

# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Planning and Development (Environmental Impact Statements) Amendment Bill 2010

### Contents

---

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Relationship between development proposals and development applications	
New section 113 (1A) and (1B)	3
5 Division 7.3.1 heading	4
6 New section 138A	4

## Contents

---

	Page
7 Form of development applications	
Section 139 (2) (f) (ii)	6
8 New sections 139 (2) (l) and (m)	7
9 Section 139 (4), new definition of <i>relevant agency</i>	7
10 What is an <i>EIS</i> and a <i>s 125-related EIS</i> ?	
Section 208, new note	8
11 When is a completed EIS required?	
Section 210, new note 2	8
12 EIS not required if development application exempted	
New section 211 (2)	8
13 Authority consideration of EIS	
Section 222 (2) (b)	8
14 Chance to address unaddressed matters	
Section 224 (1)	9
15 New sections 224A and 224B	9
16 Giving EIS to Minister	
Section 225 (1)	10
17 Section 225 (3)	10
18 New section 225A	11
19 No decision on application unless consideration in public interest	
Section 261 (2) (b)	11
20 New section 261 (2) (e) and note	12
21 Definitions—sch 4 Schedule 4, section 4.1, new definitions	12
22 Schedule 4, section 4.1, definition of <i>threatening process</i>	13
23 Schedule 4, new section 4.2	13
24 Schedule 4, part 4.2	14
25 Schedule 4, part 4.3	18
26 Dictionary, new definitions	21
27 Dictionary, definition of <i>threatening process</i>	21

## EXPOSURE DRAFT

# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## **Planning and Development (Environmental Impact Statements) Amendment Bill 2010**

---

### **A Bill for**

An Act to amend the *Planning and Development Act 2007*

---

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

## **1 Name of Act**

This Act is the *Planning and Development (Environmental Impact Statements) Amendment Act 2010*.

## **2 Commencement**

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

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

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

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

## **3 Legislation amended**

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

**4 Relationship between development proposals and development applications**  
**New section 113 (1A) and (1B)***insert*

- (1A) The determination of which assessment track applies to a development proposal is made by reference to circumstances when the application is made.

**Example**

Application is made on 20 December for approval of a development proposal for the construction of a transport corridor. The proposal is in the impact track because it is of a kind mentioned in sch 4, pt 4.2, item 1 (see s 123 (b)). The proposal would not be in the impact track if, when the application was made, the environment protection authority had produced an opinion that the proposal is not likely to cause a significant adverse environmental impact. On 1 January the environment protection authority produces an opinion to that effect. The application is assessed on 15 January. The opinion from the environment protection agency cannot be considered in determining which assessment track applies to the proposal because the proposal must be assessed by reference to the circumstances when the application was made. The proposal remains in the impact track.

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

- (1B) Subsection (1A) does not apply if, after the application is made—
- (a) the Minister makes a declaration under section 124 (Minister may declare impact track applicable) in relation to the development proposal; or
  - (b) the Public Health Act Minister makes a declaration for section 125 (Declaration by Public Health Act Minister affects assessment track) in relation to the application.

**EXPOSURE DRAFT**

**5 Division 7.3.1 heading**

*substitute*

**Division 7.3.1 Pre-application matters**

**6 New section 138A**

*in division 7.3.1, insert*

**138A Impact track proposals if likely environmental impact not significantly adverse**

- (1) This section applies to a development proposal mentioned in—
  - (a) schedule 4, part 4.2, item 1, item 3 (c) or (d) or item 7; or
  - (b) schedule 4, part 4.3, item 2 (a) or (b).
- (2) If the proponent of a development proposal wants the application for development approval assessed in the merit track on the ground that the likely environmental impact of the proposal will not be significantly adverse, the proponent must apply to the relevant agency for an opinion to that effect.

*Note 1* A development proposal may still be in the impact track for other reasons under s 123 (for example, because of a declaration under s 125 (Declaration by Public Health Act Minister affects assessment track)).

