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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PLANNING, BUILDING AND ENVIRONMENT LEGISLATION AMENDMENT BILL 2016

EXPLANATORY STATEMENT

Presented by
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EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning, Building and Environment Legislation Amendment Bill 2016* (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 and environment portfolios, 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 a 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, environment 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* (the **Legislation Act**), chapter 11 (which provides for the republication of Acts and statutory instruments).

This is the tenth 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 *Architects Act 2004* (the **Architects Act**), the *Building and Construction Industry (Security of Payments) Act 2009* (the **Building Security of Payments Act**), the *Electricity Safety Act 1971* (the **Electricity Safety Act**), the *Environment Protection Act 1997* (the **Environment Protection Act**), the *Environment Protection Regulation 2005* (the **Environment Protection Regulation**), the *Heritage Act 2004* (the **Heritage Act**), the *Nature Conservation Act 2014* (the **Nature Conservation Act**), the *Planning and Development Act 2007* (the **Planning and Development Act**), the *Planning and Development Regulation 2008* (the **Planning and Development Regulation**), the *Utilities Act 2000* (the **Utilities Act**), the *Utilities (Electricity Transmission) Regulation 2006* (the **Utilities (Electricity Transmission) Regulation**) (to be repealed), the *Utilities (Technical Regulation) Act 2014* (the **Utilities (Technical Regulation) Act**) and the *Work Health and Safety Regulation 2011* (the **Work Health and Safety Regulation**).

Minor policy amendments to the Architects Act

Section 9(1) of the Architects Act provides that the Architects Board must register, or refuse to register, an applicant for registration (either initial registration or renewal of registration). The Bill proposes to empower the Architects Board to delegate to the registrar of the Architects Board the power to renew or refuse to renew the registration of a person where the renewal is straightforward, for example, no complaints have been received against the person and no disciplinary action has been taken against the person.

Minor policy amendments to the Building and Construction Industry (Security of Payments) Act

Section 32 of the Building Security of Payments Act provides that the Minister in deciding whether an applicant is suitable to be authorised as a nominating authority must have regard to, amongst other things, whether the applicant in the preceding 12 months had an authorisation to be a nominating authority cancelled, suspended or withdrawn (see section 32(1)(d)(i)). The Building Security of Payments Act contains no provision for an authorisation to be a nominating authority to be cancelled, suspended or withdrawn. The Bill proposes to set out the grounds on which the Minister may cancel, suspend or withdraw an authorisation to be a nominating authority and the relevant matters to be considered.

Minor policy amendments to the Environment Protection Act and Environment Protection Regulation

Schedule 2, Part 2.3 of the Environment Protection Act contains provisions that regulate the sale of solid fuel-burning equipment, such as wood and coal heaters. In December 2015, new Australian standards relating to emissions and efficiency ratings for new wood heaters were endorsed by Commonwealth, State and Territory environment ministers. This endorsement, through the National Clean Air Agreement, paved the way for the national adoption of measures to reduce air pollution, including the adoption of new emissions and efficiency standards for new wood heaters.

The amendments to Part 2.3 now require compliance with AS/NZS4012 as well as the existing requirement to comply with AS/NZS4013, which set out maximum emissions and minimum efficiency limits, testing requirements and rules for marking of information on equipment. A number of consequential amendments are made to the following sections to support the requirement to comply with AS/NZS4012 as well as to strengthen compliance with both of the standards.

The updated energy efficiency and emissions limits contained in the standards are implemented in two stages, with new limits introduced upon notification of this Act. Further tightening of these limits will commence on 1 September 2019. A new section 2.4(3) is substituted into Schedule 2, to reflect the updated limits. Upon commencement of these amendments, the efficiency level of equipment required to comply with AS/NZS4012 is prescribed in the Environment Protection Regulation and is set at not less than 55%. The regulation will be amended on 1 September 2019 to increase to not less than 60%. For equipment required to comply with AS/NZS4013, the emission factor must not be more than the amount prescribed. The amounts are prescribed in the Environment Protection Regulation with new limits to operate from commencement of these amendments and more stringent emissions limits to commence on 1 September 2019.

A consequential amendment is made to Schedule 2, Part 2.3, section 2.5(1) to expand the offence to alter information or interfere with a plate attached to the equipment that contains information that is required to be marked on the plate in accordance with the relevant sections of the two standards. The current prohibition on altering information required to be marked on equipment in accordance with AS/NZS 4013, section 10, is extended to encompass the similar requirement contained in AS/NZS 4012, section 8.

Another consequential amendment is made to strengthen the regulatory compliance with the standards by inserting a new provision that prohibits a person from making a false statement by marking on the equipment that it complies with the standards if it does not in fact comply.

A final consequential amendment is made by inserting a provision that explicitly disapplies section 47(6) of the Legislation Act so that the standards are not treated as notifiable instruments, nor are any amendments to the standards. This means that AS/NZS4012 and AS/NZS4013 are adopted as they apply from time to time and they are not required to be notified on the legislation register.

Minor policy amendments to the Environment Protection Regulation related to Agvet chemical products

The dictionary to the Environment Protection Regulation defines "agvet chemical product" as either an agricultural or veterinary chemical product under the Agvet Code of the ACT (Agvet Code). Agvet Code is the Agvet Code of the ACT under the Agricultural and Veterinary Chemicals Code Act 1994 (Cwlth) as in force from time to time (Dictionary to the Environment Protection Regulation).

Existing section 55(2)(a) makes it an offence to store an agvet chemical product in a way that is not authorised by the Australian pesticides and veterinary medicines authority (APVMA). Existing section 55(2)(b) makes it an offence to use an agvet chemical in a way that is not authorised by the APVMA. This amendment makes no change to the section 55 (2)(a) offence but does amend the section 55(2)(b) offence on the use (as opposed to the storage) of agvet chemical products.

The amendment introduces an exception to the section 55(2)(b) offence to allow for the use of agvet chemicals in a responsible manner by a veterinary surgeon in a way that is not specifically authorised by the APVMA. This practice is sometimes referred to as "off label use". For example, chemical products designed to treat avian influenza in chickens are also routinely and safely used to treat pigeons, although this use is off-label. Off-label use of agvet chemical products is a common and widely accepted occurrence in the veterinary profession. As the provision was previously worded, vets who used an agvet chemical product in an off-label manner without the specific authorisation of the APVMA were inadvertently committing an offence.

This amendment establishes an exception to the offence provision under existing section 55(2)(b). No offence is committed if the person is a vet, or another person following instructions issued by a vet and uses the product in the course of treating an animal under the vet's care.

The practice of veterinary surgeons continues to be governed by the *Veterinary Surgeons Act 2015* and the *Veterinary Surgeons Regulation 2015* and other legislation. The Veterinary Surgeons Regulation establishes the required standard of practice for veterinary surgeons. This amendment has been developed in consultation with the Australian Pesticides and Veterinary Medicines Authority.

Minor policy amendments to the Heritage Act

Section 10 of the Heritage Act contains the heritage significance criteria. Specifically, section 10(c) relates to places or objects that have the potential to yield information that will contribute to an understanding of the ACT's cultural or natural history. In contrast to all of the other criteria, this criterion does not contain a threshold indicator, such as importance, strong or rare. This means that places or objects considered for registration under this criterion are assessed against a much lower threshold, as opposed to the other criteria.

This amendment inserts the word importance into criterion (c) to ensure that it has a threshold indicator so that only places or objects of Territory level significance or higher are registered on the ACT Heritage Register. This brings criterion 10(c) into line with the other criteria and ensures a consistent approach to the threshold for heritage significance in the ACT.

Minor policy amendments are also made to section 30 of the Heritage Act, which details the process for making an urgent provisional registration application. Section 30 enables an application to be made for an urgent decision on whether to provisionally register a place or object. The Heritage Act provides no substantive grounds on which the Council can assess whether the application must be accepted. These amendments require the applicant to explain the circumstances that require an urgent provisional registration decision to be made.

The amendments have the effect that the Council will not be required to accept an urgent application unless the Council is satisfied that first, an urgent provisional registration decision must be made because the place or object is likely to have heritage significance and either that significance will be diminished or damaged if a decision is not made or alternatively if a development application applies to the place or object, approval of the development proposal will authorise action that will diminish or damage the place or object. However, Council may accept an urgent application if the Council believes, on reasonable grounds, that the application is reasonable in circumstances.

If an urgent provisional registration application is not accepted by the Council, the nominated place or object will then be assessed in the normal course of the Council's assessment processes and priorities. Further, the decision not to accept an urgent provisional registration application will not be subject to ACT Civil and Administrative Tribunal merit review, consistent with the approach taken for a decision to provisionally register under section 32 of the Heritage Act, as this is a process decision. However, normal review rights for administrative decisions under the *Administrative Decisions (Judicial Review) Act 1989* will continue to apply.

A minor policy amendment is made to section 34 of the Heritage Act to address a gap in the Act by including a new provision that sets out information to be included in a notice of decision to not provisionally register a heritage place or object. Section 34(5) specifies the content of the notice where the decision is to provisionally register the place or object. However, section 34 is silent on the content of a notice where the decision is not to provisionally register the place or object. This amendment inserts a new provision that states the information to be included in a notice of a decision to not provisionally register, which largely replicates the information required to be provided in a decision to provisionally register. This includes the name and location of the place or object, a description of the place or object, the council's reasons for its decision including an assessment against the heritage significance criteria, and the date the decision takes effect.

A minor policy amendment is also made to section 57 of the Heritage Act, which details the process for obtaining access to restricted information. Part 9 of the Heritage Act allows the Council to declare particular information to be restricted information if satisfied that public disclosure would be likely to have substantial adverse impact on the heritage significance of the place or object, or the Aboriginal place or object. Section 57 allows for limited access to restricted information if land is offered for sale, and an interested person for the land, or someone considering buying an interest in the land, applies to the Council for access to restricted information relevant to the conservation and use of the land. In these circumstances, the Council must give the applicant the restricted information sought, together with a written explanation about the operation of the Part (e.g. restrictions on publishing restricted information).

The amendment to section 57 expands the circumstances in which the council can provide access to restricted information. It is necessary to expand the access to restricted information to support and inform other requirements of the Heritage Act, such as a conservation management plan and statement of heritage effect. The expanded circumstances where the Council may release restricted information are for academic research done in connection with a recognised tertiary institution; to a consultant or researcher engaged by an interested person for the purposes of planning, land management or a development proposal; to assess heritage significance or to assess whether proposed conduct will diminish the heritage significance of a place or object, or damage an Aboriginal place or object. Persons to whom restricted information is released will still be bound by the restrictions on publishing the information found elsewhere in Part 9 of the Heritage Act.

