (the *consultation period*); and
- 5 (b) include the draft revised offsets policy.
- 6 (3) A consultation notice is a notifiable instrument.
- 7 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 8 (4) If the Minister notifies a consultation notice for a draft revised
9 offsets policy—
- 10 (a) anyone may give a written submission to the Minister about the
11 draft revised offsets policy; and
- 12 (b) the submission may be given to the Minister only during the
13 consultation period for the draft revised offsets policy; and
- 14 (c) the person making the submission may, in writing, withdraw
15 the submission at any time.

16 **111J Draft revised offsets policy—revision**

- 17 If the consultation period for a draft revised offsets policy has
18 ended, the Minister must—
- 19 (a) consider any submissions received during the consultation
20 period; and
- 21 (b) make any revisions to the draft revised offsets policy that the
22 Minister considers appropriate; and
- 23 (c) prepare a final version of the draft revised offsets policy.

1 **111K Draft revised offsets policy—final version and notification**

2 (1) The final version of a draft revised offsets policy prepared under
3 section 111J or section 111L is an offsets policy.

4 (2) An offsets policy is a notifiable instrument.

5 *Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

6 *Note 2* The power to make an offsets policy includes the power to amend or
7 repeal the policy. The power to amend or repeal the policy is
8 exercisable in the same way, and subject to the same conditions, as the
9 power to make the policy (see [Legislation Act](#), s 46).

10 **111L Offsets policy—minor amendments**

11 (1) This section applies if—

12 (a) an offsets policy is in force (the *existing policy*); and

13 (b) the Minister considers that minor amendments to the existing
14 policy are appropriate.

15 (2) The Minister—

16 (a) may prepare a new draft offsets policy, incorporating the minor
17 amendments into the existing policy; and

18 (b) need not comply with the consultation requirements in
19 section 111I (Draft revised offsets policy—public
20 consultation); and

21 (c) may prepare a final version of the new draft offsets policy, as
22 amended.

23 *Note* The new draft offsets policy is an offsets policy and is a notifiable
24 instrument (see s 111K).

- 1 (3) In this section:
2 ***minor amendment***, of an offsets policy, means an amendment that
3 will—
4 (a) improve the effectiveness or technical efficiency of the offsets
5 policy without changing the substance of the policy; or
6 (b) correct a formal error.

7 **Examples**

- 8 • minor correction to improve effectiveness
9 • omission of something redundant
10 • technical adjustment to improve efficiency
11 • rewording to clarify language

12 *Note 1* **Formal error**—see the dictionary.

13 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
14 does not limit, the meaning of the provision in which it appears (see
15 [Legislation Act](#), s 126 and s 132).

16 **Division 6A.2.4 Offsets policy—implementation and**
17 **guidelines**

18 **111M Offsets policy—planning and land authority to implement**

19 The planning and land authority must take reasonable steps to
20 implement the offsets policy.

21 **111N Offsets policy—guidelines**

- 22 (1) The Minister may make guidelines about the implementation of the
23 offsets policy (***offsets policy guidelines***).
24 (2) An offsets policy guideline is a notifiable instrument.

25 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

1 **111O Draft offsets policy guidelines**

- 2 (1) This section applies if the Minister intends to make offsets policy
3 guidelines.
- 4 (2) The Minister must prepare a draft version of the guidelines (the
5 *draft offsets policy guidelines*).
- 6 (3) In preparing draft offsets policy guidelines, the Minister must
7 consult the conservator of flora and fauna.

8 **111P Draft offsets policy guidelines—public consultation**

- 9 (1) If the Minister prepares draft offsets policy guidelines, the Minister
10 must also prepare a notice about the draft guidelines (a *consultation*
11 *notice*).
- 12 (2) A consultation notice must—
- 13 (a) state that—
- 14 (i) anyone may give a written submission to the Minister
15 about the draft offsets policy guidelines; and
- 16 (ii) submissions may be given to the Minister only during the
17 period starting on the day the consultation notice is
18 notified under the [Legislation Act](#) and ending on a stated
19 day, being a day at least 3 weeks after the day it is
20 notified (the *consultation period*); and
- 21 (b) include the draft offsets policy guidelines.
- 22 (3) A consultation notice is a notifiable instrument.
- 23 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 24 (4) If the Minister notifies a consultation notice for the draft offsets
25 policy guidelines—
- 26 (a) anyone may give a written submission to the Minister about the
27 draft guidelines; and

- 1 (b) the submission may be given to the Minister only during the
2 consultation period for the draft guidelines; and
- 3 (c) the person making the submission may, in writing, withdraw
4 the submission at any time.

5 **111Q Draft offsets policy guidelines—revision**

6 If the consultation period for the draft offsets policy guidelines has
7 ended, the Minister must—

- 8 (a) consider any submissions received during the consultation
9 period; and
- 10 (b) make any revisions to the draft offsets policy guidelines that
11 the Minister considers appropriate.

12 **111R Offsets policy guidelines—monitoring and review**

- 13 (1) The Minister must monitor the effectiveness of the offsets policy
14 guidelines.
- 15 (2) The Minister must consider, at least once every 5 years, whether the
16 offsets policy guidelines need to be reviewed.
- 17 (3) In deciding whether the offsets policy guidelines need to be
18 reviewed, the Minister must consult the conservator of flora and
19 fauna.

1 Part 6A.3 Offsets policy—other provisions

2 111S Offsets—consistency with offsets policy

3 An offset must be consistent with the offsets policy.

4 *Note* *Offsets policy*—see s 111E.

5 111T Offsets—calculating value

6 (1) The Minister may determine how the value of an offset is to be
7 calculated (an *offset value calculation determination*).

8 (2) An offset value calculation determination must be consistent with
9 the offsets policy.

10 *Note* *Offsets policy*—see s 111E.

11 (3) An offset value calculation determination is a notifiable instrument.

12 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

13 111U Offsets—form

14 (1) An offset for a development may be in—

15 (a) a form prescribed by regulation; or

16 (b) any other form the planning and land authority considers
17 appropriate.

18 (2) However, an offset for a development must be in a form consistent
19 with the offsets policy.

20 *Note* *Offsets policy*—see s 111E.

1 **111V Offsets register**

- 2 (1) The planning and land authority must keep a register of each offset
3 (the *offsets register*).
- 4 (2) The offsets register must include the following for each offset:
- 5 (a) the development approval including the offset condition
6 requiring the offset;
- 7 (b) the details of the offset;
- 8 (c) if the offset requires an offset management plan—the offset
9 management plan;
- 10 (d) if the offset requires another lease to be subject to a condition
11 that the lessee of the other lease complies with an offset
12 management plan that applies to the lease—details of the lease;
- 13 (e) anything else prescribed by regulation.
- 14 (3) The offsets register may include anything else the planning and land
15 authority considers relevant.

