

2010

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning and Development (Environmental Impact Statements) Amendment Bill 2010

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Planning and Development (Environmental Impact Statements) Amendment Bill 2010

A Bill for

An Act to amend the *Planning and Development Act 2007*

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

1	1	Name of Act
2		This Act is the <i>Planning and Development (Environmental Impact</i>
3		<i>Statements) Amendment Act 2010.</i>
4	2	Commencement
5		This Act commences on a day fixed by the Minister by written
6		notice.
7	<i>Note 1</i>	The naming and commencement provisions automatically commence on
8		the notification day (see Legislation Act, s 75 (1)).
9	<i>Note 2</i>	A single day or time may be fixed, or different days or times may be
10		fixed, for the commencement of different provisions (see Legislation
11		Act, s 77 (1)).
12	<i>Note 3</i>	If a provision has not commenced within 6 months beginning on the
13		notification day, it automatically commences on the first day after that
14		period (see Legislation Act, s 79).
15	3	Legislation amended
16		This Act amends the <i>Planning and Development Act 2007.</i>
17	<i>Note</i>	This Act also amends the <i>Planning and Development Regulation 2008</i>
18		(see s 34).
19	4	Relationship between development proposals and
20		development applications
21		New section 113 (1A) and (1B)
22		<i>insert</i>
23	(1A)	The determination of which assessment track applies to a
24		development proposal is made by reference to circumstances when
25		the application is made.

(1B) Subsection (1A) does not apply if, after the application is made—

(a) the Minister makes a declaration under section 124 (Minister may declare impact track applicable) in relation to the development proposal; or

(b) the Public Health Act Minister makes a declaration for section 125 (Declaration by Public Health Act Minister affects assessment track) in relation to the application.

5 Impact track applicability

Section 123 (b), new note

insert

Note For certain proposals mentioned in sch 4, a proponent may apply under s 138A (2) for an environmental significance opinion from a relevant agency that the proposal is not likely to have a significant adverse environmental impact. The production of the opinion by the agency will take the proposal out of the impact track unless other reasons under this section apply.

6 Minister may declare impact track applicable

Section 124 (3) and (4)

omit

7 New section 124A

insert

124A Meaning of *significant* adverse environmental impact

(1) For this Act, an adverse environmental impact is *significant* if—

(a) the environmental function, system, value or entity that might be adversely impacted by a proposed development is significant; or

- 1 (b) the cumulative or incremental effect of a proposed
2 development might contribute to a substantial adverse impact
3 on an environmental function, system, value or entity.
- 4 (2) In deciding whether an adverse environmental impact is *significant*,
5 the following matters must be taken into account:
- 6 (a) the kind, size, frequency, intensity, scope and length of time of
7 the impact;
- 8 (b) the sensitivity, resilience and rarity of the environmental
9 function, system, value or entity likely to be affected.
- 10 (3) In deciding whether a development proposal is likely to have a
11 significant adverse environmental impact it does not matter whether
12 the adverse environmental impact is likely to occur on the site of the
13 development or elsewhere.

14 **8 Division 7.3.1 heading**

15 *substitute*

16 **Division 7.3.1 Pre-application matters**

17 **9 New sections 138AA to 138AD**

18 *in division 7.3.1, insert*

19 **138AA Impact track proposals if not likely to have significant**
20 **adverse environmental impact**

- 21 (1) This section applies to a development proposal mentioned in—
- 22 (a) schedule 4, part 4.2, item 3 (c) or (d); or
- 23 (b) schedule 4, part 4.3, item 1, item 2 (a) or (b), item 3 or item 6.

- (2) If the proponent of a development proposal wants the application for the development approval assessed in the merit track on the ground that the proposal is not likely to have a significant adverse environmental impact, the proponent must apply to the relevant agency for an opinion (an *environmental significance opinion*) to that effect.

Note 1 A development proposal may still be in the impact track for other reasons under s 123 (eg because of a declaration under s 125 (Declaration by Public Health Act Minister affects assessment track)).

Note 2 If a form is approved under s 425 for this provision, the form must be used.