*Note 2* If a form is approved under s 425 for this provision, the form must be used.

*Note 3* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The relevant agency may, by written notice, require the applicant to provide additional information in support of the application.

**EXPOSURE DRAFT**

- (4) Notice under subsection (3) must state the time, not shorter than 20 working days, within which the applicant must respond to the notice.
- (5) The relevant agency—
  - (a) may refuse to decide an application under subsection (2) if the additional information requested under subsection (3) is not given to the agency within the stated time; and
  - (b) must reject the application if it considers that the likely environmental impact will be significantly adverse.
- (6) The relevant agency is taken to have rejected an application for an opinion under subsection (2) if the agency does not give the opinion within—
  - (a) if no additional information is requested under subsection (3)—30 working days after the application is made to the agency; or
  - (b) if additional information is requested and the information is given to the agency—30 working days after the information is given to the agency; or
  - (c) if additional information is requested and the information is not given to the agency within the time stated—30 working days after the stated time has ended.
- (7) However, the relevant agency may decide an application under subsection (2) despite the rejection of the application under subsection (6).

*Note* Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the relevant agency will not be able to decide an application under s (2) if the ACAT has decided an application for review of the deemed rejection (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

## EXPOSURE DRAFT

- (8) The relevant agency may recover from an applicant the direct and indirect costs incurred by the agency—
- (a) in deciding an application under subsection (2); and
  - (b) in preparing an opinion in relation to the application; and
  - (c) in engaging a consultant to assist with deciding the application or preparing the opinion.

*Note* The costs may be recovered in a court of competent jurisdiction (see Legislation Act, s 177).

- (9) In this section:

***relevant agency*** means—

- (a) for schedule 4, part 4.2, item 1 and item 7—the environment protection authority; and
- (b) for schedule 4, part 4.2, item 3 (c) and (d)—the conservator of flora and fauna; and
- (c) for schedule 4, part 4.3, item 2 (a) and (b)—the conservator of flora and fauna.

***significant adverse environmental impact***—see schedule 4, section 4.2.

## **7 Form of development applications**

### **Section 139 (2) (f) (ii)**

*substitute*

- (ii) the completed EIS for the proposal, unless the application for the development approval for the proposal is exempted under section 211; and



**8 New sections 139 (2) (l) and (m)**

*before the notes, insert*

- (l) if division 9.4.2 (Varying concessional leases to remove concessional status) applies to the application—be accompanied by an assessment of—
  - (i) the social, cultural and economic impacts of the proposed variation; and
  - (ii) any other matter prescribed by regulation; and

*Note* Matters the Minister must consider before approving a variation are set out in s 261, and conditions to which the variation may be subject are set out in s 262.

- (m) if the applicant wants the application for development approval assessed in the merit track on the ground of an opinion from a relevant agency that the likely environmental impact will not be significantly adverse—be accompanied by—
  - (i) the opinion; and
  - (ii) if the agency has sent an invoice to the applicant for the costs recoverable under section 138A (8)—proof of payment of the invoice.

**9 Section 139 (4), new definition of *relevant agency***

*insert*

***relevant agency***, for subsection (2) (m)—see section 138A (9).

## EXPOSURE DRAFT

**10      What is an *EIS* and a s 125-related *EIS*?  
Section 208, new note**

*insert*

*Note*      An environmental impact statement is an investigation of the potential impact of a project on the environment. An environmental impact statement is taken into account in deciding development applications but the completion of an environmental impact statement is not itself a development application or a development approval process.

**11      When is a completed *EIS* required?  
Section 210, new note 2**

*insert*

*Note 2*      A development application in the impact track cannot be lodged without a completed *EIS* unless an exemption has been granted under s 211 before the application is lodged.

**12      *EIS* not required if development application exempted  
New section 211 (2)**

*insert*

- (2) A regulation may prescribe criteria that the Minister must take into account in deciding if the environmental impact of the development proposal has been sufficiently addressed by the other study.