16 *Note 1* The offsets register is included in the public register (see s 28 (1) (ba)).

17 *Note 2* The planning and land authority may give an evidentiary certificate
18 about details kept in the offsets register (see s 415A).

19 **7 Merit track—when development approval must not be**
20 **given**
21 **Section 119 (2)**

22 *omit*

23 division 7.3.3

24 *substitute*

25 section 148 (Some development applications to be referred)

1 **8 Merit track—considerations when deciding development**
2 **approval**
3 **New section 120 (ba)**

4 *insert*

5 (ba) if an environmental significance opinion is in force for the
6 development proposal—the environmental significance
7 opinion;

8 *Note* **Environmental significance opinion**—see s 138AA.
9 Environmental significance opinions expire 18 months after they
10 are notified (see s 138AD).

11 **9 Impact track—development applications**
12 **Section 127**

13 *omit*

14 unless the application is exempted by the Minister under section 211

15 **10 New section 127 (2)**

16 *after the notes, insert*

17 (2) However, a completed EIS is not required if an EIS exemption is in
18 force for the development proposal.

19 *Note 1* **EIS exemption**, for a development proposal—see s 211.

20 *Note 2* For when an EIS exemption expires, see s 211I.

11 **New section 127A**

insert

127A Impact track—referral of matter protected by the Commonwealth to Commonwealth

- (1) This section applies if—
- (a) but for this section, the planning and land authority or the Minister (the *decision-maker*) intends, under section 162 (Deciding development applications) to approve a development application for a development proposal (with or without conditions); and
 - (b) the proposed development is likely to have a significant adverse environmental impact on a matter protected by the Commonwealth.

Note **Matter protected by the Commonwealth**—see s 111B.
Significant adverse environmental impact—see s 124A.

- (2) Before the decision-maker may make a decision under section 162, the decision-maker must refer the proposed decision to the Commonwealth Minister responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (the **Commonwealth Minister**).

- (3) If the Commonwealth Minister does not give the decision-maker advice about the proposed decision within 10 working days after the day the decision-maker gives the application to the Commonwealth Minister, the decision-maker may approve the application.

Note If the Commonwealth Minister gives the decision-maker advice about the proposed approval, development approval must not be given unless the development proposal is consistent with the advice (see s 128 (1) (b) (v)).

1 **12 Impact track—when development approval must not be**
2 **given**
3 **Section 128 (1) (a) (ii)**

4 *substitute*

- 5 (ii) an EIS exemption is in force for the development
6 proposal; and

7 *Note 1* **EIS exemption**, for a development proposal—see s 211.

8 *Note 2* For when an EIS exemption expires, see s 211I.

9 **13 Section 128 (1) (b), notes**

10 *substitute*

- 11 (iv) if a conditional EIS exemption is in force for the
12 development application—the requirements of the
13 condition; and

14 *Note* An EIS exemption may be conditional (see s 211H (4)).

- 15 (v) if the proposed development is likely to have a significant
16 adverse environmental impact on a matter protected by
17 the Commonwealth—advice given by the
18 Commonwealth Minister under section 127A (Impact
19 track—referral of matter protected by the Commonwealth
20 to Commonwealth); and

21 *Note* **Matter protected by the Commonwealth**—see s 111B.
22 **Significant** adverse environmental impact—see s 124A.

- 23 (vi) if the proposed development is likely to have a significant
24 adverse environmental impact on a protected matter and
25 the authority is to decide the development application—
26 advice given by the conservator.

27 *Note 1* For par (b), an application cannot be approved if it is inconsistent with
28 the [territory plan](#) (see s 50) or the National Capital Plan (see [Australian](#)
29 [Capital Territory \(Planning and Land Management\) Act 1988](#) (Cwlth),
30 s 11).

- 1 *Note 2* For par (b), requirements for an EIS are dealt with in pt 8.2.
- 2 *Note 3* For par (b), for when an EIS is completed, see s 209.
- 3 *Note 4* For par (b), for the term of a scoping document for an EIS, see s 215.
- 4 *Note 5* For par (b) (vi), the conservator may give advice under s 149 as a result
5 of referral under s 147A or s 148, or under s 156. See also the *Nature*
6 *Conservation Act 1980*, pt 8A.
- 7 *Note 6* For par (b) (vi), if the Minister is to decide the development application
8 (using the Minister’s call-in power in div 7.3.5), the development
9 approval may be inconsistent with the conservator’s advice if the
10 Minister is satisfied that the approval is consistent with the offsets
11 policy (see s (1A)).
- 12 *Note 7* For par (b) (vi), *protected matter*—see s 111A.

13 **14 New section 128 (1A)**

14 *insert*

15 (1A) Also, the Minister must not approve a development application for a
16 development proposal if the approval would be inconsistent with
17 advice given by the conservator as a result of referral under
18 section 147A (Development applications involving protected matter
19 to be referred to conservator) unless the Minister is satisfied that—

- 20 (a) the approval is consistent with the offsets policy; and
21 (b) the approval would provide a substantial public benefit.

22 *Note 1* *Offsets policy*—see s 111E.

23 *Note 2* The Minister may approve a development application under s 162 if the
24 Minister exercises the Minister’s call-in powers (see div 7.3.5). If the
25 authority is to decide the application, the development approval must
26 not be given unless the development proposal is consistent with the
27 conservator’s advice (see s (1) (b) (vi)).

28 *Note 3* The conservator’s advice is further dealt with in the *Nature*
29 *Conservation Act 1980*, pt 8A.

1 **15 Section 128 (2)**

2 *omit*

3 Also

4 *substitute*

5 In addition,

6 **16 Section 128 (2)**

7 *omit*

8 division 7.3.3

9 *substitute*

10 section 148 (Some development applications to be referred)

11 **17 Impact track—considerations when deciding**
12 **development approval**
13 **Section 129 (h) and note**

14 *substitute*

15 (h) the offsets policy;

16 *Note Offsets policy*—see s 111E.

17 (ha) if an EIS is completed for the proposed development—

18 (i) the completed EIS; and

19 (ii) the EIS assessment report for the EIS;

20 *Note 1* For when an EIS is completed, see s 209.

21 *Note 2 EIS assessment report*—see s 225A.