Minor policy amendments to the Nature Conservation Act

Section 157(2) of Nature Conservation Act allowed the Minister to declare a native species to be a controlled native species if satisfied that the species is having an unacceptable impact on an environmental, economic or social asset. There are two amendments to section 157(2). First, it is often difficult to define social or economic impacts in terms of *assets*. The amendment removes the word asset and instead requires consideration of environmental, economic or social *impacts*. This less restrictive terminology allows for a broader consideration of environmental, economic or social impacts and will not be unnecessarily limited to assessing impacts on assets.

The second amendment to section 157(2) is to allow for a declaration to be made where the species is *likely* to have an unacceptable impact. As the provision is currently drafted, a declaration can only be made once the unacceptable impact has occurred. This means that controlled native species management plans (see Chapter 7 of the Nature Conservation Act) can only be made in response to an unacceptable impact. Management measures under the plan are then inherently reacting to damage caused. This unduly restricts the ability to make a declaration in circumstances where a species is likely to have an impact and damage has not yet occurred, thus not allowing preventative management measures to be undertaken.

Related to the controlled native species processes above is a further minor policy amendment to section 161 of the Nature Conservation Act. Section 161 details the consultation requirements for draft controlled native species management plans. As section 161 was previously drafted, it required the Conservator of Flora and Fauna to directly consult the lessee of land to which the plan applied. In the example of a controlled native species plan that has territory-wide application, this drafting had the unintended consequence of requiring direct consultation with every residential lessee in the territory. This process is impractical to run such a consultation process, with little or no management action required by residential lessees. This provision was intended to only require consultation with rural or other lessees who may be required to undertake management actions under a controlled native species plan.

As a result, the amendment modifies the consultation requirements to only require direct consultation with a lessee of stated land to which the plan applies, where the plan places a direct obligation on the lessee. This obligation could be to do, or not do, something under the plan. For example, consultation would be required with a lessee where a flying fox controlled native species plan required lessees to install deterrence devices on their properties. Where direct consultation is not required with an individual, they can still participate in the additional public consultation process required under section 162 of the Nature Conservation Act.

Minor policy amendments to the Utilities (Technical Regulation) Act

Section 46 of the Utilities (Technical Regulation) Act provides that an operating certificate must not be granted unless the utility service is, or for a proposed service, will be provided in accordance with the Act. The Bill proposes to amend section 46 so that an operating certificate must not be granted, unless the technical regulator is also satisfied that the unlicensed regulated utility (the **URU Applicant**) is currently providing, or for a proposed service will provide, a service consistent with the requirements reflected in the objects to the Utilities (Technical Regulation) Act.

Consequential upon the proposed amendment to section 46 of the Utilities (Technical Regulation) Act the Bill proposes that section 43 of this Act be amended so that an application for an operating certificate provides sufficient information for the technical regulator to assess the capacity of the URU Applicant to meet the additional requirements for the grant of an operating certificate.

Technical amendment to the Electricity Safety Act

Section 6(1) of the Electricity Safety Act provides that a person who has carried out electrical wiring work must ensure the work is tested and that it is an offence not to give the construction occupations registrar or the owner of the installation for which the work was done a report of the test. The Bill proposes to make it an offence if a report of the test is not provided to both the construction occupations registrar and the owner of the installation.

Technical amendments to the Heritage Act

Various sections of the Heritage Act make reference to members of the public making comments to the Council during public consultation periods and the Council considering those comments. Potentially this allows for comments from the public to be in both written and oral form. Receiving oral comments presents issues in terms of having an accurate record of the content of the comments and proof of them being having been made. Further, a person who has made comments may become an *interested person* under the Heritage Act. Interested persons may be required to be notified of decisions and may have certain review rights under the Act.

To clarify any ambiguity and for consistency with Planning and Development Act (see section 63(1)(b)), the amendment requires all comments made to the Council to be written comments. It is not anticipated that these changes will disadvantage any person in making comments. The Heritage Council will assist those who wish to comment on a proposal by, for example, taking a statement from the person, where the person is unable to write.

Sections 26, 37 and 46 of the Heritage Act provide for a four week period of public consultation on certain heritage registration decisions and the making of heritage guidelines. There has previously been no power in the Act to extend the public consultation period for these processes. This is an inflexible approach and there are circumstances in which an extension of a consultation period is warranted, such as major public consultations and where interested persons have been identified late in the consultation period. The amendments to sections 26, 37 and 46 allow the Council to extend a public consultation period by giving public notice (called an extension notice). Public notice means notice on an ACT Government website or in a daily newspaper circulating in the ACT (see Legislation Act, Dictionary, Part 1). The extension notice is also a notifiable instrument and must be notified on the Legislation Register. These amendments to allow an extension of public consultation periods under the Heritage Act are consistent with a similar provision in the Planning and Development Act (see section 156(3)).

Sections 61E and 61F of the Heritage Act establish the process for a person to apply for permission to carry out excavation work and for the Council to issue a permit to excavate. These provisions are intended to be used for the regulation of heritage investigations that require archaeological excavation. As currently drafted, the reference to excavation is not limited and can include all excavation work carried out at or near a heritage site. This includes construction work that may be carried out at or near a heritage site. Construction excavation work, and its potential impacts on heritage sites, is better managed through the processes for application and approval of a *statement of heritage effect* in sections 61G and section 61H of the Heritage Act.

The amendment to section 61E limits applications to excavate to archaeological excavation work. Excavation permits under section 61F will be limited to archaeological excavation work. *Archaeological excavation work* is excavation undertaken in a systematic way using archaeological methods, to investigate the heritage significance of a place or object. This definition is consistent with accepted heritage industry terminology.

Section 61J of the Heritage Act outlines the process for a person or entity with responsibility for a place or object to make an application to the Heritage Council for approval of a conservation management plan (**CMP**). Sections 61J(1) and (2)(d) set out the content requirements for a CMP. Section 61K allows the Council to approve a CMP with conditions. Section 110 of the Heritage Act outlines the process for the Heritage Council to direct a public authority to prepare a CMP and the subsequent approval process. While both sections 61J and 110 refer to CMPs, these sections appear to operate in isolation and section 110 does not set out the requirements for a CMP.

The amendment relocates the content requirements for a CMP from sections 61J(1) and (2)(d) and inserts them into the Dictionary definition for a CMP which will apply to both sections 61J and 110. Therefore, all CMPs made under the Heritage Act will have the same content requirements.

A further technical amendment is made to the proposed definition of a CMP which differs from the current provision in section 61J(1). In the proposed definition the word *preserve* has been replaced by the word *conserve* to reflect common industry terminology and the objective of a CMP. The objective of a CMP is conservation, not preservation under industry definitions. The Australia ICOMOS Burra Charter (the best practice guide for heritage conservation) defines conservation as meaning all of the processes of looking after a place so as to retain its cultural significance. Preservation is defined as maintaining a place in its existing state and retarding deterioration.

Section 62 of the Heritage Act relates to heritage directions given by Council. Specifically, in section 62(2) the Council can give a heritage direction (a written direction to do or not do something to conserve a place or object) to the owner of an object. Often the owner of an object is not the person who has possession or custody of the object, or is responsible for its care and conservation. For example, items of heritage significance are often loaned to museums. Under the Heritage Act, there is no ability to issue a heritage direction to the *custodian* of an object; a direction can only be issued to the owner. This amendment allows for a heritage direction to be given to the custodian of an object and/or its owner. This is consistent with heritage directions for places, where a direction can be given to the owner or the occupier of the place. This amendment will ensure that a heritage direction is issued to the person responsible for the care and conservation of the object.

A final technical amendment to the Heritage Act relates to the power of the Heritage Council to request contact information for lessees from the Commissioner for Revenue. Section 118A allows the Council to write to the Commissioner for Revenue to obtain contact information where the Council has to give notice to a person or intends taking other action that affects a person and the person is uncontactable (as defined in section 118A(4)). The Commissioner for Revenue must give the information requested to the Council. This provision is used to request contact information from the Commissioner on a case by case basis where the person is uncontactable.

Under various provisions of the Heritage Act, the Council is required to notify particular persons, for example, in respect of decisions made by the Council. This can often involve a large number of people, especially in the case of a heritage precinct. The Council is subject to strict statutory timeframes in which to notify relevant persons.

The amendment inserts a new section 118B into the Heritage Act, which is an equivalent provision to section 395B of the Planning and Development Act. This allows the Council to request and obtain contact information from the Commissioner for Revenue relating to all leases in the ACT once every three months. The Council must not use any information provided by the Commissioner for Revenue about a lessee other than for giving notice to the lessee or taking action which affects the lessee. Further, as a public sector agency, the Heritage Council is bound by *the Information Privacy Act 2014* in relation to the use and disclosure of any personal information that the Council receives from the Commissioner for Revenue.

The Council can also use section 118A to request information from the Commissioner on a case by case basis in the intervening periods. This amendment will assist the Heritage Council to meet its statutory notification timeframes.

Technical amendment to the Planning and Development Act

The Bill proposes to correct a gap in item 7 of Schedule 2 of the Planning and Development Act by inserting a maximum penalty of 60 penalty units for contravening a controlled activity order in relation to managing land under a rural lease contrary to an offset management plan and/or a land management agreement. No penalty is currently provided for this offence in the Act. A contravention of any other controlled activity order has the same maximum penalty of 60 penalty units.

Technical amendments to the Utilities Act and Utilities (Technical Regulation) Act and the Utilities (Electricity Transmission) Regulation

Sections 6(a) and (d) of the Utilities Act in effect refer to an electricity transmission network and an electricity distribution network. The Bill proposes to amend section 7 of the Utilities Act to reflect these 2 electricity networks. Currently, section 7 limits an electricity network to the distribution of electricity. Sections 95(a) and (b) of the Utilities (Technical Regulation) Act currently refer respectively to an electricity network and electricity transmission network. The Bill proposes to amend section 95(a) of the Utilities (Technical Regulation) Act so that it refers to an electricity distribution network. The Bill proposes consequential amendments to the Dictionary to both the Utilities Act and the Utilities (Technical Regulation) Act. The Bill proposes to repeal the Utilities (Electricity Transmission) Regulation because it in effect duplicates section 6(d) of the Utilities Act.

