

**2021**

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

**PLANNING AND UNIT TITLES LEGISLATION AMENDMENT BILL 2021**

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

**Presented by  
Mick Gentleman MLA  
Minister for Planning and Land Management**

# **PLANNING AND UNIT TITLES LEGISLATION AMENDMENT BILL 2021**

This 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* (the HRA).

## **INTRODUCTION**

This explanatory statement relates to the Planning and Unit Titles Legislation Amendment Bill 2021 (the bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate. It does not form part of the bill and has not been endorsed by the Legislative 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 a task for the courts.

## **BACKGROUND**

This bill is an omnibus bill to enable minor legislative amendments related to the portfolio responsibilities of the Environment, Planning and Sustainable Development Directorate (EPSDD) to be dealt with expediently and to consolidate amendments into one place, making the amendment process more accessible. The omnibus bill process helps the government to be agile and responsive to changing circumstances and to make sure that legislation remains clear, concise and up to date.

## **OVERVIEW OF THE BILL**

The purpose of the bill is to make a range of amendments to improve the operation of 2 pieces of legislation administered by EPSDD and one piece of legislation administered by the Justice and Community Safety Directorate (JACS):

- *Land Titles Act 1925*, in relation to requirements for building management statements;
- *Planning and Development Act 2007*, in relation to the form of land management agreements; and
- *Unit Titles Regulation 2001*, in relation to the signing of documents related to unit title plans.

The Bill also makes consequential amendments to the following other pieces of legislation as a result of amendments to the *Land Titles Act 1925*:

- *Civil Law (Property) Act 2006*
- *Civil Law (Sale of Residential Property) Act 2003*
- *Unit Titles Act 2001*; and
- *Unit Titles (Management) Act 2011*.

## **CONSULTATION ON THE PROPOSED APPROACH**

As the bill is an omnibus bill designed to make minor and technical changes to various pieces of legislation, consultation on the bill was conducted internally with ACT Government Directorates, including the Legislation, Policy and Programs division and Human Rights Unit in JACS.

## **CONSISTENCY WITH HUMAN RIGHTS**

### **Rights engaged**

The bill may be considered to engage the right to a fair trial under section 21 of the HRA.

#### **1. Nature of the right and the limitation (s 28 (a) and (c))**

Section 21 (1) of the HRA provides:

Everyone has the right to have criminal charges, and rights and rights and obligations recognised by law, decided by competent, independent and impartial court or tribunal after a fair and public hearing.

The bill contains a number of amendments to the *Land Titles Act 1925* to clarify the assessment and approval process for applications made to the planning and land authority for approval of a building management statement. It could be perceived that these amendments engage the right to a fair trial.

Clause 18 removes the notification and review of decisions provisions in part 18 of the Land Titles Act, which may be perceived as being a limitation on the right to a fair trial. If an application for a building management statement is refused by the planning and land authority, it may be considered to interfere with a person's right to have a decision independently reviewed. Human rights protected by the HRA are those of individuals not corporations, so only the rights of building lessees who are individuals, not corporate entities, are of relevance to the consideration of whether human rights are engaged or limited and whether a limitation is reasonable.

#### **2. Legitimate purpose (s 28 (b))**

The amendments in clause 17 that require the planning and land authority to approve a building management statement provided requirements under section 123F (1) are met, and corresponding amendment in clause 18 that the merits of the planning and land authority's decision are not reviewable, have the objective of promoting the rights and interests of individuals in relation to use and enjoyment of their lease.

This is because the planning and land authority no longer decides on the adequacy of building management statements, which reflect the individual needs of building lessees. Once approved, the building management statement can be registered by the registrar-general with the effect of notifying all individual Crown lessees about certain management arrangements for the building that are necessary for the reasonable use

and enjoyment of the benefited lease. As such, the changes are directed to a legitimate purpose.

**3. *Rational connection between the limitation and the purpose (s 28 (d))***

There is a clear connection between the limitation on an individual's right of review of a decision and promoting the rights and interests of individuals in relation to use and enjoyment of the lease. The planning and land authority ensures the elements in section 123F (1) are met and then must approve the building management statement.

**4. *Proportionality (s 28 (e))***

The removal of the notification and review of decisions is reasonable and proportionate and the least restrictive means of achieving the objective. A building management statement is designed to reflect the individual needs of the relevant building to which it applies. As such, each building management statement is unique and distinct to each relevant building, making it difficult and unreasonable to apply a standard, one size fits all assessment to the content of the statement.