1 **18 Consideration of development proposals**
2 **Section 138 (4) (b)**

3 *substitute*

- 4 (b) whether the application will be referred under section 147A
5 (Development applications involving protected matter to be
6 referred to conservator) or section 148 (Some development
7 applications to be referred);

8 **19 Deciding environmental significance opinion applications**
9 **Section 138AB (4) (a)**

10 *substitute*

- 11 (a) if the relevant agency considers that the proposal is not likely
12 to have a significant adverse environmental impact—give the
13 environmental significance opinion; or

14 *Note* **Significant** adverse environmental impact—see s 124A.

- 15 (aa) if the relevant agency considers that the proposal is not likely
16 to have a significant adverse environmental impact if the
17 development satisfies certain conditions—give the
18 environmental significance opinion subject to the stated
19 conditions (a **conditional environmental significance**
20 **opinion**); or

21 *Note* If a conditional environmental significance opinion has been
22 given for a development, the development approval must include
23 a condition that the development comply with the condition in the
24 environmental significance opinion (see s 165 (2) (d)). In
25 addition, an application to amend a development approval must
26 be refused if the changed development proposal would be in
27 breach of a condition on the approval relating to a conditional
28 environmental significance opinion (see s 198 (3) (c)).

1 **20 Form of development applications**
2 **Section 139 (2) (f) (ii)**

3 *substitute*

- 4 (ii) the completed EIS for the proposal, unless an EIS
5 exemption is in force for the development proposal; and

6 *Note 1 EIS exemption*, for a development proposal—see s 211.

7 *Note 2* For when an EIS exemption expires, see s 211I.

8 **21 Section 139 (2) (h)**

9 *omit*

10 division 7.3.3

11 *substitute*

12 section 147A (Development applications involving protected matter
13 to be referred to conservator) or section 148 (Some development
14 applications to be referred)

15 **22 Referred development application amended**
16 **Section 145 (1) (b)**

17 *substitute*

- 18 (b) before it was amended, the application was referred to an entity
19 under—

20 (i) section 127A (Impact track—referral of matter protected
21 by the Commonwealth to Commonwealth); or

22 (ii) section 147A (Development applications involving
23 protected matter to be referred to conservator); or

24 (iii) section 148 (Some development applications to be
25 referred).

1 **23 New section 147A**

2 *in division 7.3.3, insert*

3 **147A Development applications involving protected matter to**
4 **be referred to conservator**

5 (1) This section applies if the planning and land authority is satisfied
6 that a proposed development is likely to have a significant adverse
7 environmental impact on a protected matter.

8 (2) The planning and land authority must refer the development
9 application for the development to the conservator of flora and
10 fauna.

11 *Note 1* The conservator's advice must contain an assessment of whether the
12 proposed development is likely to have a significant adverse
13 environmental impact on a protected matter and, if so, advice about
14 suitable offsets for the proposed development (see *Nature Conservation*
15 *Act 1980*, pt 8A, particularly s 91D).

16 *Note 2* If the proposed development is likely to have a significant adverse
17 environmental impact on a protected matter, and the authority is to
18 decide the development application, development approval must not be
19 given unless the development proposal is consistent with the
20 conservator's advice (see s 128 (1) (b) (vi)).

21 *Note 3* **Significant** adverse environmental impact—see s 124A.

22 **24 Requirement to give advice in relation to development**
23 **applications**
24 **Section 149 (1)**

25 *after*

26 *entity*

27 *insert*

28 under section 147A or section 148

1 **25 Direction that development applications be referred to**
2 **Minister**
3 **Section 158 (2) (a)**

4 *substitute*

5 (a) is required to be referred, or has been referred, under—

6 (i) section 127A (Impact track—referral of matter protected
7 by the Commonwealth to Commonwealth); or

8 (ii) section 147A (Development applications involving
9 protected matter to be referred to conservator); or

10 (iii) section 148 (Some development applications to be
11 referred); and

12 **26 Section 158 (3) (b), example 1**

13 *substitute*

14 1 referring the application to an entity under s 147A or s 148

15 **27 Section 158 (4) (a)**

16 *substitute*

17 (a) the information and documents received by the authority in
18 relation to the application, including any advice given to the
19 authority as a result of referral under—

20 (i) section 127A; or

21 (ii) section 147A; or

22 (iii) section 148; and

1 **28 Deciding development applications**
2 **Section 162 (1), note 3**

3 *substitute*

4 *Note 3* If a development application has been referred to an entity under s 147A
5 or s 148, the notice of the decision under this section must include
6 information about any comment by the entity and whether the authority
7 followed the entity's advice (see s 170 (3) (c) and s 172).

8 **29 Conditional approvals**
9 **New section 165 (2) (d)**

10 *insert*

11 (d) if a conditional environmental significance opinion has been
12 given in relation to the development—must include a condition
13 that the development comply with the condition in the
14 environmental significance opinion.

15 *Note 1* **Conditional environmental significance opinion**—
16 see s 138AB (4) (aa).

17 *Note 2* An application to amend a development approval must be refused
18 if the changed development proposal would be in breach of the
19 condition relating to the conditional environmental significance
20 opinion (see s 198 (3) (c)).

21 **30 New section 165 (3) (ha)**

22 *insert*

23 (ha) an offset condition;

24 *Note* **Offset condition**, for a development approval—see s 165B.

31 **New division 7.3.6A***insert***Division 7.3.6A** **Development approvals—offset conditions****165B** **Meaning of *offset condition***

(1) In this Act:

offset condition, for a development approval, means a condition—

(a) identifying a protected matter that is likely to suffer a significant adverse environmental impact from the development; and

(b) requiring an offset to compensate for the likely impact of the development on the protected matter.

Note **Significant** adverse environmental impact—see s 124A.**Offset**, for a development—see s 111C.

An offset must be consistent with the offsets policy (see s 111S).

(2) An offset condition, for a development approval, may include a requirement that the proponent of the development have an offset management plan for the offset.

(3) An offset condition, for a development approval, may include a requirement that—

(a) if the offset land is not the development approval land—the lease for the offset land be subject to a condition requiring the lessee of the offset land to comply with an offset management plan for the offset; and

Note 1 **Development approval land**, for a development approval and **offset land**, for an offset—see s (4).

1 *Note 2* To satisfy an offset condition with this kind of requirement,
2 another development approval may be needed to vary the lease
3 for the offset land to include a condition on the lease for the offset
4 land that the lessee must comply with the offset management
5 plan.

