2024

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning and Environment Legislation Amendment Bill 2024

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2024

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Planning and Environment Legislation Amendment Bill 2024

A Bill for

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

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

Part 1 Preliminary

1 Name of Act

This Act is the *Planning and Environment Legislation Amendment Act 2024*.

2 Commencement

 (1) This Act (other than part 6) commences on the 7th day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 75 (1)).

 (2) Part 6 commences on the day after this Act’s notification day.

3 Legislation amended

This Act amends the following legislation:

 [Climate Change and Greenhouse Gas Reduction Act 2010](http://www.legislation.act.gov.au/a/2010-41)

 [Commissioner for Sustainability and the Environment Act 1993](http://www.legislation.act.gov.au/a/1993-37)

 [Heritage Act 2004](http://www.legislation.act.gov.au/a/2004-57)

 [Nature Conservation Act 2014](http://www.legislation.act.gov.au/a/2014-59)

 [Professional Engineers Act 2023](http://www.legislation.act.gov.au/a/2023-8)

 [Surveyors Act 2007](http://www.legislation.act.gov.au/a/2007-33).

Note This Act also amends the [Water Resources Act 2007](http://www.legislation.act.gov.au/a/2007-19) (see sch 1).

Part 2 Climate Change and Greenhouse Gas Reduction Act 2010

4 New section 26A

insert

26A Determination of fees

 (1) The Minister may determine fees for this Act.

 (2) A determination is a disallowable instrument.

Part 3 Commissioner for Sustainability and the Environment Act 1993

5 Functions
New section 12 (1) (d)

before the notes, insert

 (d) preparing a state of the environment report for each reporting period.

6 Section 12 (3), new definition of reporting period

insert

reporting period—see section 19 (7).

7 Section 14

substitute

14 Discretion not to investigate certain complaints

 (1) This section applies if a person makes a complaint to the commissioner in relation to action taken by an agency.

 (2) The commissioner may decide not to investigate the action or to stop investigating the action if—

 (a) the commissioner is satisfied that the complainant became aware of the action more than 12 months before the day the complaint was made; or

 (b) in the commissioner’s opinion—

 (i) the complaint—

 (A) is frivolous or vexatious or was not made in good faith; or

 (B) lacks substance or credibility; or

 (C) was not made genuinely or was made primarily for a mischievous purpose; or

 (D) does not contain sufficient information; or

 (ii) the subject matter of the complaint is trivial or unrelated to the commissioner’s functions; or

 (iii) considering all the circumstances, an investigation or further investigation of the action is not justified; or

 (c) in the commissioner’s opinion—

 (i) the complainant—

 (A) has or had a right to have the action reviewed by a court or tribunal; but

 (B) has not exercised that right; and

 (ii) in all the circumstances, it is reasonable for the complainant to exercise, or would have been reasonable for the complainant to have exercised, that right; or

 (d) in the commissioner’s opinion, an administrative practice is suitable for review of the action, and—

 (i) the action has been, is being or will be reviewed under the administrative practice at the complainant’s request; or

 (ii) the commissioner is satisfied that the complainant is entitled to have the action reviewed under the administrative practice.

 (3) Also, the commissioner may decide not to investigate the action if the complainant has not complained to the agency in relation to the action.

 (4) In this section:

complainant, in relation to a complaint, means—

 (a) the person who made the complaint; or

 (b) if the person made the complaint for another person or a body—the other person or body.

14A Complaints made to agencies

 (1) This section applies if—

 (a) a person (the complainant) makes a complaint to the commissioner in relation to action taken by an agency; and

 (b) the complainant—

 (i) has complained to the agency in relation to the action; and

 (ii) tells the commissioner that the agency—

 (A) has not responded to the complaint; or

 (B) has responded to the complaint but the complainant considers the agency’s response unsatisfactory.

 (2) The commissioner must investigate the action if, in the commissioner’s opinion—

 (a) the agency has not responded to the complaint within a reasonable period; or

 (b) the agency’s response to the complaint is unsatisfactory.

14B Decision not to investigate complaint—annual reporting requirement

 (1) This section applies if, in a reporting year, the commissioner decides not to investigate a complaint.

 (2) The commissioner must include details of the decision, including the reasons for the decision, in the report for the reporting year prepared by the commissioner under the [Annual Reports (Government Agencies) Act 2004](http://www.legislation.act.gov.au/a/2004-8).

8 State of the environment report
Section 19 (7), new definition of National Environment Protection Council

insert

National Environment Protection Council means the National Environment Protection Council established by the [National Environment Protection Council Act 1994](http://www.legislation.act.gov.au/a/1994-95), section 7.

