



Australian Capital Territory

Planning, Building and Environment Legislation Amendment Act 2016

A2016-2

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Australian Capital Territory

Planning, Building and Environment Legislation Amendment Act 2016

A2016-2

An Act to amend legislation about planning, building and the environment, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2015-338

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Planning, Building and Environment Legislation Amendment Act 2016*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This Act amends the following legislation:

- *Building (General) Regulation 2008*
- *Electricity Feed-in (Renewable Energy Premium) Act 2008*
- *Environment Protection Act 1997*
- *Environment Protection Regulation 2005*
- *Nature Conservation Act 2014*
- *Planning and Development Act 2007*
- *Planning and Development Regulation 2008*.

Part 2 Building (General) Regulation 2008

4 Exempt buildings and building works Schedule 1, part 1.3, new item 27

insert

- | | | | |
|----|---|---|---|
| 27 | handling bonded asbestos or an equivalent sheet material that does not contain asbestos | (a) pt 3 (Building work), except s 42 (1) (a), s 42 (1) (b), s 42 (1) (c) and s 49; and (b) pt 5 (Building occupancy); and (c) pt 6 (Residential buildings—statutory warranties, insurance and fidelity certificates) | if the work involves asbestos—the work complies with asbestos handling requirements of the <i>Work Health and Safety Act 2011</i> |
|----|---|---|---|

Part 3 Electricity Feed-in (Renewable Energy Premium) Act 2008

5 New part 10

insert

Part 10 Transitional—Planning, Building and Environment Legislation Amendment Act 2016

30 Effect of Electricity Feed-in (Renewable Energy Premium) Rate Determination 2011 (No 1)

- (1) The *Electricity Feed-in (Renewable Energy Premium) Rate Determination 2011 (No 1)* (DI2011-48) (the *determination*) has effect, and is taken to have had effect on and after 1 July 2011 until it is revoked, for all purposes as if the references in the determination, section 4, to Micro Renewable Energy Generators were references to compliant renewable energy generators.
- (2) Without limiting subsection (1) and to remove any doubt, any payment made by a NERL retailer under section 6 (3) (Feed-in from renewable energy generators to electricity network) in accordance with section 8 (Payment for electricity from renewable energy generators) using the premium rate determined under the determination is taken to be, and always have been, a valid payment.

31 Expiry—pt 10

This part expires on the day it commences.

Note 1 If a law validates something, the validating effect of the law does not end only because of the repeal of the law (see [Legislation Act](#), s 88 (1)).

Note 2 The expiry of transitional provisions does not end their effect (see [Legislation Act](#), s 88).

Part 4 Environment Protection Act 1997

6 Consultation on draft environment protection policy Section 25 (5)

substitute

- (5) The authority must also send a copy of a draft policy, without charge, to an entity prescribed by regulation.

Part 5 Environment Protection Regulation 2005

7 New section 70

insert

70 Entity to be consulted—Act, s 25 (5)

The following entities are prescribed:

- (a) the Conservation Council ACT Region Incorporated (ABN 68 248 339 828);
- (b) the Canberra Business Chamber Ltd (ACN 600 390 538).

Part 6 Nature Conservation Act 2014

8 Objects of Act Section 6 (2) (h)

substitute

- (h) promoting the principles of ecologically sustainable development.

9 New section 6 (4)

insert

- (4) In this section:

ecologically sustainable development means the effective integration of economic and environmental considerations in decision-making processes achievable through implementation of the following:

- (a) the precautionary principle;
- (b) the inter-generational equity principle;
- (c) conservation of biological diversity and ecological integrity;
- (d) improved valuation and pricing of environmental resources.

inter-generational equity principle means that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

precautionary principle means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

10 New section 72A

in part 4.3, insert

72A Definitions—pt 4.3

In this part:

listing advice—see section 79G (2).

listing assessment—see section 79F (2).

public consultation notice—see section 79E (2).