138AB Deciding environmental significance opinion applications

- (1) A relevant agency may, by written notice, require an applicant for an environmental significance opinion to provide additional information in support of the application.
- (2) Notice under subsection (1) must state the time, not shorter than 20 working days, within which the applicant must respond to the notice.
- (3) The relevant agency may refuse to decide the application if the additional information requested under subsection (1) is not given to the agency within the stated time.
- (4) If the relevant agency decides the application, the agency must—
- (a) give the environmental significance opinion if it considers that the proposal is not likely to have a significant adverse environmental impact; or
 - (b) reject the application.
- (5) The relevant agency must notify the applicant and the planning and land authority in writing if it rejects the application.

- 1 (6) A relevant agency is taken to have rejected an application for an
2 environmental significance opinion if the agency does not give the
3 opinion or a notice under subsection (5) within—
- 4 (a) if no additional information is requested under
5 subsection (1)—30 working days after the application is made
6 to the agency; or
- 7 (b) if additional information is requested and the information is
8 given to the agency—30 working days after the information is
9 given to the agency; or
- 10 (c) if additional information is requested and the information is not
11 given to the agency within the time stated—30 working days
12 after the stated time has ended.
- 13 (7) However, the relevant agency may decide the application despite the
14 rejection of the application under subsection (6).

15 **138AC Costs of environmental significance opinion**

- 16 (1) A relevant agency may recover from an applicant for an
17 environmental significance opinion the direct and indirect costs
18 incurred by the agency—
- 19 (a) in deciding an application for the opinion; and
- 20 (b) in preparing the opinion; and
- 21 (c) in engaging a consultant to assist with deciding the application
22 or preparing the opinion.
- 23 *Note* The costs may be recovered in a court of competent jurisdiction (see
24 Legislation Act, s 177).
- 25 (2) If the relevant agency has sent an invoice to the applicant for the
26 costs recoverable under subsection (1), the agency must give a copy
27 of the invoice to the planning and land authority.

- 1 (3) Despite section 138AB (4) and (5), the relevant agency may wait
 2 until the invoice has been paid by the applicant before giving the
 3 environmental significance opinion or giving a notice under
 4 section 138AB (5).

5 **138AD Requirements in relation to environmental significance**
 6 **opinions**

- 7 (1) This section applies to an environmental significance opinion given
 8 by a relevant agency to the applicant for the opinion.
- 9 (2) The relevant agency must give a copy of the environmental
 10 significance opinion to the planning and land authority when the
 11 opinion is given to the applicant.
- 12 (3) The planning and land authority must prepare a notice including the
 13 text of the environmental significance opinion.
- 14 (4) A notice is a notifiable instrument.
- 15 *Note* A notifiable instrument must be notified under the Legislation Act.
- 16 (5) The planning and land authority must put an electronic link to the
 17 notice on the authority website.
- 18 (6) An environmental significance opinion and the notice including the
 19 text of the opinion expire 18 months after the day the notice is
 20 notified.
- 21 (7) Giving an environmental significance opinion does not limit any
 22 power the relevant agency has under this Act or any other territory
 23 law.

10 Form of development applications
Section 139 (2) (f) (ii)

substitute

- (ii) the completed EIS for the proposal, unless the application for the development approval for the proposal is exempted under section 211; and

11 New sections 139 (2) (l) and (m)

before the notes, insert

- (l) if division 9.4.2 (Varying concessional leases to remove concessional status) applies to the application—be accompanied by an assessment of—

- (i) the social, cultural and economic impacts of the proposed variation; and

- (ii) any other matter prescribed by regulation; and

Note Matters the Minister must consider before approving a variation are set out in s 261, and conditions to which the variation may be subject are set out in s 262.

- (m) if the applicant wants the application for development approval assessed in the merit track on the ground of an environmental significance opinion that the development proposal is not likely to have a significant adverse environmental impact—be accompanied by—

- (i) the environmental significance opinion for the proposal; and

- (ii) if the relevant agency has sent an invoice to the applicant for the costs recoverable under section 138AC (1)—proof of payment of the invoice.

