LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

PLANNING AND DEVELOPMENT (BILATERAL AGREEMENT) AMENDMENT BILL 2014

EXPLANATORY STATEMENT

Presented by
Mr Mick Gentleman MLA
Minister for Planning

EXPLANATORY STATEMENT

Introduction

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

The statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being the task for the courts.

Terms used in this explanatory statement

Act	*Planning and Development Act 2007*
ACT Minister	The ACT Minister responsible for administering the Act
Bill	*Planning and Development (Bilateral Agreement) Amendment Bill 2014*
Commonwealth Minister	The Commonwealth Minister responsible for administering the EPBC Act
Conservator	Conservator of Flora and Fauna
EIS	Environmental impact statement
EPBC Act	*Environment Protection and Biodiversity Conservation Act 1999* (Cth)
MNES	Matters of national environmental significance
Planning authority	Planning and Land Authority

Background

The ACT Government has committed to assisting with the delivery of the Australian Government's one stop shop policy for environmental approvals that will result in accreditation of ACT statutory processes under the EPBC Act. A one stop shop means a single environmental assessment and approvals process to be administered by the ACT.

Delivery of the one stop shop also aligns with the ACT Government's reform agenda to reduce red tape and streamline regulation.

The objectives of the one stop shop are to simplify the approvals process for business, lead to faster decisions and improve the ACT's investment climate, while maintaining high environmental standards.

In terms of practical application, it is intended for relevant requirements of the Commonwealth assessment and approval process under the EPBC Act to be subsumed into the ACT development application framework under the Act.

The one stop shop will effectively comprise two bilateral agreements between the ACT and the Commonwealth: an assessment bilateral agreement and an approval bilateral agreement.

Assessment bilateral agreements may declare that actions assessed in a specified manner by a State or Territory need not be assessed under the EPBC Act. This minimises duplication between State or Territory and Commonwealth assessments.

Approval bilateral agreements may declare that actions taken under accredited State or Territory management arrangements or authorisation processes do not need further Commonwealth approval under the EPBC Act.

Commonwealth accreditation is a formal statutory process under the EPBC Act. This accreditation results in relevant ACT legislation in support of the one stop shop being tabled in both houses of the Commonwealth parliament for 15 sitting days.

The Bill is aimed at amending the Act to facilitate and implement the one stop shop. Parts of the Bill are proposed to be accredited by the Commonwealth for the approval bilateral agreement. The Bill makes minor amendments to existing provisions of the Act to ensure that a one stop shop can operate effectively and efficiently and provide certainty to stakeholders. The amendments in the Bill include:

Conditions of approval

The Bill seeks to expand the range of development application conditions of approval to include offsets. Allowing offsets to be imposed through conditions of approval will provide an additional regulatory tool to address unacceptable significant adverse environmental impacts on protected matters.

Section 165 is amended to specifically define 'offset condition' and gives examples of some types of offset conditions. This is intended to reduce any potential uncertainty about what an offset condition may contain.

Decisions

To strengthen the defensibility of decisions, transparency in consideration of protected matters and provide assurance to both the community and the Commonwealth that protected matters would be adequately considered and environmental standards would not be compromised, Conservator concurrence has been introduced.

Conservator concurrence will provide assurance about the acceptability, relevance and effectiveness of offset conditions for protected matters. The Bill contains amendments enabling the Conservator to provide advice on any development application that results in significant adverse environmental impacts on protected matters. These amendments are aimed at bolstering independent, impartial and disinterested scrutiny of decision-making involving protected matters.

The Bill includes amendments to ensure the planning authority cannot make a decision that is inconsistent with advice from the Conservator about protected matters. If the ACT Minister is the decision-maker, following exercise of the call-in powers, it is intended that a decision can only be inconsistent with Conservator advice if the decision is consistent with the ACT offsets policy and provides a substantial public benefit. However, also through these amendments, including consequential amendments to the *Nature Conservation Act 1980*, criteria are established to guide the scope of any advice provided by the Conservator.

The proposed decision must also be referred to the Commonwealth Minister. The Commonwealth Minister would have 10 days to provide written advice. Neither the ACT Minister nor the planning authority can make a decision that is inconsistent with the Commonwealth Minister's advice. This provides a powerful mechanism to ensure MNES are protected.

These provisions are intended to strengthen the defensibility of decisions, increase transparency and minimise reporting requirements for the one stop shop.

These amendments are also consistent with the Parliamentary Agreement for the 8th Legislative Assembly for the Australian Capital Territory which requires ACT Labor to *"support an ongoing approvals role for the Federal Government in environmental protection on matters of national environmental significance under the Environment Protection and Biodiversity Conservation Act 1999."* This is achieved because the Commonwealth Minister is consulted on the proposed decision, providing an opportunity to comment, as well as considering options, if necessary, under the approvals bilateral agreement. The importance of the Commonwealth Minister's advice is reflected in the Bill, which ensures a decision cannot be made that is inconsistent with the Commonwealth Minister's advice.

