**2015**

# LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

# PLANNING, BUILDING AND ENVIRONMENT LEGISLATION AMENDMENT BILL 2015 (No 2)

## EXPLANATORY STATEMENT

**Presented by**
**Mr Mick Gentleman**
**Minister for Planning**

## EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning, Building and Environment Legislation Amendment Bill 2015 (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, relevant 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, environmental 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 ninth planning, building and environment legislation amendment bill. The first bill was passed by the Assembly in June 2011. 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 proposes minor policy, technical and editorial amendments to the *Building (General) Regulation 2008*, the *Environment Protection Act 1997* and the *Environment Protection Regulation 2005,* the *Nature Conservation Act 2014,* the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008.*

***Minor policy amendment to the Building (General) Regulation***

Section 6 of the *Building Act 2004* permits the exemption of buildings or building work from the operation of all or part of the Building Act. Section 6 of the *Building (General) Regulation 2008* exempts specified building or building work from all or specified parts of the Building Act. The exempt items are set out in Schedule 1 to the Regulation.

Schedule 1, part 1.2 of the Building (General) Regulation includes various exemptions of buildings from the operation of the entirety of the Building Act including for example, temporary buildings, pre-fabricated bus shelters and stand alone bridges. Schedule 1, Part 1.3 exempts specified building work from specified parts of the Building Act. For example, fences, walls, retaining walls, small pools, antennas and internal alterations are exempt provided the building is within specified parameters.

Section 6 of the Building (General) Regulation specifies certain standing limitations on the exemptions from specified parts of the Act made under Schedule 1, Part 1.3. For example, building or building work nominally exempt under Part 1.3 is in fact not exempt if it affects:

(a) the structural integrity of the a building;
(b) a fire-rated wall, ceiling or floor;
(c) a ventilation or air-handling system, fire protection system or other mechanical service;
(d) a fire-escape, emergency lift, stairway, exit or passageway to an exit;
(e) the natural light or ventilation available to a building; or
(f) the building in a way that reduces its compliance with the building code to a level that is less than the minimum requirements of the code.

In 2014, the *Dangerous Substances (Asbestos Safety Reform) Legislation Amendment Act 2014* (the Asbestos Reform Act) together with the *Work Health and Safety (Asbestos) Amendment Regulation 2014* harmonised the Territory's asbestos management framework with that of other model jurisdictions in accordance with the Inter-governmental Agreement for Regulatory and Operational Reform in OHS (IGA).

The general outcome was that Work Health and Safety and Dangerous Substances laws regulate asbestos work rather than the *Construction Occupations (Licensing) Act 2004* (COLA) and other building laws.

However, building laws needed to continue to regulate the "building integrity" aspect of building work that can adversely affect the integrity of a building, such as structural stability, fire resistance, etc even if the building work involves or may involve the handling of asbestos. In recognition of this, the *Planning, Building and Environment Legislation Amendment Act 2015* (PABELAB 2015 No 1) amended various sections of the Building Act and the Building (General) Regulation, COLA and other legislation to clarify that holders of builders' licences will be responsible for work that affects the integrity of buildings even if the work involved the handling of asbestos, such as the demolition of houses that contain residual loose asbestos. PABELAB 2015 No 1 meant that builders were responsible for ensuring building work aspects complied with building and construction laws while asbestos safety aspects of such work continued to be regulated under work health and safety laws. This result ensured there was no gap in the regulatory oversight and management of these areas.

PABELAB 2015 No 1 included a consequential amendment which omitted item 25 of schedule 1 of Part 1.3 of the Building (General) Regulation because it related to asbestos. This item 25 had exempted the handling of asbestos cement sheets of not greater than 10m² from Parts 3, 5 and 6 of the Building Act.

Clause 4 of the Bill inserts new item 27 into Schedule 1, part 1.3 of the Building (General) Regulation. This technical amendment to the Building Regulation reinstates the abovementioned exemption for handling asbestos cement sheets with some additional modifications. In summary, this means that the removal of bonded asbestos or cement sheets does not require building approval under the Building Act. The amendments also remove references to asbestos licensing and the restriction in size of 10m2 or less as these are no longer relevant, as all work involving asbestos is now regulated under the *Work Health and Safety Act 2011* and due to other restrictions on the exemption mentioned above.

