

2012

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

COMMISSIONER FOR THE ENVIRONMENT AMENDMENT BILL 2012

EXPLANATORY STATEMENT

**Circulated by
Shane Rattenbury MLA**

INTRODUCTION

This explanatory statement relates to the Commissioner for the Environment Amendment Bill 2012 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly. The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW

The intent of the Commissioner for the Environment Amendment Bill 2012 is to improve the process through which the commissioner's reports must be tabled and responded to and to create a statutory basis for the commissioner's recent expansion of responsibilities to encompass sustainability issues in addition to the Act's existing environmental monitoring and reporting requirements.

The bill provides for the following changes:

- the name of the Act and the title of the commissioner to include the term 'sustainability';
- requiring the commissioner to prepare a sustainability report; and
- requiring that state of the environment reports, sustainability reports and special reports (that is investigations into matters of environmental significance commissioned by the Minister or initiated by the commissioner) be tabled in the Assembly, via the Speaker (in the case of state of the environment and sustainability reports) rather than the Minister and be responded to within 6 months of their being tabled. These changes ensure that all Members of the Assembly are given equal access to the commissioner's reports.

Under the existing Act, the Minister is required to respond only to state of the environment reports. The bill applies the 6 month response timeframe to *all* reports produced by the commissioner. The bill also removes the option for the Minister to respond with a statement of why a response has not been tabled after 6 months. The intent of these amendments is to mitigate against delays in acting upon the commissioner's recommendations.

The bill also creates an objects section, absent from the current Act, which outlines the legislation's intent, with particular reference to its relationship to the furtherance of ecologically sustainable development in the Territory. The objects section has been closely modelled upon the *Commissioner for Environmental Sustainability Act 2003* (Vic).

HUMAN RIGHTS

The bill relates solely to the functions, requirements and administrative processes imposed on a statutory office holder. None of the new requirements have any impact upon or application to any individuals and does not affect any human rights.

SUMMARY OF CLAUSES

Clause 1 Name of the Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2 Commencement

The clause provides that the Act takes effect on the day after its notification.

Clause 3 Legislation amended

This clause identifies that the bill amends the *Commissioner for the Environment Act 1993*. Consequential amendments are made to the *Environment Protection Act 1977*, *Legislation Act 2001* and *Ombudsman Act 1989* in schedule 1 of the bill.

Clause 4 Long title

This clause changes the name of the commissioner from the *Commissioner for the Environment* to the *commissioner for sustainability and the environment*.

Clause 5 Section 1

This clause changes the name of the Act from the *Commissioner for the Environment Act 1993* to the *Commissioner for Sustainability and the Environment Act 1993*.

Clause 6 New section 2B

The current Act does not include a section listing the objects of the Act and this clause proposes to insert a list of objects that outlines the nature of the role of the commissioner and the outcomes that are hoped to be achieved through the exercise of the commissioner's functions.

Clauses 7 and 8 Section 4 heading and Section 4(1)

These clauses amend the section 4 heading and subsection (1) from 'Commissioner for the Environment' to 'commissioner for sustainability and the environment'. This reflects the current published title on the commissioner's website (see <http://www.envcomm.act.gov.au/>) and better reflects the nature of the role and the new objects of the Act set out in clause 6.

Clause 9 Functions – Section 12(1)(a)

This clause broadens the commissioner's functions to also include sustainability matters and enables the investigation of complaints about issues relating to ecologically sustainable development in the ACT as well as the management of the environment.

Clause 10 Complaints – Section 13(1)

Complementing clause 9 above, this clause enables complainants to raise issues relating to not only environmental management but also ecologically sustainable development with the commissioner.

Clause 11 State of the environment report – Section 19(1)

In keeping with the amended tabling requirements (see clause 13) which require state of the environment reports to be presented to the Speaker, this clause requires that a state of the environment report be "prepared by the reporting day" rather than given "to the Minister".

Clause 12 Section 19(2)(c)

This section requires that the commissioner report upon specific sustainability criteria in addition to the existing state of the environment reporting criteria. This includes requiring the commissioner to conduct a sustainability assessment of:

- the ACT's resource consumption and resource management;
- waste generation and management strategies;

- the carbon emissions generated from government operations;
- the use of sustainability decision-making tools; and
- an assessment of the ACT's progress towards sustainability goals.