12 What is an EIS and a s 125-related EIS?
Section 208, new note

insert

Note An environmental impact statement is an investigation of the potential impact of a project on the environment. An environmental impact statement is taken into account in deciding development applications but the completion of an environmental impact statement is not itself a development application or a development approval process.

13 When is a completed EIS required?
Section 210, new note 2

insert

Note 2 A development application in the impact track cannot be made without a completed EIS unless an exemption has been granted under s 211 before the application is made.

14 EIS not required if development application exempted
New section 211 (2) to (5)

insert

(2) An exemption is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

(3) A regulation may prescribe criteria that the Minister must take into account in deciding whether the environmental impact of the development proposal has been sufficiently addressed by the other study.

(4) The planning and land authority must put an electronic link to the exemption on the authority website.

(5) An exemption expires 18 months after the day it is notified.

- 1 **15 Scoping of EIS**
2 **New section 212 (2A)**
- 3 *after the note, insert*
- 4 (2A) A scoping document is a notifiable instrument.
- 5 *Note* A notifiable instrument must be notified under the Legislation Act.
- 6 **16 New section 212 (4)**
- 7 *insert*
- 8 (4) The planning and land authority must put an electronic link to the
9 scoping document on the authority website.
- 10 **17 Section 215**
- 11 *substitute*
- 12 **215 Term of scoping document**
- 13 A scoping document expires 18 months after the day it is notified.
- 14 **18 Authority consideration of EIS**
15 **Section 222 (2) (b)**
- 16 *substitute*
- 17 (b) if section 224 applies—take action under section 224; or
- 18 (c) if section 224A applies—reject the EIS.

19 Chance to address unaddressed matters
Section 224 (1)

substitute

(1) This section applies in relation to the EIS for a development proposal given to the planning and land authority under section 221 if—

(a) the authority is not satisfied in relation to a matter mentioned in section 222 (2) (a); and

(b) the authority has not given the proponent of the development proposal more than one notice under this section.

20 New sections 224A and 224B

insert

224A Rejection of unsatisfactory EIS

(1) This section applies if the planning and land authority gives the proponent of a development proposal a second written notice (a ***second notice***) under section 224 (2).

(2) The planning and land authority must reject an EIS if—

(a) the proponent does not respond within the time stated in the second notice; or

(b) the proponent responds within the time stated in the second notice but the authority remains unsatisfied in relation to a matter mentioned in section 222 (2) (a).

(3) If the planning and land authority rejects an EIS under subsection (2), the authority must give the proponent written reasons explaining why the EIS is rejected.

224B Cost recovery

(1) The planning and land authority may recover from a proponent of a development proposal the direct and indirect costs incurred by the authority—

(a) in engaging a consultant to assist with the collection or analysis of information relevant to the authority's assessment of matters under a relevant provision; and

(b) in preparing an assessment report under section 225A.

Note The costs may be recovered in a court of competent jurisdiction (see Legislation Act, s 177).

(2) In this section:

relevant provision means—

(a) section 212 (2) (Scoping of EIS); or

(b) section 222 (Authority consideration of EIS); or

(c) section 223 (EIS given to authority out of time); or

(d) section 224 (Chance to address unaddressed matters); or

(e) section 224A (Rejection of unsatisfactory EIS).

**21 Giving EIS to Minister
Section 225 (1)**

substitute

(1) This section applies if the planning and land authority accepts an EIS under section 222 (2) (a).

(1A) However, this section does not apply if the planning and land authority has sent an invoice to the proponent of a development proposal for costs recoverable under section 224B and the invoice remains unpaid.

22 Section 225 (3)

omit

23 New section 225A

insert

225A EIS assessment report

(1) If the planning and land authority accepts an EIS under section 222 (2) (a), the authority must prepare a report (an **assessment report**) that—

(a) confirms that the authority is satisfied in relation to the matters mentioned in section 222 (2) (a); and

(b) may contain additional information about how the authority came to be satisfied in relation to those matters.

(2) An assessment report is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

(3) The planning and land authority must—

(a) if an EIS is given to the Minister under section 225 (2) (a)—give the assessment report to the Minister; and

(b) if a s 125-related EIS is given to the Public Health Act Minister under section 225 (2) (b)—give the assessment report to the Public Health Act Minister.