The amendment facilitates the removal of broken asbestos cement sheets, and their replacement with an equivalent material such as fibre cement sheet, provided that work complies with relevant work safety laws concerning asbestos work, and with the Building Code of Australia and is done in a proper and skilful way. For example, where the asbestos sheet eaves lining on a school building, or a house, was broken by a cricket ball, the broken sheet could be removed and replaced with fibre cement sheet, without the need for a building certifier, building plans, a building approval, a licensed builder and certificate of use.

The safety risk elements of this work, such as removing and handling bonded asbestos sheeting will continue to be regulated by work safety laws and also other Building Act requirements, including compliance with the Building Code and

requirements for the work to be carried out in a proper and skilful way. In particular, the exemption is limited by the abovementioned Building (General) Regulation, s 6 (3), which prescribes exclusions that prevent the new exemption from applying. In summary, the exemption does not apply where the work would affect the structure of a building, a fire rated element, or would reduce the way the building complied with the Building Code of Australia.

This exemption is necessary because it has become apparent that the effect of removing the exemption in PABELAB 2015 No 1 was to bring minor non-structural maintenance works under the building approval regime. This imposed an unnecessary administrative burden for some building work, such as works done for school maintenance, and did not appreciably improve regulatory outcomes. The regulatory burden of the building approval process significantly outweighs the benefits it produces in these circumstances, considering that the work is regulated under work safety laws that apply to asbestos work, and that there are also additional exclusions to the exemption, to ensure safe materials and work practices. There is no alternative to achieving this outcome other than through legislative amendments. The reinstated exemption is in keeping with other existing exemptions of minor building work in Part 1.3 of Schedule 1.

***Minor policy amendment to the Planning and Development Act***

Development applications in the impact track require an Environmental Impact Statement (EIS) under s 127(1) of the Planning and Development Act. However, under s 127(2), a completed EIS is not required if an EIS exemption is in force for the development proposal. There are a number of documents related to an EIS exemption, including the revised exemption application (see s 211G) ,the recent study on which the application is based (see s 211B) and the EIS exemption itself (see s 211H). These documents are significant for the assessment of the development proposal.

This minor policy amendment to section 129 of the *Planning and Development Act 2007* inserts additional matters that a decision maker must consider when deciding an application for development approval for a development application. The bill adds a requirement to consider an EIS exemption, a revised EIS application and the recent study that the exemption is based on. These additional matters are all relevant to the impact track development assessment process and are particularly important for consideration of environmental impacts. This also provides a formal mechanism to ensure assessment of avoidance, mitigation and offset measures, as well as to inform consideration of the appropriateness of the proposal in light of “protected matters” and other Schedule 4 items. “Protected matter” is defined in s 111A of the Planning and Development Act and is essentially a matter protected under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

***Technical amendments to the Nature Conservation Act***

Section 259 of the *Nature Conservation Act 2014* permits the Conservator to restrict access to or close a reserve (e.g. nature reserve) altogether by declaration (closed reserve declaration). A closed reserve declaration may be made if the Conservator believes that continued unrestricted public access may endanger public safety or interfere with the management of the reserve. A closed reserve declaration is a notifiable instrument and additional public notice of the closure must also be given, including displaying a notice(s) in a prominent place at the reserve itself. Being a notifiable instrument, a closure declaration previously took effect on the day after notification (s 73(2) of the *Legislation Act 2001*).

The bill amends this provision to allow a closed reserve declaration to commence on a day or at a time earlier than its notification day. This allows the closed reserve declaration to commence, if required, at the time it is made, with public notice to then take place in the form of notification on the Legislation Register, public notice on an ACT Government website and/or publication in a daily newspaper, and signs erected at the reserve. This amendment deals with the practical difficulty of needing to urgently close a nature reserve, but having to wait until the closed reserve declaration became effective on the day after notification. For example, a reserve may need to be closed urgently to prevent risk to public safety from a sudden bushfire, earthquake, snowfall or high winds.

The amendment also expands the defence available to the offence of entering a closed reserve under s 260, by adding an element to the defence of having no reasonable grounds for suspecting that a closed reserve declaration was in force. This defence will operate in circumstances where an urgent closed reserve declaration is made, and commences immediately, and a person is present in the reserve or becomes present in the reserve, without having any reasonable grounds for suspecting that a declaration is in operation.

