

2013

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**PLANNING, BUILDING AND ENVIRONMENT
LEGISLATION AMENDMENT BILL 2013 (No 2)**

EXPLANATORY STATEMENT

**Presented by
Mr Simon Corbell
Minister for Environment and Sustainable Development**

This explanatory statement relates to the *Planning, Building and Environment Legislation Amendment Bill 2013 (No 2)* (the bill) 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 Legislative Assembly.

Background

Planning, building and environment legislation has historically been amended by a number of methods, as follows:

- the usual Act amendment process,
- by modification using regulation (commonly referred to as a ‘Henry the Eighth’ amendment),
- through the Statute Law Amendment Bill process, and
- as a consequence of other legislation. For example, the *ACT Civil Administrative Tribunal Legislation Amendment Act 2008* made consequential amendments to the *Building Act 2004*.

These ways of amending legislation in the Planning Portfolio, while effective, can be confusing for community, industry and government users of the legislation. An omnibus planning, building and environment legislation amendment bill enables more minor matters to be dealt with expediently and consolidates amendments into one place, making the amendment process more user-friendly and accessible. It provides greater flexibility in drafting amendments to planning, building and environment legislation and helps to minimise costs associated with keeping the legislation up-to-date.

Under guidelines approved by the government, the essential criteria for the inclusion of amendments in the bill are that the amendments are minor or technical and non-controversial, or reflect only a minor policy change. During development of the bill, relative government Directorates are consulted and when necessary, industry and the community may be consulted.

The bill forms an important part of maintaining and enhancing the standard of ACT building and planning law. It enables legislative amendments and repeals to be made that would generally not be of sufficient importance to justify separate legislation. The amendments are also inappropriate to be made as editorial amendments under the *Legislation Act 2001*, chapter 11 (which provides for the republication of Acts and statutory instruments).

This is the fifth planning, building and environment legislation amendment bill. The first bill was passed by the Assembly in June 2011 and through that bill 8 individual Acts were amended. The second bill was passed in December 2011 and delivered two key outcomes: pre-DA community consultation and the requirement to have a sign about building work on the building site. The third bill was passed in May 2012 and delivered a number of key outcomes, including clarifying estate development plans and allowing consolidation of rural leases. The fourth bill was passed in May 2013 and delivered two minor policy outcomes, amendment of the environmental impact statement exemption process and the addition of a gas clearance to the certificate of occupancy process.

This demonstrates the effectiveness of the omnibus bill process as a tool that collates amendments to legislation relative to planning, building and the environment. Without this bill process, these amendments could have been spread over a number of amendment bills and possibly delayed. In this way, this omnibus bill helps to effectively maintain the statute book. Previous bills can be accessed on the ACT Legislation Register at www.legislation.act.gov.au.

This bill and future such bills help to keep laws as up-to-date as possible, and to respond to technological and societal change.

Overview of Bill

The bill amends the:

- *Environment Protection Act 1997*
- *Environment Protection Regulation 2005*
- *Lakes Act 1976*
- *Planning and Development Act 2007*
- *Planning and Development Regulation 2008*
- *Public Place Names Act 1989*
- *Utilities Act 2000*

The bill contains minor policy, technical and editorial amendments.

Minor policy amendments

The bill contains two minor policy amendments.

Clauses 4 and 5 of the bill amend section 13 and the Dictionary of the *Environment Protection Act 1997* (Environment Protection Act) to provide that the Environment Protection Authority (EPA) may delegate its functions to officers or employees of State or Commonwealth environment protection agencies. This amendment has been made to facilitate collaboration between the ACT EPA and its interstate and Commonwealth counterparts. This collaboration is necessary to undertake environment protection operations that cross state borders, or to enter into arrangements with other agencies to respond to environmental emergencies including natural disasters.

This amendment is intended to provide a delegation function that is similar in effect to the delegation power held by the NSW Environment Protection Authority under section 21 of the *Protection of the Environment Administration Act 1991* (NSW). Under this section, the NSW Environment Protection Authority may delegate its functions to a member of staff of a Government agency of Victoria, Queensland, South Australia or the Australian Capital Territory which administers environment protection legislation.