Clause 13 Section 19(3)

This clause sets out the new tabling arrangements for state of the environment reports. Currently reports are given to the Minister who then has up to 15 sitting days (section 22) to provide it to the Legislative Assembly. The amendment instead creates a requirement that the commissioner provide the report to the Speaker who is then required to provide each Member of the Assembly with a copy. This ensures that all members have timely access to the report and reflects the independent nature of the role being exercised by the commissioner and the importance of ensuring that the community has access to the information as soon as it is available.

The provisions of this clause are replicated from the *Auditor-General Act 1996* sections 17(4) and (5).

Clause 14 Section 19(4)

In keeping with the amended tabling arrangements, this clause removes reference to the Minister presenting a state of the environment report to the Assembly, and replaces it with wording to indicate that the report will have been provided directly to the Assembly.

Clause 15 New Section 19(4A)

This clause requires the Minister to inform the Assembly of the commissioner's reporting period recommendations, within 15 sitting days of having received the recommendations. This requirement is currently set out in section 22 of the Act which is to be amended by clause 18.

Clause 16 Section 19(7), new definitions of *Speaker* and *sustainability decision-making tool*

This clause adds to the existing definitions outlined in section 19(7) by clarifying that, in the context of the state of the environment report, where the Speaker is unavailable, the term Speaker will be taken to mean the Deputy Speaker or Clerk. Defining Speaker in this way ensures that the tabling of reports is not delayed due to the Speaker's absence.

This section also adds a definition of *sustainability decision-making tool*, as it applies to the new sustainability reporting criteria (set out in the new section 19(2)(e) in clause 12) included in the state of the environment report.

Clause 17 New section 21 (2) to (5)

Section 21(2) – 21(4) outlines the new tabling and response requirements for special reports (that is, reports, additional to the state of the environment report, which the Minister has commissioned or which have been initiated by the commissioner). Special reports are to be tabled in the same manner as state of the environment reports, however they are to be tabled by the Minister rather than the Speaker. This difference recognises that the Minister will have initiated a number of these reports, hence it is appropriate that they be given to him/her in the first instance. This section requires that the Minister respond to special reports within 6 months of the report having been tabled in the Assembly.

Section 21(5) clarifies that, in the context of special reports, where the Speaker is absent, the term Speaker will be taken to mean the Deputy Speaker or Clerk. Defining Speaker in this way ensures that the tabling of reports is not delayed due to the Speaker's absence.

Clause 18 Section 22 and New Section 22A

This sections replaces the current section 22 (Minister to table reports and recommendations) and set out the process for fulfilling the requirement to provide reports to the speaker under the Act and also inserts a new Section 22A requiring the Minister to respond to state of the environment reports within 6 months of the report having been tabled in the Assembly.

Clause 19 Dictionary, note 2

This clause inserts references to *Speaker*, *Territory* and *territory authority* into a note in the Dictionary. The note explains that these terms are defined in the Legislation Act.

Clause 20 Dictionary, definition of commissioner

Consistent with clauses 7 and 8 this clause amends the definition of *commissioner* to refer to the new title – *Commissioner for Sustainability and the Environment*.

Clause 21 Dictionary, new definition of *ecologically sustainable development*

To reflect the commissioner's expanded responsibility for sustainability matters, this clause defines *ecologically sustainable development* as used throughout the amended Act. The definition used the same as that used in other ACT legislation such as the *Financial Management Act 1996*.

Clause 22 Dictionary, new definitions of *the intergenerational equity principle* and *the precautionary principle*

This clause defines *intergenerational equity* and the *precautionary principle*, as they apply to *ecologically sustainable development* (defined in clause 20 above). Again these definitions are the same as that used in other ACT legislation such as the *Financial Management Act 1996*.

Schedule 1 Consequential amendments

The changes made in schedule 1 ensure that references to the commissioner for the environment in other ACT legislation will be changed to references to the commissioner for sustainability and the environment.