Part 4.4 of the Nature Conservation Act sets out the process for including, transferring or omitting items from lists as set out in s 80 of the Act

(a) the threatened native species list; or
(b) the threatened ecological communities list; or
(c) the key threatening processes list.

The Act includes a number of transitional provisions to, among other things, permit the incorporation of existing declarations (lists) of threatened, endangered or vulnerable species under the former 1980 Act to be carried across to the 2014 Act. The relevant transitional provisions are ss 402-405 of the Act. In the case of key threatening processes, there is no existing list to be transitioned.

The bill includes a number of amendments that permit an initial key threatening processes list to be made. This has been done by amending the definition of a *key threatening processes list* in s 75 to include a list made under new s 79A. New section 79A permits the Minister to make a key threatening processes list in accordance with the part (Part 4.3). This allows the Minister to make an initial key threatening processes list, rather than being limited to including an item on an existing list, which does not in fact exist. New ss 72A and 79A to 79H essentially replicate the process for adding an item to an existing list found in ss 83-88, including public or scientific committee nomination, public consultation, listing assessment and listing advice, and a Ministerial decision. The result is that an initial list of key threatening processes can be made under the amended Part 4.3 (see s 72A and 79A-79H). Any additional items can be included, transferred, or omitted, from the initial list through the existing process set out in Part 4.4.

***Technical amendments to the Planning and Development Act***

Section 147A of the Planning and Development Act requires the planning and land authority to refer certain development applications to the Conservator for advice. The authority must refer applications if satisfied that the development application is likely to have a significant adverse environmental impact on a protected matter (as defined by s 111A). The advice of the Conservator must include an assessment of whether the proposed development is likely to have a significant adverse environmental impact on a protected matter and, if so, advice about suitable offsets for the proposed development (refer s 318 of the Nature Conservation Act). Development approval for such a matter must not be given unless the approval is consistent with the advice of the Conservator (refer s 128(1)(b)(vi)). The Minister is similarly bound by Conservator advice in this circumstance (s 128(2)) but has an ability to depart from the advice in the limited circumstances set out in s 128(2)(a) and (b).

In providing advice on a development application referred to the Conservator under section 147A, the Conservator may also provide advice in relation to the development application that is not related to the protected matter.

This amendment is to make it clear that the authority is bound to comply with the advice of the Conservator in relation to the protected matter only. Advice on the development application that is not related to the protected matter will continue to have the same status as advice from the Conservator or other referral agencies, that is, the advice must be considered and must be adhered to unless the authority is satisfied of the matters set out in s 128(3) that is the approval decision is consistent with the objects of the Territory Plan and that all relevant guidelines and realistic alternatives and options have been considered. The decision maker is still required to take account of the advice on the non-protected matter under s 129(e) but is not bound by it.

The bill also amends s 211C of the Planning and Development Act to clarify the period of public consultation on an application for exemption from the requirement to complete an environmental impact statement (EIS). Section 211C(2)(a)(ii) previously required the public consultation period on the EIS exemption application to commence when notified on the legislation register. The wording of this provision presented administrative and uncertainty difficulties as it can be hard to anticipate the notification date. The amendment addresses this administrative issue by allowing a consultation period to be stated in the consultation notice, which will still require a period of not less than 15 working days, rather than commencing after notification.

The bill also makes a technical amendment to s 131 of the Planning and Development Act to clarify that where a matter is referred to the Commonwealth Minister, the ten day period for comment by the Commonwealth Minister is added to the time for decision on a development application. This is necessary because the decision is not able to made until the comments from the Commonwealth Minister are received and the ten day period has expired.

***Editorial amendments to the Nature Conservation Act, Planning and Development Regulation and Environment Protection Act***

The bill makes an editorial amendment to the Nature Conservation Act section 6 (2) (h). The amendment removes a redundant reference to the definition of *ecologically sustainable development* in an amended version of the Environment Protection Act and inserts that definition into the Nature Conservation Act. The definition of ecologically sustainable development previously sat in s 2(2) of the Environment Protection Act. That Act has since been amended, and the definition of ecologically sustainable development no longer sits in this provision, although the content of the provision remains in the Act, albeit in different sections. This amendment reproduces the definition of ecologically sustainable development into the Nature Conservation Act to remove the need to link to the Environment Protection Act. The amendment does not change the definition of ecologically sustainable development.