Clause 18 of the bill inserts a new section 4A into the *Public Place Names Act 1989*. Under this new section, the Minister may make guidelines about the naming of public places. A guideline is a notifiable instrument. The Environment and Sustainable

Development Directorate currently has guidelines for the naming of public places in the form of policy documents. The amendment at clause 18 would give legal status to these policy documents and improve the transparency and accessibility of the naming process.

Technical and editorial amendments

The bill contains a number of minor technical and editorial amendments to Acts and Regulations. These amendments include updates to cross-references to other legislation, simplification of the language of provisions and clarification of existing legislative requirements.

For example, clauses 15 and 16 update the cross-references in Schedule 1A, part 1A.2, sections 1A.10(4) and 1A.11(4) of the *Planning and Development Regulation 2008*, which refer to a definition of an 'exemption declaration'. The Regulation currently refers to the definition at section 1.100A(1)(e). This reference is incorrect. The bill updates the reference to the correct section 1.100A(1)(b).

Clause 11 amends section 94(3)(g) of the *Planning and Development Act 2007*. This amendment clarifies the meaning of an ongoing provision in an estate development plan. Ongoing provisions are provisions of estate development plans that are proposed to be included in a future precinct code for the development.

The amendment provides that an ongoing provision relates to the subject matter addressed by an existing rule or criterion, and does not permit the development of the block in a way that would not be permitted by an existing mandatory rule or criterion. This ensures that the precinct code does not introduce any new subject matter that is not already covered by the Territory Plan, and does not allow any development that would be contrary to the Territory Plan.

The bill has been assessed against the *Human Rights Act 2004* and no issues identified.

Outline of Provisions

Part 1 – Preliminary

Clause 1 — Name of Act

This clause names the Act as the *Planning, Building and Environment Legislation Amendment Act 2013 (No 2)*.

Clause 2 — Commencement

This clause provides that the bill commences on a day fixed by the Minister by written notice.

Clause 3 — Legislation amended

This clause names the legislation that the bill amends. The bill amends:

- *Environment Protection Act 1997*
- *Environment Protection Regulation 2005*
- *Lakes Act 1976*
- *Planning and Development Act 2007*
- *Planning and Development Regulation 2008*
- *Public Place Names Act 1989*
- *Utilities Act 2000*.

Part 2 – Environment Protection Act 1997

Clause 4 — Section 13

This clause amends section 13 of the *Environment Protection Act 1997*.

Section 13 prescribes circumstances in which the Environment Protection Authority may delegate the Authority's functions under the Environment Protection Act. This section currently provides that the Authority may delegate their functions under the Act to a public employee. The *Legislation Act 2001* defines a 'public employee' as an ACT public servant, a person employed by a territory instrumentality, an ACT statutory officer or a person employed by an ACT statutory office-holder.

This clause amends section 13 to provide that the Environment Protection Authority may also delegate their functions to officers or employees of State or Commonwealth environment protection agencies. This amendment has been made to facilitate collaboration between the Environment Protection Authority and its interstate and Commonwealth counterparts.

Clause 5 – Dictionary, note 2

This clause amends note 2 of the Dictionary of the *Environment Protection Act 1997*.

Note 2 is a list of terms used in the Environment Protection Act that are defined by the *Legislation Act 2001*. This clause adds "Commonwealth" to the list of defined terms. This amendment is related to the amendment at clause 4, which provided that the Environment Protection Authority may delegate their functions to officers or employees of State or Commonwealth environment protection agencies.

Part 3 – Environment Protection Regulation 2005

Clause 6 – Sections 34, 35 and 36

This clause amends sections 34, 35 and 36 of the *Environment Protection Regulation 2005*.

These sections apply to the regulation of noise. Each of these sections refer to ‘a compliance point’ on the land, where noise measurements are taken. In referring to ‘a compliance point’, these sections suggest that there is a single compliance point where noise measurements are taken. In practice, there may be more than one compliance points.