Editorial amendments to the Heritage Act, the Nature Conservation Act, the Planning and Development Regulation and the Work Health and Safety Regulation

The Bill makes editorial amendments to sections 13(1)(h), 13(2)(b), 43(3)(b), 114A(1)(a), 202(c), Schedule 1, item 2, and the Dictionary definition of *heritage decision* to replace the incorrect references to section 47 with the correct reference to section 49 (decision about cancellation proposal).

An editorial amendment is made to s 21 of the Nature Conservation Act. Section 21 details the Conservator of Flora and Fauna's (the Conservator) main functions and provides guidance on how those functions must or may be exercised. Section 21(4) details the matters that the Conservator may have regard to in exercising a function. Section 21(4)(d) (d) contains an example of a relevant matter, being a kangaroo management plan. This example is incorrectly located under s 21(4)(d) and should be located under s 21(4)(e) as a kangaroo management plan is an example of (e) any other government policy or plan relating to nature conservation.

Sections 400(2)(e) and (f) of the Planning and Development Regulation provide respectively that section 47(6) of the Legislation Act does not apply to a technical code or a utility rule (which is made under a technical code). The Bill proposes to delete these sections because they do not serve any useful purpose.

Section 1.11(4) in schedule 1 of the Planning and Development Regulation provides 2 examples which respectively refer to the electricity service and installation rules made under the Utilities Act and the water and sewerage service and installation rules made under the Utilities Act. The Bill proposes to amend these examples to reflect that both these rules are now made under the Utilities (Technical Regulation) Act.

Utility rule is defined in section 1.11(4) of the Planning and Development Regulation to mean a rule made under a technical code made under the Utilities Act. The Bill proposes to amend this definition to reflect that technical codes are now made under the Utilities (Technical Regulation) Act. In addition, the proposed amendment will correctly identify the web address at which technical codes and the service and installation of water and sewerage rules can be accessed.

Section 166(2)(b)(ii) and section 166(3) of the Work Health and Safety Regulation refer to requirements placed on an electricity supply authority under the Electricity Safety Act and the Utilities Act. Note 2 to section 166(2) of the Work Health and Safety Regulation provides that the Electricity Safety Act and the Utilities Act will also apply to a person conducting the relevant business or undertaking. The electricity supply authority and a person conducting the business or undertaking must also meet requirements under the Utilities (Technical Regulation) Act.

The Bill proposes to amend sections 166(2)(b)(ii) and166(3) and note 2 to section 166(2) to include a reference to the Utilities (Technical Regulation) Act.

Human Rights

Environment Protection Regulation Agvet chemicals

An amendment to the Environment Protection Regulation relates to the use of agvet chemical products. Section 55(2)(b) of the Environment Protection Regulation states that a person commits an offence if they use an agvet chemical product other than in a way authorised by the Australian Pesticides and Veterinary Medicines Authority (APVMA). New section 55 (2A) inserted by clause 22 introduces an exception to the s 55(2)(b) offence to allow for the use of Agvet chemicals by veterinary surgeons or persons acting under instructions from a vet in the course of treating animals notwithstanding that the use is not specifically authorised by the APVMA. This practice is sometimes referred to “off label” use of agvet chemicals. For example, chemical products designed to treat avian influenza in chickens are from time to time used to treat pigeons, although this use is off-label. As the provision was previously worded, veterinary surgeons who used an agvet chemical product in an off-label manner were inadvertently committing an offence. This new exception to this existing offence is a limitation of an offence provision. The provision is relevant to the human right of a fair trial. The provision does not limit this human right as it creates an exception to an existing offence.

The practice of veterinary surgeons continues to be governed by the *Veterinary Surgeons Act 2015* and the *Veterinary Surgeons Regulation 2015* and other legislation. The Veterinary Surgeons Regulation establishes the required standard of practice for veterinary surgeons. This amendment has been developed in consultation with the Australian Pesticides and Veterinary Medicines Authority.

Applications for urgent consideration of application for provisional registration under section 30 of the Heritage Act

Existing section 30 of the Heritage Act permits applications to the Heritage Council for urgent consideration of a proposed provisional registration. The Heritage Council must undertake urgent consideration of the potential provisional registration if the application is properly made, that is, it is in writing to the Council and uses the correct form if prescribed (section 30(2)) of the Heritage Act.

Under existing section 30 of the Heritage Act there is no requirement for the applicant to indicate reasons for requesting urgent consideration and there are no grounds specified to permit the Heritage Council to assess whether the matter does in fact require urgent consideration. Further there is no, or only limited ability, for the Heritage Council to decline to give the matter urgent attention if the Council considers there is no conceivable basis for urgency.

This presents practical difficulties. Firstly, the legislation as it stands provides no guidance to applicants or the Heritage Council as to what circumstances might warrant urgent consideration. Further, the near automatic requirement on the Heritage Council to comply with any and all requests for urgent consideration irrespective of the actual need for urgency makes it difficult to implement any real distinction between urgent and non urgent applications and therefore difficult to implement the distinction in the Act between urgent and non-urgent applications. In addition, this situation also makes it difficult for the Heritage Council to effectively prioritise tasks and allocate limited resources. This has implications for the efficient and effective operation of the Heritage Council.

The bill addresses these difficulties by requiring applications for urgent consideration to include reasons why urgent consideration is warranted (new s30(2)(d) inserted by clause 28). Further, the bill makes it clear that the Heritage Council has a discretion to refuse or grant an application for urgent consideration based on the merits of the application and to this end specifies the factors that the Council must consider in exercising this discretion (new section 30(3)(c) inserted by clause 29). The grounds for seeking urgent consideration are:

- the prospect that likely heritage significance will be diminished or damaged if a decision is not made urgently;
- a lodged development application could if granted result in development that will diminish or damage the place or object; and
- other circumstances exist that the Heritage Council believes warrants urgent consideration.

The decision on urgency by the Heritage Council is not subject to ACAT merit review consistent with the fact that under the existing legislation the substantive decision on the actual provisional registration is not itself subject to ACAT merit review.

This measure might be considered to be one which engages section 17 of the Human Rights Act, that is the right oftaking part in public life. This is because consideration of provisional registration amounts to consideration of whether a

heritage registration proposal is to be progressed further through public consultation, Heritage Council assessment of final registration and potentially ACAT merit review. Further, this measure might be considered to engage section 21 of the Human Rights Act (Fair trial) on the basis that it gives the Heritage Council a discretion to refuse applications for urgent consideration based on specified criteria and the exercise of this discretion is not subject to ACAT merit review.

To the extent that this new process does impact on the human right to take part in public life and the human right to fair trial, 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). The following matters are relevant.

In connection with section 28(2)(b) of the Human Rights Act, the amendments are important to resolve the difficulties identified above. In relation to section 28(2)(c), the nature and extent of any limitation is limited because:

- the Heritage Council has already an ability to refuse applications for urgent consideration albeit a limited one;
- a refusal of a request for urgent consideration based on the new criteria inserted by the bill does not mean that the matter cannot be assessed for provisional registration at all. The applicant will still have their nominated place or object assessed for provisional registration in the usual manner if their application for an urgent decision is rejected;
- the absence of a right of ACAT merit review of a decision to refuse to consider an application as a matter of urgency is consistent with the existing framework in the Heritage Act which provides for merit review of decisions on final registration but not on provisional registration;
- the amendments in the Bill to existing section 30 of the Heritage Act set out wide grounds for seeking urgent consideration (refer above) and also enables an application to be granted on additional grounds that the Heritage Council considers are reasonable.

In relation to section 28(2)(d) of the Human Rights Act, the amendments in the bill directly address the issues around the existing wording by filling a gap in the existing provisions through establishing clear criteria around which an assessment of urgency can be made. Regarding section 28(2)(e), there is no practical alternative to addressing this issue other than by legislative amendment of the type proposed. Conceivably an attempt to address this issue could be made through development of an application form for requests for urgent consideration using the power of the Minister to approve forms for the purposes of the Heritage Act under existing section 119. However there is some doubt as to whether an approved form could operate to restrict the grounds for application for urgency without contravening the open-ended nature of the existing application provision in section 30 of the Heritage Act.

In light of the above, the proposed amendments to section 30 of the Heritage Act, to the extent that they are a limitation on human rights, amount to a measure which is in terms of section 28(1) of the Human Rights Act, a reasonable and justified limit in a free and democratic society.

Release of restricted information under section 57 of the Heritage Act

Section 54 of the Heritage Act permits the Heritage Council to declare particular information about the location or nature of certain places or objects to be restricted information. This declaration process applies to places or objects that have heritage significance and to Aboriginal places or Aboriginal objects. The Council may make this declaration if it is satisfied that public disclosure of the information would be likely to have an adverse affect on the relevant place or object (section 54(2) of the Heritage Act), for example by leading to vandalism. Before making a declaration in relation to an Aboriginal place or object the Council must consider the views of, each representative Aboriginal organisation about the proposed declaration (section 54(3) of the Heritage Act).

Subject to certain exceptions, it is an offence to publish restricted information without the approval of the Heritage Council (section 55). The Council may approve publication only if satisfied on reasonable grounds that the publication will not have a substantial adverse effect on the heritage significance of the relevant place or object.

There are exceptions to the prohibition on release of restricted information. Publication of information about an Aboriginal place or object can be made by a person with a traditional affiliation with the place or object in certain circumstances (section 55(3)).

A person who is interested in purchasing land may apply to the Heritage Council for restricted information relevant to the conservation and use of the land (section 57). Clause 34 of the Bill amends section 57 of the Heritage Act to expand the potential access to restricted information. Clause 34 makes certain non-substantive editorial clarifications to existing section 57 (refer to new section 57(2)) and also inserts entirely new section 57(3).

New section 57(3) permits the Heritage Council to give an applicant restricted information in certain circumstances. The Council may provide the restricted information if satisfied (a) the release will not diminish the heritage significance of a place or object or damage an Aboriginal place or object and (b) the applicant will use the information for one of the following purposes:

- academic research in connection with a recognised tertiary institution;
- as a consultant or researcher engaged in planning, land management or a development proposal; and
- to assess heritage significance or determine whether a proposed action might affect a place with heritage significance).

The recipient of restricted information under new section 57(3) will, like others, be bound by the prohibition on general publication. In other words the recipient will not be able to publish the received information without first obtaining approval to do so from the Heritage Council under section 56. It will be possible for an applicant such as an academic researcher to apply for both the information and approval to publish the information in an academic journal for example.