**13      Authority consideration of *EIS*  
Section 222 (2) (b)**

*substitute*

- (b) if section 224 applies—take action under section 224; or  
(c) if section 224A applies—reject the *EIS*.

**14 Chance to address unaddressed matters  
Section 224 (1)**

*substitute*

- (1) This section applies in relation to the EIS for a development proposal given to the planning and land authority under section 221 if—
  - (a) the authority is not satisfied in relation to a matter mentioned in section 222 (2) (a); and
  - (b) the authority has not given the proponent of the development proposal more than one notice under this section.

**15 New sections 224A and 224B**

*insert*

**224A Rejection of unsatisfactory EIS**

- (1) This section applies if the planning and land authority gives the proponent of a development proposal a second written notice (a ***second notice***) under section 224 (2).
- (2) The planning and land authority must reject an EIS if—
  - (a) the proponent does not respond within the time stated in the second notice; or
  - (b) the proponent responds within the time stated in the second notice but the authority remains unsatisfied in relation to a matter mentioned in section 222 (2) (a).
- (3) If the planning and land authority rejects an EIS under subsection (2), the authority must give the proponent written reasons explaining why the EIS is rejected.

**EXPOSURE DRAFT**

**224B Cost recovery**

- (1) The planning and land authority may recover from a proponent of a development proposal the direct and indirect costs incurred by the authority—
  - (a) in engaging a consultant to assist with the collection or analysis of information relevant to the authority's assessment of matters under a relevant provision; and
  - (b) in preparing an assessment report under section 225A.

*Note* The costs may be recovered in a court of competent jurisdiction (see Legislation Act, s 177).

- (2) In this section:

***relevant provision*** means section 212 (2), section 222, section 223, section 224 or section 224A.

**16 Giving EIS to Minister  
Section 225 (1)**

*substitute*

- (1) This section applies if the planning and land authority accepts an EIS under section 222 (2) (a).
- (1A) However, this section does not apply if the planning and land authority has sent an invoice to the proponent of a development proposal for costs recoverable under section 224B and the invoice remains unpaid.

**17 Section 225 (3)**

*omit*

**18      New section 225A***insert***225A      EIS assessment report**

- (1) If the planning and land authority accepts an EIS under section 222 (2) (a), the authority must prepare a report (an *assessment report*) that—
  - (a) confirms that the authority is satisfied in relation to the matters mentioned in section 222 (2) (a); and
  - (b) may contain additional information about how the authority came to be satisfied in relation to those matters.
- (2) The planning and land authority must—
  - (a) if an EIS is given to the Minister under section 225 (2) (a)—give the assessment report to the Minister ; and
  - (b) if a s 125-related EIS is given to the Public Health Act Minister under section 225 (2) (b)—give the assessment report to the Public Health Act Minister.

**19      No decision on application unless consideration in public interest  
Section 261 (2) (b)***substitute*

- (b) whether approving the application would cause any disadvantage to the community taking into account potential uses of the leased land that are consistent with the territory plan, whether or not those uses are authorised by the lease;

**EXPOSURE DRAFT**

**20 New section 261 (2) (e) and note**

*insert*

- (e) whether the Territory wishes to encourage the continued use of the land for an authorised use under the lease by retaining the concessional status of the lease.

*Note* The Minister must consider the material required under s 139 (2) (l).

**21 Definitions—sch 4  
Schedule 4, section 4.1, new definitions**

*insert*

***crest***, of a water storage dam, means the highest point of the dam wall or embankment excluding any parapet, handrail or similar structure on the wall or embankment.

***lowest point of the general foundations***, of a water storage dam, means where the dam wall or embankment meets the lowest point of the bed of the river or stream on the downstream side of the wall or embankment.

***normal operating level***, of a reservoir formed by a water storage dam, means the full water supply level of the reservoir when not affected by flood.

