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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PLANNING AND BUILDING LEGISLATION AMENDMENT BILL 2011

EXPLANATORY STATEMENT

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EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning and Building Legislation Amendment Bill 2011* (the bill).

Background

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

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

These ways of amending planning and building legislation can be cumbersome and confusing for community, industry and government users of the legislation. In recent legislative debate on a *Planning and Development Act 2007* amendment bill, two Assembly members commented that the bill contained a large number of fairly insignificant clauses to clarify areas of uncertainty or to make small improvements to the current Act.

An omnibus Planning and Building Legislation Amendment Bill will enable more minor matters to be dealt with expediently and will help to consolidate amendments into one place making the amendment process more user-friendly and accessible. It will provide greater flexibility in drafting amendments of planning and building legislation and will minimise costs associated with keeping the legislation up-to-date.

Overview

Under guidelines approved by the government, the essential criteria for the inclusion of amendments in the bill are that the amendments are minor or technical and non-controversial, or reflect only a minor policy change.

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

Well maintained legislation greatly enhances access to it by making it easier to find in an up-to-date form and easier to read and understand. This bill and future such bills facilitate keeping laws as up-to-date as possible to reflect

technological and societal change both of which can happen rapidly in today's world.
In summary, the bill amends:

- *Building Act 2004* – to fine-tune the requirements for what information must be shown in the plans when making an application for an exemption assessment notice. An exemption notice is a new non-mandatory process for persons to use so that they have a record that their development met development exemption criteria and therefore, no building approval was required;
- *Construction Occupations (Licensing) Act 2004* (COLA) – to make a code of practice a notifiable instrument, thereby making them publicly available to industry and the community;
- *Electricity Safety Act 1971* – to include 'generator', such as might be used in a residential dwelling, as a type of thing covered by the Act;
- *Gas Safety Act 2000* and regulation – to allow codes of practice to apply current Australian Standards to industry;
- Planning and Development Act 2007 and regulation - to clarify the nature of 'notification' (vis-à-vis 'consultation') for development applications; to fine-tune requirements in relation to exemption assessment notices; to make amendments relating to recent EIS reforms and to the public availability of comments on technical amendments to the territory plan; to make comments on technical plan variations available for inspection; and to specify the type of information supplied to the Land Titles Office in relation to development applications;
- *Surveyors Act 2007* – to clarify the wording of an existing offence provision; and
- *Unit Titles Act 2001* and regulation – to allow a unit title assessment report to be for one stage of a staged (unit title) development.

Outline of Provisions

Part 1 – Preliminary

Clause 1 — Name of Act
This clause names the Act as the *Planning and Building Legislation Amendment Act 2011.*

Clause 2 — Commencement
This clause provides for the bill's commencement. The bill has various commencement provisions reflecting the different pieces of legislation being amended. Some pieces of legislation such as the *Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010* have not as yet commenced fully. The commencement provisions allow for this and ensure that when the relevant legislation commences (if applicable) that the amendments proposed in the Bill will come into effect.

Clause 3 — Legislation amended
This clause names the legislation that the bill amends.

Part 2 Building Act 2004

Clause 4 — Exemption assessment applications Section 14(4)

The *Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010* (A2010-24, partially commenced) amended the *Building Act 2004* to introduce the 'exemption assessment notice'. The notice can be issued by a building certifier and is similar to a building certificate, for instance, plans are attached to it. However, unlike building certificates, an exemption assessment notice is not mandatory.

In developing the regulations to support the notice, it became apparent that the regulation would need to specify what information must be shown on the plans to ensure the certifier has the necessary information to make an assessment. There is a similar requirement in relation to plans for building approvals.

The amendment allows the regulation to prescribe the information required to be shown and other requirements for plans attached to an exemption assessment notice.

Clause 5 — Exemption assessments and notices New section 14B (2A)

This clause relates to the amendment at clause 4 above. The Building Act already provides for what information must be stated on an exemption notice and that a regulation may prescribe additional things that must be stated. However, when developing the regulation to support the exemption notice, it became apparent that the notice must also have relevant documents attached to it. Types of documents include the plan/s the certifier used in making the assessment or any other document that informed the final decision.

New section 14B (2A) allows a regulation to prescribe what documents must be attached to the notice and the information required to be shown in the document. This provides clear and transparent information on the scope of the notice and to what it applies.