Offsets

Offsets are a tool that can be used during the environmental impact assessment process and help to provide a form of environmental compensation for unavoidable residual significant adverse environmental impacts on protected matters. Offsets are a last resort to address these impacts and can only be proposed after all reasonable avoidance and mitigation measures have been exhaustively considered.

Offsets can be delivered in different ways. For example, the enduring protection and management of a threatened species' habitat can be achieved through a variety of methods, including through conservation land management by rural landholders. Under the Bill, conditions can be imposed requiring a lessee to vary a lease for offset land so that any relevant offset management plan is complied with.

Offsets can be in different forms. For example, if the proposed action is likely to have impacts on foraging habitat for a particular protected matter, then the offset should create, improve, protect and/or managing foraging habitat.

The 'avoid, mitigate, offset' hierarchy of principles involves:

- avoidance of impacts on protected matters, for example through comprehensive planning and suitable site selection;
- after all reasonable avoidance measures have been put in place, mitigation remaining impacts. Avoidance and mitigation can reduce and, in some instances, remove the need for offsets. Offsets should not be considered until all reasonable avoidance and mitigation measures are considered;
- after all reasonable avoidance and mitigation measures have been considered, an assessment is made of any remaining, or residual, impacts on protected matters, and whether those impacts are acceptable; and
- only after residual impacts have been mitigated as far as possible, may environmental offsetting measures be considered. Offsets must achieve long-term environmental outcomes for protected matters and be consistent with the ACT offsets policy.

An offsets policy is a mandatory requirement for a one stop shop, as it sets out relevant matters for a proponent and decision-maker to evaluate and consider for possible offsets. Under the Commonwealth *Standards for Accreditation of Environmental Approvals under the Environment Protection and Biodiversity Conservation Act 1999 2014*, an acceptable offsets policy must be in place before the ACT can be accredited to provide an approval function for MNES.

The Bill provides for the Minister responsible for administering the *Nature Conservation Act 1980* to prepare an ACT offsets policy and to make guidelines about its implementation.

In addition, the Bill contains provisions for making offset management plans and requiring a proponent to consult with the Conservator and the relevant custodian or lessee when preparing a draft offset management plan.

Through these amendments, the land custodian, Conservator and lessee (as relevant), are all intended to play an important role in the formulation and implementation of offset arrangements, before a development application decision is made, or development approval granted. The ability to impose a condition requiring a lease variation to make the lessee of offset land comply with an offset management plan creates an effective mechanism to ensure offsets are delivered and complied with.

For the first time in the ACT, the approach to offsets and related policy will be underpinned by legislation. The Bill affords a level of legal security to offsets not previously seen in the ACT and will provide a clear regulatory framework for decision-making in relation to offsets.

It should be noted that offsets should never be used to justify development that would otherwise not be appropriate.

Strengthening existing processes

Amendments will strengthen existing processes, ensuring greater transparency and consultation.

Section 211 exemption applications

An application for an exemption under section 211 of the Act to prepare an EIS will now include public consultation. This aims to promote transparency of decision-making and ensure public comments are considered in the statutory process.

Environmental significance opinion

The Bill provides an option for any agency in preparing an environmental significance opinion to make conditional environmental significance opinions (ESO). This strengthens the role of an ESO by ensuring the agency's advice is incorporated into subsequent and corresponding development approval decisions in the merit track. ESOs become a mandatory consideration in the making of relevant merit track approval decisions.

Impact track development application

The Bill provides for mandatory consideration of assessment reports in making an impact track development approval decision. An assessment report is a detailed assessment prepared by the planning authority to support recommendations about some environmental regulation processes, including EISs and section 211 exemption applications.

This strengthens the role of assessment reports. Impact track decisions will also be published on the Environment and Planning Directorate website. This achieves greater transparency and easier public access to information.

Human rights issues

The Bill aligns with the right to take part in public life (section 17, *Human Rights Act 2004*) by increasing the ACT community's level of consultation in the assessment and approval process. The Bill also provides citizens with greater opportunities to access information relating to environmental assessments and approvals by requiring the planning authority to publish additional information and to maintain a publically available offsets register.

The Bill does not introduce any new offences or penalties. Additionally, the Bill does not affect any existing appeal or review rights. However, a decision under section 211H to refuse to grant an EIS exemption becomes a reviewable decision. On the basis that section 211 decisions are a significant feature of the one stop shop, this amendment is in response to the Commonwealth *Standards for Accreditation of Environmental Approvals under the Environment Protection and Biodiversity Conservation Act 1999 2014* for transparency of decision making and review by tribunals and courts.