(4) The planning and land authority must put an electronic link to the assessment report on the authority website.

(5) An assessment report expires 18 months after the day it is notified.

24 No decision on application unless consideration in public interest
Section 261 (2) (b)

substitute

- (b) whether approving the application would cause any disadvantage to the community taking into account potential uses of the leased land that are consistent with the territory plan, whether or not those uses are authorised by the lease;

25 New section 261 (2) (e) and note

insert

- (e) whether the Territory wishes to encourage the continued use of the land for an authorised use under the lease by retaining the concessional status of the lease.

Note The Minister must consider the material required under s 139 (2) (l).

26 New section 446B

in part 15.4, insert

446B Transitional—revised EIS to vary lease to change concessional status

- (1) This section applies to a proponent of a development application if—
- (a) division 9.4.2 (Varying concessional leases to remove concessional status) applies to the application; and
- (b) before the commencement of the *Planning and Development (Environmental Impact Statements) Amendment Act 2010*, the proponent gave the planning and land authority a revised EIS in accordance with section 221.

- (2) The proponent is taken to have complied with the requirements of section 139 (2) (1) (i).

27 Definitions—sch 4
Schedule 4, section 4.1, new definitions

insert

crest, of a water storage dam, means the highest point of the dam wall or embankment excluding any parapet, handrail or similar structure on the wall or embankment.

lowest point of the general foundations, of a water storage dam, means where the dam wall or embankment meets the lowest point of the bed of the river or stream on the downstream side of the wall or embankment.

normal operating level, of a reservoir formed by a water storage dam, means the full water supply level of the reservoir when not affected by flood.

recommended design flood has the same meaning as in the Guidelines on Dam Safety Management 2003, as published from time to time by the Australian National Committee on Large Dams Incorporated.

Note The Guidelines on Dam Safety Management 2003 are accessible at www.ancold.org.au.

28 Schedule 4, section 4.1, definition of *threatening process*

substitute

threatening process—see the *Nature Conservation Act 1980*, dictionary.

29 Schedule 4, part 4.2

substitute

**Part 4.2 Development proposals requiring
EIS—activities**

column 1 item	column 2 development proposal
1	<p>proposal for construction of a transport corridor including a major road, a dedicated bus way, a railway, or a light rail corridor, on any land, other than on land designated under the territory plan as a future urban area or in a transport and services zone, if the proposal is likely to have a significant adverse environmental impact on—</p> <ul style="list-style-type: none"> (a) air quality so as to be detrimental to the health of persons in an adjoining residential, commercial or community facility zone; or (b) ambient noise or vibration so as to be detrimental to the health of persons in an adjoining residential, commercial or community facility zone
2	<p>proposal that involves—</p> <ul style="list-style-type: none"> (a) electricity transmission line construction, including additions or realignment works, outside an existing easement or exceeding 500m in length, that are intended to carry underground or above-ground transmission lines with a voltage of 132kV or more; or (b) a coal electricity generating station; or (c) an electricity generating station (other than a coal electricity generating station) including gas, wind, hydroelectric, geothermal, bio-material, solar power or co-generation— <ul style="list-style-type: none"> (i) that is capable of supplying— <ul style="list-style-type: none"> (A) the amount of electrical power prescribed by regulation; or (B) if no amount is prescribed—4MW or more of electrical power; or

column 1 item	column 2 development proposal
	<p>(ii) in a location or of a kind or nature prescribed by regulation; or</p> <p>(d) an electricity generating station if the temperature of water released from the station into a body of water (other than an artificial body of water) is likely to vary by more than 2°C from the ambient temperature of the body of water</p>
3	<p>proposal for construction of a water storage dam—</p> <p>(a) that will be at least 15m high when measured from the lowest point of the general foundations to the crest of the dam; or</p> <p>(b) that will be at least 10m high when measured from the lowest point of the general foundations to the crest of the dam if—</p> <p>(i) the crest is not less than 500m in length; or</p> <p>(ii) the water storage capacity of the reservoir formed by the dam at normal operating level is at least 1 000 000m³; or</p> <p>(iii) the recommended design flood discharge dealt with by the dam is at least 2 000m³ per second; or</p> <p>(c) in the river corridor zone under the territory plan unless the conservator of flora and fauna produces an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact; or</p> <p>(d) on a continuously flowing river in a non-urban zone under the territory plan unless the conservator of flora and fauna produces an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact</p>
4	proposal for construction of an airport or airfield (other than a helicopter landing facility used exclusively for emergency services purposes, including medical evacuation, fire fighting, retrieval or rescue)
5	<p>proposal for construction of a wastewater treatment plant (including a plant for the treatment of sewage or other effluent) that—</p> <p>(a) will be less than 1km from the boundary of a residential block or unit in a residential or commercial zone; or</p>