9 Information to be included in commissioner’s annual report
Section 20

omit

financial year

substitute

reporting year

10 Section 20 (b)

omit

under section 19 or special report under section 21

substitute

or a special report

11 Section 20, note

omit

12 Minister to table reports and recommendations
Section 22

omit

a report under section 19 or 21

substitute

a state of the environment report, a special report

13 Information to be included in agency annual reports
Section 23

omit

financial year

substitute

reporting year

14 Section 23, note

omit

15 Dictionary, note 2

insert

 body

 tribunal

16 Dictionary, note 2

omit

 penalty unit (see s 133)

17 Dictionary, definition of pre-election year

omit

18 Dictionary, new definitions

insert

reporting year—see the [Annual Reports (Government Agencies) Act 2004](http://www.legislation.act.gov.au/a/2004-8), dictionary.

special report means a report prepared by the commissioner under section 21.

state of the environment report means a report prepared by the commissioner under section 19.

Part 4 Heritage Act 2004

19 New section 18A

insert

18A Ministerial statement of priorities

 (1) The Minister may make a statement setting out the government’s priorities in relation to heritage in the ACT (a statement of priorities).

 (2) The Minister must consult the council before making a statement of priorities.

 (3) The statement of priorities—

 (a) must include information about how the council must or may report about the action taken by the council to respond to the statement of priorities; and

 (b) may include any information the Minister believes will assist the council in responding to the statement of priorities; but

 (c) must not include a direction about the way in which a function of the council is exercised.

 (4) The Minister must give the statement of priorities to the council.

 (5) A statement of priorities is a notifiable instrument.

Part 5 Nature Conservation Act 2014

20 Offence—enter closed reserve
Section 260 (3), note

substitute

 (4) Subsection (1) does not apply if the person is a conservation officer exercising a function under this Act.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) and s (4) (see [Criminal Code](http://www.legislation.act.gov.au/a/2002-51), s 58).

Part 6 Professional Engineers Act 2023

21 Section 2 (2)

substitute

 (2) If this Act has not commenced before 6 March 2025, it automatically commences on that day.

Part 7 Surveyors Act 2007

22 Sections 6 to 8

substitute

6 Application for registration

A person may apply to the surveyor-general for registration as a surveyor.

7 Eligibility for registration

 (1) A person is eligible to be registered as a surveyor if—

 (a) the person—

 (i) has previously been registered as a surveyor in the ACT; or

 (ii) is or has previously been registered as a surveyor in a State; or

Note State includes the Northern Territory (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), dict, pt 1).

 (iii) has obtained a certificate of competency as a land surveyor from the board of surveying and spatial information; and

 (b) the surveyor-general is satisfied that the person has a working knowledge of current surveying practices and any practice directions; and

 (c) if the person has previously been registered as a surveyor in the ACT or is or has previously been registered as a surveyor in a State—

 (i) the registration was not involuntarily cancelled; or

 (ii) if the registration was involuntarily cancelled—the surveyor-general is satisfied that it is appropriate to register the person, taking into account—

 (A) the reason for the person’s registration being involuntary cancelled; and

 (B) anything relevant done by the person since their registration was involuntarily cancelled.

Example—subpar (ii)

The person’s registration was cancelled because they carried out a survey that was inaccurate because they lacked knowledge of current surveying practices. Since the cancellation, the person has acquired sufficient knowledge of current surveying practices.

 (2) For subsection (1) (c), a person’s registration as a surveyor is involuntarily cancelled if the registration is cancelled for any reason other than because the person requested the cancellation.

 (3) In this section:

board of surveying and spatial information means the board of surveying and spatial information established under the [Surveying and Spatial Information Act 2002](https://legislation.nsw.gov.au/view/html/inforce/current/act-2002-083) (NSW), section 27.

7A Application for registration renewal

 (1) A surveyor may apply to the surveyor-general for renewal of their registration.

 (2) If a surveyor applies for renewal before their registration ends, the registration continues in force until the day the application is decided.

7B Eligibility for registration renewal

A surveyor is eligible to have their registration renewed if the surveyor-general is satisfied that the surveyor—

 (a) continues to be eligible for registration; and

 (b) meets any other eligibility requirements prescribed by regulation.

7C Surveyor-general may request information

 (1) The surveyor-general may, in writing, require an applicant under section 6 or section 7A to give the surveyor-general information that the surveyor-general reasonably needs to decide the application.

 (2) If the applicant does not comply with a requirement under subsection (1), the surveyor-general may refuse to consider the application further.

8 Decision on application for registration or renewal

 (1) If a person applies for registration, the surveyor-general must—

 (a) if the person is eligible for registration—

 (i) register the person; and

 (ii) give the person a unique identifying number (a registration number); or

 (b) if the person is not eligible for registration—refuse to register the person.