***recommended design flood*** has the same meaning as in the Guidelines on Dam Safety Management 2003, as published from time to time by the Australian National Committee on Large Dams Incorporated.

*Note* The Guidelines on Dam Safety Management 2003 are accessible at [www.ancold.org.au](http://www.ancold.org.au).

**22 Schedule 4, section 4.1, definition of *threatening process***

*substitute*

*threatening process*—see the *Nature Conservation Act 1980*, dictionary.

**23 Schedule 4, new section 4.2**

*in part 4.1, insert*

**4.2 Meaning of *significant adverse environmental impact***

- (1) An adverse environmental impact is *significant* if—
  - (a) the environmental function, system, value or entity that might be adversely impacted by a proposed development is significant; or
  - (b) the cumulative or incremental effect of a proposed development might contribute to a substantial adverse impact on an environmental function, system, value or entity.
- (2) In deciding whether an adverse environmental impact is *significant*, the following matters must be taken into account:
  - (a) the kind, size, frequency, intensity, scope and length of time of the impact;
  - (b) the sensitivity, resilience and rarity of the environmental function, system, value or entity likely to be affected.

**EXPOSURE DRAFT**

**24 Schedule 4, part 4.2**

*substitute*

**Part 4.2 Development proposals requiring EIS—activities**

<b>column 1 item</b>	<b>column 2 development proposal</b>
1	<p>proposal for construction of a transport corridor including a major road, a dedicated bus way, a railway, or a light rail corridor, on any land, other than on land designated under the territory plan as a future urban area or in a transport and services zone, unless the environment protection authority produces an opinion that the proposal is not likely to cause a significant adverse environmental impact on—</p> <ul style="list-style-type: none"> <li>(a) air quality so as to be detrimental to the health of persons in an adjoining residential, commercial or community facility zone; or</li> <li>(b) ambient noise or vibration so as to be detrimental to the health of persons in an adjoining residential, commercial or community facility zone</li> </ul>
2	<p>proposal that involves—</p> <ul style="list-style-type: none"> <li>(a) electricity transmission line construction, including additions or realignment works, outside an existing easement or exceeding 500m in length, that are intended to carry underground or above-ground transmission lines with a voltage of 132kV or more; or</li> <li>(b) a coal electricity generating station; or</li> <li>(c) an electricity generating station (other than a coal electricity generating station) including gas, wind, hydroelectric, geothermal, bio-material, solar power or co-generation, that is capable of supplying— <ul style="list-style-type: none"> <li>(i) the amount of electrical power prescribed by regulation; or</li> </ul> </li> </ul>



column 1 item	column 2 development proposal
	<p>(ii) if no amount is prescribed—4MW or more of electrical power; or</p> <p>(d) an electricity generating station if the temperature of water released from the station into a body of water (other than an artificial body of water) is likely to vary by more than 2°C from the ambient temperature of the body of water</p>
3	<p>proposal for construction of a water storage dam—</p> <p>(a) that will be at least 15m high when measured from the lowest point of the general foundations to the crest of the dam; or</p> <p>(b) that will be at least 10m high when measured from the lowest point of the general foundations to the crest of the dam if—</p> <p>(i) the crest is not less than 500m in length; or</p> <p>(ii) the water storage capacity of the reservoir formed by the dam at normal operating level is at least 1 000 000m<sup>3</sup>; or</p> <p>(iii) the recommended design flood discharge dealt with by the dam is at least 2 000m<sup>3</sup> per second; or</p> <p>(c) in the river corridor zone under the territory plan unless the conservator of flora and fauna produces an opinion that the proposal is not likely to have a significant adverse environmental impact; or</p> <p>(d) on a continuously flowing river in a non-urban zone under the territory plan unless the conservator of flora and fauna produces an opinion that the proposal is not likely to have a significant adverse environmental impact</p>
4	proposal for construction of an airport or airfield (other than a helicopter landing facility used exclusively for emergency services purposes, including medical evacuation, fire fighting, retrieval or rescue)

