

2015

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning, Building and Environment Legislation Amendment Bill 2015 (No 2)

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(Minister for Planning)

Planning, Building and Environment Legislation Amendment Bill 2015 (No 2)

A Bill for

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:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Planning, Building and Environment Legislation*
4 *Amendment Act 2015 (No 2)*.

5 **2 Commencement**

6 This Act commences on the day after its notification day.

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

9 **3 Legislation amended**

10 This Act amends the following legislation:

- 11 • [Building \(General\) Regulation 2008](#)
- 12 • [Environment Protection Act 1997](#)
- 13 • [Environment Protection Regulation 2005](#)
- 14 • [Nature Conservation Act 2014](#)
- 15 • [Planning and Development Act 2007](#)
- 16 • [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 Work Health and Safety Act 2011 |
|----|---|---|--|

1 **Part 3 Environment Protection Act 1997**

2 **5 Consultation on draft environment protection policy**
3 **Section 25 (5)**

4 *substitute*

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

1 **Part 4** **Environment Protection**
2 **Regulation 2005**

3 **6** **New section 70**

4 *insert*

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

6 The following entities are prescribed:

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

1 **Part 5 Nature Conservation Act 2014**

2 **7 Objects of Act**
3 **Section 6 (2) (h)**

4 *substitute*

5 (h) promoting the principles of ecologically sustainable
6 development.

7 **8 New section 6 (4)**

8 *insert*

9 (4) In this section:

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

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

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

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

-
- 1 **9** **New section 72A**
- 2 *in part 4.3, insert*
- 3 **72A** **Definitions—pt 4.3**
- 4 In this part:
- 5 *listing advice*—see section 79G (2).
- 6 *listing assessment*—see section 79F (2).
- 7 *public consultation notice*—see section 79E (2).
- 8 **10** **What is a key threatening processes list?**
- 9 **Section 75, definition of key threatening processes list**
- 10 *substitute*
- 11 *key threatening processes list* means—
- 12 (a) the key threatening processes list made under section 79A; or
- 13 (b) a key threatening processes list notified under section 91 (Final
- 14 version of list and notification).
- 15 **11** **Key threatening processes list**
- 16 **Section 76**
- 17 *omit*
- 18 **12** **New sections 79A to 79H**
- 19 *in part 4.3, insert*
- 20 **79A** **Key threatening processes list**
- 21 (1) The Minister may make a key threatening processes list in
- 22 accordance with this part.

1 (2) The key threatening processes list is a notifiable instrument.

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

3 **79B Public may nominate items for list**

4 (1) A person may nominate an item to be included in the key
5 threatening processes list.

6 (2) A nomination must—

7 (a) comply with any requirements prescribed by regulation for the
8 nomination; and

9 (b) be given to the scientific committee.

10 (3) A person who gives the scientific committee a nomination may, in
11 writing, withdraw the nomination at any time.

12 **79C Scientific committee may reject nomination from public**

13 (1) The scientific committee may reject a nomination if the scientific
14 committee considers that—

15 (a) the nomination is vexatious, frivolous or not made in good
16 faith; or

17 (b) a requirement prescribed by regulation for the nomination has
18 not been complied with.

19 (2) If the scientific committee rejects a nomination, the scientific
20 committee must take reasonable steps to tell the person who made
21 the nomination about the rejection and the reason for it.

22 **79D Scientific committee may nominate items for list**

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

1 **79E Public consultation**

- 2 (1) This section applies if the scientific committee—
- 3 (a) receives a nomination under section 79B that is not rejected
- 4 under section 79C; or
- 5 (b) nominates an item under section 79D.
- 6 (2) The scientific committee may prepare a notice about the nomination
- 7 (a *public consultation notice*).
- 8 (3) A public consultation notice must—
- 9 (a) state that—
- 10 (i) anyone may give a written submission to the scientific
- 11 committee about the nomination; and
- 12 (ii) submissions may be given to the scientific committee
- 13 only during the period starting on the day the public
- 14 consultation notice is notified under the [Legislation Act](#)
- 15 and ending on a stated day, being at least 6 weeks after
- 16 the day it is notified (the *public consultation period*); and
- 17 (b) include the nomination.
- 18 (4) A public consultation notice is a notifiable instrument.
- 19 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 20 (5) If the scientific committee notifies a public consultation notice for a
- 21 nomination—
- 22 (a) anyone may give a written submission to the scientific
- 23 committee about the nomination; and
- 24 (b) the submission may be given to the scientific committee only
- 25 during the public consultation period for the nomination; and
- 26 (c) the person making the submission may, in writing, withdraw
- 27 the submission at any time.

- 1 (6) The scientific committee may make arrangements for people with
2 particular communication needs to ensure they have adequate
3 opportunity to comment on the nomination.