A second editorial amendment is made to the Nature Conservation Act that removes Note 3 in section 159. This note became redundant with the commencement of the Nature Conservation Act  and refers to repealed processes.

An editorial amendment is also made to the Planning and Development Regulation to amend an incorrect section reference in a title. Section 25 of the regulation incorrectly referred to s 139(2)(i) and this has been replaced with the correct reference to s 139(2)(j).

The bill also makes an editorial amendment to s 25 of the Environment Protection Act. This section lists the organisations that must be sent copies of draft environmental protection policies in the consultation process. The two listed

organisations have recently undergone a name change and merger respectively. As a result, the names of the entities required updating. This has been achieved through substituting s 25 of the Environment Protection Act with a new section stating that entities are prescribed in regulation. A new regulation is then created that prescribes the two entities according to their new names.

**Human Rights**

Clause 4 of the Bill inserts new item 27 into Schedule 1, part 1.3 of the Building (General) Regulation. This amendment reinstates an exemption that had been removed by PABELAB 2015 No 1. The amendment is such that building approval will no longer be required for certain building works involving the handling of bonded asbestos or an equivalent sheet material not containing asbestos. The effect of this is to remove the requirement for decisions under the Building Act such as the approval of plans and granting building approval by the building certifier.

This measure might be considered to potentially impact on the right to a fair trial in s 21 of the *Human Rights Act 2004*. This could be on the basis that the exemption of specified building work from statutory approval processes reduces the scope for review of decisions leading up to the physical undertaking of the building work. The removal of the requirement for building approval will mean that the decision to grant or not grant approval will not be subject to review by the Supreme Court either under the *Administrative Decisions (Judicial Review) Act 1989* or the inherent jurisdiction of the Court.

To the extent that this exemption does impact on the right to a fair trial, it is considered that the impact is reasonable, proportional and justified and as such is permissible, consistent with s 28 of the Human Rights Act, taking into account the matters set out in s 28(2).

The amendment is justified consistent with s 28(2)(a) of the Human Rights Act because the limitation has little practical effect on the ability of the proponent of the building work to seek review. If the work in the removal of cement sheets is exempt from building approval under the proposed exemption then the work can proceed as sought by the proponent. If the work is considered to be not exempt then building approval is required and the decision processes and outcomes associated with this are then potentially subject to Supreme Court review. It should also be noted that the amendment works to benefit of the proponent by removing the need to get building approval in the first place. In exempting these matters from building approval, this would also remove any existing potential for third parties to seek Supreme Court review of a decision to grant building approval. However, the ability of third parties to seek judicial review of decisions associated with the removal of such sheets would appear limited, given in practical terms the limited potential for such decisions on cement sheets to have any effect on third parties.

The limitation is consistent with 28(2)(b) of the Human Rights Act because the measure is important to remove unnecessary approval processes and associated red tape that had no significant public benefit, as noted above.

In terms of section 28(2)(c) of the Human Rights Act it is noted that the limitation is itself circumscribed as the risk elements associated with these actions are appropriately regulated through other provisions of the Building Act that still apply, and through work safety laws. In particular, with respect to actions involving the removal of asbestos cement sheets, these actions will continue to be required to comply with asbestos handling requirements in the *Work Health and Safety Act 2011* and this continuing requirement is not affected in any way by the proposed amendment. Further, the exemption is also limited by requirements to comply with the Building Code of Australia and for work to be carried out in a proper and skilful way.

In terms of sections 28(2)(d) of the Human Rights Act, the proposed amendment achieves the outcomes sought in a direct manner (i.e. reinstates the exemption from building approval so removing unnecessary red tape).

In terms of section 28(2)(e) of the Human Rights Act there is no practical alternative to achieving this outcome other than by amending the provision to reinstate the relevant exemption from building approval.