Part 3 – Construction Occupations (Licensing) Act 2004

Clause 6 — Registrar's functions Section 104(1)(d)(ii)

Clause 6 omits section 104(1)(d)(ii). It is no longer needed because a new section 104A is being inserted. Section 104(1)(d)(ii) provides that the construction occupations registrar can make a code but is silent for what occupations, what they may consist of and did not require the code to be publicly available.

The *Construction Occupations Legislation Amendment Act 2010 (No 2)* (A2010-32, awaiting commencement) inserts a new section 104A that allows the registrar to make a code of practice, and states for what occupations a code can be made, and that a code is a disallowable instrument.

Clause 7 — Section 104(3)
The *Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010* (A2010-24, partially commenced) inserts a new section 104(3) to require a code to be a notifiable instrument. This ensures a code is available to the public including industry. This new section 104(3) would be in conflict with new section 104A(3) (refer clause 6 above) which states that a code is a disallowable instrument. Section 104A(3) is being amended (refer clause 8 below) to clarify a code is a notifiable instrument and so section 104(3) is no longer needed and is therefore omitted.

Clause 8 — Codes of practice Section 104A(3)
This amendment corrects an anomaly created by amendments made to COLA in relation to codes of practice. One amendment made a code a disallowable instrument while another made it a notifiable instrument. The construction occupations registrar has determined that a code should be a notifiable instrument. This is consistent with other types of things in COLA.

Clause 8 amends the new section 104A(3) inserted by the *Construction Occupations Legislation Amendment Act 2010 (No 2)* (A2010-32, awaiting commencement) to make a code a notifiable instrument.

Part 4 Electricity Safety Act 1971

Clause 9 — Dictionary, definition of *electrical installation*
This clause adjusts the definition of electrical installation in the Dictionary to capture new installations that may operate on a stand-alone basis serving one or more consumers.

The definition is amended to include a generator and the generation of electrical energy. A new definition of generator is also inserted in the Dictionary (see Clause 10 below) to make it clear what is meant by the term ‘generator’ in the new definition (it includes a generator that generates electricity from any energy source, for example, the sun, diesel fuel, gas and wind).

Clause 10 — Dictionary, new definition of *generator*
This amendment is a consequence of the amendment at clause 9 above.

Part 5 Gas Safety Act 2000

Clause 11 — Codes of practice Section 65(2)
Existing section 65(2) already provides that a code of practice may set out practices, standards and other matters relative to the conduct of gas safety work, notifications and certifications. New section 65(2) permits a code to also apply an instrument that may be in force from time to time. Gas-fitters, as with other occupations, work to Australian Standards (and other instruments).

The amendment means that a code can now call in these instruments. The use of the phrase ‘from time to time’ means that the regulation does not need to specify the particular version rather it always applies to the current version (unless it has been repealed).

Clause 12 — Section 65(5)
Section 65(5) is amended so that the construction occupations registrar, rather than the planning and land authority, is responsible for making a code of practice available to both the relevant construction occupation and the public. This brings the provision in-line with the *Construction Occupations (Licensing) Act 2004* which is the over-arching legislation for licensing and management of construction occupations in the ACT.

Clause 13 — Section 65(5)(a)
It is more appropriate and consistent with the above amendment to section 65(5) (refer Clause 12) that codes be available at the office of the construction occupations registrar rather than the chief planning executive.

Clause 14 — Dictionary, note 2
This clause amends the Dictionary to include the construction occupations registrar in Note 2. This amendment is a consequence of the amendments to section 65(5) above (refer clause 12 and 13).

Part 6 Gas Safety Regulation 2001

Clause 15 — References to Australian Gas Association standards and codes Section 4A
This clause omits section 4A. The Australian Gas Association no longer develops and publishes standards or codes relating to gas safety (this is now done by Standards Australia) and other amendments made by this bill remove references to Australian Gas Association standards in the regulation (see for instance, clauses 16 and 20 below). As the purpose of section 4A is to explain references in the regulation to Australian Gas Association standards and codes, it is no longer required.

Standards Australia (AS) is already referred to in the regulation. AS is a well understood and known industry term. There is no need to further define it in the regulation.

Clause 16 — Sections 18D and 18E
This clause amends sections 18D and 18E to remove an irrelevant reference to an Australian Gas Association standard and substitute the relevant Australian standard (AS). This reflects current industry knowledge and practice of using Australian Standards rather than Australian Gas Association standards. As indicated above in clause 15, the Australian Gas Association no longer develops standards and codes. This is now done by Standards Australia.