4 **79F Listing assessment**

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

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

23 **79G Listing advice**

- 24 (1) This section applies if the scientific committee—
- 25 (a) has carried out a listing assessment of a nominated item; and
- 26 (b) considers that the item is eligible to be included in the key
27 threatening processes list.

- 1 (2) The scientific committee must prepare an advice about the item
2 (a *listing advice*) for the Minister.
- 3 (3) A listing advice is a notifiable instrument.
- 4 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 5 (4) A listing advice must set out—
- 6 (a) the grounds on which the item is eligible to be included in the
7 key threatening processes list; and
- 8 (b) the main factors that make it eligible.
- 9 *Note* Eligibility for the key threatening processes list is dealt with in s 77.
- 10 (5) The scientific committee must give the listing advice to the Minister
11 not later than 1 year after the end of the 4-week period, or public
12 consultation period, mentioned in section 79E.

13 **79H Minister to decide whether to include item in list**

- 14 (1) Not later than 3 months after the Minister receives a listing advice
15 for an item, the Minister must decide whether to include, or refuse
16 to include, the item in the key threatening processes list.
- 17 (2) The Minister may include an item in the key threatening processes
18 list only if satisfied that the item is eligible to be included in the list.
- 19 *Note* Eligibility for the key threatening processes list is dealt with in s 77.
- 20 (3) In deciding whether to include an item in the key threatening
21 processes list, the Minister may only consider—
- 22 (a) the listing advice for the item; and
- 23 (b) the eligibility of the item for the list under the key threatening
24 processes list criteria.
- 25 *Note* **Key threatening processes list criteria**—see s 78.

- 1 **13** **Definitions—pt 4.4**
2 **Section 80, new definitions**
- 3 *insert*
- 4 *listing advice*—see section 86 (2).
5 *listing assessment*—see section 85 (2).
6 *public consultation notice*—see section 84 (2).
- 7 **14** **What is a *draft controlled native species management***
8 ***plan*?—ch 7**
9 **Section 159 (1), definition of *draft controlled native***
10 ***species management plan*, note 3**
- 11 *omit*
- 12 **15** **Conservator may close reserve**
13 **New section 259 (5)**
- 14 *insert*
- 15 (5) A closed reserve declaration may commence on a day or at a time
16 earlier than its notification day.
- 17 **16** **Offence—enter closed reserve**
18 **Section 260 (3), except note**
- 19 *substitute*
- 20 (3) It is a defence to a prosecution for an offence against this section if
21 the defendant proves that the defendant—
- 22 (a) took reasonable steps to ensure that the contravention did not
23 happen; or
- 24 (b) had no reasonable grounds for suspecting that a closed reserve
25 declaration was in force for the reserve.

1 **17 Threatening processes to be key threatening processes**
2 **Section 405**

3 *omit*

4 **18 Dictionary, definitions of *listing advice*, *listing***
5 ***assessment* and *public consultation notice***

6 *substitute*

7 *listing advice*—

8 (a) for part 4.3 (Key threatening processes)—see section 79G (2);
9 and

10 (b) for part 4.4 (Including, transferring and omitting items in
11 list)—see section 86 (2).

12 *listing assessment*—

13 (a) for part 4.3 (Key threatening processes)—see section 79F (2);
14 and

15 (b) for part 4.4 (Including, transferring and omitting items in
16 list)—see section 85 (2).

17 *public consultation notice*, for a nomination—

18 (a) for part 4.3 (Key threatening processes)—see section 79E (2);
19 and

20 (b) for part 4.4 (Including, transferring and omitting items in
21 list)—see section 84 (2).

1 **Part 6** **Planning and Development Act**
2 **2007**

3 **19 Impact track—when development approval must not be**
4 **given**
5 **Section 128 (1) (b) (vi)**

6 *after*

7 conservator

8 *insert*

9 that relates to the protected matter

10 **20 New section 128 (2A)**

11 *insert*

12 (2A) Subsection (2) does not apply if the approval is inconsistent only
13 with a part of the advice that does not relate to a protected matter.

14 **21 Impact track—considerations when deciding**
15 **development approval**
16 **New section 129 (k)**

17 *insert*

18 (k) if an EIS exemption is granted under section 211H (EIS
19 exemption—decision) in relation to the proposed
20 development—

21 (i) the EIS exemption; and

22 (ii) the recent study; and

23 (iii) the revised EIS exemption application under
24 section 211G (EIS exemption application—revision).

1 **22 Impact track—time for decision on application**
2 **New section 131 (2)**

3 *insert*

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

9 **23 EIS exemption application—public consultation**
10 **Section 211C (2) (a) (ii)**

11 *substitute*

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

1 **Part 7** **Planning and Development**
2 **Regulation 2008**

3 **24** **Section 25 heading**

4 *substitute*

5 **25** **When survey certificate not required for development**
6 **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 2015.

3 Republications of amended laws

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

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