Clause 15 amends section 259 of the Nature Conservation Act. This amendment will allow for a closed reserve declaration to commence on a day or a time a time earlier than its notification day. This amendment has the potential to impact on the human right of freedom of movement (see s13 of the Human Rights Act). It is arguable that this measure impacts on the right of freedom of movement in that it will permit the immediate closure of nature reserves to public access in contrast to the existing law which requires the closure instrument to be notified on the legislation register before taking effect.

To the extent that this exemption does impact on the right of freedom of movement, it is considered that the impact is reasonable, proportional and justified and as such is permissible consistent with section 28 of the Human Rights Act, taking into account the matters set out in section 28(2) of that Act.

The amendment is justified, taking into account s28(2)(a) and (c) of the Human Rights Act because in this case the existing right to freedom of movement in relation to nature reserves is already subject to restriction by decision of the Conservator under section 259 of the Nature Conservation Act. The amended provision does not make any substantive change to the power to close reserves. The amended

provision affects only the timing of when a declaration can commence. The proposed measure does have the potential to allow for a declaration to come into force when persons are already present in a reserve. There is also the potential for persons to enter the reserve soon after the declaration is made but before the closure is publicly notified. This urgent closure may be necessary from time to time to permit Conservation officers to immediately require persons on the reserve to leave without first having to wait for the decision to be publicly notified. To address this situation, the bill includes a defence provision (clause 14 substituting s 260(3)). This provision will serve to protect persons from having committed an offence where they could not reasonably have known that a declaration was in force, or where they have a reasonable excuse for being in the closed nature reserve. For this reason, the limitation on freedom of movement is mitigated by including a defence of reasonable excuse to the offence of being present in a nature reserve while a declaration is in force. Further, there is still a requirement for the declaration instrument to be notified on the Legislation Register as soon as practical after the instrument is made, for public notice to be given and for signage to be placed at the reserve.

In terms of section 28(2)(b) of the Human Rights Act, the measure is important to permit the closure of nature reserves in urgent circumstances such as when there is a bushfire, flood or other imminent threat to public safety.

In terms of section 28(2)(d) of the Human Rights Act, the proposed measure does permit the immediate closure of nature reserves as might be required in urgent circumstances and as such bears a direct relationship between the limitation and its purpose.

In terms of section 28(2)(e) of the Human Rights Act, there is no practical alternative measure to achieve this outcome other than by legislative amendment of the type sought.

## Outline of provisions

**Clause 1 — Name of Act**
This clause names the Act as the *Planning Building and Environment Legislation Amendment Act 2015 (No 2).*

**Clause 2 — Commencement**
This clause provides that the Act commences on the day after its notification day.

**Clause 3 — Legislation amended**
This clause states the Act amends the legislation mentioned in schedule 1, that is:

- *Building (General) Regulation 2008*
- *Environment Protection Act 1997*
- *Environment Protection Regulation 2005*
- *Nature Conservation Act 2014*
- *Planning and Development Act 2007*
- *Planning and Development Regulation 2008.*

**Part 2 Building (General) Regulation 2008**

**Clause 4 — Exempt buildings and building works Schedule 1, part 1.3, new item 27**
Clause 4 inserts new item 27 into Schedule 1, part 1.3 of the Building (General) Regulation.

New item 27 reinstates an exemption for handling asbestos cement sheets and equivalent sheet material not containing asbestos, which had unintended consequences when omitted during recent amendments.

The removal of this exemption brought minor non-structural maintenance works under the building approval regime. This imposed an unnecessary administrative burden on some building work, such as that done by school maintenance, and did not appreciably improve regulatory outcomes as the risk elements of this work, such as removing and handling bonded asbestos sheeting, continue to be regulated by work safety laws and other Building Act requirements, including compliance with the Building Code and for the work to be carried out in a proper and skilful way.

The amendment also removes references to asbestos licensing and to remove the restriction in size of $10m^2$ or less as these are no longer relevant, as all work involving asbestos is now regulated under the *Work Health and Safety Act 2011* and because of other restrictions to the exemption mentioned above.

## Part 3 Environment Protection Act 1997

### Clause 5 — Consultation on draft environment protection policy Section 25 (5)

This clause substitutes new s 25(5). This clause adopts a new approach by prescribing by regulation the entities to which the Environment Protection Authority must send a copy of a draft policy. The approach of prescribing the names of entities in regulation gives flexibility to easily amend the prescribed entities should their names change again in the future.