The Bill also adds to the controlled activity provision by including failure of an offset manager to comply with an offsets management plan. This could result in compliance against the offsets manager under chapter 12 of the Act, including the issue of a controlled activity order and rectification direction. This provision is essential to ensure that offset management plans are able to be appropriately enforced. Existing notice and appeal rights on controlled activity matters will apply to this new provision (schedule 2, new item 4A).

Costs and benefits

The amendments to the Act in support of the one stop shop will lead to a reduction in regulatory burden and duplication while maintaining environmental outcomes for MNES.

The one stop shop will require additional funding in the short term, but lead to cost savings across the ACT in the long term. If the one stop shop does not commence, the ACT will be subject to cost recovery under the EPBC Act.

The Commonwealth has passed legislation that introduces cost recovery, effective from 1 July 2014. Under these arrangements, fees will apply to assessments and approvals processed by the Commonwealth under the EPBC Act. For example, a referral could potentially cost approximately $9,000, an approval based on information in the referral up to $84,000, and an approval using preliminary documentation between $15,000 and $43,000. The fee for an EIS could be between $44,000 and $86,000 and for a bilateral EIS between $45,000 and $78,000. A strategic assessment could cost up to $1,000,000.

There are likely to be benefits to the ACT economy and environment from adoption of an ACT offsets policy. This policy, a prerequisite to the commencement of a one stop shop, will assist with the delivery of benefits to both business and the environment through greater articulation of the ACT Government's offset policy and a more systematic approach to environmental offsets.

The Bill will also result in strong practical benefits to the ACT. Under the current Commonwealth approval framework, effective consultation with key ACT Government stakeholders including the Territory and Municipal Services Directorate and the Conservator, is limited. The Bill results in mandatory consultation with these important stakeholders at key points in the statutory process. This will ensure a predictable and manageable approach is taken to offsets. In particular, it will allow adequate resourcing to be considered for administering and implementing offsets.

Climate change impacts

The measures in the Bill are largely procedural, or facilitative. Some processes in the Bill address measures to mitigate and offset impacts caused by development, but these measures are likely to result in neutral climate change impacts over time.

Bill provisions in detail

Clause 1 Name of Act

This clause indicates the name of the Act.

Clause 2 Commencement

This clause indicates the time of commencement of the Act. The Bill provides for commencement on a day fixed by the Minister by written notice. This allows the Minister the flexibility to commence the Act to align with the commencement of an approval bilateral agreement under the EPBC Act, and provides sufficient time for subsidiary regulation and instruments to be prepared and for websites to be updated.

Clause 3 Legislation amended

This clause indicates that the *Planning and Development Act 2007* is amended by this Bill, with consequential amendments to other legislation.

Clause 4 Contents of public register
New Section 28(1)(ba)

This clause amends section 28(1) of the Act to provide that the offsets register forms part of the contents of the public register.

Clause 5 Meaning of associated document – pt 3.6
Section 30(1)(j)

This clause amends Section 30(1)(j) to provide a meaning of associated document that includes advice from entities in relation to development applications. This clause ensures that Conservator advice relating to MNES is recognised as an associated document.

Clause 6 New chapter 6A

This clause inserts a new Chapter 6A into the Act. New Chapter 6A defines the terms 'protected matter' and 'offset' and provides for the Minister responsible for administering the *Nature Conservation Act 1980* to prepare an offsets policy and guidelines. This Chapter also provides for the Minister responsible for administering the *Nature Conservation Act 1980* to determine how the value of an offset is to be calculated and requires the planning authority to keep an offsets register.

Part 6A.1 Definitions

New Part 6A.1 provides definitions including 'protected matter' and 'offset'.
Part 6A.1 links the definition of 'protected matter' with the EPBC Act and provides for the Minister to declare any other matter as a 'protected matter'. Part 6A.1 also provides a definition of 'offset' which is needed to differentiate offset actions from avoidance and mitigation measures. It also provides the basis for the offsets framework which is established in this Bill. This part seeks to establish alignment with the EPBC Act.

Part 6A.2 Offsets policy

New Part 6A.2 provides for the Minister responsible for administering the *Nature Conservation Act 1980* to make an offsets policy and guidelines. An offsets policy is a key requirement for a one stop shop and is necessary to guide the development and implementation of offset conditions.

Environmental offsets for ACT development projects have previously only been given effect by the EPBC Act. Under a one stop shop for environmental approvals, the planning authority (or in some situations the ACT Minister) will be responsible for deciding offsets, and for the general regulation of offsets. Proponents will continue to be responsible for proposing offsets.

Part 6A.2 also sets out requirements for public consultation, monitoring and review of a policy and guidelines.

Division 6A.2.1 Definitions

New Division 6A.2.1 provides definitions for 'Minister' and 'offsets policy'. 'Minister' is defined to be the Minister responsible for administering the *Nature Conservation Act 1980*. This definition was intended to reflect the importance of environmental considerations in the development and maintenance of the offsets policy, as opposed to the implementation of the policy. 'Offsets policy' is defined to include a broad description of what an offsets policy must include.