The measure is also reasonable and proportionate given that under section 123H of the Land Titles Act, a building management statement may also be amended from time to time to adapt to the evolution of the building in how it is used, occupied and managed. The development and agreement to the content of the building management statement may only occur with the support of all building lessees. With this being the case, it would not be appropriate for the planning and land authority to scrutinise the adequacy of the statement if its contents have been approved by a building's lessees.

Clause 18 does not impact on the ability for a building lessee or a building management committee to apply to the ACT Civil and Administrative Tribunal (ACAT) if a dispute arises in relation to the effect of, or compliance of, a building lessee with a building management statement. For this reason, these amendments have no impact of section 21 of the HRA because they do not arbitrarily interfere or remove the existing right to seek independent review by ACAT. Furthermore, an individual adversely affected by a decision by the planning and land authority to approve a building management statement may still seek judicial review of the decision under the *Administrative Decisions (Judicial Review) Act 1989*.

To the extent that any provision of these amendments may limit human rights, the limitation is reasonable and justified.

## APPENDIX A

### Planning and Unit Titles Legislation Amendment Bill 2021

#### *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Planning and Unit Titles Legislation Amendment Bill 2021**. 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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Shane Rattenbury MLA  
Attorney-General

## OUTLINE OF PROVISIONS OF THE BILL

### Part 1 Preliminary

#### Clause 1 Name of Act

This clause provides that the name of the Act is the *Planning and Unit Titles Legislation Amendment Act 2021*.

#### Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commences on the day after its notification day.

#### Clause 3 Legislation amended

This clause lists the legislation amended by the Act. The Act amends the:

- *Land Titles Act 1925*
- *Planning and Development Act 2007*
- *Unit Titles Regulation 2001*.

The Act also makes consequential amendments to other legislation as a result of the amendments to the *Land Titles Act 1925*, as provided in schedule 1.

## Part 2 Land Titles Act 1925

Part 2 contains amendments to the *Land Titles Act 1925* in relation to building management statements for strata units. Building management statements were introduced by the *Unit Titles Legislation Amendment Act 2020*.

### Clause 4 Section 123C

Clause 4 amends section 123C relating to definitions under this part of the Act. New definitions have been created and others amended in section 123C (1) to give further clarity to their meaning and application, including the following changes.

The term ***parties*** is omitted and replaced by the new term ***building lessee***. This amendment clarifies who a registered building management statement applies to, which was previously outlined in section 123E (1).

The definition of the term ***building management statement*** has been refined. It was previously defined under section 123D (2), and now references the new terms of ***relevant building*** and ***building lessees***. This distinguishes the definitions of a ***building management statement*** and a ***registered building management statement***.

Clause 4 defines the term ***relevant building***, which was previously provided by section 123D (1). This change improves consistency for referencing the term throughout this part of the Act.

New section 123C (2) defines the term ***building*** to include a single building or set of physically related buildings, including the site and common facilities of the building. This was previously defined by section 123I (2) (b) of the Act. It also simplifies the definition of ***set of physically related buildings*** to include buildings which are semi-detached, physically integrated through structures or common facilities. These definitions were previously provided by section 123I (3) of the Act.

### Clause 5 Building management statement may be registered Section 123D (1) and (2)

Clause 5 replaces previous sections 123D (1) and (2) with new section 123D (1) to clarify that a person may apply to the register-general for registration of the building management statement, or amendment of a registered building management statement. This recognises that it may be the developer or a third party (such as a lawyer or project manager) who lodges the application for registration prior to completion of the building, or on behalf of the building management committee for an existing building.

### Clause 6 Section 123D (3)

Clause 6 inserts a reference to the planning and land authority as the approving body to provide additional clarity for what building management statements can be registered.

**Clause 7      Section 123D (5)**

Clause 7 replaces the term **owner of** with **lessee under**, for drafting consistency.

**Clause 8      Section 123D (5) (a) (ii)**

Clause 8 omits the previous reference to the owner of a lease and substitutes it with the lessee of a lease to achieve consistency with other provisions.

**Clause 9      Effect of building management statement  
Section 123E (1)**

Clause 9 replaces the term **parties** with the new term **building lessees**, for drafting consistency.

**Clause 10     Section 123E (2)**

Clause 10 replaces the term **parties** with the new term **building lessees**, for drafting consistency.

**Clause 11     Section 123E (3)**

Clause 11 substitutes the reference to **a person mentioned in subsection (1)** with the new term **building lessee**.

**Clause 12     Formal requirements for building management statement  
Section 123F (1) (a)**

Clause 12 substitutes the reference to **party to the statement** with the new term **building lessee**.