## Part 4 Environment Protection Regulation 2005

### Clause 6 — New Section 70

This clause inserts new section 70. This clause prescribes the entities referred to in clause 5.

The entities prescribed in new section 70 are the new names for the entities previously listed in s25 of the *Environment Protection Act 1997* prior to this amendment.

## Part 5 Nature Conservation Act 2014

### Clause 7 — Objects of Act Section 6 (2) (h)

This clause substitutes new s 6(2)(h) that maintains the object of promoting the principles of ecologically sustainable development, but removes the reference to the definition of the term in the repealed s 2(2) of the *Environment Protection Act 1997.*

The definition of ecologically sustainable development previously sat in s 2(2) of the Environment Protection Act. That Act has since been amended, and the definition of ecologically sustainable development no longer sits in this provision, although the content of the provision remains in the Act, albeit in different sections. This amendment reproduces the definition of ecologically sustainable development into the Nature Conservation Act to remove the need to link to the Environment Protection Act. The amendment does not change the definition of ecologically sustainable development.

### Clause 8 — New Section 6 (4)

Clause 8 inserts new s 6(4) which contains the definition of ecologically sustainable development referred to in clause 7 above, and that previously sat in repealed s 2(2) of the *Environment Protection Act 1997.*

New s 6(4) also includes definitions of new s 6(4)(a) the precautionary principle, and new s 6(4)(b) the inter-generational equity principle. The definitions of these terms are the same as those found in s 3D of the *Environment Protection Act 1997.* Clauses 7 and 8 have not altered the definition of ecologically sustainable development; they have merely replicated existing definitions from the *Environment Protection Act 1997* into the *Nature Conservation Act 2014*.

**Clause 9 — New section 72A**
Clause 9 inserts new s 72A which includes definitions for terms in Part 4.3. These definitions relate to elements of the process for making an initial key threatening processes list set out in clauses 10-12 below.

**Clause 10 — What is a *key threatening processes list?***
**Section 75, definition of *key threatening processes list***
Clause 9 substitutes s 75 of the *Nature Conservation Act 2014* to amend the definition of *key threatening processes list* to include a key threatening processes list made under s 79A.

This clause is part of a suite of amendments to the Nature Conservation Act (clauses 9 to 11 and 15) to clarify that an initial list of threatening processes can be made, as a previous list was not made under the repealed *Nature Conservation Act 1980* and could not be transitioned, as was the case with the threatened native species list and the threatened ecological communities list.

**Clause 11 — Key threatening processes list Section 76**
Clause 10 omits s 76.

Omitted s 76 is redundant given other amendments to the process for making a key threatening processes list (see clause 11 below).

**Clause 12 — New Sections 79A to 79H**
Clause 11 inserts new ss 79A to 79H into part 4.3 to clarify that an initial list of key threatening processes can be made.

New s 79A requires that the Minister make a key threatening processes list in accordance with this part (Part 4.3). This clarifies that the Minister may make an initial key threatening processes list, rather than being limited to including an item on an existing key threatening processes list, which does not exist. New ss 79A to 79H essentially replicate the process for adding an item to an existing list found in ss 81-88, including public or scientific committee nomination, public consultation, listing assessment and listing advice, and a Ministerial decision.

**Clause 13 — Definitions—pt 4.4 Section 80, new definitions**

Clause 13 inserts new definitions for items in Part 4.4 to distinguish these items from the new definitions inserted by clause 9 above.

New clause 13 definitions are included to distinguish the process for making an initial key threatening processes list, which is inserted by clauses 10-12, from the process for including, transferring or omitting an item from an existing list found in current Part 4.4 of the Nature Conservation Act.

**Clause 14 — What is a *draft controlled native species management plan*? – ch 7 Section 159(1) note 3**

Clause 11 omits s 159(1) note 3 as the note is redundant as a result of amendments contained in the *Nature Conservation Act 2014.*

**Clause 15 — Conservator may close reserve New Section 259 (5)**

Clause 12 inserts new s 259(5). This new section allows a closed reserve declaration to commence on a day or at a time earlier than its notification day.