Clause 17— Serious gas accidents – prescribed amount Section 20
This clause amends section 20 which prescribes a monetary amount for paragraph (c) of the definition for serious gas accident in the Dictionary of the *Gas Safety Act 2000*. The prescribed amount is increased from $2000 to $5000. The prescribed amount has not been updated since the Gas Safety Act's inception in 2000 and the increase in the amount takes into account the increased cost of replacement or repair of damage caused by a gas accident.

The amendment overcomes the problem of the emergence of cases of a less serious nature being unnecessarily classified as a serious gas accident due to rising costs. It reconfirms the intent of the provision to define serious gas accidents as those that involve a certain level of technical complexity or extent of damage to property from a gas accident.

Clause 18 — Place for keeping records – Act, s19(2)(b) and s65(5)(b) Section 21
This clause omits section 21 to remove the reference to a function no longer undertaken by an entity that did have administrative responsibility for the function in the past. ACT Workcover no longer provides a function under gas safety legislation as a place to keep records. The regulation already provides that the planning and land authority keeps records.

Clause 19 — Dictionary, note 2
This clause inserts 'AS' in note 2 of the Dictionary for clarification purposes. Note 2 indicates that certain terms are defined in the *Legislation Act 2001*. Section 164 of Legislation Act provides that 'AS' in legislation means Australian standard.

Clause 20 — Dictionary, definitions of *type A appliance* and *type B appliance*
This clause amends the definition of type A and type B appliances to reflect the common usage of Australian Standards (AS) and omit the reference to Australian Gas Association standards. As indicated in clause 15 above, the Australian Gas Association no longer develops codes and standards. This is now done by Standards Australia.

Part 7 Planning and Development Act 2007

Clause 21 — Limited consultation Section 90(2)(c)
This clause ensures consistency of terminology in the *Planning and Development Act 2007* (the Act). 'Representations' is a term more appropriately used when referring to notification such as notification of development applications. Consultation rather than notification takes place in relation to technical amendments to the territory plan so the word 'representation' in section 90 is removed and the more appropriate term 'consultation comments' is substituted.

Clause 22 — new section 90(2)(d) and (2A)
The Act requires the planning and land authority (the authority) to undertake consultation on a technical variation to the territory plan. However, if comments are made, other people who may want to know what types of comments have been made, can not access the comments unless they apply under *Freedom of Information Act 1989*.

The proposed amendment to the Act will require that the notice advising of the consultation will also say that comments will be available to the public. This is consistent with what happens for other types of consultation.

Clause 23 — Section 90(3)
This clause substitutes the word 'representations' with the words 'consultation comments' for similar reasons to those in clause 21 above.

Clause 24 — Section 90(5)(a)
This clause substitutes the word 'representation' with the words 'consultation comments' for similar reasons to those in clause 21 above.

Clause 25 — What is an exempt development? Section 133, note 2
This clause substitutes the words 'planning and development authority' with the words 'planning and land authority'. The use of the term 'planning and development authority' is an incorrect reference to the ACT planning and land authority.

Clause 26 — Exemption assessment applications New section 138B(2)(a)(ia)
The *Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010* (A2010-24, partially commenced) amended the Act to introduce a new concept of 'exemption assessment notice'. The notice can be issued by certain qualified persons, known as a works assessor or building surveyor, and certifies that the development meets prescribed exemption criteria. It is not mandatory for a proponent to obtain a notice.

In developing the regulations to support the notice, it became apparent that a regulation was needed that could specify how many copies of the plans must be included in an application for a notice. The person issuing the notice must provide a set of documents and information to the applicant and the authority, as well as retain a copy for their records. Therefore, the application must include sufficient copies of the plans. There is a similar requirement for a building approval application.

The amendment to the Act provides for a regulation to prescribe the number of copies of the plans to be included in an application for an exemption assessment notice.

Clause 27 — Exemption assessments and notices Section 138D(2)(b)
This amendment is related to the amendment made by clause 26. The Act already provides that a works assessor or building surveyor must state on an

exemption assessment notice whether the development is exempt from requiring development approval. However, in developing the regulations to support the notice, it was identified that the regulation needs to be able to prescribe other things that must be included in the notice. For instance, which criteria the development meets in schedule 1 of the *Planning and Development Regulation 2008*.