**11 What is a *key threatening processes list*?
Section 75, definition of *key threatening processes list***

substitute

key threatening processes list means—

- (a) the key threatening processes list made under section 79A; or
- (b) a key threatening processes list notified under section 91 (Final version of list and notification).

**12 Key threatening processes list
Section 76**

omit

13 New sections 79A to 79H

in part 4.3, insert

79A Key threatening processes list

- (1) The Minister may make a key threatening processes list in accordance with this part.
- (2) The key threatening processes list is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

79B Public may nominate items for list

- (1) A person may nominate an item to be included in the key threatening processes list.
- (2) A nomination must—
 - (a) comply with any requirements prescribed by regulation for the nomination; and
 - (b) be given to the scientific committee.
- (3) A person who gives the scientific committee a nomination may, in writing, withdraw the nomination at any time.

79C Scientific committee may reject nomination from public

- (1) The scientific committee may reject a nomination if the scientific committee considers that—
 - (a) the nomination is vexatious, frivolous or not made in good faith; or
 - (b) a requirement prescribed by regulation for the nomination has not been complied with.
- (2) If the scientific committee rejects a nomination, the scientific committee must take reasonable steps to tell the person who made the nomination about the rejection and the reason for it.

79D Scientific committee may nominate items for list

The scientific committee may nominate an item to be included in the key threatening processes list.

79E Public consultation

- (1) This section applies if the scientific committee—
 - (a) receives a nomination under section 79B that is not rejected under section 79C; or
 - (b) nominates an item under section 79D.
- (2) The scientific committee may prepare a notice about the nomination (a *public consultation notice*).
- (3) A public consultation notice must—
 - (a) state that—
 - (i) anyone may give a written submission to the scientific committee about the nomination; and
 - (ii) submissions may be given to the scientific committee only during the period starting on the day the public consultation notice is notified under the [Legislation Act](#) and ending on a stated day, being at least 6 weeks after the day it is notified (the *public consultation period*); and
 - (b) include the nomination.
- (4) A public consultation notice is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).
- (5) If the scientific committee notifies a public consultation notice for a nomination—
 - (a) anyone may give a written submission to the scientific committee about the nomination; and

- (b) the submission may be given to the scientific committee only during the public consultation period for the nomination; and
 - (c) the person making the submission may, in writing, withdraw the submission at any time.
- (6) The scientific committee may make arrangements for people with particular communication needs to ensure they have adequate opportunity to comment on the nomination.

79F Listing assessment

- (1) This section applies if—
- (a) the scientific committee does not notify a public consultation notice for a nomination under section 79E within 4 weeks after nominating the item; or
 - (b) the public consultation period for a nomination has ended.
- (2) The scientific committee must assess the nominated item (a *listing assessment*).
- (3) A listing assessment for a nominated item must assess whether the item is eligible for inclusion in the key threatening processes list.
- Note* Eligibility for the key threatening processes list is dealt with in s 77.
- (4) In carrying out a listing assessment for a nominated item, the scientific committee must consider—
- (a) if public consultation about the item has been carried out under section 79E—any submissions received during the public consultation period for the item; and
 - (b) the eligibility of the item for the list under the key threatening processes list criteria.

Note **Key threatening processes list criteria**—see s 78.

79G Listing advice

- (1) This section applies if the scientific committee—
 - (a) has carried out a listing assessment of a nominated item; and
 - (b) considers that the item is eligible to be included in the key threatening processes list.
- (2) The scientific committee must prepare an advice about the item (a *listing advice*) for the Minister.

- (3) A listing advice is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

- (4) A listing advice must set out—
 - (a) the grounds on which the item is eligible to be included in the key threatening processes list; and
 - (b) the main factors that make it eligible.

Note Eligibility for the key threatening processes list is dealt with in s 77.

- (5) The scientific committee must give the listing advice to the Minister not later than 1 year after the end of the 4-week period, or public consultation period, mentioned in section 79E.