**Clause 13     Section 123F (1) (d)**

Clause 12 substitutes the reference to **parties to the statement** with the new term **building lessees**.

**Clause 14     Section 123F (1) (h)**

Clause 14 substitutes the reference to **party to the statement** with the new term **building lessee**.

**Clause 15     Section 123F (3)**

Clause 15 substitutes the term **parties to the building management statement** with the new term **building lessees**.

**Clause 16     Amendment of building management statement  
Section 123H**

Clause 16 omits section 123H for drafting consistency, as amendments are captured by clause 17.

**Clause 17     Section 123I**

Clause 17 introduces new section 123I to simplify and clarify the approval process for a building management statement or an amendment to a

registered building management statement. This clause does not change the intent of the operation of a building management statement.

New section 123I (1) provides that a person may apply to the planning and land authority for approval of a building management statement, or amendment of a registered building management statement. This recognises that it may be the developer or a third party (such as a lawyer or project manager) who lodges the application for approval of the building management statement prior to completion of the building, or on behalf of the building management committee for an existing building.

New section 123I (2) clarifies that approval of the statement can only be given by the planning and land authority if it provides for each matter mentioned in new section 123F (1); the statement relates to a relevant building; and the planning and land authority is satisfied that all building lessees consent to the application. Provisions related to matters the planning and land authority must consider have been moved to section 123C, for improved consistency throughout this part of the Act.

New section 123I (3) (a) further clarifies the role of the planning and land authority in approving a building management statement. As a building management statement is created to address the individual needs, facilities and uses for a relevant building, new section 123I (2) (a) does not require the planning and land authority to consider the adequacy of any matter provided in the building management statement or amendment. The planning and land authority must, however, ensure a building management statement addresses all matters in new section 123F (1).

New section 123I (3) (b) further clarifies that an amendment to a registered building management is not binding unless the revised agreement is registered by the planning and land authority under section 123D.

## **Clause 18 Notification and review of decisions**

### **Part 18**

Clause 18 omits the provisions related to the notification and review of decisions for the approval of a building management statement. The removal of part 18 has been done in consideration of the low threshold applied by the planning and land authority in approving a building management statement.

Under new section 123I (3), the planning and land authority is not required to consider the adequacy of any matter provided for in the statement; therefore, the only grounds for the planning and land authority to refuse an application to approve a building management statement is where the statement does not address all matters mentioned in section 123F (1), or it is not a relevant building, or all building lessees have not consented to the application. If an applicant satisfies these requirements, the planning and land authority must approve the application.

The criteria for approval are all related to processing the application, and if the planning and land authority identified an application failing to meet these requirements, it would engage with the applicant in all instances to remedy the

issue. In the circumstance where the applicant fails to remedy a defect in an application, the planning and land authority must refuse the application; however, the applicant is able to submit another application at any time without prejudice.

Additionally, as there is no assessment of the merit of the content of a building management statement, the planning and land authority has no discretion in refusing an application and there are no grounds for an applicant to seek a review of a decision based on the adequacy of the statement.

If there is a dispute relating to a building management statement, a right to apply to the ACAT to seek resolution of the dispute continues.

#### **Clause 19 Dictionary, definitions of *applicant* and *approved***

Clause 19 removes the definitions of *applicant* and *approved*, which are now incorporated into new section 123D (3).

#### **Clause 20 Dictionary, new definition of *building lessee***

Clause 20 inserts a signpost definition of *building lessee* into the dictionary of the Act, referring the reader to section 123C (1).

#### **Clause 21 Dictionary, definition of *building management statement***

Clause 21 amends the section reference for the definition of *building management statement* from section 123D (2) to section 123C (1).

#### **Clause 22 Dictionary, definition of *parties***

Clause 22 removes the definition of *parties*, which is now incorporated into the definition of *building lessee* in section 123C (1).

#### **Clause 23 Dictionary, definition of *registered building management statement***

Clause 23 amends the section reference for the definition of *registered building management statement* to section 123C (1).

#### **Clause 24 Dictionary, new definition of *relevant building***

Clause 24 inserts a signpost definition of *relevant building* into the dictionary of the Act, referring the reader to section 123C (1).

#### **Clause 25 Dictionary, definition of *reviewable decision***

Clause 25 omits the definition of *reviewable decision* from the dictionary of the Act as a consequence of clause 18 of the bill.

## Part 3 Planning and Development Act 2007

Part 3 contains amendments to the *Planning and Development Act 2007*, largely concerning the form of land management agreements. A land management agreement is an agreement between the Conservator of Flora and Fauna (the **conservator**) and a rural lessee about how a rural lease will be managed.