The expansion of access to restricted information could be considered to engage section 27 of the Human Rights Act (Cultural and other rights) of Aboriginal and Torres Strait Islander peoples and other minorities. This is because the release of restricted information could be considered as an action which could conceivably result in damage to sensitive sites and therefore impact on abilities recognised under section 27 of the Human Rights Act including the ability to enjoy or practice own culture and related matters. Further, it could be considered to be an action that could for similar reasons potentially impact on right of Aboriginal and Torres Strait Islander peoples under section 27 including the right to maintain, control, protect and develop cultural heritage and distinctive spiritual practices, observances, beliefs and teachings.

To the extent that new section 57(3) does impact on the abovementioned human rights the following considerations are relevant. In terms of section 28(2)(a) of the Human Rights Act, the nature of the rights potentially affected are as noted above. In terms of section 28 (2) (b) of the Human Rights Act, the purpose of the proposed measures is to permit access to restricted information in the circumstances noted above. The ability to release information for the purpose of recognised academic research is important to the facilitation of academic research with benefits to all society. The ability to release of information to a consultant or other entity in order to permit the assessment of the heritage significance of a site is important to permit persons to assess the implications of a proposed development or other action and to assess their obligations under the Heritage Act and other legislation. In summary, this expanded access is important to allow for a proper examination of the heritage significance of sites, and also for the proper assessment of the potential affect of proposed development on a site. In terms of section 28(2)(d) of the Human Rights Act, the new section 57(3) achieves this purpose by expressly permitting the Heritage Council to release restricted information if satisfied that the release is for a recognised purpose.

In terms of section 28(2)(b) of the Human Rights Act it is also relevant that the new section 57(3) supports the operation of the existing mechanism for approval of the publication of restricted information. The new provision will enable a person conducting academic research for example to seek restricted information and then assess whether they wish to take a next step of publication. If publication is sought then the person will be able to apply for approval of publication.

In terms of section 28(2)(c) of the Human Rights Act, to the extent that new section 57(3) does impact on section 27 Human Rights, the impact is limited for the following reasons:

- the additional ability to release restricted information is limited to the purposes specified in section 57(3);
- prior to release of information to the applicant, the Heritage Council must be satisfied that the release will not diminish the heritage significance of a place or object or damage an Aboriginal place or object;
- if the applicant is successful, the recipient of the restricted information will be the only person who can access the information and will be subject to the general prohibition on publication under section 55 of the Heritage Act; and
- the measure is consistent with existing precedents in the Heritage Act which already permits the release and publication of restricted information in specified circumstances.

The following is relevant to section 28(2)(e) of the Human Rights Act. Given the existing Heritage Act prohibits the publication of restricted information and provides only very limited access to restricted information currently, there is no option but to amend the Act to permit the release of information in the circumstances proposed. An alternative would have been to make no amendment but this would not have permitted what is considered to be a reasonable level of access.

In considering whether the measures are reasonable in terms of section 28 (1) of the Human Rights Act it is also relevant to note that the proposed additional access to restricted information could also be said to engage the right to take part in public life recognised in section 17 of the Human Rights Act. The measure arguably does this by permitting access to information which could assist with participation in public life, including, for example, assisting persons to decide whether to pursue or oppose a proposed development in a certain area.

In light of the above, the proposed new section 57(3) of the Heritage Act, to the extent that it is a limitation on human rights, is a measure which is in terms of section 28 (1) of the Human Rights Act, a reasonable and justified limit in a free and democratic society.

Access to names and addresses of lessees under new section 118B of the Heritage Act

The Heritage Council has various functions under the Heritage Act. These functions include providing notice to lessees (and other persons) of decisions on provisional and final registration of the leased land and other matters. For example, section 40 (5) of the Heritage Act requires the Council to give notice to the lessee of land (and other interested persons) of a Council decision to register a place on the relevant land. The contact details of the lessee of the relevant land may not be readily ascertainable. Existing section 118A of the Heritage Act permits the Heritage Council to request the Commissioner for revenue to provide information relevant to a particular notice requirement. Under the terms of section 118A this request must be made on a case by case or as needs basis. This requires the Heritage Council to write a new letter and for the Commissioner to respond each time such a requirement arises. This case by case approach differs from measures in section 395B of the *Planning and Development Act 2007* which permits the planning and land authority to obtain from the Commissioner for Revenue a full data set of the contact details of all lessees in the ACT and to obtain periodic updates of this data set.

The problem with existing section 118A is that while it permits the Council to obtain updated contact details for lessees from the Commissioner for Revenue it only permits this information to be obtained on a case by case basis. This is an inefficient process which takes up more time and resources compared to a more systematic process.

Clause 41 of the Bill inserts new section 118B into the Heritage Act which is intended to address this matter. New section 118B is written in the same terms as existing section 395B of the Planning and Development Act. New section 118B allows the Heritage Council to ask the Commissioner for Revenue for contact information relating to all leases in the ACT and to request this information (updates) on a regular basis but no more frequently than every three months or such longer period as might be prescribed. Access to this full data set and to periodic updates will greatly assist the Heritage Council to quickly notify interested persons of key processes under the Act and to contact persons they intend taking action against under the Act. As this provision relates to the release of personal information in the form of names and contact details of lessees, it has the potential to impact on the right to privacy in section 12 of the Human Rights Act (see s 28(2)(a) of the Human Rights Act).

In considering section 28(2)(b) of the Human Rights Act, it is important for the council to be able to receive this information from the Commissioner for Revenue to assist with contacting people for the purposes of the Heritage Act in as efficient and effective a manner as possible. The existing requirement to obtain this information on a case by case basis under existing section 118A of the Heritage Act, risks unnecessary resource cost and delay in some cases, for example, when the Council is required to notify all lease holders of a precinct. The process also requires the Commissioner for Revenue to respond to requests on a case by case basis. The purpose of the amendment is to enable the efficient and effective obtaining of information by permitting the Council access to a full data set of contact details.

In terms of section 28(2)(c) of the Human Rights Act, the following is relevant. New section 118B does not expand the type of information that the Heritage Council can obtain. The Heritage Council can still only obtain the names and addresses of lessees. The Council will not be able to obtain any other information about the lessee. In this sense there is no change from the existing Act. The new element is that new section 118B will permit the Council to obtain this information in a more systematic manner. It is also relevant to note that information once obtained will be able to be used by the Heritage Council for an express specified purpose only. The Council will only be able to use the information for giving notice to a lessee under the Heritage Act or for taking action under the Heritage Act which affects the lessee (refer to new section 118B(3)(b) inserted by clause 41). The information will not be able to be used for any other purpose.

Further, it is relevant that the Heritage Council will continue to be bound by the requirements of the *Information Privacy Act 2014* and the Territory privacy principles. Further, the Council will be able to make a request for information on the full data set of all lessees not more frequently than once every three months or such other period as might be prescribed. The extent of any limitation is also reasonable in this sense. As noted above, the Planning and Development Act already permits a similar method for releasing a full data set of lessee names and contact details in connection with the actions under that Act. The need for this information process and the statutory framework of the Heritage Act is similar to requirements in the Planning and Development Act where this more systematic approach to releasing information has operated successfully since February 2010 when section 395B of the Planning and Development Act came into effect.

In relation to section 28(2)(d) of the Human Rights Act, the proposed amendment achieves the purpose of obtaining lessee contact information through enabling information to be provided on a more holistic and therefore more efficient and effective process.

In connection with section 28(2)(e) of the Human Rights Act, an amendment to the Heritage Act was considered the most effective, accountable and transparent mechanism for achieving this purpose. Given the terms of the current Act it was not possible to achieve this outcome by administrative practice alone.

In light of the above, the proposed new section 118B of the Heritage Act, to the extent that it is a limitation on human rights, is a measure which is in terms of section 28(1) of the Human Rights Act, a reasonable and justified limit in a free and democratic society.

Community consultation on draft controlled native species management plans under section 161 of the Nature Conservation Act

Under section 157 of the Nature Conservation Act the Minister can declare a native species to be a controlled native species if satisfied the species is having an unacceptable environmental, social or economic impact. Clause 49 amends this section to permit a declaration to be made on the basis that a native species is likely to have an impact so that a preventative declaration can be made.

Sections 158-165 of the Nature Conservation Act establish a process for the development, finalisation and amendment of controlled native species management plans. This procedure includes public consultation on draft management plans.

Existing section 161 requires the Conservator of Flora and Fauna to directly consult the lessee of land to which the draft plan applies. In the example of a controlled native species plan that has territory-wide application, this drafting had the unintended consequence of requiring direct consultation with every residential lessee in the territory. This process is impractical and unnecessary in circumstances where the draft plan does not impose any direct requirements on lessees. This provision was intended to only require consultation with rural or other lessees who may be required to undertake management actions under a controlled native species plan.

As a result, clause 50 of the bill modifies the consultation requirements in section 161 of the Nature Conservation Act to only require direct consultation with a lessee of stated land to which the plan applies, where the plan places a direct obligation on the lessee. This obligation could be to do, or not do, something under the plan. For example, consultation would be required with a lessee where a flying fox controlled native species plan required lessees to install deterrence devices on their properties. Where direct consultation is not required with an individual, they can still participate in the additional public consultation process required under section 162 of the Nature Conservation Act.

In redefining who must be consulted directly on a draft plan, the amendment engages with the right to take part in public life in section 17 of the Human Rights Act. This is because existing section 161(1) required direct consultation with all lessees of all lands to which the draft plan applied. With reference to section 28(2)(a) of the Human Rights Act, the amendment has altered this requirement to only require consultation with a person where the draft plan requires a person to do or not something (i.e. imposes a direct obligation on the person).

With reference to section 28(2)(b) of the Human Rights Act, this change is necessary to ensure that consultation under section 161(1) of the Nature Conservation Act is targeted to those who have obligations placed on them, while the general public can provide comment through the general public consultation process in existing section 162. This is a more efficient and better targeted process.

With reference to section 28(2)(c) of the Human Rights Act, the measures have limited potential impact because the amendments retain the requirement for there to be general community consultation on draft plans before they are finalised. Anyone who is no longer required to be consulted with under section 161(1) will still be able to provide comment on a draft plan through this process in section 162. Therefore, no one is disadvantaged or shut out of the consultation process by this amendment.

In response to section 28(2)(d) of the Human Rights Act, the change in consultation requirements achieves the purpose of better targeting consultation processes to those who are directly affected by a draft plan, whilst maintaining the ability for the general community to have their say on a draft plan through the public consultation process in section 162.

With reference to section 28(2)(e) of the Human Rights Act, there is no alternative to achieving the sought outcome other than through legislative amendment of the type proposed.

In light of the above, the proposed amendment to section 161 of the Nature Conservation Act, to the extent that it is a limitation on human rights, is a measure which is in terms of section 28(1) of the Human Rights Act, a reasonable and justified limit in a free and democratic society.