 (2) If a surveyor applies for renewal of their registration, the surveyor‑general must—

 (a) if the surveyor is eligible for registration renewal—renew the surveyor’s registration; or

 (b) if the surveyor is not eligible for registration renewal—refuse to renew the surveyor’s registration.

 (3) If the surveyor-general registers a person, the surveyor-general must give the person a certificate (a registration certificate) that includes the following information:

 (a) the person’s name;

 (b) the person’s registration number;

 (c) the date the person’s registration begins.

 (4) If the surveyor-general refuses an application for registration or renewal of registration, the surveyor-general must give the applicant written notice of the decision.

 (5) The surveyor-general is taken to have refused an application for registration or renewal of registration if the surveyor-general does not decide the application within 45 days after the day the surveyor‑general—

 (a) received the application; or

 (b) received the information requested under section 7C.

23 Section 10

substitute

10 Registration term

 (1) A surveyor’s registration—

 (a) begins on the day stated in the registration certificate; and

 (b) ends on 30 June after the registration begins.

Note A surveyor’s registration may be cancelled before it ends (see s 23, s 27 and s 41).

 (2) A surveyor’s renewal of registration—

 (a) begins on the earlier of the following:

 (i) if the surveyor-general decides the application for renewal before the day the surveyor’s registration ends—1 July after the surveyor-general decides the application for renewal;

 (ii) in any other case—the day the surveyor-general decides the application for renewal; and

 (b) ends on 30 June after the renewal begins.

Note If a surveyor applies for renewal before their registration ends, the registration continues in force until the day the application is decided (see s 7A (2)).

24 Details to be entered in surveyors register
Section 12 (1) (e)

substitute

 (e) the date the surveyor’s registration begins and ends;

25 Continuing registration
Division 3.1

omit

26 Power of entry generally
Section 45 (2), new note

insert

Note For how documents may be given, see the [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), pt 19.5.

27 New section 45 (2A)

insert

 (2A) If a surveyor gives an owner notice under subsection (2), the surveyor must—

 (a) keep written evidence of the notice, including how the notice was given; and

 (b) give a copy of the evidence to the surveyor-general on request.

Examples—written evidence

file note, copy of written notice

28 Surveyor-general practice directions
New section 55 (1A)

insert

 (1A) A practice direction may apply, adopt or incorporate a law or instrument as in force from time to time.

NoteThe text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 47 (5) or (6) is not disapplied (see s 47 (7)).

29 Reviewable decisions
Schedule 1, item 1

substitute

|  |  |  |  |
| --- | --- | --- | --- |
| 1  | 8 (1) (b) | refuse to register person | applicant for registration |
| 1A | 8 (2) (b) | refuse to renew surveyor’s registration | applicant for renewal |

30 Dictionary, definition of continuation notice

omit

31 Dictionary, definitions of registration certificate and registration number

substitute

registration certificate—see section 8 (3).

registration number––see section 8 (1) (a) (ii).

Schedule 1 Technical amendments

(see s 3)

Part 1.1 Commissioner for Sustainability and the Environment Act 1993

[1.1] New section 15 (13)

insert

 (13) In this section:

complainant, in relation to a complaint—see section 14 (4).

Explanatory note

This amendment is consequential on the insertion of a definition of complainant in section 14 by another amendment.

[1.2] Section 24

omit

his or her

substitute

the commissioner’s

Explanatory note

This amendment updates language in line with current drafting practice.

Part 1.2 Nature Conservation Act 2014

[1.3] Section 266, definition of suitability information, paragraph (a) (vii), example 3

substitute

3 [Biodiversity Conservation Act 2016](https://legislation.nsw.gov.au/view/html/inforce/current/act-2016-063) (NSW)

Explanatory note

This amendment corrects a cross-reference. The [Threatened Species Conservation Act 1995](https://legislation.nsw.gov.au/view/html/repealed/current/act-1995-101) (NSW) was repealed and replaced by the [Biodiversity Conservation Act 2016](https://legislation.nsw.gov.au/view/html/inforce/current/act-2016-063) (NSW).

Part 1.3 Surveyors Act 2007

[1.4] Dictionary, definition of registered business address

substitute

registered business address—see section 12 (1) (b).

Explanatory note

This amendment corrects a cross-reference.

Part 1.4 Water Resources Act 2007

[1.5] Section 25 (4) (c)

omit

his or her

substitute

their

Explanatory note

This amendment updates language in line with current drafting practice.

[1.6] Section 67E (8)

omit

Explanatory note

This amendment omits a definition of a term that is no longer used in this section.

Endnotes

1 Presentation speech

 Presentation speech made in the Legislative Assembly on 10 April 2024.

2 Notification

 Notified under the [Legislation Act](http://www.legislation.act.gov.au/a/2001-14) on 2024.

3 Republications of amended laws

 For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au/).

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