Division 6A.2.2 Initial offsets policy

New Division 6A.2.2 provides that the Minister responsible for administering the *Nature Conservation Act 1980* may make an initial offsets policy. This provision is limited to the initial policy and allows the Minister responsible for administering the *Nature Conservation Act 1980* to make such policy without undergoing statutory consultation, as an offsets policy has already been prepared and scrutinised through public consultation. An offsets policy must be in place prior to execution of any approval bilateral agreement in support of the one stop shop.

Section 111E specifies that the offsets policy is a notifiable instrument.

Division 6A.2.3 Revised offsets policy

New Division 6A.2.3 provides for the Minister responsible for administering the *Nature Conservation Act 1980* to monitor and review the effectiveness of the offsets policy. The amendments require the Minister responsible for administering the *Nature Conservation Act 1980* to consult the planning authority and the Conservator in reviewing the offsets policy. In reviewing the offsets policy, the Minister responsible for administering the *Nature Conservation Act 1980* must undertake public consultation.

This amendment requires the planning authority to take reasonable steps to implement the offsets policy.

Section 111L allows for minor technical amendments to the offsets policy without undertaking the full range of mandatory statutory requirements.

Division 6A.2.4 Offsets policy – implementation and guidelines

Section 111M Offsets policy-planning and land authority to implement

This section requires the planning authority to implement the offsets policy.

Section 111N Offsets policy-guidelines

This section allows the Minister responsible for administering the *Nature Conservation Act 1980* to make guidelines for the implementation of the offsets policy. Any guidelines are notifiable instruments.

Section 111O Draft offsets policy guidelines

This section requires the Minister responsible for administering the *Nature Conservation Act 1980* to consult the Conservator in making any guidelines to implement the offsets policy.

Section 111P Draft offsets policy guidelines-public consultation

This section requires the Minister responsible for administering the *Nature Conservation Act 1980* to consult the public in preparing guidelines to support the implementation of the offsets policy.

Section 111Q Draft offsets policy guidelines-revision

This section requires the Minister responsible for administering the *Nature Conservation Act 1980* to consider submissions received in the public consultation period.

Section 111R Offsets policy guidelines-monitoring and review

This section provides for the monitoring and review of the offsets policy by the Minister responsible for administering the *Nature Conservation Act 1980*.

Part 6A.3 Offsets policy-other provisions

Section 111S Offsets–consistency with offsets policy

This section requires an offset to be consistent with the offsets policy. This provision ensures that any offset conditions applied in accordance with new section 165(3)(ha) are consistent with the offsets policy. The intention of this clause is to provide reasonable parameters around appropriate offsets, and certainty for offset proposals.

Section 111T Offsets–calculating value

New Section 111T provides for the Minister to determine how the value of an offset can be calculated, including the methodology which must be used. Section 111T(2) requires any methodology (offset value calculation determination) to be consistent with the offsets policy.

Section 111U Offsets-form

New Section 111U allows for the form of an offset to be prescribed by regulation or otherwise in some other form considered appropriate by the planning authority. Section 111U(2) requires an offset to be in a form consistent with the offsets policy.

Section 111V Offsets register

New Section 111V requires the planning authority to keep a register of each offset. Section 111V specifies what the register must include. This will be facilitated through the public register, which is required to contain the offsets register in accordance with section 28.

Clause 7 Merit track-when development approval must not be given
Section 119(2)

This clause amends section 119(2) to provide for consideration of entity advice under section 148 (in Division 7.3.3) rather than all of Division 7.3.3.

This Bill amends Division 7.3.3 to include entity advice in relation to MNES (new section 147A). This is not a relevant consideration in a merit track development approval and has been excluded from consideration in making a development approval in the merit track.

Clause 8 Merit track-considerations when deciding development approval
New section 120(ba)

New section 120(ba) provides that the decision-maker must consider any environmental significance opinion in force for a development proposal when making a decision in the merit track. This provision strengthens the role of an environmental significance opinion by making it a mandatory consideration in the approval decision process. The provision is also intended to recognise the importance of the Conservator's advice in relation to MNES. It also means that some merit track development applications cannot avoid consideration of MNES when Schedule 4 would otherwise be triggered.

Clause 9 Impact track–development applications
Section 127

This clause omits the words 'unless the application is exempted by the Minister under section 211' as exemptions have been provided for in new section 127(2).

Clause 10 New section 127(2)

New section 127(2) replaces the words omitted in Clause 9. The amendments in clauses 9 and 10 reflect existing provisions and have been redrafted to provide consistency of terms.

Clause 11 New section 127A

New section 127A provides that a proposed development approval decision in the impact track (by either the planning authority or the ACT Minister) for a development that is likely to have significant adverse environmental impacts on MNES must be referred to the Commonwealth Minister for advice. This provision ensures that the Commonwealth Minister retains an ongoing approvals role for proposals that are likely to have a significance adverse environmental impact on MNES.