Provisions in detail

Part 1 Preliminary

Clause 1 Name of Act

This clause names the Act as the *Planning Building and Environment Legislation Amendment Act 2016.*

Clause 2 Commencement

This clause provides that the Act, other than section 13 and 19, commences on the day after its notification day.

This clause provides that sections 20 and 21 commence on 1 September 2019. These clauses have a delayed introduction as they will be amending other provisions in the Bill. On 1 September 2019, clause 20 will amend new section 14B inserted by clause 19, and clause 21 will amend new section 14C inserted by clause 19.

This is done to achieve a two-stage introduction of new efficiency requirements and emissions limits. The first level of new efficiency requirements and emissions limits will be introduced upon commencement. These will be amended in 2019 to require wood heaters to become more efficient and produce fewer emissions.

This staged introduction is required by the relevant national standards from which these efficiency and emissions limits are drawn, namely AS/NZS4012 and AS/NZS4013.

Clause 3 Legislation amended

This clause identifies the Acts and regulations that are amended by the Bill.

Clause 4 Legislation repealed

This clause repeals the Utilities (Electricity Transmission) Regulation because it in effect duplicates section 6(d) of the *Utilities Act 2000*.

Part 2 Architects Act 2004

Clause 5 New section 69A

This clause inserts new s 69A to empower the Architects Board to delegate to the registrar the function of renewing the registration of an architect where a number of preconditions are met. These preconditions are that, in the preceding 12 months before the architect applied for renewal, there are first, no relevant circumstances (as set out in section 9(4)) applying to the architect secondly, the Architects Board has not received a complaint against the architect and thirdly no disciplinary action has been taken or is pending against the architect. In addition, the architect's registration must not already be subject to a condition.

Part 3 Building and Construction Industry (Security of Payments) Act 2009

Clause 6 New section 33A

The purpose of this clause is to remedy a gap in the Act. Currently section 32(1)(d) of the Act enables the Minister in deciding whether an applicant is suitable to be authorised as a nominating authority to consider, amongst other things, whether the applicant at any time in the 1 year before the application is made had an authorisation to be a nominating authority cancelled, suspended or withdrawn under the Act. However there is no process under the Act to enable an authorisation to be cancelled, suspended or withdrawn.

New section 33A provides that the Minister may suspend or cancel an authorisation if the Minister is satisfied on reasonable grounds that the nominating authority has contravened the Act or is no longer suitable, having regard to the matters listed in section 32(1) of the Act. In respect of a contravention of the Act, the Minister must have regard to the extent to which the nominating authority or a person engaged or employed by the nominating authority is responsible for the contravention and the impact of the contravention on the rights or entitlements of a person, the integrity of the adjudication process as a whole and any specific adjudication process undertaken by the nominating authority. In determining whether a nominating authority is no longer suitable the Minister will have regard to the existing matters in section 32 of the Act.

Before making a decision to suspend or cancel an authorisation the Minister must tell the nominating authority that the Minister intends to suspend or cancel the authorisation, provide reasons and give the nominating authority at least 14 days to make representations to the Minister about the matter. Only after considering any representations made can the Minister make a decision to suspend or cancel the authorisation.

The maximum period of any suspension is 12 months. Any decision by the Minister to suspend or cancel an authorisation is subject to review by the ACT Civil and Administrative Tribunal (see clause 7).

The Minister may withdraw an authorisation if the Minister is satisfied on reasonable grounds that information given to the Minister by the nominating authority in relation to the nominating authority's suitability for authorisation (see sections 31 and 32 of the Act) was false or misleading.

Any decision by the Minister to withdraw an authorisation is subject to review by the ACT Civil and Administrative Tribunal (see clause 7).

Clause 7 Reviewable decisions
Schedule 1, new items 2 and 3

The effect of this clause is to enable the nominating authority to seek a review by the ACT Civil and Administrative Tribunal of any decision by the Minister, under new section 33A (clause 6), to suspend, cancel or withdraw an authorisation.

Part 4 Electricity Safety Act 1971

Clause 8 Testing and reporting of electrical work
Section 6(1)(b)

This clause substitutes a new section 6(1)(b) which creates an offence where a person fails within 14 days after the day electrical wiring work is tested to give both the construction occupations registrar and the owner of the installation for which the work was done a report of the test. Currently section 6(1)(b) provides that it is an offence if a report of the test is provided to neither the constructions occupations registrar nor the owner of the installation for which the work was done. It is importance that a report of the test of electrical wiring work is provided to both the registrar and the owner.

Part 5 Environment Protection Act 1997

Background

Part 6 of the Bill includes amendments to the *Environment Protection Act 1997* related to additional standards on the performance of solid fuel burning equipment used in residential premises (typically wood, although it includes briquette and coal burning heaters) in terms of emissions, air quality and operating efficiency. For simplicity this description will refer to wood heaters. In December 2015, new Australian standards relating to emissions and efficiency ratings for new wood heaters were endorsed by Commonwealth, State and Territory ministers for the environment. This endorsement, through the National Clean Air Agreement, paved the way for various measures to reduce air pollution, including the adoption of new emissions and efficiency standards for new wood heaters.

The amendments to Part 2.3 of the Environment Protection Act will require compliance with an additional Australian Standard, that is,

> AS/NZS4012 - Domestic solid fuel burning appliances - Method for determination of power output and efficiency

The amendments will not affect the requirement to continue to apply the following existing applicable standard

> AS/NZS4013 – Domestic solid fuel burning appliances—Method for determination of flue gas emission.

The additional standard AS/NZS4012 includes requirements in relation to the power output and operating efficiency of wood heaters and methodologies for measuring these factors. New section 2.4(1)(b) of schedule 2 of the Environment Protection Act inserted by clause 12 will require new wood heaters to comply with new standard AS/NZS4012 and have an overall efficiency of not less than the prescribed amount in the *Environment Protection Regulation 2005*. New section 14B of the Regulation inserted by clause 19 prescribes this amount. New section 14B provides that the prescribed overall efficiency for the sale of solid fuel burning equipment is 55%.

This minimum overall efficiency requirement in new section 14B will become more stringent through an increase to 60% effective 1 September 2019. This is as a result of clause 2(2) of the Bill which provides for delayed commencement of clause 20 of the Bill. Clause 20 removes the 55% requirement in new section 2.4(3) of schedule 2 and substitutes 60%. The new efficiency requirements are intended to reduce the amount of firewood that needs to be consumed for heating. Reduction in the volume of firewood used will have environmental benefits through improved local air quality as well as cost savings benefits for the operator.

The Bill also establishes more stringent emissions standards for new wood heaters. Currently, existing section 2.4(3) of schedule 2 of the Environment Protection Act requires new wood heaters to be of a type that has been certified as having a particulate emission factor not greater than the maximum set out in section 7 of the standard AS/NZS4013. The Bill replaces this standard with amounts prescribed in the Environment Protection Regulation (refer to new section 2.4(1)(c)(ii) inserted by clause 12). The new standard to apply on commencement of the Bill is set out in clause 19 of the Bill which inserts new section 14C into the Environment Protection Regulation. New section 14C requires solid fuel burning equipment to have a maximum particulate emission factor of:

- 2.5g per kg of fuel burnt for a heater without a catalytic combustor;
- 1.4 g per kg of fuel burnt for a heater with a catalytic combustor.

The new emissions requirements are intended to reduce the amount of particulate emissions from the operation of wood heaters. This minimum requirement will alter and become more stringent on 1 September 2019 as a result of clause 2(2) of the Bill which provides for delayed commencement of clause 21 of the Bill. Clause 21 removes the 2016 emissions standards in the Environment Protection Regulation and substitutes 1.5 g per kg and 0.8g per kg for wood heaters without and with a catalytic converter respectively.

A number of consequential amendments are made to support the requirement to comply with AS/NZS4012 as well as to strengthen compliance with both of the standards.

Clause 9 Definitions for sch 2
Schedule 2, section 2.1, new definition of *AS/NZS 4012*

This clause inserts a new definition of the Australian standard AS/NZS 4012 Domestic solid fuel burning appliances - Method for determination of power output and efficiency. The Bill amends the Environment Protection Act to adopt this standard for the first time for new wood heaters. This standard includes requirements in relation to the power output and operating efficiency of wood heaters and methodologies for measuring these factors.

Clause 10 Schedule 2, section 2.1, definition of *solid fuel-burning equipment*

This clause incorporates a reference in this definition to the newly adopted standard AS/NZS 4012. The new wording retains the reference to existing standard AS/NZS 4013 which continues to apply.

Clause 11 New schedule 2, section 2.1 (2)

This Clause inserts new section 2.1 (2) into schedule 2 of the Environment Protection Act. New section 2.1 (2) disapplies a provision of the Legislation Act, that is section 47(6).

Currently section 2.1 of Schedule 2 applies existing Australian standard AS/NZS 4013 as it exists from time to time. In other words if the standard is updated (amended) the updated version is adopted for the purposes of Schedule 2. Consistent with this approach, the newly incorporated Australian standard AS/NZS 4012 will apply as it is exists from time to time, refer to clause 9. In the absence of a provision to the contrary, section 47(6) of the Legislation Act applies with the effect that every update to these instruments would amount to a new notifiable instrument which is required to be notified on the Legislation Register. This is not a practical outcome as the notification of Australian standards on the legislation register is not possible as these instruments are subject to copyright. New section 2.1 (2) removes this requirement by disapplying section 47 (6) of the Legislation Act.

Clause 12 Sale of solid fuel-burning equipment
Schedule 2, section 2.4 (1) (a) and (b)

Clause 12 deletes existing section 2.4(1) and substitutes new section 2.4(1). Existing section 2.4(1) prohibits the sale of solid fuel burning equipment for use in residential premises other than in specified circumstances. The equipment must not be sold unless the equipment:

(a) Complies with existing standard AS/NZS 4013 re rate of particulate emissions; and
(b) Is of a type that is the subject of a validly issued certificate of compliance, issued under section 2.4(3).

New section 2.4(1) retains these requirements with some additions.

New section 2.4(1)(b)(i) requires compliance with the newly adopted standard AS/NZS 4012 in relation to equipment efficiency, however the actual efficiency standard is set out in new section 2.4(1)(b)(ii). New section 2.4(1)(b)(ii) requires the equipment to have an overall efficiency of not less than the amount prescribed in the Environment Protection Regulation as ascertained through test procedures set out in the standard AS/NZS 4012. The prescribed standard of 55% is in new section 14B of the Environment Protection Regulation inserted by clause 19. This standard will increase to 60% on 1 September 2019 (refer to clauses 2 and 20).

