

2020

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**CITY RENEWAL AUTHORITY AND SUBURBAN LAND AGENCY
AMENDMENT BILL 2020**

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

Presented by

Andrew Barr MLA

Chief Minister

INTRODUCTION

This explanatory statement relates to the City Renewal Authority and Suburban Land Authority Amendment Bill 2020 (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 Assembly.

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

The Bill **is** not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The City Renewal Authority (Authority) is established by section 7 of the *City Renewal Authority and Suburban Land Agency Act 2017* (CRASLA Act). The Authority's objects and functions under the CRASLA Act, relevant to this Bill, are, within declared urban renewal precincts, to:

- a. Encourage and promote a vibrant city through the delivery of design-led, people-focussed urban renewal;
- b. Carry out urban renewal;
- c. Make arrangements for the public service or another entity to carry out development or works;
- d. Support public and private sector investment and participation in urban renewal.

The Chief Minister declared the City Renewal Precinct under the CRASLA Act, which spans Dickson, Northbourne Avenue, Haig Park, Civic and West Basin.

The purpose of the Bill is to insert a new division into part 2 of the CRASLA Act detailing the process for revitalising the Sydney and Melbourne Buildings, which are located within the City Renewal Precinct. The Bill has been developed following targeted stakeholder consultation.

The Bill outlines the following process for compelling revitalisation of the Sydney and Melbourne Buildings:

- i. The Minister may approve a revitalisation plan (a draft prepared by the Authority) for the leased public areas of the Sydney and Melbourne Buildings. In developing a draft revitalisation plan the Authority must consult with and consider submissions made by certain entities, including owners of leases within the Sydney and Melbourne Buildings, and the owners' corporation if the lease is subdivided under the *Unit Titles Act 2001*;

- ii. The authority may direct an owner or an owners' corporation of the Sydney or the Melbourne Buildings to comply with an approved revitalisation plan;
- iii. If a lessee or an owners' corporation fails to comply with a direction, the Authority may authorise a third party to undertake the revitalisation work to make the building comply with the direction (and revitalisation plan);
- iv. The Territory may recover the reasonable costs of undertaking the work to make a building comply with a direction from the relevant lessee or owners' corporation;
- v. The framework provides for appropriate merit review, for example, for directing a lessee or an owners' corporation to comply with an approved revitalisation plan.

CONSULTATION ON THE PROPOSED APPROACH

Extensive consultation was conducted on the proposed approach and the draft legislation. A community engagement process was undertaken on the proposed policy with targeted stakeholders, including owners and managers of leases in Sydney and Melbourne Buildings. Comments received during this process were incorporated as appropriate into the draft legislation. A public consultation process was then conducted on the draft legislation. Significant comments were received during this consultation, and some amendments made accordingly to the legislation.

CONSISTENCY WITH HUMAN RIGHTS

In relation to the content of the Bill, if a lease is owned by or whose tenants are individuals (that is, not corporations) the Bill may engage human rights under the *Human Rights Act 2004* (HRA).

Section 28(1) of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Section 28(2) of the HRA provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) The nature of the right affected;
- b) The importance of the purpose of the limitation;
- c) The nature and extent of the limitation;
- d) The relationship between the limitation and its purposes; and
- e) Any less restrictive means reasonable available to achieve the purpose the limitation seeks to achieve.
- f) The limits that are placed on human rights by the Bill are reasonable and justifiable in a free and democratic society.

An assessment of the Bill's impact on relevant provisions of the HRA, against the factors in section 28(2) is provided below.

Rights engaged

Section 8- Recognition and equality before the law

The implementation of the Bill is likely to discriminate against specific property owners – those owning leases within the Sydney or Melbourne Buildings. The Bill is limited to the Sydney and Melbourne Buildings, rather than other buildings within the City Renewal Precinct or applying to all buildings in the ACT. In the development of a draft revitalisation plan, the Authority must consult with and consider submissions from buildings owners.

The Sydney and Melbourne Buildings are iconic and important buildings, have historical and cultural significance, and contribute to the social, cultural and economic life of the city centre. The buildings are city landmarks, framing the gateway to Northbourne Avenue and City Hill.

Due to the prominence and significance of the Sydney and Melbourne Buildings, and the public funding which has been invested in their proximity (including the city terminus of Light Rail and the verges and footpaths on Northbourne Avenue) it is considered appropriate to require building owners to maintain and revitalise these buildings to ensure their condition reflects their importance and prominence.

