

2014

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**PLANNING AND DEVELOPMENT (SYMONSTON MENTAL HEALTH FACILITY)
AMENDMENT BILL 2014**

EXPLANATORY STATEMENT

**Presented by
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Minister for the Environment and Sustainable Development**

EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning and Development (Symonston Mental Health Facility) Amendment Bill 2014* (the bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Legislative Assembly.

Background

This explanatory statement provides information about why a bill is required together with an explanation about the proposed legislative amendments. To give effect to the desired outcomes it is necessary to consider amendments to the planning legislation to ensure that the ACT receives within an optimum timeframe a secure mental health facility.

The ACT Legislative Assembly has identified an immediate need for a medium/low security mental health facility of approximately 25 beds to meet current and anticipated future demand. In the meantime, high security and acute long term care will continue to be provided in NSW.

It is envisaged that a new facility would fulfil a critical role in the treatment and rehabilitation of affected community members. The facility would provide residential care to people who are, or were, subject to a mental health order under the *Mental Health (Treatment and Care) Act 1994*. The new facility would provide secure residential care accommodation, in the ACT, in a controlled and safe environment. This would mean that vulnerable members of our community are supported within our community and will no longer be required to move to a facility in NSW away from family members and support structures.

Further, the ACT Legislative Assembly, on 7 August 2013 (Hansard Week 9 Page 2594), passed the following motion unanimously:

The Legislative Assembly:

(1) notes that:

- (a) the Government is committed to continuing to develop specialist mental health facilities and services, including a secure mental health facility in the ACT;
- (b) a number of reviews have been undertaken in relation to the proposed secure mental health facility, and these studies have confirmed the need for a medium/low security facility of 25 beds to meet current and future demand;
- (c) extensive site selection investigations have determined the former Quamby Youth Detention Centre site at Symonston as the most appropriate location for the secure mental health facility; and
- (d) design for the secure mental health facility has begun, and that the current timetable for commissioning of the facility is early 2017; and

(2) calls on the Assembly to:

- (a) confirm its support for a 25 bed medium/low security secure mental health facility to be constructed on the former Quamby site at Symonston;

- (b) agree that the secure mental health facility project should be fast-tracked to allow for delivery ahead of the early 2017 timetable currently planned;
- (c) agree to consider project specific legislation which would expedite the planning process and allow construction of the secure mental health facility to commence as soon as possible; and
- (d) agree that appropriate comprehensive community consultation continue throughout the project's design, implementation and delivery phases.

The Government, with the support of the Assembly, have determined that the development of the mental health facility should be fast tracked in order to meet the community need at the earliest possible time.

The ACT Health Directorate, together with other ACT government directorates, has completed, in consultation with the community an extensive site selection process. The former Quamby Youth Detention Centre site at Symonston was identified as the best available site for a new mental health facility for the ACT community.

Overview of the bill

The bill proposes a number of amendments to the *Planning and Development Act 2007* (the Act), the *Planning and Development Regulation 2008* (the regulation) and the *Administrative Decisions (Judicial Review) Act 1989*. The proposed amendments would assist Government to expedite the construction of a secure mental health facility in Symonston.

In summary the bill proposes the following amendments:

1. The bill proposes to introduce a draft special variation process. The proposed process can only be used if the special variation is in relation to the proposed Symonston mental health facility. The proposed provisions for a special variation includes elements similar to those already prescribed by the Act: there is a requirement for public consultation and consultation with the national capital authority; the planning and land authority may extend the period of consultation; consultation requirements are a notifiable instrument and must also be published in a daily newspaper; and the public are able to inspect any proposed special variation.
2. Applies certain restrictions on appeals in relation to the special variation process and development approvals for the proposed Symonston mental health facility. In summary the bill:
 - removes the ability to appeal a decision under the *Administrative Decisions (Judicial Review) Act 1989* in relation to the making of a special variation and requires any appeals to the Supreme Court under the common law in relation to this matter to be made within 60 days of the relevant decision;
 - removes the ability to appeal a decision under the *Administrative Decisions (Judicial Review) Act* in relation to development proposals connected to the proposed Symonston mental health facility and requires any appeals to the Supreme Court under the common law in relation to development proposals connected to the proposed Symonston mental health facility, to be made within 60 days of the

relevant decision. These restrictions are time limited, they exist for five years unless extended by regulation; and

- removes the ability of third parties to seek ACAT merit review of decisions in relation to the proposed Symonston mental health facility.