- 6 (b) if the offset is to be on public land—
- 7 (i) a new plan of management for the public land be
8 prepared, including stated matters; or
- 9 (ii) an existing plan of management for the public land be
10 varied in a stated way; and

11 *Note* **Plan of management**—see s 313.

- 12 (c) if the offset is to be on land comprised in a rural lease—
- 13 (i) a new land management agreement for the land be
14 prepared, including stated matters; or
- 15 (ii) an existing land management agreement for the land be
16 varied in a stated way.

17 *Note* **Rural lease**—see s 234.
18 **Land management agreement** means an agreement under s 283.

- 19 (4) In this section:
- 20 **development approval land**, for a development approval, means the
21 land to which the development approval applies.
- 22 **offset land**, for an offset, means the land on which the offset is to be
23 located.

1 **165C Meaning of *offset management plan***

2 (1) In this Act:

3 *offset management plan*, for an offset, means a plan—

4 (a) to achieve the offset; and

5 (b) that is—

6 (i) approved by the Minister under section 165F (Draft
7 offset management plan—submission to Minister); or

8 (ii) amended by the Minister under—

9 (A) section 165I (Offset management plan—amendment
10 initiated by offset manager); or

11 (B) section 165J (Offset management plan—
12 amendment initiated by Minister).

13 (2) An offset management plan is a notifiable instrument.

14 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

15 **165D Meaning of *offset manager***

16 In this Act:

17 *offset manager*, for an offset management plan—

18 (a) means—

19 (i) if a lease of land includes a condition that requires the
20 lessee of the land to comply with an offset management
21 plan in relation to an offset—the lessee of the land; or

22 (ii) if the offset management plan applies to unleased land or
23 public land—the custodian of the land; or

24 *Note* The offset manager must take reasonable steps to
25 implement the offset management plan (see s 165H and
26 sch 2, item 4A).

- 1 (iii) in any other case—the person identified in the offset
2 management plan as the offset manager; but
- 3 (b) if paragraph (a) (i) does not apply—does not include the lessee
4 of the land.

5 **165E Draft offset management plan—proponent to prepare**

- 6 (1) If an offset condition on a development approval requires the
7 proponent to have an offset management plan for the offset, the
8 proponent must prepare a draft offset management plan for the
9 offset.
- 10 (2) The draft offset management plan must—
- 11 (a) identify the land to which it applies; and
- 12 (b) include a plan describing how the offset may be achieved; and
- 13 (c) if the offset management plan will not apply to leased land,
14 unleased land or public land—identify the offset manager for
15 the offset management plan; and
- 16 (d) include provisions about—
- 17 (i) how the effectiveness of the plan is to be monitored; and
- 18 (ii) when the plan is to be reviewed; and
- 19 (e) include the matters prescribed by regulation.
- 20 (3) The draft offset management plan may—
- 21 (a) state the term of the offset management plan; and
- 22 *Note* If no term is stated, the offset management plan expires when the
23 development approval including the offset condition requiring the
24 offset management plan ends (see s 165L). Otherwise the offset
25 management plan operates indefinitely.
- 26 (b) apply, adopt or incorporate an instrument as in force from time
27 to time.

- 1 (4) In preparing a draft offset management plan, the proponent must
2 consult the following entities and seek their written agreement to the
3 draft offset management plan:
- 4 (a) the conservator of flora and fauna;
- 5 (b) if the offset management plan will apply to leased land—the
6 lessee of the land (unless the lessee is the proponent);
- 7 (c) if the offset management plan will apply to unleased land or
8 public land—the custodian of the land.

9 **165F Draft offset management plan—submission to Minister**

- 10 (1) The proponent must submit the draft offset management plan to the
11 Minister for approval.
- 12 (2) The draft offset management plan must be accompanied by the
13 written agreement of the entities mentioned in section 165E (4).
- 14 (3) If the proponent submits the draft offset management plan to the
15 Minister for approval, the Minister must—
- 16 (a) approve the draft offset management plan; or
- 17 *Note* A draft offset management plan approved under this paragraph
18 becomes the offset management plan (see s 165C).
- 19 (b) return the draft offset management plan to the proponent and
20 direct the proponent to take 1 or more of the following actions
21 in relation to it:
- 22 (i) carry out stated further consultation;
- 23 (ii) consider a relevant report;
- 24 (iii) revise the draft offset management plan in a stated way;
25 or

- 26 *Note* The proponent must give effect to the direction and resubmit the
27 draft offset management plan to the Minister (see s 165G).

- 1 (c) reject the draft offset management plan.
- 2 (4) However, the Minister may approve the draft offset management
3 plan only if the plan is consistent with—
- 4 (a) the offset condition in the development approval requiring the
5 offset; and
- 6 (b) the offsets policy.

7 *Note 1 Offsets policy*—see s 111E.

8 *Note 2* An offset management plan approved by the Minister is a notifiable
9 instrument (see s 165C (2)).

10 *Note 3* This section is subject to s 411 and s 412.

11 **165G Draft offset management plan—Minister’s direction to
12 revise etc**

- 13 (1) This section applies if the Minister gives the proponent a direction
14 under section 165F (3) (b).
- 15 (2) The proponent must—
- 16 (a) give effect to the direction; and
- 17 (b) if the direction is to revise the draft offset management plan in
18 a stated way—consult the entities mentioned in
19 section 165E (4) and seek their written agreement to the
20 revisions; and
- 21 (c) resubmit the draft offset management plan to the Minister for
22 approval.
- 23 (3) The resubmitted draft offset management plan must be accompanied
24 by the written agreement of the entities mentioned in
25 section 165E (4).
- 26 (4) The Minister must decide, under section 165F, what to do with the
27 resubmitted draft offset management plan.

- 1 **165H Offset management plan—unleased land or public land**
- 2 If an offset management plan applies to unleased land or public
3 land, the custodian of the land must take reasonable steps to
4 implement the plan.
- 5 *Note* Failure to implement the offset management plan is a controlled activity
6 (see sch 2, item 4A). *Controlled activity*—see s 339.
- 7 **165I Offset management plan—amendment initiated by offset**
8 **manager**
- 9 (1) The offset manager for an offset management plan may apply to the
10 Minister to amend the offset management plan.
- 11 (2) The application must—
- 12 (a) be in writing; and
- 13 (b) include details of the proposed amendment.
- 14 *Note 1* If a form is approved under s 425 for this provision, the form must be
15 used.
- 16 *Note 2* A fee may be determined under s 424 for this provision.
- 17 (3) The Minister may amend the offset management plan only if
18 satisfied that the offset for the amended offset management plan
19 is—
- 20 (a) at least equivalent to the offset for the original offset
21 management plan; and
- 22 (b) consistent with the offsets policy.
- 23 *Note 1* *Offset*, for a development—see s 111C.
24 *Offsets policy*—see s 111E.
- 25 *Note 2* An offset management plan amended by the Minister is a notifiable
26 instrument (see s 165C).