Clause 27 provides that a regulation can prescribe this information. The amendment is consistent with what is required for an exemption notice under *Building Act 2004*.

Clause 28 — Section 138D, note
This clause substitutes the words 'planning and development authority' with the words 'planning and land authority'. The use of the term 'planning and development authority' is an incorrect reference to the ACT planning and land authority.

Clause 29 — Form of development applications New section 139(3A) to (3C)
The *Planning and Development (Environmental Impact Statements) Amendment Act 2010* inserted a new provision, section 139(2)(i) in the Act which means that it will no longer be necessary to prepare an EIS prior to lodgement of a development application to remove the concessional status of a lease.

New s139(2)(i) requires instead that an application for approval of de-concessionalisation must include an assessment of the social, cultural and economic impacts (SIA) of the de-concessionalisation, as well as addressing any other matter required by regulation.

These changes ensure that the level and content of the assessment of such applications is more appropriately focused. Because of the importance of the SIA in a DA application, it was considered that the proponent must have some guidance about what information should be included in a SIA. Previously this would have been dealt with in an EIS scoping document. However, once deconcessionalistion of a lease is no longer an EIS trigger, there will be no scoping document.

New sections 139(3A) to (3C) provide the power for a regulation to prescribe the requirements for a SIA, and for the Minister to make guidelines for their preparation. A guideline is a notifiable instrument.

Clause 30 — Notice of approval of application Section 170(2) and (3)
This clause amends existing section 170 so that it provides what information must be contained in a notice to the Land Titles Office (LTO). Previously, the section did not specify particular details to be included in the notice, but merely provided that notice must be given.

This brings the section in-line with administrative practice and ensures a consistent level of information is provided to LTO.

Clause 31 — Sections 184 to 187
This clause omits the words 'the ACAT or' from these sections. This was a reference to an internal review process by ACAT which is no longer available because of an amendment to *ACT Civil and Administrative Tribunal Act 2008* by *Justice and Community Safety Legislation Amendment Act 2010* (A2010-13, s1.12).

Clause 32 — Restrictions on public availability – comments, applications, representations and proposals New section 411(1)(aa) This clause is a consequence of the amendment to the Act by clause 22 which allows consultation comments on technical amendments to the territory plan to be publicly available.

The amendment affords consultation comments on proposed technical amendments the same rights of restriction on public availability as presently given to those things listed in section 411.

Clause 33 — Section 411(2), definition of *relevant document*, new paragraph (aa)
This clause also relates to the amendment made by clause 22. Clause 22 means consultation comments on a proposed technical amendment can be made publicly available like other things such as comments on a draft plan variation.

Clause 33 ensures proposed technical amendments and consultation comments on a proposed technical amendment are afforded the same protections regarding restrictions on public availability as the other things listed in section 411(1) of the Act.

Clause 34 — Restrictions on public availability – security Section 412(5), definition of *relevant document*, new paragraphs (ba) and (bb)
This clause also relates to the amendment made by clause 22. Clause 34 ensures proposed technical amendments and consultation comments on a proposed technical amendment are afforded the same protections regarding restrictions on public availability as the other things listed in section 411(1) of the Act.

Clause 35 — Dictionary, definition of *public consultation period*
This clause removes the reference to a development application in the definition of public consultation period as a consequence of the amendments at clause 25 above.

Clause 36— Dictionary, new definition of *public notification period*
This clause inserts a new definition of public notification period as a consequence of the amendments at clause 25 above.

Clause 37 — Further amendments, mentions of *consultation*
This clause substitutes the word 'notification' for the word 'consultation' when it is used in relation to a development application.

The Act uses the term 'consultation' extensively but in different contexts. For example, 'consultation' is required under s61 for a draft Territory Plan variation, s66 which deals with 'public consultation' on a draft Territory Plan variation, s89 which deals with 'limited consultation' on technical Territory Plan variations, etc. These types of 'consultation' are where the planning and land authority puts information out for active interaction, consideration, review and comment.

However, 'consultation' when it is being done in relation to a development application (DA) involves the notification to a person relative to the DA such as a neighbour so that they have the information and can ‘make comment’ on the proposed development. The authority takes this information into consideration as part of the assessment process. There is no interactive discussion with ‘notified’ persons.

For this reason, section 125 etc is amended to use the word ‘notification’ rather than ‘consultation.’