Section 127A(2) specifies that the Commonwealth Minister is the Commonwealth Minister responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999*.

The effect of section 127A(3) is that the Commonwealth Minister has 10 working days to provide advice to either the planning authority or the ACT Minister about the proposed decision. If advice is not received in that timeframe, the Commonwealth Minister is deemed to support the proposed decision. This ensures a decision can be made by either the planning authority or the ACT Minister without unreasonable delay.

Based on the effect of new section 128(1)(b)(v), neither the planning authority nor the ACT Minister can act inconsistently with any advice received by the Commonwealth Minister under new section 127A.

Clause 12 Impact track–when development approval must not be given
Section 128(1)(a)(ii)

Section 128(1)(a)(ii) confirms existing requirements, but has been redrafted to provide consistency of terms.

Clause 13 New section 128(1)(b)(iv) to (vi)

This clause inserts new sections 128(1)(b)(iv) and (v) provides that development approval in the impact track must not be given for a development proposal unless it is consistent with a conditional EIS exemption.

The amendment is also intended to ensure that the planning authority cannot give development approval if it is inconsistent with either the advice from the Conservator under section 149 9but limited to relevant impacts on MNES), or advice from the Commonwealth Minister under section 127A.

The amendment provides that if the ACT Minister is the decision-maker, a decision cannot be made that is inconsistent with advice from the Commonwealth Minister under section 127A. This amendment ensures that the Commonwealth Minister retains an ongoing and meaningful approvals role in relation to significant impacts on MNES.

Clause 14 Section 128(1A)

The amendment allows the ACT Minister to give development approval that is inconsistent with the Conservator's advice, but only if the development approval is consistent with the offsets policy and would provide a substantial public benefit.

Clauses 15 and 16 Section 128(2)

This clause amends section 128 (2) to provide for consideration of entity advice under section 148 (in Division 7.3.3). Section 128(2) allows development approval to be given if it is inconsistent with referral entity advice under section 148, but only if the criteria of section 128(2)(a) and (b) is met. The provisions of section 128(2) are not intended to be available to the planning authority for development approval in relation to advice received from the Conservator under section 147A.

A further intention of the amendment to section 128(2) is to differentiate between advice provided from a referral under section 147A and a referral under section 148.

Clause 17 Impact track-considerations when deciding development approval
Section 129 (h) and note

This clause amends section 129 (h) requiring both a completed EIS and EIS assessment report to be considered in deciding a development application in the impact track. Consideration of the EIS assessment report has not previously been a mandatory consideration. However, the EIS assessment report contains important information which can inform impact track development approval decisions.

Clause 18 Consideration of development proposals
Section 138 (4) (b)

This clause amends section 138 (4) (b) requiring the planning authority to tell the proponent of a proposal whether the application will be referred under either section 147A or section 148. This provision has been included to ensure consistency of terms.

Clause 19 Deciding environmental significance opinion applications
Section 138AB (4) (a)

This amends section 138AB (4) (a) to confirm that the Conservator may attach conditions to an environmental significance opinion. This opinion can only be given where the Conservator considers that a proposal is not likely to have a significance adverse environmental impact if the development satisfies certain conditions.

This amendment will ensure that an environmental significance opinion can be given for a project that is not likely to have a significant adverse environmental impact, but only if undertaken in compliance with specific conditions. Through this Bill, conditional environmental significance opinions become a mandatory consideration in merit track development approval. Conditions attached to an environmental significance opinion are also required, through amendments to section 165 (2) (d), to be complied with as a condition of development approval.

For the avoidance of doubt, an environmental significance opinion would not be appropriate if offsets were required.

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

Section 139 (2) (f) (ii) reflects existing provisions and has been redrafted to provide consistency with section 127.

Clause 21 Section 139 (2) (h)

This amendment is intended to provide consistency of terms.

Clause 22 Referred development application amended
Section 145 (1) (b)

This amendment is intended to provide consistency of terms.

Clause 23 New section 147A

This clause inserts a new section 147A into the Act. Section 147A sets out requirements for referring a development proposal that is likely to have a significance adverse environmental impact on a MNES to the Conservator. The planning authority must first be satisfied that the proposal is likely to have these impacts. Consideration will be informed by initial environmental impact assessment, through the EIS process and section 211 exemption applications.

This section aims to emphasise and strengthen the role of the Conservator in development proposals that result in a significant adverse environmental impact on MNES.

Clause 24 Requirement to give advice in relation to development applications
Section 149 (1)

This amendment is intended to provide consistency of terms.

Clause 25 Direction that development applications be referred to Minister
Section 158 (2) (a)

This amendment is intended to provide consistency of terms.

Clause 26 Section 158 (3) (b), example 1

This amendment is intended to provide consistency of terms.