- 1 **165J Offset management plan—amendment initiated by**
2 **Minister**
- 3 (1) The Minister may, by written notice (an *amendment notice*) given
4 to the offset manager for an offset management plan, amend the
5 offset management plan if satisfied that—
- 6 (a) the offset for the amended offset management plan is at least
7 equivalent to the offset for the original offset management
8 plan; and
- 9 (b) the offset for the amended offset management plan is
10 consistent with the offsets policy.
- 11 *Note 1 Offset*, for a development—see s 111C.
12 *Offsets policy*—see s 111E.
- 13 *Note 2 An offset management plan amended by the Minister is a notifiable*
14 *instrument (see s 165C).*
- 15 (2) However, the Minister may amend the offset management plan only
16 if—
- 17 (a) the Minister has given the offset manager for the offset
18 management plan written notice of the proposed amendment
19 (a *proposal notice*); and
- 20 (b) the proposal notice states that written submissions about the
21 proposal may be made to the Minister before the end of a
22 stated period of at least 14 days after the day the proposal
23 notice is given to the offset manager; and
- 24 (c) after the end of the stated period, the Minister has considered
25 any submissions made in accordance with the proposal notice.
- 26 (3) The amendment takes effect on the day the amendment notice is
27 given to the offset manager for the offset management plan or a later
28 day stated in the amendment notice.

1 **165K Offset management plan—reporting**

- 2 (1) The offset manager for an offset management plan must report to
3 the planning and land authority about the offset management plan—
4 (a) at least once every 3 years; and
5 (b) at any other time the authority requests.
6 (2) The planning and land authority must report to the Minister about
7 each offset management plan at least once every 3 years.

8 **165L Offset management plan—expiry if development approval**
9 **ends**

- 10 (1) This section applies if—
11 (a) a development approval, that includes an offset condition
12 requiring the proponent of the development have an offset
13 management plan for the offset, ends; and
14 (b) the offset management plan is in force when the development
15 approval ends.
16 *Note 1* The draft offset management plan may state the term of the offset
17 management plan (see s 165E).
18 *Note 2* Ending of development approvals is dealt with in s 184 to s 187.
19 Development approvals continue unless ended (see s 188).
20 (2) The offset management plan expires when the development
21 approval ends.

1 **32 Notice of approval of application**
2 **Section 170 (3) (c)**

3 *substitute*

4 (c) if the development application was referred to an entity under
5 section 147A (Development applications involving protected
6 matter to be referred to conservator) or section 148 (Some
7 development applications to be referred)—set out a summary
8 of the entity's advice given under section 149 (Requirement to
9 give advice in relation to development applications) and any
10 response by the planning and land authority; and

11 (ca) if the development application decision was referred to the
12 Commonwealth Minister under section 127A (Impact track—
13 referral of matter protected by the Commonwealth to
14 Commonwealth)—set out a summary of the Commonwealth
15 Minister's advice (if any); and

16 **33 New section 170 (4) and (5)**

17 *after the note, insert*

18 (4) A notice under subsection (1) for approval of a development
19 application in the impact track (an ***impact track development***
20 ***approval notice***) is a notifiable instrument.

21 *Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

22 *Note 2* This section is subject to s 411 and s 412.

23 (5) The planning and land authority must put an electronic link to the
24 impact track development approval notice on the authority website.

25 *Note* ***Authority website***—see the dictionary.

1 **34 Notice of decision on referred development application**
2 **Section 172 (1) (a)**

3 *substitute*

4 (a) the application is referred to an entity under section 147A
5 (Development applications involving protected matter to be
6 referred to conservator) or section 148 (Some development
7 applications to be referred); and

8 **35 Notice of decision to referral entities**
9 **Section 174 (1) (b)**

10 *omit*

11 division 7.3.3

12 *substitute*

13 section 147A (Development applications involving protected matter
14 to be referred to conservator) or section 148 (Some development
15 applications to be referred)

16 **36 Deciding applications to amend development approvals**
17 **Section 198 (3) (c)**

18 *substitute*

19 (c) the changed development proposal would be in breach of a
20 condition on the approval—

21 (i) imposed (rather than confirmed or varied) by a court or
22 tribunal; or

23 (ii) relating to a conditional environmental significance
24 opinion; or

25 *Note 1 Conditional environmental significance opinion—*
26 *see s 138AB (4) (aa).*

39 Sections 208 to 209A*relocate to part 8.1***40 New division 8.2.1 heading***before section 210, insert***Division 8.2.1 When is an EIS required?****41 When is a completed EIS required?
Section 210***omit*

, unless the application for development approval for the proposal is exempted under section 211.

42 Section 210, note 2*omit**s 211**substitute**s 211H***43 New section 210 (2)***after the notes, insert*

(2) However, a completed EIS is not required if an EIS exemption is in force for the development proposal.

Note 1 **EIS exemption**, for a development proposal—see s 211.

Note 2 For when an EIS exemption expires, see s 211I.

1 **44 Section 211**

2 *substitute*

3 **211 Meaning of *EIS exemption***

4 In this Act:

5 *EIS exemption*, for a development proposal, means an exemption
6 from the requirement to include an EIS in the development
7 application for the proposal.

8 **211A Meaning of *recent study*—pt 8.2**

9 In this part:

10 *recent study* means a study that is not more than 5 years old.

11 **211B EIS exemption application**

12 (1) This section applies if the expected environmental impact of a
13 development proposal has been addressed by a recent study,
14 whether or not the recent study relates to the particular development
15 proposal.

16 (2) The proponent for the development proposal may apply to the
17 Minister for an EIS exemption for the proposal (an *EIS exemption*
18 *application*).

19 (3) The application must—

20 (a) be in writing; and

21 (b) identify the recent study; and

- 1 (c) if the recent study is more than 18 months old—include a
2 statement, from an appropriately qualified person with no
3 current professional relationship with the proponent, verifying
4 that the information in the recent study is current.

5 *Note 1* If a form is approved under s 425 for this provision, the form must be
6 used.

7 *Note 2* A fee may be determined under s 424 for this provision.