Draft special variation process

A draft special variation process is required to facilitate the development of a secure mental health facility in the ACT. This is because the existing planning laws i.e. the Act, does not permit the identification of specific geographical areas for priority development. The Act requires the same territory plan variation, development assessment and appeal processes to apply to all areas where applicable. These legislated processes can involve considerable timeframes for example a normal territory plan variation process can typically take over 12 months.

A development assessment process, for a facility such as a secure mental health facility would be assessed within a potential timeframe of 3 – 6 months without any appeals and considerably longer if there is an appeal. Timeframes for a development application that is assessed in the impact can take even longer because of the need to complete an environmental impact assessment. The ACT cannot wait this long to acquire a secure mental health facility.

The current process:

Part 5.3 prescribes the process to vary the Territory Plan. The process is either initiated by the planning and land authority (see section 60) or the Minister directs the authority to revise the Territory Plan or a provision of the plan (see section 14(1)(b)).

If the planning and land authority prepares a draft plan variation, the authority must prepare a consultation notice (see section 63) that invites comments on the draft variation, and, when publicly notified, may give the draft plan variation interim effect (see sections 64 and 65). The draft plan variation and background papers must be available for public inspection and purchase during the consultation period for not less than 30 working days.

If a draft variation has interim effect, this means it operates as if the Territory Plan were varied in accordance with the draft variation. The Territory, the Executive, a Minister or a territory authority must not do or approve the doing of anything that would be inconsistent with the proposed varied Territory Plan i.e. in accordance with the draft plan variation.

The planning and land authority may revise or withdraw a variation at the end of public consultation (see section 68). If the variation is not withdrawn, the planning and land authority must give the variation to the Minister for approval (see section 69) and give notice that the variation and other documents are available for public inspection (see section 70).

If notice is given of the variation's availability for inspection, the variation notified may have interim effect (see sections 71 and 72). The Minister may refer the variation to a Legislative Assembly committee. If the Minister receives a committee report about the variation, the Minister may approve the draft variation or take other action such

as returning the draft plan variation to the planning and land authority and directing the authority to conduct further consultation, consider any relevant planning report or strategic assessment, or revise the draft plan variation (see section 76).

The Minister may revoke an approval of a draft plan variation before presenting the approved plan variation to the Legislative Assembly (see section 77) but otherwise must present the approved plan variation to the Legislative Assembly (see section 79). The Legislative Assembly may reject the plan variation (see section 80). If the plan variation, or a provision of the plan variation, is not rejected, the Minister must fix a day when the variation commences (see section 83).

Draft special variation process – Symonston mental health facility

The bill inserts a new Part 5.3A into the Act. This new Part prescribes requirements for a special variation of the Territory Plan in relation to the Symonston mental health facility. The proposed provisions are similar to those for a normal territory plan variation: there is public consultation, consultation with the national capital authority, and opportunity to review the proposed special variation.

Where the process differs is in the actions after consultation i.e. what the Minister must do or in relation to the bill what the Executive must do. Whereas currently the Act provides that the main decisions about a normal variation reside with the Minister these decisions are now elevated to the Executive. It is important to remember that the up-front consultation with the community and the national capital authority are protected by the proposed bill.

The bill limits the effect of a draft special variation to development in relation to the Symonston site as identified in the map at schedule 6 of the proposed bill. The draft special variation process cannot be used for any other sites.

