2017

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PLANNING, BUILDING AND ENVIRONMENT LEGISLATION AMENDMENT BILL 2017

REVISED – JUNE 2017 EXPLANATORY STATEMENT

Presented by
Mr Mick Gentleman MLA
Minister for the Environment and Heritage

EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning, Building and Environment Legislation Amendment Bill 2017* (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.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Background

This revised explanatory statement has been issued to correct a small number of editorial errors in the original explanatory statement.

The Bill forms an important part of maintaining and enhancing the standard of ACT building, environment and planning law. An omnibus planning, building and environment legislation amendment bill (PABELAB) enables more minor matters to be dealt with expediently and consolidates amendments into one place, making the amendment process more user-friendly and accessible. This ensures that the government can be responsive and agile to changing circumstances and legislation remains up-to-date.

Previous PABELABs can be accessed on the ACT Legislation Register at www.legislation.act.gov.au.

Overview of the Bill

The Bill proposes minor policy amendments to:

- the *Energy Efficiency (Cost of Living) Improvement Act 2012*
- the *Nature Conservation Act 2014*.

The Bill also proposes a number of technical and editorial amendments to the following legislation:

- the *Climate Change and Greenhouse Gas Reduction Act 2010*
- the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011*
- the *Electricity Feed-in (Renewable Energy Premium) Act 2008*
- the *Environment Protection Act 1997*
- the *Heritage Act 2004*

- the *Nature Conservation Act 2014*
- the *Planning and Development Act 2007*
- the *Public Place Names Act 1989*
- the *Water Resources Act 2007*
- the *Water Resources Regulation 2007*.

Overview of minor policy amendments

Amendment to the *Energy Efficiency (Cost of Living) Improvement Act 2012*

Section 28C of the *Energy Efficiency (Cost of Living) Improvement Act 2012* provides for the administrator of the Act to share compliance information with a non-territory agency. The provision contains a number of limitations on this power including that information can only be shared if it relates to compliance with a law that has been applied, adopted or incorporated by an eligible activities determination or a code of practice made or approved under the Act.

The amendment in clause 12 to s 28C rewords the restriction on sharing compliance information. Section 28C now allows information to be shared if it relates to compliance with a law of another jurisdiction that provides for energy efficiency or greenhouse gas abatement. The other restrictions that apply to the administrator sharing compliance information with non-territory agencies remain in place, such as the information having to relate to the undertaking of eligible activities under the Act. Examples of eligible activities include installing low-energy lighting, installing insulation and thermally efficient glazing (windows) and purchasing high efficiency electrical appliances. Examples of compliance information that could be shared under this section relate to places where activities have been conducted and include addresses, phone numbers, the type of activity, the abatement achieved, the number of activities undertaken and the models or type of items that are purchased and installed.

Sharing compliance information is important for ensuring compliance with, and maintaining the effectiveness of, the Energy Efficiency Improvement Scheme (EEIS) and similar schemes at Commonwealth and state level. Given that compliance with these schemes has financial implications, the sharing of information between jurisdictions ensures that appropriate auditing and accounting can occur. In order for activities undertaken through the EEIS to lead to genuine energy efficiency improvement or greenhouse gas abatement, the activities must be additional to activities that would have occurred anyway. If there is double-counting of activities under multiple schemes, then the integrity of the schemes may be compromised and the targets may not be achieved. Double counting of abatement activities is a significant potential compliance issue that undermines the ability of schemes to achieve their purpose.

Therefore, it is important that agencies in other jurisdictions can access relevant compliance information. This allows records of activities under different schemes to be cross-referenced and audited to ensure that they are in fact unique.

The current wording of the provision is not suitable for this purpose as the potential for double counting exists in relation to any laws of other jurisdictions that create obligations or incentives for the abatement of greenhouse gas emissions. It is not limited to laws which are adopted, applied or incorporated into ACT legislation by an eligible activities determination or a code of practice. The reason for adopting activities (or a code of practice) is to enable those specific activities to be undertaken for the purpose of the EEIS. While there is a particular possibility of double counting under these laws, they are not the only laws under which double counting could take place. Thus, the compliance reason for sharing information extends to other laws that relate to energy efficiency or greenhouse gas abatement more broadly and not just those adopted, applied or incorporated into ACT law.

Information can already be shared for the purpose of ensuring compliance with laws of other jurisdictions. The way that this section is currently constructed is such that it is ineffective at doing this in relation to all relevant laws. The amendment addresses this by changing the way that relevant laws for which compliance information can be shared are characterised, rather than expanding the power to share information.

The potential human rights and privacy implications of this amendment are discussed below.