## EXPOSURE DRAFT

column 1 item	column 2 development proposal
5	<p>proposal for construction of a waste water treatment plant (including a plant for the treatment of sewage or other effluent, but not including a septic tank that services residential premises or a plant for the treatment of stormwater) that—</p> <ul style="list-style-type: none"> <li>(a) will be less than 1km from the boundary of a residential block or unit in a residential or commercial zone; or</li> <li>(b) will be able to treat each day more than— <ul style="list-style-type: none"> <li>(i) 2 500 people equivalent capacity; or</li> <li>(ii) 750kL; or</li> </ul> </li> <li>(c) will have capacity to store more than 1kt of sewage, sludge or effluent; or</li> <li>(d) will incinerate sewage or sewage products; or</li> <li>(e) will have a capacity to treat more than 100ML of wastewater (excluding stormwater) each year</li> </ul>
6	<p>proposal for construction of a petroleum storage facility with a storage capacity greater than 500kL of petroleum products at 1 time</p>
7	<p>proposal for construction of a permanent venue for the conduct of motor racing events if the venue is less than 2km from the boundary of a residential block or unit in a residential or commercial zone, unless the environment protection authority produces an opinion that the construction of the venue, or the conduct of the events, is not likely to have a significant adverse environmental impact</p>

## EXPOSURE DRAFT

column 1 item	column 2 development proposal
8	<p>proposal for use of land for a commercial landfill facility, other than for the disposal of virgin excavated natural material (or other earth and rock fill that is inert waste) if—</p> <ul style="list-style-type: none"> <li>(a) the intended capacity of the facility is more than 5kt each year, or 20kt in total; or</li> <li>(b) the facility will be— <ul style="list-style-type: none"> <li>(i) in an area with a high watertable, highly permeable soils, sodic soils or saline soils; or</li> <li>(ii) less than 1km from the boundary of a residential block or unit in a residential or commercial zone</li> </ul> </li> </ul>
9	<p>proposal for the construction of a waste management facility that is—</p> <ul style="list-style-type: none"> <li>(a) an incineration facility for the destruction by thermal oxidation of waste including biological, veterinary, medical, clinical, dental, quarantine and municipal waste; or</li> <li>(b) for the sterilisation of clinical waste; or</li> <li>(c) for the storage, treatment, disposal, processing, recycling, recovery, use or reuse of regulated waste</li> </ul>

## EXPOSURE DRAFT

column 1 item	column 2 development proposal
10	<p>proposal for a waste transfer station or recycling facility that sorts, consolidates or temporarily stores solid waste (including municipal waste) for transfer to another site for disposal, storage, reprocessing, recycling, use or reuse, if the transfer station—</p> <ul style="list-style-type: none"> <li>(a) is intended to handle more than 30kt of waste each year; or</li> <li>(b) will be less than 1km from the boundary of a residential block or unit in a residential or commercial zone; but</li> <li>(c) is not a small-scale waste management facility, on or near a residential block or near a residential unit, consisting of wheelie bins, small hoppers, or other small waste management bins or enclosures for the use of people living on the residential block or in the residential unit</li> </ul>

*Note* A proponent may apply under s 138A (2) for an opinion that a proposal is not likely to have a significant adverse environmental impact.

## 25 Schedule 4, part 4.3

*substitute*

### Part 4.3 Development proposals requiring EIS—areas and processes

column 1 item	column 2 proposal
1	<p>proposal that the conservator of flora and fauna considers is likely to have a significant adverse environmental impact on—</p> <ul style="list-style-type: none"> <li>(a) a species or ecological community that is endangered; or</li> <li>(b) a species that is vulnerable; or</li> <li>(c) a species that is protected; or</li> </ul>