79H Minister to decide whether to include item in list

- (1) Not later than 3 months after the Minister receives a listing advice for an item, the Minister must decide whether to include, or refuse to include, the item in the key threatening processes list.
- (2) The Minister may include an item in the key threatening processes list only if satisfied that the item is eligible to be included in the list.

Note Eligibility for the key threatening processes list is dealt with in s 77.

- (3) In deciding whether to include an item in the key threatening processes list, the Minister may only consider—
- (a) the listing advice for the item; and
 - (b) the eligibility of the item for the list under the key threatening processes list criteria.

Note **Key threatening processes list criteria**—see s 78.

14 **Definitions—pt 4.4**
Section 80, new definitions

insert

listing advice—see section 86 (2).

listing assessment—see section 85 (2).

public consultation notice—see section 84 (2).

15 **What is a *draft controlled native species management plan*?—ch 7**
Section 159 (1), definition of *draft controlled native species management plan*, note 3

omit

16 **Conservator may close reserve**
New section 259 (5)

insert

- (5) A closed reserve declaration may commence on a day or at a time earlier than its notification day.

**17 Offence—enter closed reserve
Section 260 (3), except note**

substitute

- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant—
- (a) took reasonable steps to ensure that the contravention did not happen; or
 - (b) had no reasonable grounds for suspecting that a closed reserve declaration was in force for the reserve.

**18 Threatening processes to be key threatening processes
Section 405**

omit

19 Dictionary, definitions of *listing advice*, *listing assessment* and *public consultation notice*

substitute

listing advice—

- (a) for part 4.3 (Key threatening processes)—see section 79G (2); and
- (b) for part 4.4 (Including, transferring and omitting items in list)—see section 86 (2).

listing assessment—

- (a) for part 4.3 (Key threatening processes)—see section 79F (2); and
- (b) for part 4.4 (Including, transferring and omitting items in list)—see section 85 (2).

public consultation notice, for a nomination—

- (a) for part 4.3 (Key threatening processes)—see section 79E (2);
and
- (b) for part 4.4 (Including, transferring and omitting items in list)—see section 84 (2).

Part 7 Planning and Development Act 2007

20 Impact track—when development approval must not be given Section 128 (1) (b) (vi)

after

conservator

insert

that relates to the protected matter

21 New section 128 (2A)

insert

- (2A) Subsection (2) does not apply if the approval is inconsistent only with a part of the advice that does not relate to a protected matter.

22 Impact track—considerations when deciding development approval New section 129 (k)

insert

- (k) if an EIS exemption is granted under section 211H (EIS exemption—decision) in relation to the proposed development—
- (i) the EIS exemption; and
 - (ii) the recent study; and
 - (iii) the revised EIS exemption application under section 211G (EIS exemption application—revision).

**23 Impact track—time for decision on application
New section 131 (2)**

insert

- (2) However, if the decision maker has referred the proposed decision to the Commonwealth Minister under section 127A (2) (Impact track—referral of matter protected by the Commonwealth to Commonwealth), the time periods mentioned in subsection (1) (a) and (b) are 40 and 55 working days respectively.

**24 EIS exemption application—public consultation
Section 211C (2) (a) (ii)**

substitute

- (ii) submissions may be given to the Minister during a stated period of not less than 15 working days (the *consultation period*); and

Part 8 Planning and Development Regulation 2008

25 Section 25 heading

substitute

25 When survey certificate not required for development applications—Act, s 139 (2) (j)

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 19 November 2015.

2 Notification

Notified under the [Legislation Act](#) on 23 February 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Planning, Building and Environment Legislation Amendment Bill 2016, which originated in the Legislative Assembly as the Planning, Building and Environment Legislation Amendment Bill 2015 (No 2) and was passed by the Assembly on 9 February 2016.

Acting Clerk of the Legislative Assembly

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