8 **211C EIS exemption application—public consultation**

9 (1) If the Minister receives an EIS exemption application, the Minister
10 must prepare a notice about the application (a *consultation notice*).

11 (2) A consultation notice must—

12 (a) state that—

13 (i) anyone may give a written submission to the Minister
14 about the EIS exemption application; and

15 (ii) submissions may be given to the Minister only during the
16 period starting on the day the consultation notice is
17 notified under the [Legislation Act](#) and ending 15 working
18 days later (the *consultation period*); and

19 (b) include the EIS exemption application.

20 (3) A consultation notice is a notifiable instrument.

21 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

22 (4) The Minister must put an electronic link to the EIS exemption
23 application on the authority website during the consultation period.

24 *Note 1* This section is subject to s 411 and s 412.

25 *Note 2* *Authority website*—see the dictionary.

1 **211D EIS exemption application—public submissions**

2 (1) If the Minister notifies a consultation notice for an EIS exemption
3 application—

4 (a) anyone may give a written submission to the Minister about the
5 EIS exemption application; and

6 *Note* There are particular matters the Minister must consider
7 (see s 211H (3)).

8 (b) the submission may be given to the Minister only during the
9 consultation period for the EIS exemption application; and

10 (c) the person making the submission may, in writing, withdraw
11 the submission at any time.

12 (2) The Minister may extend the consultation period.

13 *Note* The Minister may extend the time even though the consultation period
14 has ended (see [Legislation Act](#), s 151C).

15 **211E EIS exemption application—consultation with entities**

16 (1) The Minister must consult the entities prescribed by regulation
17 about the EIS exemption application.

18 (2) It is sufficient consultation under subsection (1) if the Minister, not
19 later than the day the consultation notice is notified—

20 (a) tells the entity about the consultation notice for the EIS
21 exemption application; and

22 (b) gives the entity a copy of any document the Minister considers
23 relevant to the application.

24 (3) An entity is taken to have made no comment on the EIS exemption
25 application if the entity fails to give the Minister a comment within
26 the consultation period.

27 *Note* The consultation period may be extended under s 211D (2).

- 1 **211F EIS exemption application—publication of submissions**
- 2 If a person or other entity gives the Minister a submission about an
3 EIS exemption application within the consultation period for the
4 application, the Minister must—
- 5 (a) make a copy of the submission available on the authority
6 website until—
- 7 (i) if the submission is withdrawn before the consultation
8 period ends—the submission is withdrawn; or
- 9 (ii) the consultation period ends; and
- 10 (b) give a copy of the submission to the proponent of the
11 development proposal.
- 12 *Note 1* This section is subject to s 411 and s 412.
- 13 *Note 2* *Authority website*—see the dictionary.
- 14 **211G EIS exemption application—revision**
- 15 (1) This section applies if the consultation period for an EIS exemption
16 application has ended.
- 17 *Note* The consultation period may be extended under s 211D (2).
- 18 (2) The proponent of the development proposal must—
- 19 (a) consider any submissions received during the consultation
20 period; and
- 21 (b) make any revisions to the EIS exemption application that the
22 proponent considers appropriate; and
- 23 (c) give the revised application to the Minister.
- 24 (3) The revised application must—
- 25 (a) if a submission about the application is made within the
26 consultation period—address each matter raised in the
27 submission; and

- 1 (b) if no submissions about the application are made within the
2 consultation period—include a statement to that effect.

3 **211H EIS exemption—decision**

4 (1) This section applies if the proponent of a development proposal
5 gives the Minister a revised EIS exemption application under
6 section 211G (2) (c).

7 (2) The Minister may grant an EIS exemption for the proposal if
8 satisfied that the expected environmental impact of the development
9 proposal has already been sufficiently addressed by a recent study,
10 whether or not the recent study relates to the particular development
11 proposal.

12 **Examples—recent study that may sufficiently address the expected**
13 **environmental impact of a development proposal**

- 14 • a report about the ecological value of an area
15 • an environmental impact statement under the *Environment Protection and*
16 *Biodiversity Conservation Act 1999* (Cwlth), pt 8 (Assessing impacts of
17 controlled actions)
18 • an endorsed policy, plan or program under the *Environment Protection and*
19 *Biodiversity Conservation Act 1999* (Cwlth), pt 10 (Strategic assessments)

20 *Note* An example is part of the Act, is not exhaustive and may extend, but
21 does not limit, the meaning of the provision in which it appears (see
22 [Legislation Act](#), s 126 and s 132).

23 (3) In deciding whether the environmental impact of the development
24 proposal has been sufficiently addressed by the recent study, the
25 Minister must consider—

- 26 (a) whether the recent study was conducted by an appropriately
27 qualified person with relevant expertise and experience in
28 relation to the environmental values of the land in the proposal;
29 and

- 1 (b) if the recent study does not relate directly to the proposal—
 2 whether there is sufficient detail to allow assessment of the
 3 environmental impacts likely to occur if the proposal proceeds;
 4 and
- 5 (c) whether the part of the recent study relevant to the proposal
 6 required public consultation through a statutory process or as
 7 part of a government policy development; and
- 8 **Example**
 9 the public consultation process in a [territory plan](#) variation under pt 5.3
- 10 (d) if the recent study is more than 18 months old—whether the
 11 Minister is satisfied that the information in the study is current;
 12 and
- 13 (e) any submissions received during the consultation period for the
 14 EIS exemption application.
- 15 (4) An EIS exemption may be conditional.
- 16 (5) An EIS exemption is a notifiable instrument.
- 17 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 18 (6) The Minister must put an electronic link to the EIS exemption on
 19 the authority website.
- 20 *Note* **Authority website**—see the dictionary.

21 **2111 EIS exemption—expiry**

22 An EIS exemption expires—

- 23 (a) if the recent study is an environmental impact statement
 24 prepared under the [Environment Protection and Biodiversity](#)
 25 [Conservation Act 1999](#) (Cwlth), part 8 (Assessing impacts of
 26 controlled actions) and approval of action in relation to the
 27 development has been given under that Act, part 9 (Approval
 28 of actions)—when the approval expires, or 5 years after the
 29 day the exemption is notified, whichever happens later; or

- 1 (b) if the recent study is an endorsed policy, plan or program under
2 the *Environment Protection and Biodiversity Conservation*
3 *Act 1999* (Cwlth), part 10 (Strategic assessments) and approval
4 of action in relation to the development has been given under
5 that Act, part 10—when the approval expires, or 5 years after
6 the day the exemption is notified, whichever happens later; or
- 7 (c) in any other case—
- 8 (i) 5 years after the day it is notified; or
- 9 (ii) if a later day is prescribed by regulation—the later day.
- 10 *Note* Power to make a statutory instrument (including a regulation)
11 includes power to make different provision in relation to different
12 matters or different classes of matters, and to make an instrument
13 that applies differently by reference to stated exceptions or factors
14 (see [Legislation Act](#), s 48).