Clause 27 Section 158 (4) (a)

This amendment is intended to provide consistency of terms.

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

This amendment is intended to provide consistency of terms.

Clause 29 Conditional approvals
New section 165 (2) (d)

New section 165 (2) (d) requires a development approval under section 162 (1) (b) to include a condition that the development comply with the condition in an environmental significance opinion, if one has been given in relation to the development.

This provision strengthens the role of the environmental significance opinion, by ensuring that environmental significance opinions are adequately considered in development application decisions.

Clause 30 New section 165 (3) (ha)

New section 165 (3) (ha) is intended to enable offset conditions to be applied to development approvals. This amendment facilitates delivery of offsets when necessary and provides a legislative link to the offsets policy.

Clause 31 New division 7.3.6A

This clause inserts a new division 7.3.6A into the Act. Division 7.3.6A provides a definition of 'offset condition' and 'offset management plan'. It also sets out requirements for preparing, approving and revising offset management plans.

Section 165B Meaning of *offset condition*

New section 165B introduces the definition of 'offset condition'. This section also makes reference to offset management plans, specifying that an offset condition may include a requirement for a proponent of the development to have an offset management plan for the offset.

Section 165B also provides that an offset condition may require a lease for an offset site, which is not the development approval land, to be subject to a condition that the lessee must comply with an offset management plan for the offset. This provision ensures that a condition requiring an offset management plan for a site is specified in the lease, so that the requirement to implement an offset management plan does not expire when the development approval expires. This provision aims to strengthen the security of offsets by incorporation into the leasing framework.

The section also addresses offsets on public land and land in a rural lease.

Section 165C meaning of *offset management plan*

New section 165C provides a definition of 'offset management plan' for the purpose of the Act. This provision provides that an offset management plan is a notifiable instrument.

Section 165D Meaning of *offset manager*

New section 165D provides a definition of 'offset manager'. This definition is provided to make it clear who is responsible for implementing an offset management plan on an offset site.

Section 165E to section 165L

Section 165E, 165F, 165G, 165H, 165I, 165J, 165K and 165L provide for the preparation, approval, revision and review of offset management plans.

It is intended that a draft offset management plan may be prepared at any appropriate stage, but that it must be approved in accordance with the new provisions. The amendments afford flexibility to the approval decision and can result in a condition requiring an offset management plan to be in place either before or after construction commences.

Section 165E provides that if an offset condition requires the proponent to have an offset management plan, the proponent must prepare a draft offset management plan. This section specifies what must be included in the plan and who must be consulted in preparing the plan. This section requires the relevant custodian or lessee to be consulted during development of the plan, which ensures an offset cannot be established without the involvement of those parties. The Conservator must also be consulted. The section also allows the offset management plan to specify the term of the offset management plan.

Section 165F provides that the ACT Minister may approve or reject the draft offset management plan. The section also requires the offset management plan to be accompanied by written agreement from the entities in section 165E (4). It provides that the ACT Minister can only approve the draft plan if it is consistent with both the offset condition in the development approval and the offsets policy.

Section 165G provides that if the ACT Minister has directed a proponent to revise a draft offset management plan, the proponent must do so in accordance with the stated provisions.

Section 165H provides that if an offset management plan applies to unleased land or public land the relevant custodian must take reasonable steps to implement the plan.

Section 165I sets out a procedure for the offset manager to initiate amendment of the plan.

Section 165J sets out a procedure for the ACT Minister to initiate amendment of the plan. This section provides that the Minister must give the offset manager written notice of the proposed amendments and must provide a 14 day period for the proponent to make a submission on the proposed amendments.

Section 165K sets out the requirements for reporting to the planning authority on the offset management plan. The offset manager must report at least once every three years and upon request. The planning authority must report to the ACT Minister on each offset management plan at least once every three years.

Section 165L links the expiry date of an offset management plan with the expiry date of a development approval, if the offset management plan does not otherwise state the term of the offset management plan (section 165 E).

Clause 32 Notice of approval of application
Section 170 (3) (c)

This amendment is intended to provide consistency of terms.

Clause 33 New section 170 (4)

New section 170 (4) provides that an impact track development approval notice is a notifiable instrument and that the planning authority must put an electronic link to the notice on the planning authority website. This provision provides greater transparency for the development approval process and facilitates easier public access to information.

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

This amendment is intended to provide consistency of terms.

Clause 35 Notice of decision to referral entities
Section 174 (1) (b)

This amendment is intended to provide consistency of terms.

Clause 36 Deciding applications to amend development approvals
Section 198 (3) (c)

Clause 36 amends section 198 (3) (c) to include that the planning authority must refuse to amend a development approval if satisfied that the changed development proposal would breach a condition of approval relating to a conditional environmental significance opinion.