A draft special variation must state how the special variation meets the criteria in proposed new section 85I and include any information that the Executive considers appropriate. A draft special variation must indicate what changes are required to be made to the Territory Plan.

This is different to normal territory plan variation processes and is warranted given the proposed process to give effect to a draft special variation. Providing this extra level of information allows the community to fully understand the scope of the proposed special variation and to consider the likely impacts in their community. A special variation cannot proceed if the community or the national capital authority has not been consulted.

The draft special variation is required to be publicly notified and undergo community consultation. This is the same as a normal territory plan variation. Proposed new section 85C provides that the planning and land authority must give written notice inviting comment on the draft special variation to the national capital authority and also consult with the public in accordance with the procedures set out in new section 85D. Proposed new section 85D sets out requirements for the preparation of a consultation notice for a draft special variation. Copies of the draft special variation must be available for public inspection (or purchase) for not less than 15 working days.

The consultation notice must invite people to give written comments about the draft special variation and state that these consultation comments, or comments received from the national capital authority, will be made available for public inspection for at least 15 working days starting 10 days after the day the consultation period ends (unless exempted under s411 or s412). The planning and land authority may extend or further extend the consultation period.

Proposed new section 85E provides that the planning and land authority must make copies of the draft special variation mentioned in a consultation notice available for public inspection (or purchase) during office hours during the consultation period and at the places stated in the consultation notice. Usually there would be no charge for making a copy of the proposed draft special variation.

Consistent with existing Territory Plan variation processes, the Bill requires the public availability of public comments made on draft Territory Plan variations in relation to the proposed Symonston mental health facility. Proposed new section 85F provides that the planning and land authority must make copies of any consultation comments made on a draft special variation available for public inspection during office hours during the period, and at the places, mentioned in the consultation notice for the draft special variation, unless exempted under s411 or s412. Also consistent with existing processes, persons can apply for their comments to be withheld on certain grounds as set out in existing section 411. These grounds include concerns that disclosure could result in the disclosure of a trade secret, risk to life or physical safety, risk of damage or theft of property. Existing section 412 provides that the availability of information can be restricted by the Commonwealth or ACT Attorney-General on grounds of national security or risk of injury or property damage. These standard provisions applying to existing Territory Plan provisions will also apply to any Territory Plan variations made through the proposed special variation process in relation to the Symonston mental health facility.

Proposed new section 85G applies to a draft special variation if the consultation process for the draft special variation has ended. The planning and land authority must give the Executive the draft special variation, together with a report setting out any comments received from the national capital authority, details of the public consultation and the issues raised in any consultation about the draft special variation. The Executive may either require further consultation to be undertaken or the withdrawal of the draft special variation.

Proposed new section 85H provides that the Executive may make an instrument to vary the Territory Plan in relation to the Symonston mental health facility i.e. the draft special variation. A draft special variation is a notifiable instrument and must identify the Symonston site, include any territory plan variations that are required to implement the draft special variation and state how in the Executive's opinion, the area meets the draft special variation criteria at proposed new section 85I.

Proposed new section 85I prescribes the criteria that the Executive must be satisfied with before making a special variation under proposed new section 85H. The Executive may only make the variation if the planning and land authority has consulted the national capital authority and the public about the draft special variation; considered the consultation report from the planning and land authority;

that, in the Executive's opinion, the special variation will facilitate the Symonston mental health facility and that there is no substantive public policy reason for the development of the Symonston mental health facility not to proceed.

However, the Executive may make the special variation in a revised form to the draft special variation if, having regard to the report of the planning and land authority and comments of the Executive under section 85G, the Executive considers it appropriate to do so.

Proposed new section 85J provides that a variation to the Territory Plan that is included in a special variation takes effect on the day the special variation commences.

The planning and land authority must publish details in a daily newspaper of each variation to the Territory Plan made by the special variation and where copies of the plan variation may be inspected (or purchased). Copies of the special plan variation will be available for inspection (or purchase) during office hours at the places, and during the period, published in the newspaper.