15 **Division 8.2.2 Scoping of EIS**

16 **45 New division 8.2.3 heading**

17 *after section 215, insert*

18 **Division 8.2.3 Draft EIS**

19 **46 New division 8.2.4 heading**

20 *after section 221, insert*

21 **Division 8.2.4 Consideration of EIS**

1 **47 Authority consideration of EIS**
2 **New section 222 (2A)**

3 *insert*

4 (2A) In making a decision under subsection (2), the planning and land
5 authority must consult each entity that made a submission to the
6 authority when consulted about the scoping document for the EIS
7 under section 212 (4) (Scoping of EIS).

8 **48 Cost recovery**
9 **Section 224B (1) (b) and note**

10 *substitute*

11 (b) in preparing an EIS assessment report.

12 *Note 1 EIS assessment report*—see s 225A.

13 *Note 2* An amount owing under a law may be recovered as a debt in a court of
14 competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

15 **49 EIS assessment report**
16 **Section 225A (1)**

17 *omit*

18 *assessment report*

19 *substitute*

20 *EIS assessment report*

21 **50 Section 225A (2) to (5)**

22 *omit*

23 assessment report

24 *substitute*

25 EIS assessment report

1 **51 New division 8.2.4**

2 *after section 227, insert*

3 **Division 8.2.4 Expiry of EIS**

4 **227A Expiry of EIS**

5 An EIS expires 5 years after the day it is completed.

6 *Note Completed—*

7 (a) for an EIS—see s 209; and

8 (b) for a s 125-related EIS—see s 209A.

9 **52 Section 411 heading**

10 *substitute*

11 **411 Restrictions on public availability—applications,**
12 **comments, submissions etc**

13 **53 New section 411 (1) (da) and (db)**

14 *insert*

15 (da) a person who makes an EIS exemption application under
16 section 211B; or

17 (db) a person who makes a submission about an EIS exemption
18 application under section 211D; or

1 **54 New section 411 (2), definition of *relevant document*,**
2 **new paragraphs (da) and (db)**

3 *insert*

4 (da) in relation to a person who makes an EIS exemption
5 application—the EIS exemption application; or

6 (db) in relation to a person who makes a submission about an EIS
7 exemption application—the submission; or

8 **55 Section 411 (3)**

9 *omit*

10 for public inspection

11 *substitute*

12 to the public

13 **56 Section 411 (7)**

14 *omit*

15 copies of the relevant document made available for public
16 inspection, each

17 *substitute*

18 the copy of the relevant document made available to the public, the

19 **57 Restrictions on public availability—security**
20 **Section 412 (5), definition of *relevant document*,**
21 **new paragraphs (ea) and (eb)**

22 *insert*

23 (ea) an EIS exemption application under section 211B;

24 (eb) a submission about an EIS exemption application under
25 section 211D;

1 **58 New section 415A**

2 *insert*

3 **415A Evidentiary certificates—offsets register**

- 4 (1) The planning and land authority may give a signed certificate—
- 5 (a) stating that on a stated date or during a stated period a stated
- 6 area of land was or was not the subject of an offset; and
- 7 (b) if the land was the subject of an offset—including the details
- 8 kept in the offsets register about the land.

9 *Note Offsets register—see s 111V.*

- 10 (2) A certificate under this section is evidence of the matters stated in it.
- 11 (3) Unless the contrary is proved, a document that purports to be a
- 12 certificate under this section is taken to be a certificate.

13 **59 Regulation-making power**

14 **Section 426 (2) (c)**

15 *omit*

1 **60 Reviewable decisions, eligible entities and interested entities**
2 **Schedule 1, new item 14A**

3 *insert*

14A	decision under s 211H to refuse to grant an EIS exemption	applicant for development approval	entity consulted under s 211E that made a submission within the consultation period
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1 **61 Controlled activities**
 2 **Schedule 2, new item 4A**

3 *insert*

4A	failing to take reasonable steps to implement an offset management plan as required under section 165H	60 penalty units
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4 **62 Schedule 2, item 6**

5 *substitute*

6	managing land held under a rural lease other than in accordance with— (a) if an offset management plan is in force for the land— (i) the offset management plan; and (ii) to the extent that the land management agreement for the land is not inconsistent with the offset management plan—the land management agreement; or (b) in any other case—the land management agreement for the land	
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6 **63 Development proposals in impact track because of need**
 7 **for EIS**
 8 **Schedule 4, part 4.3, item 1, column 2, new paragraph (h)**

9 *insert*

10 (h) any other protected matter

1 **64 Dictionary, new definition of *conditional environmental***
2 ***significance opinion***

3 *insert*

4 *conditional environmental significance opinion*—see
5 section 138AB (4) (aa).

6 **65 Dictionary, definition of *consultation notice*, new**
7 **paragraphs (c) and (d)**

8 *insert*

9 (c) for a draft revised offsets policy—see section 111I (1); and

10 (d) for an EIS exemption application—see section 211C (1).

11 **66 Dictionary, definition of *consultation period*, new**
12 **paragraphs (c) and (d)**

13 *insert*

14 (c) for a draft revised offsets policy—see section 111I (2); and

15 (d) for an EIS exemption application—see section 211C (2).

16 **67 Dictionary, new definitions**

17 *insert*

18 *draft revised offsets policy*—see section 111H (2).

19 *EIS assessment report*—see section 225A (1).

20 *EIS exemption*, for a development proposal—see section 211.

21 *EIS exemption application*—see section 211B (2).

22 *matter protected by the Commonwealth*—see section 111B.

23 *Minister*, for part 6A.2 (Offsets policy)—see section 111D.

24 *offset*, for a development—see section 111C.

- 1 ***offset condition***, for a development approval—see section 165B.
2 ***offset management plan***, for an offset—see section 165C.
3 ***offset manager***, for an offset management plan—see section 165D.
4 ***offsets policy***—see section 111E.
5 ***protected matter***—see section 111A.
6 ***recent study***, for part 8.2 (Environmental impact statements)—see
7 section 211A.