### Clause 26 Form of development applications Section 139 (8), definition of **building management statement**

Clause 26 amends the signpost definition of **building management statement** as a consequence of the amendments made by part 2 of the bill.

### Clause 27 Meaning of community concessional lease use Section 253B (1) (d)

Clause 27 corrects a minor drafting error in section 253B (1) (d), replacing the term **education establishment** with **educational establishment**.

### Clause 28 Land management agreements Section 283 (2) (a)

Clause 28 inserts the term **land management agreement** as a defined term for section 283, for completeness.

### Clause 29 Section 283 (2) (b)

Clause 29 substitutes paragraph (b) to retain the requirement in existing section 283 (3) (b) that a land management agreement be signed by the conservator and the person to whom a rural lease is to be granted, assigned or transferred, or whose rural lease is to be varied.

### Clause 30 Section 283 (3)

Clause 30 omits subsection (3) to address the apparent inconsistency between section 425, under which the planning and land authority has a discretion to approve a form for the Act, and section 283 (3), under which an approved form appears to be a requirement of a land management agreement. Omitting section 283 (3) (a) clarifies that an approved form is not a requirement for a land management agreement.

If a form is not ‘approved’, an alternative type of form may be made that does not need to be notified on the Legislation Register. This could include an electronic ‘smart’ form or a form published on a directorate’s website rather than the Legislation Register.

The requirements of section 283 (3) (b) are retained by new section 283 (2) (b) as substituted by clause 24.

### Clause 31 Section 283 (4)

Clause 31 substitutes the term **agreement** from section 283 (4) with **land management agreement** in line with the amendment made by clause 23, for consistency of drafting.

### **Clause 32    New sections 283 (5) to (7)**

Clause 32 inserts new sections 283 (5) to (7) to permit to the conservator to make guidelines setting out the requirements for land management agreements.

In preparing a guideline, new section 283 (6) requires the conservator to consult with the planning and land authority.

Once consultation with the planning and land authority has occurred under new section 283 (6), new section 283 (7) provides that a guideline prepared by the conservator is a notifiable instrument.

### **Clause 33    New section 283A**

Clause 33 inserts new section 283A to deem that land management agreements made on or after the revocation of the *Planning and Development (Land Management Agreement Form) Approval 2016* (AF2016-16) (the **approval**) and the commencement of this bill are taken to be valid, and that any act done, or required to be done, under a land management agreement is taken to have been validly done or required to be done.

The approval was revoked on 5 May 2020 to reflect contemporary usage of government forms. While originally the publication of approved forms on the Legislation Register increased their accessibility, many government agencies now have their own websites to make forms directly available. Additionally, forms that are of an interactive ‘smart’ nature and feed information directly into agency databases cannot be hosted on the Legislation Register.

New section 283A has been inserted out of an abundance of caution to ensure the validity of land management agreements made between the revocation of the approval on 5 May 2020 and the commencement of the bill, which through clause 25 clarifies that an approved form is not a requirement for a land management agreement.

New section 283A (4) provides that new section 283A expires on the day it commences.

## **Part 4                      Unit Titles Regulation 2001**

Part 4 amends the *Unit Titles Regulation 2001* to provide that signatures are not required on either the documents that make up a unit title application, or the planning and land authority's endorsement of a unit title application.

### **Clause 34    Endorsement of units plans—Act, s 27 (2)                   Section 9 (1) (b)**

Clause 34 omits the word **sign** from section 9 (1) (b) to remove the requirement that the planning and land authority sign an endorsement of a unit title application.

### **Clause 35    Section 9 (1) (c)**

Clause 35 omits section 9 (1) (c) to remove the requirement that the planning and land authority sign each other sheet of the documents that make up a unit title application.

### **Clause 36    Section 9 (2)**

Clause 36 omits section 9 (2) to remove the requirement that the documents that make up a unit title application be signed by the lessee of the parcel and the Crown lessee, if the parcel is land under a declared land sublease.

## **Schedule 1**

## **Consequential amendments**

Schedule 1 of the bill includes minor consequential amendments to legislation as a result of the amendments to the *Land Titles Act 1925* made by part 2 of the bill.

Schedule 1 amends the:

- *Civil Law (Property) Act 2006* (in part 1.1)
- *Civil Law (Sale of Residential Property) Act 2003* (in part 1.2)
- *Unit Titles Act 2001* (in part 1.3); and
- *Unit Titles (Management) Act 2011* (in part 1.4).