Proposed new section 85K provides that a person may not start a proceeding in a court in relation to the special variation (eg the validity of the special variation) more than 60 days after the variation is made. This would apply to applications for review by the Supreme Court under the common law. In addition, item 1.1 of Schedule 1 to the Bill amends the *Administrative Decisions (Judicial Review) Act 1989*. The amendment removes the proposed special variation process from potential review under the Administrative Decisions (Judicial Review) Act.

Proposed new section 85L provides that a person may not start a proceeding in a court in relation to a decision under chapter 7, chapter 8 or chapter 9, if the decision is in relation to the development proposal for the Symonston mental health facility and more than 60 days have passed since the decision was made. This would apply to applications for review by the Supreme Court under the common law. Under new section 85L these restrictions are in place for a limited period of 5 years unless the period is extended by regulation for a further 5 years. The regulation cannot extend the period by more than 5 years.

In addition, new item 1.1 of Schedule 1 to the Bill amends the Administrative Decisions (Judicial Review) Act. The amendment removes decisions under chapters 7, 8 or 9 in relation to the development proposal for the Symonston mental health facility from potential review under the Administrative Decisions (Judicial Review) Act. This restriction only comes into effect if the Executive makes a special variation under new section 85H. This restriction on the application of the Administrative Decisions (Judicial Review) Act only applies only while section 85L subsists. This means that the restriction is in place for a limited period of 5 years unless the period is extended by regulation for a further 5 years. The regulation cannot extend the period by more than 5 years.

Human rights implications

The proposed restrictions on review processes arguably engage sections 17 (Taking part in public life) and s21 (Fair trial) of the Human Rights Act.

However, case law indicates that human rights legislation does not guarantee a right of appeal for civil matters. Opportunities for input into planning and development applications and the existence of a right to judicial review have been held in many cases to satisfy the requirement of the right to a fair trial. For example, in *Thomson v ACT Planning and Land Authority* [2009] ACAT 38, the Commissioner commented, "...providing certainty and predictability for applicants for development approval, and the need to ensure a timely approval process are sufficiently important objectives to justify some constraints on third party review rights."¹

Although the bill restricts third party review rights and review by the Supreme Court under the ADJR Act, the right to judicial review under the Supreme Court's inherent jurisdiction remains, albeit with time constraints. The time restraints are reasonable in this instance as the main purpose of the proposed bill is to ensure that the ACT community receives a secure mental health facility with minimal delay.

In addition, the right to take part in public life is comprehensively addressed by the extensive opportunities for public comment on the draft special variation and the publicly notified development application for the Symonston mental health facility. This is in addition to the consultation opportunities on normal territory plan variations.

To the extent that the proposed law limits any rights afforded by the *Human Rights Act 2004*, these limitations must meet the proportionality test of section 28 of that legislation.

In this case, the proposed law serves to balance the need to provide a secure mental health facility in a timely and expedient manner against an existing right to third party review. There is a need to provide a facility where those vulnerable members of the community can be treated and rehabilitated in an environment that ensures they are protected. The facility is being constructed in a Broad Acre land use policy area on a site specifically identified. The selected site was formerly a youth detention centre, is not immediately adjacent to residential land use and is not set amongst uses that conflict with the intended facility.

The proposed law does not cover a facility built on any other site. The removal of third party review rights by the proposed law is linked to a specific site for a known purpose. The proposed law does not have general application and is restricted to the site and the purpose i.e. it only applies to a mental health facility at Symonston.

It is relevant to note that the *Planning and Development Regulation 2008* already restricts third party applications for ACAT merit review in relation to a number of matters including development in town centres, Kingston Foreshore, the City.