Section 198 (3) (d) provides that the planning authority must also refuse to amend a development approval if satisfied that the changed development proposal would not provide an offset at least equivalent to the offset provided by the original approval, in accordance with the original offset condition. This amendment is intended to ensure that development approvals will not result in lower levels of protection for protected matters, including MNES. This amendment mirrors equivalent EPBC Act provisions in relation to the variation of conditions of approval.

Clause 37 Exception to referral requirement under section 198 (1) (b)
Section 198A (1) (a)

This amendment is intended to provide consistency of terms.

Clause 38 Section 198A (1) (b), note 1

This amendment is intended to provide consistency of terms.

Clause 39 Section 208 to section 209A

Clause 39 relocates section 208, 209 and 209A to Part 8.1, in order to provide clearer and more logical presentation of information.

Clause 40 New division 8.2.1

This clause inserts new division 8.2.1.

Clause 41 When is a completed EIS required?
Section 210

This clause omits the words 'unless the application for development approval for the proposal is exempted under section 211' as exemptions have been provided for in new section 210 (2).

Clause 42 Section 210, note 2

This amendment is intended to provide consistency of terms.

Clause 43 New Section 210 (2)

New section 210 (2) replaces the words omitted in Clause 41. Clauses 40 and 41 reflect existing provisions and have been redrafted for clarification.

Clause 44 Section 211

Clause 44 amends section 211 to provide additional detail on the EIS exemption process. Section 211 defines 'EIS exemption' and sets out the procedures for an application under section 211, including public consultation, revision, decision and expiry. This amendment also migrates requirements previously set out in the *Planning and Development Regulation 2008*, into the Act itself.

Section 211A provides a definition of 'recent study'. It is intended to make the expiry date of a "recent study" consistent with other provisions and practices.

Section 211B provides for a proponent to apply for an EIS exemption if the expected environmental impact of a development proposal has been addressed by recent studies. Section 211B (3) sets out the requirements for an application.

Section 211C provides for public consultation on EIS exemption applications. The ACT Minister must consult on EIS exemption applications for 15 working days and must publish a consultation notice, which is a notifiable instrument. The ACT Minister must also put an electronic link to the notice on the planning authority website. This provision provides greater transparency in development assessment processes and facilitates easier public access to information.

Section 211D provides that anyone may give a written submission to the ACT Minister about the EIS exemption application and that the ACT Minister may extend the consultation period.

Section 211E provides that the ACT Minister must consult with entities prescribed by regulation about the EIS exemption application. If no comments are received during the consultation period the entity is taken to have made no comment. This ensures the assessment process is not unreasonably delayed or fettered.

Section 211F provides that submissions must be published on the planning authority website and specifies required time limits for publication. This section also provides that the ACT Minister must give a copy of the submission to the proponent. This provides greater transparency in development assessment processes and facilitates easier public access to information.

Section 211G sets out what a proponent must do with submissions about the application for an EIS exemption in preparing a revised application. This amendment anticipates that the proponent may prepare a supplementary report about the submissions.

Section 211H provides that the ACT Minister may grant an EIS exemption and provides a list of items that the ACT Minister must consider when making a decision. Section 211H also provides that an EIS exemption may be conditional and that an EIS exemption is a notifiable instrument. The ACT Minister is also required to put an electronic link to the EIS exemption on the planning authority website. This provides greater transparency and easier public access to information. This section also provides examples of a "recent study" that could be considered to address the environmental impacts of a development proposal.

Section 211I provides that if an EIS exemption application was made using a recent study that is an EIS prepared under, or an endorsed plan, policy or program under the EPBC Act, then the EIS exemption expires when the approval expires, or 5 years after the day the exemption is notified (whichever is later). This ensures greater alignment between different assessment and approval processes.

Section 211I also provides that in any other case the EIS exemption expires 5 years after the day it is notified or as prescribed by regulation. This expiry date aligns with the new expiry date specified for an EIS in section 227A and provides a reasonable period to obtain development approvals prior to the scheduled commencement of construction.

Clause 45 New division 8.2.3 heading

This clause inserts a new division 8.2.3. This division contains provisions relating to a draft EIS.

Clause 46 New division 8.2.4 heading

This clause inserts a new division 8.2.4. This division contains provisions relating to relevant considerations for an EIS.

Clause 47 Authority consideration of EIS
New Section 222 (2A)

Clause 47 inserts new section 222 (2A) providing that the planning authority, in making a decision to accept an EIS, must consult with each entity that made a submission on the scoping document for the EIS. This ensures that an EIS should only be accepted if it is consistent with entity comments on the scope of the EIS.

Clause 48 Cost recovery
Section 224B (1) (b) and note

This amendment is intended to provide consistency of terms and better clarification for the notes.

Clause 49 EIS assessment report
Section 225A (1)

This amendment is to provide concise identification of the assessment report.

Clause 50 Section 225A (2) to (5)

These amendments are to provide concise identification of the assessment report.