New section 2.4(1)(c)(i) requires compliance with existing standard AS/NZS 4013 other than with respect to the actual particulate emission factor which is now prescribed under new section 2.4(c)(ii). New section 2.4(c)(ii) requires the equipment to have an appliance particulate emission factor of not more than the amount prescribed in the Environment Protection Regulation as ascertained through test procedures set out in existing standard AS/NZS 4013. The prescribed amount is in new section 14C of the Environment Protection Regulation inserted by clause 19. This amount will decrease (become more stringent) on 1 September 2019 (refer to clauses 2 and 21). Under the existing Environment Protection Act, this prescribed particulate emission factor amount was set out in AS/NZS 4013 standard itself (refer to existing section 2.4(3)(b) of the Environment Protection Act). This amount is now prescribed in the regulation. The particulate emission factor prescribed in new section 14C taking effect on commencement of the bill is consistent with the emission factor prescribed in the current AS/NZS 4013 standard.

New section 2.4(1) retains the existing requirement for the solid fuel burning equipment to be of a type that is the subject of a compliance certificate. The required content of a compliance certificate is set out in new section 2.4(3) inserted by clause 13. New section 2.4(3) requires the compliance certificate to attest that solid fuel burning equipment of the relevant type does meet the standards required in

relation to overall efficiency and particulate emissions as tested through new standard AS/NZS 4012 and existing standard AS/NZS 4013.

Clause 13 Schedule 2, section 2.4 (3)

Clause 13 deletes section 2.4 (3) of schedule 2 of the Environment Protection Act and substitutes a new section 2.4 (3).

The effect of existing section 2.4 (1) of Part 2.3 of Schedule 2 of the Environment Protection Act makes it an offence to sell solid fuel-burning equipment for use on residential premises unless the equipment complies with the required standard *AS/NZS 4013* and is of a type that is the subject of a certificate of compliance that confirms that the equipment type meets the emissions requirements of the standard *AS/NZS 4013*.

New section 2.4 (3) applies an efficiency standard in accordance with the newly adopted standard *AS/NZS 4012.* New section 2.4 (3) (a) requires the equipment type to have an overall efficiency of not less than the amount prescribed as ascertained in accordance with the methodology set out in standard *AS/NZS 4012.* This efficiency standard will apply until 1 September 2019. Clause 20 of the Bill in conjunction with commencement clause 2 sets a new efficiency standard through amendment of the Environment Protection Regulation to apply from 1 September 2019.

New section 2.4 (3) also modifies the existing requirement in relation to the emission of particulate pollutants. Existing section 2.4(3) requires the equipment type to have a particulate emission factor or rate that does not exceed section 7 of existing standard *AS/NZS 4013*. New section 2.4 (3) (b) moves the quantum of this requirement from the standard to the *Environment Protection Regulation 2005*. The new section requires the equipment type to have a particulate emission factor or rate that does not exceed the factor prescribed in the Environment Protection Regulation. Clause 19 of the Bill amends the Environment Protection Regulation to set the appliance particulate emission factor. This factor will apply until 1 September 2019. Clause 20 of the Bill in conjunction with commencement clause 2 sets a new particulate emission factor to apply from 1 September 2019.

Clause 14 Schedule 2, section 2.4 (4)

Clause 14 is a consequential amendment to clause 12 above. It omits a reference to subsection (1)(b) in schedule 2, section 2.4(4) and replaces it with a reference to subsection (1)(a) as a result of the amendment in clause 12.

Clause 15 Interference with solid fuel-burning equipment or attached plates Schedule 2, section 2.5 (1)

Clause 15 amends section 2.5 (1) of schedule 2 of the Environment Protection Act. The amendment is a consequence of the adoption of new standard *AS/NZS 4012.* Existing section 2.5 (1) makes it an offence to alter the information on or remove a compliance plate attached to solid fuel-burning equipment that contains information required to be displayed on the plate by section 10 of the existing standard *AS/NZS 4013.* Section 8 of the newly adopted standard *AS/NZS 4012* has a similar requirement for information to be displayed on the compliance plate. Amended section 2.5 (1) makes it an offence to interfere with a plate containing information required by the new standard *AS/NZS 4012.*

Clause 16 Schedule 2, new section 2.5 (1A)

Clause 16 inserts new section 2.5 (1A) into schedule 2 of the Environment Protection Act. New section 2.5 (1A) makes it an offence to put a mark on solid fuel-burning equipment affirming that the equipment complies with existing standard AS/NZS 4013 or new standard AS/NZS 4012 if this is in fact not the case. Existing section 2.5 of schedule 2 of the Environment Protection Act makes it an offence to interfere with compliance plates containing information about the equipment that is required to be displayed by the relevant Australian standard. While this existing provision in effect makes it an offence to alter information required on a plate, there is no offence of falsely affirming that the equipment complies with the relevant standard in the first place. This new offence provision fills this gap. The new offence prohibits a person from making a false statement by marking on the equipment that it complies with the standards if it does not in fact comply. The offence is supplementary to and consistent with the philosophy of the existing offence provision. The new offence is an indictable offence with a maximum penalty of 30 penalty units, consistent with the existing offence provision as a result of the consequential amendment in clause 17.

Clause 17 Schedule 2, section 2.5 (4)

Clause 17 amends section 2.5 (4) of schedule 2 of the Environment Protection Act. The amendment is a consequence of the new offence in new section 2.5 (1A) inserted by clause 16. Amended section 2.5 (4) makes the new offence an indictable offence subject to a maximum penalty of 30 penalty units consistent with the existing offence in existing section 2.5 (4) of schedule 2 of the Environment Protection Act.

Clause 18 Dictionary, new definition of *AS/NZS 4012*

Clause 18 inserts a new definition of the newly adopted Australian Standard for solid fuel burning equipment (eg wood heaters) *AS/NZS 4012*. This will be in addition to the existing definition of the standard AS/NZS 4013 which will continue to apply.

Part 6 Environment Protection Regulation 2005

Clause 19 New division 2.4A

Clause 19 inserts new Division 2.4A Solid fuel-burning equipment including new section 14B Minimum overall efficiency–Act, sch 2, s 2.4(1) and new section 14C Maximum appliance particulate emission factor–Act, sch 2, s 2.4(1) into the Environment Protection Regulation 2005. New section 14B sets out the prescribed minimum overall efficiency referred to in new schedule 2, s 2.4(3) of the Environment Protection Act (see clause 13) at 55%. New section 14C does the same for maximum application particulate emission factors, for heaters with and without a catalytic combustor. These new limits apply to solid fuel-burning equipment sold after the commencement of this Bill**.**

New section 2.4 (3) of the Environment Protection Act inserted by clause 13 of the Bill requires a certificate of compliance issued for the relevant equipment type to be the subject of a compliance certificate confirming that the equipment has an overall efficiency and particulate emission factor of not more than the amounts prescribed in the Environment Protection Regulation. The limits in clause 19 will apply from commencement of the Bill until 1 September 2019 when clauses 20 and 21 commence (see clause 2(2)).

Clause 20 Minimum overall efficiency–Act, s2.4 Section 14B

Clause 20 sets out a new more stringent overall efficiency limit for solid fuel-burning equipment. The equipment must comply with an overall efficiency limit of not less than 60% from 1 September 2019, by operation of the commencement provision in clause 2(2).

Clause 21 Maximum appliance particulate emission factor–Act, s 2.4 Section 14C, paragraphs (a) and (b)

Clause 21 substitutes new more stringent emission factors set out in new section 14C inserted by clause 19. Consistent with clause 20, Clause 2(2) provides that clause 21 commences on 1 September 2019.

Clause 22 Storage and use of certain agvet chemical products New section 55 (2A)

Clause 22 inserts new s 55(2A) into the Environment Protection Regulation.

The dictionary to the Environment Protection Regulation defines "agvet chemical product" as either an agricultural or veterinary chemical product under the Agvet Code of the ACT (Agvet Code). Agvet Code is the Agvet Code of the ACT under the Agricultural and Veterinary Chemicals Coe Act 1994 (Cwlth) as in force from time to time (Dictionary to the Environment Protection Regulation).

Existing section 55(2)(a) makes it an offence to store an agvet chemical product in a way that is not authorised by the Australian pesticides and veterinary medicines authority (APVMA). Existing section 55 (2)(b) makes it an offence to use an agvet chemical in a way that is not authorised by the APVMA. This amendment makes no change to the section 55(2)(a) offence but does amend the section 55(2)(b) offence on the use (as opposed to the storage) of agvet chemical products.

The amendment introduces an exception to the section 55(2)(b) offence to allow for the off-label use of agvet chemicals by veterinary surgeons (vets) or persons acting under instructions from a vet. For example, chemical products designed and authorised to treat avian influenza in chickens are also routinely and safely used to treat pigeons, although this use is off-label. As the provision was previously worded, vets who used an agvet chemical product in an off-label manner without the authorisation of the APVMA were inadvertently committing an offence.

New section 55(2A) inserts an exception to this offence. Under new section 55(2A) no offence is committed if the person using the product is a veterinary surgeon and using the product in the course of treating an animal under the veterinary surgeon's care.

The practice of veterinary surgeons continues to be governed by the *Veterinary Surgeons Act 2015* and the *Veterinary Surgeons Regulation 2015* and other legislation. The Veterinary Surgeons Regulation establishes the required standard of practice for veterinary surgeons. This amendment has been developed in consultation with the Australian Pesticides and Veterinary Medicines Authority.

Clause 23 Dictionary, note 2

Clause 23 inserts a new dot point item in note 2 in the Dictionary in the Environment Protection Regulation. The new item indicates that the term "veterinary surgeon" is another example of terms in the regulation whose meaning is as defined in the Legislation Act.

Part 7 Heritage Act 2004

Clause 24 Meaning of heritage significance Section 10(c)

This clause makes it clear that a place or object has heritage significance if it has potential to yield important information that will contribute to an understanding of the ACT's cultural or natural history. The amendment inserts the word *important* before the word *information* in section 10(c). The amendment clarifies that the information must be important before the criterion is satisfied and imposes a threshold test equivalent to the threshold tests for the other criteria in section 10.

Clause 25 Public consultation about heritage guidelines Section 26(2)

This clause omits section 26(2), however, the contents of this section, namely, that a consultation notice is a notifiable instrument is relocated to new section 26(7)(a) (see clause 27).