Possible alternatives to the proposed law

One alternative is to rely on the Minister's "call-in" power under the Planning and Development Act. This is not recommended because the call-in power does not provide the same opportunities for the community to provide input into the decision process. The proposed special variation process has the advantage of legislating that the community and the national capital authority has the opportunity to comment on the special variation and also the development application itself for the facility. A

¹*Thomson v ACT Planning and Land Authority* op cit.

decision under a call-in power is not reviewed by the Executive whereas a special variation is. Importantly the bill provides that the Executive cannot make a special variation if the consultation has not occurred (there is no discretion). This ensures that the community is aware of and has a right to comment on the proposed special variation before it can be made ensuring a level of transparency and scrutiny.

A further alternative is to make a regulation to remove the requirement for the proposed mental health facility to obtain development approval under the Planning and Development Act. This option is not recommended because such exemptions are typically used for relatively minor matters and the use of the exemption process for a major project is likely to be challenged in the Supreme Court.

Outline of Provisions

Clause 1 — Name of Act

This clause names the Act as the *Planning and Development (Symonston Mental Health Facility) Amendment Act 2014*.

Clause 2 – Commencement

This clause provides that the Act commences on the day after its notification day.

Clause 3 – Legislation amended

This clause provides that the Act amends the *Planning and Development Act 2007*. Other amendments are also made to the *Planning and Development Regulation 2008* and the *Administrative Decisions (Judicial Review) Act 1989* (see schedule 1).

Clause 4 – Part 5.3 heading

This clause changes the heading of Part 5.3 of the Act from “Variations of territory plan other than technical amendments” to “Variations of territory plan other than a special variation or technical amendments”.

This amendment reflects the new type of plan variation inserted in the Act.

Clause 5 – How territory plan is varied under pt 5.3 – Section 57 (1)

This clause amends section 57(1) of the Act and inserts the words ‘special variation’ before ‘technical’. Section 57 establishes the process for full variations of the Territory Plan. Section 57 (1) previously provided, “A variation of the Territory Plan (other than a technical amendment) begins...”.

Section 51(1) now states “A variation of the Territory Plan (other than a special variation or a technical amendment) begins...” This incorporates another type of amendment to the Territory Plan.

Clause 6 – Section 57(1), note

This clause amends the note at section 57(1) by substituting new Notes 1 and 2.

New Note 1 provides that for Territory Plan variations that are special variations see pt 5.3A. New Note 2 provides that for Territory Plan variations that are technical amendments, see pt 5.4 and 5.5.

Clause 7 – Section 57(8)

This clause amends section 57(8) of the Act to provide that different provisions apply to plan variations that are special variations and technical amendments, including future urban areas.

This clause also inserts new Notes 1 and 2 into section 57(8). New Note 1 provides that for Territory Plan variations that are special variations, see pt 5.3A. New Note 2 provides that for Territory Plan variations that are technical amendments, see pt 5.4, pt 5.5, and s95.

Clause 8 – Section 59

This clause substitutes a new section 59 into the Act.

New section 59 is headed “Application of pt 5.3”. New section 59 provides that Part 5.3 does not apply to variations that are special variations under part 5.3A and technical amendments under part 5.4.

Clause 9 – New part 5.3A

This clause inserts a new Part 5.3A into the Act.

New Part 5.3A prescribes requirements for a special variation of the Territory Plan with respect to the Symonston mental health facility. Part 5.3A includes the following new sections of the Planning and Development Act.

New Division 5.3A.1 – Preliminary

New section 85A – Definitions – pt 5.3A

New section 85A provides a list of definitions for the following terms in pt 5.3A: “mental health facility”, “Symonston mental health facility” and “Symonston site”.

New Division 5.3A.2 – Special variation – consultation requirements

New section 85B – Preparation of draft Symonston mental health facility variation

New section 85B establishes the procedure for the preparation of a draft Symonston mental health facility variation. The planning and land authority prepares an instrument to make a draft special variation of the Territory Plan in relation to the Symonston mental health facility (the draft special variation).

The draft special variation must identify the Symonston site and include any territory plan variations that are required to implement the special variation and also state how the special variation meets the criteria in section 85I.