## EXPOSURE DRAFT

column 1 item	column 2 proposal
	<p>(d) a species with special protection status; or</p> <p>(e) a species or ecological community if a threatening process has been declared under the <i>Nature Conservation Act 1980</i>, s 38 (4) in relation to the species or community; or</p> <p>(f) a species or ecological community if the flora and fauna committee has stated criteria for assessing whether the committee should recommend the making of a declaration under the <i>Nature Conservation Act 1980</i>, s 38 (Declaration of species, community or process) in relation to the species or community; or</p> <p><i>Note</i> Criteria are specified under the <i>Nature Conservation Act 1980</i>, s 35. An instrument under that Act, s 35 is a disallowable instrument and must be notified, and presented to the Legislative Assembly, under the Legislation Act.</p> <p>(g) an endangered species, an endangered population, an endangered ecological community, a critically endangered species, a critically endangered ecological community or species presumed extinct under the <i>Threatened Species Conservation Act 1995</i> (NSW), if the potential impact of the proposal will be on the species or community in New South Wales</p>
2	<p>proposal involving—</p> <p>(a) the clearing of more than 0.5ha of native vegetation other than on land that is designated as a future urban area under the territory plan unless the conservator of flora and fauna produces an opinion that the clearing is not likely to have a significant adverse environmental impact; or</p> <p>(b) the clearing of more than 5.0ha of native vegetation on land that is designated as a future urban area under the territory plan unless the conservator of flora and fauna produces an opinion that the clearing is not likely to have a significant adverse environmental impact</p>

## EXPOSURE DRAFT

column 1 item	column 2 proposal
3	proposal for development on land reserved under this Act, s 315 for the purpose of a wilderness area, national park, nature reserve or special purpose reserve, that the conservator of flora and fauna considers is likely to have a significant adverse environmental impact on the land
4	proposal that is likely to have a significant adverse environmental impact on— <ul style="list-style-type: none"> <li>(a) a domestic water supply catchment; or</li> <li>(b) a water use purpose mentioned in the territory plan (water use and catchment general code); or</li> <li>(c) a prescribed environmental value mentioned in the territory plan (water use catchment general code) of a natural waterway or aquifer</li> </ul>
5	proposal that is likely to result in environmentally significant water extraction or consumption, other than a proposal for an urban lake, pond or retardation basin or a wastewater reuse scheme— <ul style="list-style-type: none"> <li>(a) in an existing urban area or on land that has been designated as a future urban area; and</li> <li>(b) that is designed in accordance with the water sensitive urban design general code under the territory plan</li> </ul>
6	proposal that the heritage council considers is likely to have a significant adverse environmental impact on the heritage significance of a place or object registered under the <i>Heritage Act 2004</i>
7	proposal involving land that the environment protection authority considers may be contaminated in a way that is causing, or is likely to cause, a significant risk of harm to people's health or the environment
8	proposal, other than on land in an existing urban area or land that is designated under the territory plan as a future urban area, with the potential to adversely affect the integrity of a site where significant environmental or ecological scientific research is being conducted by a government entity, a university or another entity prescribed by regulation

## EXPOSURE DRAFT

*Note 1* A proponent may apply under s 138A (2) for an opinion that a proposal is not likely to have a significant adverse environmental impact.

*Note 2* A development application for a development proposal must include an EIS in relation to the proposal if the impact track applies to it because of a declaration under s 125 (Declaration by Public Health Act Minister affects assessment track).

## **26 Dictionary, new definitions**

*insert*

***crest***, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

***lowest point of the general foundations***, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

***normal operating level***, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

***recommended design flood***, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

***significant adverse environmental impact***—see schedule 4, section 4.2.

## **27 Dictionary, definition of *threatening process***

*substitute*

***threatening process***, for schedule 4 (Development proposals in impact track because of need for EIS)—see the *Nature Conservation Act 1980*, dictionary.

# **EXPOSURE DRAFT**

---

## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2010.

**2 Notification**

Notified under the Legislation Act on 2010.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

---

## EXPOSURE DRAFT