Clause 26 New section 26(4A)

This amendment will empower the Heritage Council to extend the consultation period in respect of the making of heritage guidelines. Existing section 26(4)(c) provides for a consultation period of 4 weeks. This amendment will enable this 4 week period to be extended through the Council giving an extension notice. The extension notice will be a public notice and a notifiable instrument (see clause 27). A public notice means notice on an ACT government website or in a daily newspaper circulating in the ACT.

Clause 27 New section 26(7)

This clause provides that a consultation notice and an extension notice are notifiable instruments. The requirement that a consultation notice is a notifiable instrument remains unchanged because this requirement in existing section 26(2) is relocated to new section 26(7)(a), see also clause 25. Clause 26 provides that an extension notice can be given to extend the public notification period. This clause is similar to clauses 32 and 33.

Clause 28 Request for urgent provisional registration New section 30(2)(d)

This clause inserts new section 30(2)(d) which requires that an application for urgent provisional registration must explain the circumstances that require an urgent provisional registration decision to be made. This clause is related to clause 29.

Clause 29 New section 30(3)(c)

This amendment provides additional requirements to be met before the Council must accept an application for urgent provisional registration. Those requirements are that the place or object is likely to have heritage significance and either it is likely that the heritage significance will be diminished or damaged if a provisional registration decision is not made or alternatively it is likely that if a development application applies to the place or object, approval of the development proposal will authorise action that will diminish damage the place or object. However, the Council may still accept an urgent application, notwithstanding that it does not meet the above requirements, if the Council believes, on reasonable grounds, that the application is reasonable in the circumstances. This clause is related to the offence provisions in Part 13 of the Act.

Clause 30 Section 30(4)

This amendment removes an ambiguity in section 30 by deleting from section 30(4) the phrase *as if the place or object was a nominated place or object*. The Council can only accept an application for urgent provisional registration if the place or object is a nominated place or object (see section 30(3)(a)).

Clause 31 Notice of decision about provisional registration Section 34(5)

This clause substitutes a new section 34(5). Existing section 34(5) provides that a notice about a decision to provisionally register a place or object must contain certain information. The amendment does not change the information required in a notice about a decision to provisionally register a place or object. Prior to this amendment the Act was silent on what information was required to be in a notice for a decision *not to* provisionally register a place or object.

This amendment provides that a notice about a decision not to provisionally register a place or object must contain the following information: the name of the place or object, the location or address of the place or object, a description of the place or object, the Council's reasons for its decision and the date the decision takes effect.

Clause 32 Public consultation about registration of place or object New section 37(1A) and (1B)

This amendment, similar to clauses 26 and 33, will empower the Heritage Council to extend the consultation period in respect of the registration of a place or object. Existing section 37(1) provides for a consultation period of 4 weeks. This amendment will enable this 4 week period to be extended through the Council giving an extension notice. The extension notice will be a public notice and a notifiable instrument.

Clause 33 Public consultation about cancellation proposal
New section 46(1A) and (1B)

This amendment, similar to clauses 26 and 32, will empower the Heritage Council to extend the consultation period in respect a proposal that a place or object cease to be registered. Existing section 46(1) provides for a consultation period of 4 weeks. This amendment will enable this 4 week period to be extended through the Council giving an extension notice. The extension notice will be a public notice and a notifiable instrument.

Clause 34 Section 57

This clause substitutes a new section 57. The substance of existing 57 is retained in new section 57(1), (2) and (4). New section 57(3) provides the Council with a discretion to give an applicant restricted information if the applicant satisfies the Council that the applicant will use the information in any one or more specified ways. Namely, for academic research in connection with a recognised tertiary institution; for planning, land management or a development proposal where the person using the information is a consultant or researcher engaged by an interested person (as defined in section 13 of the Act); to assess heritage significance or to assess whether proposed conduct will diminish the heritage significance of a place or object or damage an Aboriginal place or object.

However, the Council before releasing restricted information must be satisfied on reasonable grounds that the release of the information will not diminish the heritage significance of a place or object or damage an Aboriginal place or object.

Clause 35 Application to excavate
Section 61E(1)

This clause will have the effect of limiting applications to excavate under section 61E(1) to archaeological excavation work. A new section 61E(3) is inserted to define *archaeological excavation work*, see clause 36. Instead of issuing an excavation permit under existing section 61F the Council will instead issue a permit for archaeological excavation work, see clause 37.

The purpose of clauses 35-37 is to clarify that excavation permits are limited to archaeological excavation work. Excavation that is not archaeological excavation work may still be approved under existing section 61H.

Clause 36 New section 61E(3)

This clause defines *archaeological excavation work* to mean excavation undertaken in a systematic way, using archaeological methods and to investigate the heritage significance of a place or object. This clause is related to clauses 35 and 37.

Clause 37 Permit to excavate
Section 61F(1)

This amendment is linked to clause 35 which has the effect of limiting applications to excavate under section 61E(1) to archaeological excavation work. Section 61F(1) is amended so as to empower the Council to issue a permit for proposed archaeological excavation work instead of a permit for proposed excavation work.

Clause 38 Section 61J

The purpose of the amendments in clauses 38 and 43 is to better align section 61J with section 110 which both deal with conservation management plans. Clause 43 inserts into the Dictionary a definition of *conservation management plan* which is an amalgam of relevant parts of existing section 61J(1) and (2)(d). The information required in a conservation plan remains unchanged as a consequence of the amendments in clauses 38 and 43. The definition of *conservation management plan* will apply to references to a conservation management plan in both sections 61J and 110.

This clause substitutes a new section 61J. However, the only substantive change made to existing section 61J is to omit the specified information required in a conservation management plan. That specified information is relocated to the definition of *conservation management plan* in the Dictionary.

Clause 39 Heritage direction by council
Section 62(2)(b)

This amendment will enable the Council to give a heritage direction to the custodian of an object. Under existing section 62(2)(b) a heritage direction can only be given to the owner of the object. However the owner of an object is not necessarily the person who has possession or custody of the object. The purpose of this amendment is to empower the Council to give a heritage direction in relation to an object to the person who has custody of the object.

Clause 40 Conservation management plan
Section 110(4)(c)

This clause makes an editorial amendment to existing section 110(4)(c) by making it clear that where the Council is not satisfied that a conservation management plan adequately manages a threat or potential threat to a heritage place or object and the Council sets a completion date for further work on the plan, the completion date is a new completion date not the completion date referred to in existing section 110(1)(b).

Clause 41 New section 118B

This clause inserts new section 118B into the Act. New section 118B empowers the Council to ask the Commissioner for Revenue for information in relation to a lease, namely, the lessee's name, the lessee's home address or other contact address. The Commissioner for Revenue must provide the information required in a request. *Lease* and *lessee*, for the purposes of this new section, have the same meaning as they have in the Planning and Development Act under respectively, section 235 and section 234.

New section 118B will enable the Council through one request to obtain contact information in relation to all leases in the ACT. This information will enable the Council to maintain an up-to-date record of lessee contact details. This information will assist the Council in, for example, notifying interested persons, defined in section 13 of the Act, of amongst other things, the acceptance of a nomination application under section 29(2)(b), the acceptance of an application for urgent provisional registration under section 30(4)(b), of a provisional registration decision under section 34(4) and of a registration decision under section 40(5).

New section 118B provides that the Council must not make a request under this section more often that once every 3 months or if a regulation prescribes a longer period, once each period as prescribed. The Council is precluded by this new section from using the information provided by the Commissioner for Revenue about a lessee other than for the purpose of giving notice to the lessee under the Act or taking action under the Act which affects the lessee.

The Council retains the power under existing section 118A of the Act to obtain information from the Commissioner for Revenue on a case by case basis where the Council may or must give notice to a person or intends taking action which affects the person and the person is not contactable.

Clause 42 Reviewable decisions
Schedule 1, item 2, column 2

This amendment corrects a typographical error in item 2 of Schedule 1 which provides that a decision to cancel or not cancel the registration of a place or object is a reviewable decision (see also Part 17 of the Act). This clause corrects column 2, of item 2, to refer to the relevant provision of the Act for this reviewable decision. This clause substitutes *section 49* for the existing incorrect reference to *section 47*. Clause 44 also substitutes section 49 for the existing incorrect references to section 47 in other sections of the Act.

Clause 43 Dictionary, definition of *conservation management plan*

This clause substitutes a new definition of *conservation management plan* into the Dictionary. The new definition is an amalgamation of relevant parts of existing section 61J(1) and (2)(d). The existing definition of *conservation management plan* merely states *see section 61J*. This clause is related to clause 38 which amends 61J. This definition will also be relevant to the operation of section 110 which also refers to conservation management plans.

Clause 44 Further amendments, mentions of *section 47*

This amendment corrects a typographical error in sections 13(1)(h), 13(2)(b), 43(3)(b), 114A(1)(a), 202(c) and in the definition of *heritage decision* in paragraph (c) in the Dictionary. Namely, this clause substitutes *section 49* for the existing incorrect references to *section 47*.

Clause 45 Further amendments, mentions of *comments*

The purpose of this clause is to clarify that comments made to the Council during the public consultation period in respect of proposed heritage guidelines (section 26(4)(c)), the registration of a place or object (section 37(1)) and the cancellation of the registration of a place or object (section 46(1)) must be in writing. Consequential amendments are also made to section 13(1)(g) and (h). This clause is related to clause 46.

Clause 46 Further amendments, mentions of *comments*

This clause is related to clause 45 which clarifies that comments made to the Council during periods of public consultation are to be in writing. This clause makes consequential amendments to a number of sections to insert the word *written* before the word *comments*.

In particular, in making heritage guidelines the Council must consider any *written* comments made during the consultation period (section 26(6)(a)) and may consider any *written* comments about the guidelines made after the end of the consultation period (section 26(6)(b)). After the end of this public consultation period the Council must give the Minister a written report that, amongst other things, identifies any issues raised in *written* comments made to the Council before the end of the public consultation period (section 26B(c)) and identifies any changes the Council proposes to make to the guidelines taking into account the issues raised in *written* comments (section 26B(e)).

This clause also provides that in deciding whether to register a place or object the Council must consider any *written* comments made during the public consultation period (section 37(2)(a)) and may consider any *written* comments made after the end

of the public consultation period (section 37(2)(b)). After the end of this public consultation period the Council must give the Minister a written report that, amongst other things, identifies issues raised in *written* comments made to the Council before the end of the public consultation period (section 38(c)) and identifies any changes the Council proposes to make to the registration having regard to the issues raised in the *written* comments (section 38(e)).