New section 85C – Consultation on draft special variation

New section 85C sets out requirements for consultation notification on a draft special variation. The planning and land authority must give written notice inviting comment on the draft special variation to the national capital authority and also consult with the public in accordance with section 85D.

New section 85D – Public consultation – notification

New section 85D sets out requirements for the preparation of a consultation notice for a draft special variation. Copies of the draft special variation must be available for public inspection (or purchase) for not less than 15 working days. The consultation notice must invite people to give written comments about the draft special variation and state that these consultation comments, or comments received from the national capital authority, will be made available for public inspection for at least 15 working days starting 10 days after the day the consultation period ends. The planning and land authority may extend or further extend the consultation period.

New section 85E – Public consultation – availability of draft special variation

New section 85E provides that the planning and land authority must make copies of the draft special variation mentioned in a consultation notice available for public inspection (or purchase) during office hours during the consultation period and at the places stated in the consultation notice.

New section 85F – Public inspection of comments on draft variation

New section 85F provides that the planning and land authority must make copies of any consultation comments made on a draft special variation available for public inspection during office hours during the period, and at the places, mentioned in the consultation notice for the draft special variation.

The bill inserts a note to provide that section 411 and 412 of the Act applies. Clauses 10 and 12 amend existing sections 411 and 412 to provide that comments made in response to a draft special variation can also be excluded from availability.

New section 85G – Draft variation to be given to Executive

New section 85G applies to a draft special variation if the consultation process for the draft special variation has ended. The planning and land authority must give to the Executive the draft special variation, together with a report setting out any comments received from the national capital authority, details of the public consultation and the issues raised in any consultation about the draft special variation.

The Executive may return the draft special variation to the planning and land authority and direct the authority to conduct further consultation or withdraw the draft special variation.

This process is similar to that which applies to a normal territory plan variation process.

Division 5.3A.2 – Special variation

New section 85H – Executive may make special variation

New section 85H provides that the Executive may make an instrument to vary the Territory Plan in relation to the Symonston mental health facility (the special variation). The special variation is a notifiable instrument.

The special variation must identify the Symonston site, include any Territory Plan variations that are required to implement the special variation and state how in the Executive's opinion, the area meets the special variation criteria in section 85I of the Planning and Development Act. The special variation must also include the consultation report on the draft special variation prepared by the planning and land authority under section 85G.

New section 85I – When Executive may make special variation

New section 85I prescribes criteria that the Executive must be satisfied of before making a special variation under section 85H. The Executive may only make the variation if the planning and land authority has consulted the national capital authority and the public about the draft special variation and the Executive has considered the planning and land authority's consultation report.

The Executive must consider that the variation of the Territory Plan will facilitate the Symonston mental health facility at the Symonston site and that there is no substantive public policy reason for the development of the Symonston mental health facility not to proceed.

However, the Executive may make the special variation in a revised form to the draft special variation if, having regard to the report of the planning and land authority the Executive considers it appropriate to do so.

New section 85J – Effect of special variation – variations to Territory Plan

New section 85J provides that a variation to the Territory Plan that is included in a special variation takes effect on the day the special variation commences.

The planning and land authority must details in a daily newspaper of each variation to the Territory Plan made by the special variation and where copies of the plan variation may be inspected or purchased. The planning and land authority must make copies of the plan variation available for inspection or purchase during office hours at the places, and during the period, published in the newspaper.

New section 85K – Special variation – time limit on bringing court proceedings

New section 85K provides that a person may not start a proceeding in a court in relation to the special variation more than 60 days after the variation is made.

This section also includes a Note. The Note provides that section 104 of the Planning and Development Act limits challenges to the validity of Territory Plan provisions more generally.

New section 85L – Time limit on proceedings in relation to Symonston mental health facility

Proposed new section 85L provides that a person may not start a proceeding in a court in relation to a decision under chapter 7, chapter 8 or chapter 9, if the decision is in relation to the development proposal for the Symonston mental health facility and more than 60 days have passed since the decision was made. The proposed bill limits the provision to 5 years unless the period is extended by regulation and may only be extended for a further 5 years.