column 1 item	column 2 development proposal
	<p>(b) will be able to treat each day more than—</p> <p>(i) 2 500 people equivalent capacity; or</p> <p>(ii) 750kL; or</p> <p>(c) will have capacity to store more than 1kt of sewage, sludge or effluent; or</p> <p>(d) will incinerate sewage or sewage products; or</p> <p>(e) will have a capacity to treat more than 100ML of wastewater (excluding stormwater) each year; but</p> <p>(f) is not—</p> <p>(i) a plant for the treatment of stormwater; or</p> <p>(ii) a small-scale wastewater treatment plant (including a plant for the treatment of sewage or other effluent but not including a small-scale plant prescribed by regulation); or</p> <p>(iii) a residential on-site wastewater treatment system (including a septic tank)</p>
6	proposal for construction of a petroleum storage facility with a storage capacity greater than 500kL of petroleum products at 1 time
7	proposal for construction of a permanent venue for the conduct of motor racing events
8	<p>proposal for use of land for a commercial landfill facility, other than for the disposal of virgin excavated natural material (or other earth and rock fill that is inert waste) if—</p> <p>(a) the intended capacity of the facility is more than 5kt each year, or 20kt in total; or</p> <p>(b) the facility will be—</p> <p>(i) in an area with a high watertable, highly permeable soils, sodic soils or saline soils; or</p> <p>(ii) less than 2km from the boundary of a residential block or unit in a residential or commercial zone</p>

column 1 item	column 2 development proposal
9	<p>proposal for the construction of a waste management facility that is—</p> <ul style="list-style-type: none"> (a) an incineration facility for the destruction by thermal oxidation of waste including biological, veterinary, medical, clinical, dental, quarantine and municipal waste; or (b) for the sterilisation of clinical waste; or (c) for the storage, treatment, disposal, processing, recycling, recovery, use or reuse of regulated waste
10	<p>proposal for a waste transfer station or recycling facility that sorts, consolidates or temporarily stores solid waste (including municipal waste) for transfer to another site for disposal, storage, reprocessing, recycling, use or reuse, if the transfer station—</p> <ul style="list-style-type: none"> (a) is intended to handle more than 30kt of waste each year; or (b) will be less than 1km from the boundary of a residential block or unit in a residential or commercial zone; but (c) is not a small-scale waste management facility, on or near a residential block or near a residential unit, consisting of wheelie bins, small hoppers, or other small waste management bins or enclosures for the use of people living on the residential block or in the residential unit

1
2
3
4

Note

A development application for a development proposal must include an EIS in relation to the proposal if the impact track applies to it because of a declaration under s 125 (Declaration by Public Health Act Minister affects assessment track).

30 Schedule 4, part 4.3

substitute

**Part 4.3 Development proposals requiring
EIS—areas and processes**

column 1 item	column 2 proposal
1	<p>proposal that is likely to have a significant adverse environmental impact on 1 or more of the following, unless the conservator of flora and fauna produces an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact:</p> <ul style="list-style-type: none"> (a) a species or ecological community that is endangered; (b) a species that is vulnerable; (c) a species that is protected; (d) a species with special protection status; (e) a species or ecological community if a threatening process has been declared under the <i>Nature Conservation Act 1980</i>, s 38 (4) in relation to the species or community; (f) a species or ecological community if the flora and fauna committee has stated criteria for assessing whether the committee should recommend the making of a declaration under the <i>Nature Conservation Act 1980</i>, s 38 (Declaration of species, community or process) in relation to the species or community; <p><i>Note</i> Criteria are specified under the <i>Nature Conservation Act 1980</i>, s 35. An instrument under that Act, s 35 is a disallowable instrument and must be notified, and presented to the Legislative Assembly, under the Legislation Act.</p> <ul style="list-style-type: none"> (g) an endangered species, an endangered population, an endangered ecological community, a critically endangered species, a critically endangered ecological community or species presumed extinct under the <i>Threatened Species Conservation Act 1995</i> (NSW), if the potential impact of the proposal will be on the species or community in New South Wales