The limitations on section 8 introduced by this Bill are proportionate to achieving the purposes of the Bill. Less restrictive options, such as requiring the ACT Government to undertake the works in the first instance, are not appropriate. It is not appropriate for the ACT Government to unilaterally interfere in such a way with private leases. The Act provides for safeguards; in providing that the issuing of a direction to an owner to undertake works to comply with a revitalisation plan is a decision reviewable by ACAT, and requiring the authority to consult with building owners in the development of a revitalisation plan.

Section 16- Freedom of expression

Depending on the content, requirements and restrictions included in a revitalisation plan, there is potential that enforcing a direction to comply with an approved revitalisation plan may engage the human right of freedom of expression including limiting a person's right to communicate their religious, political or social beliefs.

For example, if an approved revitalisation plan required a building to be painted only in a particular colour, and a lessee wished to paint a rainbow on the leased public area in support of the LGBTQIA+ community, the Authority may direct the lessee to remove the rainbow. This is likely to restrict the person's right to freedom of expression.

To minimise the restriction on this human right, safeguards have been incorporated into the Bill. It is proposed that revitalisation plans be approved by the minister, be disallowable instruments (requiring an explanatory statement and human rights assessment of its specific requirements), and be subject to disallowable processes and Scrutiny of Bills Committee consideration. In addition, in preparing a draft revitalisation plan, the Authority must consult and consider submissions made by certain entities.

Without the requirements and restrictions on the external appearance of the Sydney and Melbourne Buildings provided for in the revitalisation plans, the Bill's purpose of a uniform

approach to the maintenance and appearance of the Buildings would not be achieved. Less restrictive options, such as allowing owners of the Buildings to have full control over the works completed on their leased areas, are not reasonably available ways of achieving the Bill's purpose of a uniform approach to the maintenance and appearance of the buildings.

Section 21- Fair trial

The issuing of a direction for an owner to comply with an approved revitalisation plan would likely engage with the right to a fair trial. However, the restriction on this right is limited in that merit review is provided for in the Bill.

An owner has the right to challenge the merits of a direction. For example, a direction may be issued to an owner to paint the leased public area in a particular colour. The owner may have already painted the area in compliance with the revitalisation plan, and therefore argue that the direction cannot be lawfully issued. Similarly, if the revitalisation plan includes a timeframe in which revitalisation work must be carried out, the ACT Civil and Administrative Tribunal (ACAT) can review the merits of the direction including whether the timeframe has in fact lapsed.

The Bill provides for safeguards to ensure that owners are aware of their obligations under the revitalisation plan and the provisions of the Bill in general. The owner of a lease in the Sydney and Melbourne Buildings would be on notice of the revitalisation plan (having been consulted during its development prior to approval) and that there is a requirement to comply with it. The direction to comply gives the owner notice that the revitalisation plan is being enforced and there is a requirement to provide a reasonable time in which to comply. The owner may have the direction reviewed by ACAT. The owner would be on notice that failure to comply with the direction would permit an authorised person to undertake the work and for the reasonable expenses for undertaking the revitalisation work to be a debt owing to the Territory.

Section 12- Right to privacy and reputation

The Bill has the potential to engage the right to privacy and reputation, particularly unlawful and arbitrary interference with the home. The leases in the Sydney and Melbourne Buildings are commercial leases, and as such the Bill cannot be considered unlawful or arbitrary interference with the home.

The Bill could be considered to engage the right to freedom from unlawful or arbitrary interference with one's privacy, as an owner may be considered to have a right to privacy in the operation of commercial premises. Issuing a direction to undertake certain works may be considered to interfere with this right, as may the ability for the Territory to apply for necessary approvals and permits to undertake works if the owners refuse to do so.

However, this interference is not unlawful or arbitrary; safeguards have been incorporated into the Bill such as providing that issuing of a direction to undertake works is reviewable by ACAT, and providing that revitalisation plans must be developed in consultation with owners, and are subject to oversight of the Legislative Assembly. The ability for the Territory to apply for any necessary building and development approvals is a proportionate measure to achieve the policy objective of ensuring that these works are carried out, after adequate notice and opportunity has been given to the owners to complete these works. The process for obtaining these approvals is already provided for under other Territory legislation.

City Renewal Authority and Suburban Land Agency Amendment Bill 2020

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **City Renewal Authority and Suburban Land Agency Amendment Bill 2020**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This clause provides that the name of the Act is the *City Renewal Authority and Suburban Land Agency Amendment Act 2020*.

Clause 2 Commencement

This clause provides that the Act will commence on a day fixed by the Minister by written notice. If the Act has not commenced within 6 months, it will commence on the first day after that period in accordance with section 79 of the *Legislation Act 2001*.