Clause 10 – Restrictions on public availability – comments, applications, representations and proposals – New section 411(1) (aa)

This clause inserts a new section 411(1) (aa) into the Planning and Development Act. This new section provides that section 411 also applies to a person who makes consultation comments on a draft special variation.

This and related clause 11 ensures that the existing right of persons to apply for their comments to be withheld from public release on certain grounds applies to comments made on any special variations related to the proposed mental health facility as it does to other Territory Plan variations. The application process and grounds for non-disclosure are set out in existing section 411. These grounds include concerns that disclosure could result in the disclosure of a trade secret, risk to life or physical safety, risk of damage or theft of property.

Clause 11 – Section 411(2), definition of *relevant document*, new paragraph (aa)

This clause amends section 411(2) of the Planning and Development Act by adding a new paragraph (aa) to the definition of a “relevant document”. The amendment

provides that a relevant document in relation to a person who makes consultation comments on a draft special variation is the consultation comments.

Clause 12 – Restrictions on public availability – security – Section 412(5), definition of *relevant document*, new paragraphs (ba) and (bb)

This clause inserts new paragraphs (ba) and (bb) into section 412(5) of the Planning and Development Act. These new paragraphs add a draft special variation and consultation comments on a draft special variation to the list of relevant documents in this section.

Existing section 412 provides that the availability of information can be restricted by the Commonwealth or ACT Attorney-General on grounds of national security or risk of injury or property damage. This clause ensures that these standard provisions applying to existing Territory Plan provisions will also apply to any Territory Plan variations made through the proposed special variation process in relation to the Symonston mental health facility.

Clause 13 – New schedule 6

This clause inserts a new schedule 6 into the Act with a map of the Symonston site. A special variation must identify the area within the map as the area subject to the variation.

Clause 14 – Dictionary, definition of *background papers*

This clause amends the definition of *background papers*.

Clause 15 - 19 Dictionary, definitions of *consultation comments*, *consultation notice* and *consultation period*

These clauses make a number of consequential amendments to the Dictionary of the Act. They include the new *special territory plan variation* and introduces the new defined terms *Symonston mental health facility* and *Symonston site*.

Schedule 1 – Other amendments

Part 1.1 – Administrative Decisions (Judicial Review) Act 1989

1.1 Schedule 1, item 15, column 3

This clause amends Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1989* to exclude the following decisions from the operation of the Administrative Decisions (Judicial Review) Act.

The clause excludes a decision making or forming part of the process of making, or leading up to the making of, a special variation.

The clause also excludes a decision under chapter 7, 8 or 9 of the Planning and Development Act in relation to a development proposal to which section 85L applies (ie decisions relating to development proposals related to the proposed Symonston mental health facility). This restriction on the application of the Administrative Decisions (Judicial Review) Act only applies only while section 85L subsists. This means that the restriction is in place for a limited period of 5 years unless the period is extended by regulation for a further 5 years. The regulation cannot extend the period by more than 5 years. Note this restriction only comes into effect if the Executive makes a special variation under new section 85H.

Part 1.2 – Planning and Development Regulation 2008

1.2 Schedule 3, part 3.2, new item 15

The clause inserts a new item 15 in the schedule. The schedule lists those matters that are assessed in the merit track that are exempt from third-party ACT Civil and Administrative Tribunal (ACAT) review. The clause includes development in relation to the Symonston mental health facility.

1.3 Schedule 3, part 3.3, new item 2

The clause inserts a new item 2 in the schedule. The schedule lists those matters that are assessed in the impact track that are exempt from third-party ACAT review. The clause includes development in relation to the Symonston mental health facility.

1.4 Dictionary, note 3

The clause inserts 'Symonston mental health facility (see 85A)' into the dictionary.