Clause 51 New division 8.2.4

This clause inserts a new division 8.2.4. This provides that an EIS expires 5 years after the day it is completed. Having an expiry date for an EIS will encourage proponents to submit development applications before information in assessment documentation is out of date. The expiry date aligns with the expiry date of an EIS exemption.

Clause 52 Section 411 heading

This clause changes the heading of Section 411 of the Act from 'Restrictions on public availability – comments, applications, representations and proposals' to 'Restrictions on public availability – applications, comments, submissions, etc' to clarify the types of documents that are subject to restrictions on public availability.

Clause 53 New section 411 (1) (da) and (db)

Clause 53 amends section 411 (1) to update the list of documents that are subject to this section.

Clause 54 New section 411 (2), definition of relevant document, new paragraph (da) and (db)

Clause 54 amends section 411 (2) to update the list of documents that may be considered as relevant documents.

Clause 55 Section 411 (3)

This amendment clarifies the scope of the exclusion application.

Clause 56 Section 411 (7)

Section 411 (7) has been redrafted to provide clarification.

Clause 57 Restrictions on public availability – security Section 412 (5) definition of *relevant document*, new paragraph (ea) and (eb)

Clause 57 amends section 412 (5) to update the list of documents that may be considered as relevant documents.

Clause 58 New section 415A

This clause inserts a new section 415A into Chapter 14. This section provides that the planning authority may give a signed certificate as evidence about an offset. This may include details kept in the offsets register. This is intended to increase efficiency in proving the record of an offset in a proceeding.

Clause 59 Regulation-making power
Section 426 (2) (c)

Omits the criteria a person must satisfy to be a consultant under section 213.

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

Clause 60 inserts an additional reviewable decision item. This provides that a decision to refuse to grant an EIS exemption is a reviewable decision. On the basis that section 211 decisions are a significant feature of the one stop shop, this amendment is in response to the Commonwealth *Standards for Accreditation of Environmental Approvals under the Environment Protection and Biodiversity Conservation Act 1999 2014* for transparency of decision making and review by tribunals and courts.

Clause 61 Controlled activities
Schedule 2, new item 4A

This clause inserts a new controlled activity, namely failure to take reasonable steps to implement an offset management plan as required under the Act. This could result in compliance against the offsets manager under chapter 12 of the Act, including the issue of a controlled activity order and rectification direction. This provision is essential to ensure that offset management plans are able to be appropriately enforced. Existing notice and appeal rights on controlled activity matters will apply to this new provision (schedule 2, new item 4A).

Clause 62 Schedule 2, item 6

Includes offset management plan in the controlled activity.

Clause 63 Development proposals in impact track because of need for EIS
Schedule 4, part 4.3, item 1, column 2, new paragraph (h)

This clause includes "protected matter" to clarify the application of Schedule 4, Part 4.3, item 1, column 2 to a matter protected by the Commonwealth or a declared protected matter.

Clause 64 to Clause 66

These clauses update definitions in the dictionary.

Clause 67 Dictionary, new definitions

This clause amends the dictionary to provide additional definitions in accordance with the amendments in this Bill.

Schedule 1 Consequential amendments
Part 1.1 *Nature Conservation Act 1980*
Clause [1.1] New part 8A

This inserts new Part 8A Land development applications. It clarifies, through notes, the Conservator's role in the Act, as a result of the amendments. The amendments state the requirements for the Conservator's advice, including what should be included, and what information should be considered.

Conservator advice must be based on relevant policy, plan or guideline documents that relate to protected matters or MNES. Conservator advice in this context is advisory in nature; not regulatory. This amendment aims to establish the statutory basis for that advisory role within the primary legislation that creates the position of the Conservator.

Clause [1.2] Dictionary, definition of *development*

This clause includes a substituted definition for *development*.

Part 1.2 Planning and Development Regulation 2008

Clause [1.3] Section 26 (1) (c), new note

This clause inserts a note into section 26 (1) (c) to make it clear that the planning authority must refer a development application to the Conservator if it is likely to have a significant adverse environmental impact on MNES.

Clause [1.4] New section 26 (1) (i)

This clause provides that the lessee of the land or custodian of the land that may be subject to an offset condition are prescribed entities for the impact track development application. This ensures the lessee or custodian is consulted on changes to the land that may affect their management.

Clause [1.5] Section 50A

The former content of section 50A has been migrated into the Act itself. Section 50A now provides that the entities for consultation on an EIS exemption application are the prescribed entities in section 26 (1). This ensures consistency rather than having a separate list.

Clause [1.6] New section 54 (3) (b)

This clause amends section 54 (3) (b) to provide for a scoping document to require that an EIS contain a statement about whether an offset is likely to be required and whether an offset management plan is likely to be required. This will ensure that offset requirements are identified early in the EIS process and allow for appropriate public consultation.

Clause [1.7] Dictionary, note 3

Note 3 is amended to make reference to new terms defined in the Act.