Clause 3 Legislation amended

This clause provides that the Act amends the *City Renewal Authority and Suburban Land Agency Act 2017* (the Act).

Clause 4 New division 2.9

This clause inserts a new division 2.9 into the Act. New division 2.9 creates a framework for the revitalisation of the Sydney and Melbourne Buildings. The framework created by clause 4 is outlined below.

36A Definitions—div 2.9

New section 36A sets out definitions for new division 2.9 of the Act.

36B Draft revitalisation plans

New section 36B provides that the Minister may ask the City Renewal Authority (the Authority) to prepare a draft revitalisation plan for the leased public areas of the Sydney or Melbourne Buildings.

A draft revitalisation plan must set out the work required to revitalise the leased public area of the building and include any other matter prescribed by regulation.

When preparing a draft revitalisation plan, the authority must consult with:

- the owner of the building (or in the circumstances provided in new section 36B (4), the owners corporation);
- the Conservator of Flora and Fauna (the Conservator), if the plan affects a protected tree;
- the Heritage Council; and
- any other person prescribed by regulation.

The authority must give each relevant entity written notice that it may make written submissions about the proposed draft revitalisation plan within 30 days of the notice or any longer period stated in the notice.

The authority must consider any comments made by any of the entities with which it consults and following this, must give the draft revitalisation plan to the Minister for approval.

36C Draft revitalisation plan- public consultation

Section 36C provides that if the authority prepares a draft revitalisation plan, it must also prepare a consultation notice, which is a notifiable instrument stating that written submissions may be made about the draft plan.

Section 36C also provides that the authority must consider any submissions received during the consultation period and make appropriate revisions.

Section 36C is intended to provide for an avenue for public input in the development of a revitalisation plan, in addition to engagement with key stakeholders as provided for in section 36B.

36D Approval of draft revitalisation plan

Section 36D provides that the Minister may approve a draft revitalisation plan unless it is inconsistent with a submission made during consultation with the conservator or the Heritage Council. The Minister must also state in the approval a reasonable period of time in which the work must be completed, to ensure that all interested parties are aware of the timeframe for the revitalisation. An approval of a draft revitalisation plan is a disallowable instrument.

36E Direction to carry out revitalisation work

New section 36E provides that the authority may give the owner a direction requiring the owner to carry out stated work on the building within a stated period in accordance with an approved revitalisation plan.

New section 36E (3) outlines the requirements that the authority must include in a direction made under new section 36D (2), including that it contains a statement that if the revitalisation work is not completed by the end of the period required, the authority may authorise someone else to carry out the work and the costs of carrying out the work will become a debt owing to the Territory.

36F ACAT review of direction

New section 36F provides a right of review to the ACT Civil and Administrative Tribunal (ACAT) for the person to whom a direction under new section 36E (2) is given and any other person whose interests are affected by the direction.

36G Authorisation to carry out revitalisation work

New section 36G provides that the authority may authorise a third party to enter the premises of a building subject to a revitalisation plan to carry out revitalisation work, if the building owner has not complied with a direction given under section 36E.

Before authorising a third party, the authority must wait until after the end of the period for making an application for review to ACAT, or if an application has been made to ACAT already, until after ACAT has upheld the decision or the applicant has withdrawn their application.

Section 36G also makes clear that if an approval or permit (for example a building or development approval) is required in order to carry out work pursuant to a direction, the Territory may apply for the approval or permit on behalf of a person who is required to comply with the direction. This provision ensures the policy objective of the Bill is met; that works the owner refuses to undertake will be undertaken, in accordance with all relevant legislation, in order to comply with a revitalisation plan.

36H Revitalisation work by authorised people

New section 36G provides that an authorised person must carry out revitalisation work in accordance with the directions of the authority. New section 36H also allows an authorised person to enter premises where revitalisation work is to be carried out, but only during business hours or at any other time with the consent of the occupier of the premises. The authorised person may do anything reasonably required to carry out the revitalisation work.

36I Liability for cost of revitalisation work

New section 36I provides that a person who is required to comply with a direction under section 36E must pay the Territory its reasonable costs for any revitalisation work on the building undertaken by an authorised person.

36J Protection of authorised people from liability

New section 36J provides protection for an authorised person from civil liability for revitalisation work carried out under the direction of the authority. Any civil liability will instead attach to the Territory.

Clause 5 Dictionary, note 2

This clause inserts a signpost into note 2 of the dictionary of the Act, referring the reader to the *Legislation Act 2001* for the definition of the term *working day*.

Clause 6 Dictionary, new definitions

This clause inserts new signpost definitions into the dictionary of the Act to reflect terms used in new division 2.9 created by clause 4.