This section allows for the urgent closure of nature reserves to protect public safety and means that a declaration can commence operation when it is made rather than having to wait until the day after the notification day as per s 73 of the *Legislation Act 2001.*

**Clause 16 — Offence—enter closed reserve Section 260 (3), except note**

Clause 14 substitutes a new s 260 (3) to include a new element to the defence against an offence under s 260.

Substituted clause 14 expands on the defence available to an offence under s 260 by adding an element to the defence of having no reasonable grounds for suspecting that a closed reserve declaration was in force. The circumstances where this element of the defence will operate include where an urgent closure declaration is made and a person is already present in the reserve, or where a person enters the reserve after a declaration is made but before officers are available to give public notice of the declaration and place signage at the reserve.

**Clause 17 — Threatening processes to be key threatening processes Section 405**

Clause 13 omits s 405 as it is a transitional provision for an existing list of threatening processes that was never made under the repealed *Nature Conservation Act 1980*.

**Clause 18 — Dictionary, definitions of *listing advice, listing assessment* and *public consultation notice***

Clause 18 substitutes new definitions for the terms *listing advice*, *listing assessment* and *public consultation notice* as part of the suite of amendments that will permit the Minister to make an initial key threatening processes list (see clauses 9-13 above), as opposed to including an item on an existing list (see existing Part 4.4 of the Nature Conservation Act).

## Part 6 Planning and Development Act 2007

### Clause 19 — Impact track—when development approval must not be given Section 128 (1) (b) (vi)

Clause 14 inserts the phrase 'that relates to the protected matter' after the word 'Conservator' in s 128 (1) (b) (vi).

This amendment clarifies that where a development application is referred to the Conservator for advice because it is likely to have a significant adverse environmental impact on a protected matter, the advice given by the Conservator in relation to a development application is only binding in relation to the protected matter. "Protected matter" is defined in s 111A of the Planning and Development Act. Development applications involving protected matters must be referred to the Conservator under s 147A of the Planning and Development Act. The Conservator must provide advice on the development application as a whole, consistent with s 149 of the Planning and Development Act. Under s 129 (e), the decision maker on the development application must take into account all of the advice received from the Conservator; however, this amendment clarifies that the decision maker is only bound by the advice that relates to the protected matter.

### Clause 20 — Section 128 (2A)

Clause 15 inserts new s 128 (2A) that states that s 128 (2) does not apply if a development approval is inconsistent with a part of the Conservator's advice that relates only to 'non-protected' matters.

This clause relates to clause 14 in clarifying that a decision maker on a development application is only bound by advice from the Conservator on protected matters.

### Clause 21 — Impact track – considerations when deciding development approval New Section 129 (k)

Clause 16 inserts new s 129 (k) which adds new considerations when deciding development approval.

New s 129 (k) operates where an Environmental Impact Statement (EIS) exemption has been granted under s 211H of the Planning and Development Act in relation to the proposed development. The new section states that the EIS exemption, the

recent study on which the exemption is based and the revised EIS exemption application under s 211G of the Planning and Development Act must all be considered. This ensures proper consideration of environmental impacts in the impact track development assessment process.

**Clause 22 — Impact track – time for decision on application**
**New Section 131 (2)**
Clause 17 inserts new s 131 (2) which clarifies the time for decision on a development application if the decision maker has referred the proposed decision to the Commonwealth Minister under s 127A (2) of the Planning and Development Act.

New s 131 (2) clarifies that the 10 day period in which the Commonwealth Minister can provide comment is added to the time period for making a decision, In effect, if the decision is referred to the Commonwealth Minister, the time period for decision will be extended by 10 days.

**Clause 23 — EIS exemption application – public consultation**
**Section 211C (2) (a) (ii)**
Clause 18 substitutes a new s 211C (2) (a) (ii) to clarify that a consultation period can be a period stated in a consultation notice.

Substituted s 211C (2) (a) (ii) allows a consultation period to be that which is stated in the consultation notice, which requires a minimum 15 day period, rather than commencing after notification. This addresses an administrative difficulty of having to anticipate the notification date when determining the consultation period.

**Part 7 Planning and Development Regulation 2008**

**Clause 24 — Section 25 heading**
Clause 20 substitutes the s 25 heading with a new heading to address an editorial error. This heading referred to the incorrect s 139 (2) (i) when it should refer to s 139 (2) (j).