The Macquarie dictionary definition for 'notification' is reflective of what consultation means when it is part of the development assessment process.

Part 8 – Planning and Development Regulation 2008

Clause 38 — Public consultation period – Act, s157, def *public consultation period*, par(a) Section 28 heading.
This clause substitutes the word ‘notification’ for the word ‘consultation’. This is consequential to the amendments by clause 25 of this bill.

Clause 39 — Content of scoping documents- Act, s213(1) Section 54(3)
This clause omits section 54(3) because s54(3) relates to section 54(1)(e) which was omitted from the regulation by section 34 of *Planning and Development (Environmental Impact Statements) Amendment Act 2010* (the EIS Act). These sections provided information about the scoping document for a development proposal to vary a lease to change its concessional status. Such proposals no longer require a scoping document as a result of amendments made by the EIS Act.

Part 9 – Surveyors Act 2007

Clause 40 — Section 49
This clause substitutes a new section 49 for clarification purposes.

New section 49 clarifies that a person commits an offence if the person carries out a survey (as defined under the Surveyors Act) and is not a surveyor (as defined under the Surveyors Act), or supervised by a surveyor, when the survey is carried out.

This was previously unclear and the new section is supported by the Survey Practice Advisory Committee. There has been no change to the penalty provision.

Part 10 Unit Titles Act 2001

Clause 41 — Unit title applications – general requirements Sections 17(4) and (5) and note

This clause amends sections 17(4) and (5) so that a unit title application for a development that is proposed to be done in 'stages' includes a unit title assessment report for each stage.

A unit title assessment report (UTAR) is required for all applications to unit title if the parcel (of land) has been prescribed. All parcels are prescribed under *Unit Titles Regulation 2001*.

Currently, the Unit Titles Act only specifies that a UTAR is required if the development is done in one stage. This does not cater for the situation where the development is done in stages. New sections 17(4) and (5) provide that a UTAR has to be provided for each stage of a staged development. The same content requirements apply for a UTAR whether the UTAR is for un-staged i.e. the whole development is constructed at the same time, or a staged development.

Clause 42 — Unit title applications – approval New section 20(1A)

The Unit Titles Act provides, amongst other things, for an application process for a lessee to seek to unit title a development. The development can be a completed development; an un-staged development or a staged development.

Section 20 of the Act presently deals with the approval of applications. The section provides for one application and one decision. It does not cater for a 'staged' development application although these types of applications have always been available.

New section 20(1A) provides that an application that is for staged development can be approved at each stage of the development. The amendment introduces a new term 'a development stage'. This allows the Unit Titles Act to deal with the stages of development whether or not it is only one stage or many stages.

Clause 43 — Section 20(2)

This clause amends the sub-section to use the term 'development stage'. This amendment is a consequence of the amendment at clause 42.

Clause 44 — Section 20(2)(b)

This clause amends the sub-section to use the term 'development'. The amendment is a consequence of the amendment at clause 42.

Clause 45 — Section 20(8), definition of *first stage*
This clause amends the definition of staged development so that it applies to both type A and type B units. These types of units are defined in section 10 and 11 of the Unit Titles Act.

Both type A and type B units can be unit titled and if they are completed in stages, a development statement must be compiled. Section 8 of the Unit Titles Regulation prescribes the detail for a development statement.

The amendment clarifies this requirement.

Part 11 Unit Titles Regulation 2001

Clause 46 — Unit title assessment report – contents – Act, s22B(5)(a)
New section 2D(1)(c)(ia)
This clause amends section 2D to require a works assessor to include their license number on a unit title assessment report. All works assessors are required to be licensed. The provision already requires the works assessor to include other details such as full name, postal address, telephone contact, etc.

Clause 47 — Section 2D(1)(i)
This clause amends the section to require that only those conditions relevant post-construction are complied with for the completed un-staged development or the completed part of the staged development. For example, if a condition is required on the third stage and the UTAR is dealing with stage 1 or 2 then the condition does not need to be complied with at that point (it would however need to be complied with when stage 3 is completed).

Clause 48 — Section 2D(2)
This clause amends the section to provide for staged development.

Previously the section only dealt with 1 stage of development - either a whole ‘un-staged’ development or stage 1 of a multi-stage development.

This amendment is a consequence of the amendment at clause 42.

Clause 49 — Section 2D(3), new definition of *stage*
This clause inserts a definition for stage. This amendment is a consequence of the amendment at clause 42.