This clause amends these sections to refer to ‘1 or more compliance points’. This technical amendment updates the Regulation to ensure that multiple compliance points are taken into account.

Part 4 – Lakes Act 1976

Clause 7 – Schedule 1

This clause omits Schedule 1 of the *Lakes Act 1976*.

Schedule 1 describes the location of Lake Ginninderra. This description is expressed as geographical bearings. Lake Ginninderra is the only lake that is described in the Lakes Act. This description is substantially different from the current practice of declaring an area as a lake in the Territory. All other lakes are declared by the Minister through a notifiable instrument, pursuant to section 5 of the Lakes Act.

The bill omits Schedule 1 of the Lakes Act to allow Lake Ginninderra to be declared by notifiable instrument. This amendment will make Lake Ginninderra consistent with other Territory lakes.

Clause 8 – Dictionary, definition of *foreshores*

This clause amends the definition of ‘foreshores’ in the Dictionary of the *Lakes Act 1976*.

The Dictionary currently refers to the Schedule 1 description of Lake Ginninderra in the definition of ‘foreshores’.

This clause omits this reference to Lake Ginninderra. This amendment is related to the amendment at clause 7, which omits Schedule 1 of the Lakes Act.

Clause 9 – Dictionary, definition of *lake*

This clause amends the definition of ‘lake’ in the Dictionary of the *Lakes Act 1976*.

The Dictionary currently includes a reference to ‘Lake Ginninderra’.

This clause omits the reference ‘Lake Ginninderra’. This amendment is related to the amendment at clause 7, which omits Schedule 1 of the Lakes Act.

Clause 10 – Dictionary, definition of *Lake Ginninderra*

This clause omits the definition of ‘Lake Ginninderra’ from the Dictionary of the *Lakes Act 1976*.

The Dictionary currently defines ‘Lake Ginninderra’ as “the body of water insider the land described in Schedule 1”.

This clause omits the definition of ‘Lake Ginninderra’. This amendment is related to the amendment at clause 7, which omits Schedule 1 of the *Lakes Act*.

Part 5 – Planning and Development Act 2007

Clause 11 – What is an estate development plan? Section 94(3)(g) and examples

This clause amends section 94(3)(g) of the *Planning and Development Act 2007*.

Section 94 defines an estate development plan. This definition includes a reference to an ‘ongoing provision’, which is defined as ‘an existing rule or criterion that is proposed to apply to particular blocks’.

Clause 11 amends section 94(3)(g) of the *Planning and Development Act 2007*. This amendment clarifies the meaning of an ongoing provision in an estate development plan. Ongoing provisions are provisions of estate development plans that are proposed to be included in a future precinct code for the development.

The amendment provides that an ongoing provision relates to the subject matter addressed by an existing rule or criterion, and does not permit the development of the block in a way that would not be permitted by an existing mandatory rule or criterion. This ensures that the precinct code does not introduce any new subject matter that is not already covered by the Territory Plan, and does not allow any development that would be contrary to the Territory Plan.

Clause 12 – When development approval takes effect – reconsideration and review right, Section 183(2)

This clause amends section 183(2) of the *Planning and Development Act 2007*.

Section 183 sets out circumstances when a development approval on reconsideration with a review right takes effect. This section currently does not state when the development approval will take effect if an application has been made to the ACT Civil and Administrative Tribunal (ACAT) for a review of the decision.

Clause 12 amends section 183(2) to provide that the development approval would take effect the day that any confirmation, variation or substitution of the decision by the ACAT takes effect. This amendment makes section 183 consistent with other sections of the *Planning and Development Act* that take into account ACAT review, such as sections 180 and 182.

Clause 13 – ACAT review – people who made representations etc, new Section 409(2)(c)

This clause inserts a new section 409(2)(c) into the *Planning and Development Act 2007*.

Section 409 applies to a reviewable decision in relation to a development application if the person applying to the ACT Civil and Administrative Tribunal (ACAT) for review is not the applicant for the development application.