In addition, this clause provides that in deciding whether a place or object should cease to be registered the Council must consider any *written* comments made during the public consultation period and may consider any *written* comments made to the Council after the end of the public consultation period (section 46(2)). At the end of the public consultation period in relation to the cancellation of the registration of a place or object the Council must give the Minister a written report that, amongst other things identifies issues raised in *written* comments made to the Council before the end of public consultation period (section 47(c)) and if the Council's view is not to cancel the registration of the place or object – identifies any changes the Council proposes to make to the registration having regard to the issues raised in the *written* comments (section 47(e)).

Part 8 Nature Conservation Act 2014

Clause 47 Conservator-functions Section 21 (4) (d), example

Clause 47 omits the example in section 21 (4) (d). The example is omitted as it is in section 21 (4) (d) by error, the example has no relevance to section 21 (4) (d). The example is relevant to section 21 (4) (e). Clause 48 inserts this omitted example into its correct location.

Clause 48 Section 21 (4) (e), new example

Clause 48 inserts an example into section 21 (4) (e) of the Nature Conservation Act. The inserted example is the same as the example omitted from section 21 (4) (d) of the Act by clause 47. Together clauses 47 and 48 move this example from the wrong location in the Act to the right one.

Clause 49 What is a *controlled native species?*-ch 7 Section 157 (2) and example

Clause 49 removes existing section 157 (2) and substitutes new section 157 (2).

Existing section 157 (2) permits the Minister to declare a native species to be a controlled native species if satisfied that the species is having an unacceptable impact on an environmental, social or economic asset.

New section 157 (2) includes terminology different to existing section 157 (2). The existing section refers to impacts on an "asset". The term "asset" is removed from the new section which simply refers to impacts. The term "asset" is omitted because it is difficult to describe or determine environmental, social and economic values exclusively in terms of assets. The new terminology is simpler and more appropriate to the concepts being applied in this section.

New section 157 (2) also expands the existing declaration power to permit the Minister to make a declaration if the Minister is satisfied that the native species *is likely to have* an unacceptable impact. This will permit a declaration to be made on the basis of impacts that are likely to occur but have not yet occurred. The declaration will therefore enable preventative management measures to be taken including the development of a controlled native species management plan. Under the existing section this is not possible, under the existing section only reactive measures can be taken.

Clause 50 Draft controlled native species management plan-consultation with lessee and custodian Section 161

This clause removes existing section 161 of the Nature Conservation Act and substitutes new section 161.

Under section 157 of the Nature Conservation Act the Minister can declare a native species to be a controlled native species if satisfied the species is having an unacceptable environmental, social or economic impact.
Clause 50 amends this section to permit a declaration to be made on the basis that a native species is likely to have an impact so that a preventative declaration can be made.

Sections 158-165 of the Nature Conservation Act establish a process for the development, finalisation and amendment of controlled native species management plans. This procedure includes public consultation on draft management plans.

Existing section 161 requires the Conservator of Flora and Fauna to directly consult the lessee of land to which the draft plan applies. In the example of a controlled native species plan that has territory-wide application, this drafting had the unintended consequence of requiring direct consultation with every residential lessee in the territory. This process is impractical and unnecessary in circumstances where the draft plan does not impose any direct requirements on lessees.

Clause 50 modifies the consultation requirements to only require direct consultation with a lessee of stated land to which the plan applies, where the plan places a direct obligation on the lessee. This obligation could be to do, or not do, something under the plan. For example, consultation would be required with a lessee where a flying fox controlled native species plan required lessees to install deterrence devices on their properties. Where direct consultation is not required with an individual, the individual can still participate in the additional public consultation process required under s 162 of the Nature Conservation Act.

Part 9 Planning and Development Act 2007

Clause 51 Controlled activities Schedule 2, item 7, column 3

This clause corrects a gap in item 7 of Schedule 2, namely, it inserts a maximum penalty for contravening a controlled activity order in respect of the controlled activity identified in item 7, column 2 of Schedule 2. Under existing item 7 there is no penalty imposed.

The relevant controlled activity identified in item 7, column 2 of Schedule 2 is managing land held under a rural lease other than in accordance with the following: an offset management plan in force for the land, the land management agreement for the land to the extent that it is not inconsistent with the offset management plan, or if there is no offset management plan the land management agreement for the land. The maximum penalty inserted is 60 penalty units. A contravention of any other controlled activity order has the same maximum penalty of 60 penalty units (see further sections 339 and 361 and Schedule 2 items 1-8).

Part 10 Planning and Development Regulation 2008

Clause 52 Disapplication of the Legislation Act, section 47(5) and (6)-regulation
Sections 400(2)(e) and (f)

This clause has the effect of deleting sections 400(2)(e) and (f). These sections, provide that section 47(6) of the Legislation Act does not apply to a technical code or a utility rule (which are made under a technical code). These sections are being deleted because they do not serve any useful purpose. A technical code, is a disallowable instrument (section 14(4) of the *Utilities (Technical Regulation) Act 2014*) and any disallowable instrument can provide that section 47(6) of the *Legislation Act 2001* does not apply to it. Similarly, any technical code can provide that for any utility rule made under it that section 47(6) of the *Legislation Act 2001* does not apply to the utility rule (see further section 47(7) of the *Legislation Act 2001*).

Clause 53 Section 400(3), definition of utility rule

This clause deletes the definition of utility rule used in section 400(3). This is a consequential amendment to the amendment deleting section 400(2)(e), see clause 52.

Clause 54 Criterion 1 - easement and other access clearances
Schedule 1, section 1.11(4), definition of *utility infrastructure access or protection space*, examples 1 and 2

This clause omits, in examples 1 and 2, the reference to the Utilities Act and substitutes the Utilities (Technical Regulation) Act. This amendment is necessary because the *electricity service and installation rules* and the *water and sewerage service and installation rules*, referred to in these examples, are no longer made under the Utilities Act but instead are made under the Utilities (Technical Regulation) Act.

Clause 55 Schedule 1, section 1.11(4), definition of *utility rule* and note

This clause substitutes a new definition of *utility rule* to reflect that technical codes are no longer made under the Utilities Act but instead are made under the Utilities (Technical Regulation) Act. In addition, the *Note* to the definition is amended so as to provide that technical codes are accessible on the Legislation register and the rules for service and installation of water and sewerage are now accessible at www.iconwater.com.au.

Part 11 Utilities Act 2000

Clause 56 Section 7, heading

This clause amends the heading to section 7 by substituting a heading of *Electricity networks* instead of *Electricity network*. Section 7 is amended to provide for 2 electricity networks, namely, a new electricity transmission network and what was called an electricity network under the existing Act is renamed an electricity distribution network. This clause is related to clauses 57 - 61.

Clause 57 New section 7(1A)

This clause inserts a new section 7(1A) to provide that for the purposes of the Act a *electricity transmission network* consists of infrastructure used, or for use in relation to the transmission of electricity by a person to an electricity distribution network. This clause is related to clause 58.

Clause 58 Section 7(1)

This clause omits in section 7(1) the reference to *electricity network* and substitutes *electricity distribution network*. This new name for the electricity distribution network more accurately reflects this network in the context of clause 57 providing for a electricity transmission network.

Clause 59 Dictionary, new definition of *electricity distribution network*

This clause makes consequential amendments to the Dictionary to reflect that there are 2 electricity networks, namely, an electricity distribution network referred to in existing section 7(1) and the new electricity transmission network referred to in new section 7(1A).

Clause 60 Dictionary, definition of *electricity network*

This clause substitutes a new definition of electricity network into the Dictionary. The clause makes an editorial change to the existing definition in the Dictionary by shortening the definition so that it merely states see section 7.

Clause 61 Dictionary, new definition of *electricity transmission network*

This clause makes consequential amendments to the Dictionary to reflect that there are 2 electricity networks, namely, an electricity distribution network referred to in existing section 7(1) and the new electricity transmission network referred to in new section 7(1A).

Part 12 Utilities (Technical Regulation) Act 2014

Clause 62 Operating certificate – application New section 43(2)

This clause inserts new section 43(2) which provides that an application by an unlicensed regulated utility to the technical regulator for an operating certificate must contain certain information. The information required by new section 43(2) is consistent with the objects of the Act (see section 6). The purpose of the amendment is to remove any uncertainty as to the power of the technical regulator to require an unlicensed regulated utility applying for an operating certificate under section 43 to provide information relevant to the objects of the Act. This information will then be relevant to the technical regulator making a decision, under section 46, on whether to grant an operating certificate, see clauses 63 and 64.

Clause 63 Operating certificate–grant Section 46(1)(a)

This clause amends section 46(1)(a) to expand the matters upon which the technical regulator must be satisfied on reasonable grounds before he or she must grant an operating certificate to an unlicensed regulated utility already providing a regulated utility service. The additional matters are that the service is being delivered in a safe, reliable and efficient manner, that there has been sufficient consideration of long-term serviceability, design integrity and functionality and that there is safe and reliable operation and maintenance in a manner that protects the public, people working on the regulated utility service, property near the regulated utility service and the environment. The additional matters relate to the objects of the Act (see section 6) and the information to be provided in the application for an operating certificate (see clause 62).

Clause 64 Section 46(1)(b)(ii)

This clause amends section 46(1)(b) to expand the matters upon which the technical regulator must be satisfied on reasonable grounds before he or she must grant an operating certificate to an unlicensed regulated utility proposing to provide a regulated utility service. The additional matters are the same as those provided for by clause 63 in relation to an unlicensed regulated utility already providing a regulated utility service.

Clause 65 Meaning of *utility infrastructure work* – div 9.5 Section 95(a)

This clause omits in section 95(a) the reference to an *electricity network* and substitutes *electricity distribution network*. This clause is necessary as a consequence of clause 58 which amends section 7(1) of the Utilities Act to rename *electricity network* to *electricity distribution network*.

Clause 66 Dictionary, new definitions

This clause makes consequential amendments to the Dictionary to reflect that there are 2 electricity networks, namely, an electricity distribution network referred to in existing section 7(1) of the Utilities Act and the new electricity transmission network referred to in section 7(1A) of the Utilities Act (see further clauses 57-61).

Part 13 Work Health and Safety Regulation 2011

Clause 67 Duty of person conducting a business or undertaking Section 166

This amendment is required as a consequence of the enactment of the Utilities (Technical Regulation) Act which imposes requirements on an electricity supply authority. Accordingly, sections 166(2)(b)(ii) and 166(3) are amended so as to require an electricity supply authority to also meet the requirements in the Utilities (Technical Regulation) Act.