1 **Schedule 1** **Consequential amendments**

2 (see s 3)

3 **Part 1.1** **Nature Conservation Act 1980**

4 **[1.1]** **New part 8A**

5 *insert*

6 **Part 8A** **Land development applications**

7 **91A** **Meaning of *development*—pt 8A**

8 (1) In this part:

9 *development* means a proposed development to which a
10 development application applies.

11 (2) In this section:

12 *development application*—see the *Planning and Development*
13 *Act 2007*, dictionary.

1 **91B Simplified outline**

2 The following notes provide a simplified outline of this part and the
3 *Planning and Development Act 2007*, chapter 7 (Development
4 approvals):

5 *Note 1 Conservator to be given copy of certain development applications*

6 The planning and land authority is required to give the conservator a
7 copy of each development application that is likely to have a significant
8 adverse environmental impact on a protected matter (see *Planning and*
9 *Development Act 2007*, s 147A). The planning and land authority may
10 also be required to give the conservator a copy of each development
11 application in the merit track or impact track (see *Planning and*
12 *Development Act 2007*, s 148). This requirement does not apply to a
13 development application for a development proposal in the code track
14 (see *Planning and Development Act 2007*, s 117 (c)).

15 *Note 2 Conservator to give advice about development application*

16 The conservator must give advice to the planning and land authority
17 about adverse environmental impacts of the proposed development
18 (see s 91C and s 91D) (see also *Planning and Development Act 2007*,
19 s 149, s 150 and s 151).

20 *Note 3 Conservator's advice to be considered*

21 The conservator's advice must be considered by the planning and land
22 authority (or the Minister) in approving or refusing to approve a
23 development application (see *Planning and Development Act 2007*,
24 s 119 (2), s 120 (d) and s 129 (e)).

25 *Note 4 Development approval by authority to be consistent with conservator's*
26 *advice*

27 If the authority is to decide the development application, development
28 approval must not be given unless the development proposal is
29 consistent with the conservator's advice (see *Planning and*
30 *Development Act 2007*, s 128 (1) (b) (vi)).

1 *Note 5* *Development approval by Minister may be inconsistent with*
2 *conservator's advice*

3 If the Minister is to decide the development application (using the
4 Minister's call-in power (see *Planning and Development Act 2007*,
5 div 7.3.5)), the development approval may be inconsistent with the
6 conservator's advice if the Minister is satisfied that the approval is
7 consistent with the offsets policy (see *Planning and Development*
8 *Act 2007*, s 128 (1A)).

9 **91C Advice about adverse environmental impacts**

- 10 (1) This section applies if the conservator is satisfied on reasonable
11 grounds that a proposed development is likely to have an adverse
12 environmental impact.
- 13 (2) The conservator may give the planning and land authority written
14 advice under section 91D about the development.

15 *Note* If the planning and land authority refers a development application to
16 the conservator under the *Planning and Development Act 2007*, s 147A
17 or s 148, the conservator must, not later than 15 working days after
18 being given the application, give the planning and land authority its
19 advice (see *Planning and Development Act 2007*, s 149).

20 **91D Requirements for conservator's advice**

- 21 (1) This section applies if the conservator gives advice—
22 (a) under section 91C about a development; or
23 (b) under the *Planning and Development Act 2007*, section 149
24 (Requirement to give advice in relation to development
25 applications) about a development application.
- 26 (2) The conservator's advice must include—
27 (a) an outline of the environmental impact of the proposed
28 development; and
29 (b) advice about ways to avoid or minimise the environmental
30 impact of the proposed development; and

- 1 (c) an assessment of whether the proposed development is likely
2 to have a significant adverse environmental impact on a
3 protected matter; and
- 4 (d) if the proposed development is likely to have a significant
5 adverse environmental impact on a protected matter—advice
6 about suitable offsets for the proposed development.
- 7 *Note 1* If the proposed development is likely to have a significant adverse
8 environmental impact, the development application may be declared to
9 be in the impact track (see *Planning and Development Act 2007*, s 124),
10 and may require an offset (see *Planning and Development Act 2007*,
11 s 111C).
- 12 *Note 2* **Significant** adverse environmental impact—see the *Planning and*
13 *Development Act 2007*, s 124A.
- 14 (3) In preparing the advice, the conservator—
- 15 (a) must consider—
- 16 (i) the policy statement ‘Significant Impact Guidelines—
17 Matters of National Environmental Significance’
18 published by the Commonwealth, as in force from time to
19 time; and
- 20 *Note* The policy statement is available at
21 www.environment.gov.au.
- 22 (ii) the offsets policy; and
- 23 (b) may consider any other guideline, plan or policy published by
24 the Territory or the Commonwealth about—
- 25 (i) protected matters; or
26 (ii) matters of national environmental significance.
- 27 (4) In this section:
- 28 *offset*, for a development—see the *Planning and Development*
29 *Act 2007*, section 111C.

1 (ii) unleased land or public land—the custodian of the land.

2 *Note* **Offset condition**, for a development approval—see the [Act](#),
3 s 165B.

4 **[1.5] Section 50A**

5 *substitute*

6 **50A EIS exemption application—consultation with entities—**
7 **Act, s 211E**

8 The entities prescribed are the entities mentioned in
9 section 26 (1) (Referral of certain development applications—Act,
10 s 148 (1)).

11 **[1.6] Section 54 (3) (b)**

12 *substitute*

13 (b) for each potentially significant environmental impact identified
14 in the scoping document—

15 (i) a requirement that the proponent of the development
16 proposal to which the scoping document relates consider
17 ongoing management, monitoring or reporting regimes;
18 or

19 (ii) a requirement that the EIS contain a statement
20 indicating—

21 (A) whether an offset is likely to be required for the
22 impact; and

1 (B) if an offset is likely to be required—whether an
2 offset management plan is likely to be required for
3 the offset;

4 *Note 1* If an offset is required, the Minister may impose an offset
5 condition on the development approval (see [Act](#), s 165 (3) (ha)).
6 An offset condition may require the proponent to prepare an
7 offset management plan for the offset (see [Act](#), s 165B).

8 *Note 2* Offsets are dealt with in the [Act](#), ch 6A.

9 *Note 3* **Significant** adverse environmental impact—see the [Act](#), s 124A.
10 **Offset**, for a development—see the [Act](#), s 111C.
11 **Offset condition**, for a development approval—see the [Act](#),
12 s 165B.

13 **[1.7] Dictionary, note 3**

14 *insert*

- 15 • EIS exemption
16 • offset
17 • protected matter (see s 111A)

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 14 August 2014.

2 Notification

Notified under the [Legislation Act](#) on 2014.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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