

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

COMMISSIONER FOR THE ENVIRONMENT (AMENDMENT) BILL 1997

EXPLANATORY MEMORANDUM

Circulated by authority of

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Minister for the Environment,
Land and Planning**

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OUTLINE

The Commissioner for the Environment Act 1993 (hereafter the Act) provides for the establishment of the office of the Commissioner for the Environment (hereafter the Commissioner). The Act specifies functions of the Commissioner and provides for the conduct of investigations by the Commissioner. The Act also places an obligation on the Commissioner to prepare a report on each investigation and a State of the Environment Report (hereafter the Report).

The Commissioner for the Environment (Amendment) Bill 1997 (hereafter the Bill) will make a number of amendments to the Act. These amendments will alter the reporting period and requirements for the Report and will empower the Minister to direct the Commissioner to conduct an investigation in public.

Revenue and Cost implications

The Bill has no revenue or cost implications.

Details of Bill

Clauses 1, 2 and 3 - Machinery Provisions

Clauses 1, 2 and 3 are Machinery Provisions. Clause 1 identifies the title of the Bill; clause 2 specifies when the Bill will commence and clause 3 identifies the Act that will be amended by the Bill.

Clause 4 - Insertion of new definition

Clause 4 will amend section 3 of the Act by inserting a definition of the term pre-election year. The term is defined to mean the calendar year immediately before each calendar year in which a general election for the Legislative Assembly will be required. The term 'pre-election year' is relevant to the submission of the Report under section 19 of the Act.

Clause 5 - amends section 15

Clause 5 will amend section 15 of the Act by omitting subsection 15(3) and inserting new subsections 15(3) and 15(3A).

Section 15 of the Act imposes certain obligations on the Commissioner in relation to an investigation. Section 15 specifies an investigation will be conducted in private and in such a manner as the Commissioner thinks fit.

Proposed new subsection 15(3) will specify that an investigation shall be conducted in private unless there is a direction from the Minister that it would be in the public interest to conduct the investigation in public.

Proposed new subsection 15(3A) will place an obligation on the Commissioner to conduct a public consultation or public hearing in public when the Commissioner receives a direction from the Minister to investigate a matter and that direction specifies that it would be in the public interest for the investigation to be conducted in public.

Proposed new subsection 15(3A) also gives the Commissioner a discretion to take into account such other measures as the Commissioner considers necessary for the proper conduct of the investigation.

The effect of the proposed amendments will be that the investigation conducted under the Act by the Commissioner shall be conducted in private unless the Minister has given direction under paragraph 15(1)(b) of the Act and has specified in that direction that it would be in the public interest to conduct the investigation in public. Upon receipt of such a direction, the Commissioner would be under an obligation to arrange for such public consultations, public hearings or the taking of such other measures as the Commissioner considers necessary for the proper conduct of the investigation

Clause 6 - Repeal of section 19 and the substitution of a new section 19

Clause 6 will repeal section 19 of the Act and will substitute a new section 19. Proposed new section 19 will specify when the State of the Environment Report is to be submitted to the Minister and the subject matter to be included in the report

Proposed new subsection 19(1) will impose an obligation on the Commissioner to prepare a Report and submit the Report to the Minister by 31 March of each pre-election year. The Report is to cover the period ending on 30 June the year preceding the pre election year

Proposed new subsection 19(2) will specify the subject matter to be included in the Report. The Report is to include an assessment of the condition of the environment; an evaluation of the adequacy and effectiveness of environmental management; an assessment of the degree of compliance with national environment protection measures made by the National Environment Protection Council, such matters as the Minister specifies in writing and such other matters as the Commissioner considers relevant. The criteria specified in proposed paragraph 19(2)(a) that may be utilised in the Report to assess the condition of the environment are the criteria used to define the term 'environment' in the proposed environment protection legislation. This common definition is being adopted to aid consistency of decision making.

Proposed new subsection 19(3) will impose an obligation on the Minister to present a statement to the Legislative Assembly of the Australian Capital Territory setting out

the response of the Government to the Report. The Minister is to present the statement by 31 September in each pre election year. Proposed new subsection 19(3) will also impose an obligation on the Minister, where a statement of the Government's response has not been presented to the Legislative Assembly, to outline the reasons why the response of the Government has not been presented.

Clauses 7 and 8 - Minor Amendments

Clauses 7 and 8 will amend the Act correcting certain words

Clause 7 will amend paragraph 21 (a) and (b) of the Act by omitting the word "inquiry". Paragraph 21 (a) will be further amended by inserting the word "investigation".

Clause 8 will amend section 25 of the Act by omitting the word "inquiry" and substituting the word "investigation".

Clause 9 - Submission of 1997 State of the Environment Report

Clause 9 is a transitional provision that specifies that the 1997 Report shall be submitted on the date specified by the Minister.