column 1 item	column 2 proposal
2	<p>proposal involving—</p> <ul style="list-style-type: none"> (a) the clearing of more than 0.5ha of native vegetation other than on land that is designated as a future urban area under the territory plan unless the conservator of flora and fauna produces an environmental significance opinion that the clearing is not likely to have a significant adverse environmental impact; or (b) the clearing of more than 5.0ha of native vegetation on land that is designated as a future urban area under the territory plan unless the conservator of flora and fauna produces an environmental significance opinion that the clearing is not likely to have a significant adverse environmental impact
3	<p>proposal for development on land reserved under s 315 for the purpose of a wilderness area, national park, nature reserve or special purpose reserve, unless the conservator of flora and fauna produces an environmental significance opinion that the proposal is not likely to have a significant adverse environmental impact</p>
4	<p>proposal that is likely to have a significant adverse environmental impact on—</p> <ul style="list-style-type: none"> (a) a domestic water supply catchment; or (b) a water use purpose mentioned in the territory plan (water use and catchment general code); or (c) a prescribed environmental value mentioned in the territory plan (water use catchment general code) of a natural waterway or aquifer
5	<p>proposal that is likely to result in environmentally significant water extraction or consumption, other than a proposal for an urban lake, pond or retardation basin or a wastewater reuse scheme—</p> <ul style="list-style-type: none"> (a) in an existing urban area or on land that has been designated as a future urban area; and (b) that is designed in accordance with the water sensitive urban design general code under the territory plan

column 1 item	column 2 proposal
6	proposal that is likely to have a significant adverse impact on the heritage significance of a place or object registered under the <i>Heritage Act 2004</i> , unless the heritage council produces an environmental significance opinion that the proposal is not likely to have a significant adverse impact
7	proposal involving land included on the register of contaminated sites under the <i>Environment Protection Act 1997</i>
8	proposal, other than on land in an existing urban area or land that is designated under the territory plan as a future urban area, with the potential to adversely affect the integrity of a site where significant environmental or ecological scientific research is being conducted by a government entity, a university or another entity prescribed by regulation

Note A development application for a development proposal must include an EIS in relation to the proposal if the impact track applies to it because of a declaration under s 125 (Declaration by Public Health Act Minister affects assessment track).

31 Dictionary, note 2

insert

- heritage council

32 Dictionary, new definitions

insert

crest, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

environmental significance opinion—see section 138A (2).

lowest point of the general foundations, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

normal operating level, for schedule 4 (Development proposals in impact track because of need for EIS)—see schedule 4, section 4.1.

1 *recommended design flood*, for schedule 4 (Development proposals
2 in impact track because of need for EIS)—see schedule 4,
3 section 4.1.

4 *relevant agency* means—

5 (a) for schedule 4, part 4.2, item 3 (c) and (d)—the conservator of
6 flora and fauna; and

7 (b) for schedule 4, part 4.3, item 1, item 2 (a) and (b) and item 3—
8 the conservator of flora and fauna; and

9 (c) for schedule 4, part 4.3, item 6—the heritage council.

10 *significant*, in relation to an adverse environmental impact—see
11 section 124A.

12 **33 Dictionary, definition of *threatening process***

13 *substitute*

14 *threatening process*, for schedule 4 (Development proposals in
15 impact track because of need for EIS)—see the *Nature Conservation*
16 *Act 1980*, dictionary.

17 **34 Planning and Development Regulation 2008, 18 section 54 (1) (e)**

19 *omit*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2010.

2 Notification

Notified under the Legislation Act on 2010.

3 Republications of amended laws

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

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