Section 409 currently does not refer to decisions on reconsideration. Clause 13 amends section 409 to explicitly refer to decisions on reconsideration. This leaves it beyond doubt that this section does apply to decisions on reconsideration.

Clause 14 – Section 409(4)

This clause inserts a new section 409(4) into the *Planning and Development Act 2007*.

Section 409(4) defines ‘final notice’ for the purposes of section 409 of the Planning and Development Act. This subsection currently refers to ‘final notice’ as defined in section 177(3) of the Act. Section 177(3) defines ‘final notice’ for situations in which there are multiple representations on a development approval with ACAT review rights. Final notice means the day when every person who made a representation on the application has been given notice of the decision.

New section 409(4) amends the definition of ‘final notice’ to include additional circumstances. New section 409(4)(a) retains the existing definition of ‘final notice’ for decisions to which section 177 applies. New Section 409(4)(b) defines ‘final notice’ for decisions to which section 195 applies. Section 195 applies to notice of decisions on reconsideration.

This amendment is related to the amendment at clause 13, which provides that section 409 also applies to decisions on reconsideration.

Part 6 – Planning and Development Regulation 2008

Clause 15 – Schedule 1A, part 1A.2, section 1A.10(4)

This clause amends Schedule 1A, part 1A.2, section 1A.10(4) of the *Planning and Development Regulation 2008*.

This clause updates the cross-reference in Schedule 1A, part 1A.2, section 1A.10(4) which refers to a definition of an ‘exemption declaration’. The Regulation currently refers to the definition at section 1.100A(1)(e). This reference is incorrect. The bill updates the reference to the correct section 1.100A(1)(b).

Clause 16 – Schedule 1A, part 1A.2, section 1A.11(4)

This clause amends Schedule 1A, part 1A.2, section 1A.11(4) of the *Planning and Development Regulation 2008*.

This clause updates the cross-reference in Schedule 1A, part 1A.2, section 1A.11(4) of the *Planning and Development Regulation 2008*, which refer to a definition of an ‘exemption declaration’. The Regulation currently refers to the definition at section 1.100A(1)(e). This reference is incorrect. The bill updates the reference to the correct section 1.100A(1)(b).

Part 7 – Public Place Names Act 1989

Clause 17 – Minister to determine names, new section 3(2A)

This clause inserts a new section 3(2A) into the *Public Place Names Act 1989*.

Section 3 of the Public Place Names Act provides that the Minister may determine the name of a division of Territory land, or the name of a public place that is Territory land.

New section 3(2A)(a) provides that the Minister must also consider any guideline made under section 4A of the Public Place Names Act. This amendment is related to the amendment at clause 18.

New section 3(2A)(b) provides that the Minister must consider any guideline made under section 14 of the *Districts Act 2002*. Section 14 of the Districts Act provides that the Minister may make guidelines on the allocation of street addresses. Much of ACT place naming is for road names. These are a key component of the process for developing street addresses. New section 3(2A)(b) provides an important cross-reference to the Districts Act. This amendment ensures that the obligations under both Acts are clear.

Clause 18 – New section 4A

This clause inserts a new section 4A into the *Public Place Names Act 1989*.

Under this new section, the Minister may make guidelines about the naming of public places. A guideline is a notifiable instrument. The Environment and Sustainable Development Directorate currently has guidelines for the naming of public places in the form of policy documents.

The amendment at clause 18 gives legal status to these policy documents and improves the transparency and accessibility of the naming process.

Part 8 – Utilities Act 2000

Clause 19 – Dictionary, definition of *customer contract*, new paragraph (c)

This clause adds a new paragraph (c) to the definition of customer contract in the Dictionary of the *Utilities Act 2000*.

New paragraph (c) provides that a 'customer contract' includes a customer connection contract under the National Energy Retail Law (ACT). This updates the definition of customer contract so that it refers to the National Energy Retail Law, which was adopted by the ACT with the passage of the *National Energy Retail Law (ACT) Act 2012*.