Amendment to the *Nature Conservation Act 2014*

Section 203 of the Nature Conservation Act contains a requirement for the conservator of flora and fauna to report to the Minister about each Ramsar wetland management plan every five years. Ramsar wetlands are wetlands of international importance, protected by an international intergovernmental treaty (the Ramsar Convention). The amendment alters the requirement for the conservator to report to the Minister on a Ramsar wetland management plan to be done once every seven years. This is so that it will align with the Commonwealth requirement to review a Ramsar plan of management every seven years under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

The amendment will make the process of reviewing and reporting on Ramsar wetland management plans more efficient and will allow for the sharing of resources between the ACT and the Commonwealth while doing so. This amendment will have the consequence that reporting about Ramsar wetland management plans will be done less frequently (every 7 years compared to the previous 5 years) although process efficiencies and implementation benefits are expected to arise from this change. The amendment is justified because aligning ACT reporting with reviews under Commonwealth legislation will ensure that the ACT can introduce the same timelines for reviewing plans, aligning management actions and reporting on outcomes. This will ultimately enable better quality reporting and management of Ramsar wetlands.

Overview of Technical and Editorial Amendments

Amendments to the *Climate Change and Greenhouse Gas Reduction Act 2010* and the *Water Resources Act 2007*

The amendments in clauses 5, 6, 21 and 22 introduce changes to facilitate annual reporting requirements for the climate change council under the Climate Change and Greenhouse Gas Reduction Act and the catchment management coordination group in the Water Resources Act. Specifically, these amendments make provision for the situation where the period for the tabling of annual reports coincides with the pre-election period (the caretaker period). At present, these Acts do not provide for the circumstance of annual reports being due during the pre-election period. This presents an issue in having an appropriate process in place to ensure that the report is brought to the attention of members of the Legislative Assembly, given that there are no sitting days and members may not return to the Assembly.

The amendments provide that where the 21-day period for tabling an annual report coincides with the pre-election period, the Minister must table the annual report on the second sitting day after the election.

These amendments are consistent with the approach taken in the *Annual Reports (Government Agencies) Act 2004*.

Amendments to the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011*

The Bill makes a technical amendment to the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* by updating the names of the NSW local councils that define the area of the 'Australian capital region' for the purposes of the Act. The 'Australian capital region' is an important term in the Act that has an

objective of promoting the establishment of large-scale renewable energy facilities in the region.

The names of the NSW local councils that make up the physical area of the Australian capital region have changed recently following NSW council amalgamations.

To facilitate an easier process for updating council names should they change in the future, clause 9 allows for the area of the Australian capital region to be prescribed by regulation. Clauses 7 and 8 introduce a new regulation and prescribe the NSW local council areas that make up the region. The amendment does not make a substantive change to the area of the region; rather, it defines it by the new NSW local council names.

Amendment to the *Heritage Act 2004*

Section 34(5)(b)(iv) of the Heritage Act requires that a notice of decision not to provisionally register a place or object must include reasons for the decision. As currently drafted, those reasons must include an assessment of the place or object against the heritage significance criteria. Clause 14 amends this requirement so that it only applies if such an assessment has been undertaken.

Currently, every notice of decision must provide a statement of reasons, including an assessment against the heritage significance criteria. There are some circumstances where an assessment is not undertaken because a decision not to provisionally register a place or object is made on another basis. For example, if a place has natural heritage significance only and is more appropriately protected under the *Nature Conservation Act 2014*, then s 42A(2)(b) of the Heritage Act prohibits it from being registered. In this instance, the Heritage Council (the Council) will assess the heritage values of the place, and if the place has natural significance only, the Council will not provisionally register the place under the Heritage Act. The decision will state that it should be considered for protection under the Nature Conservation Act. A formal assessment of those natural values against the heritage significance criteria in s 10 of the Heritage Act will not be undertaken, due to the operation of s 42A.

Section 3B of the Heritage Act also prohibits the registration of urban trees unless the tree forms part of a place that also has heritage significance. This provision recognises that protection of urban trees is most appropriately governed by the *Tree Protection Act 2005.* If such a tree was nominated under the Heritage Act, the statement of reasons in the decision would indicate that the tree is not able to be registered and therefore an assessment against the heritage significance criteria has not been undertaken.

Another example is the decision of the Council as set out in the *Heritage (Decision about Provisional Registration of Ruins, Coree) Notice 2015* (NI2015-664). The decision in NI2015-664 was not to provisionally register the place because the nomination was lacking in substance in that the place was not described, an accurate location was not provided, and no details of the nominator were available.

In this instance, the Council undertook a preliminary investigation into this nomination and were unable to proceed to an assessment against the heritage significance criteria, due to a lack of substance in the nomination and the inability to contact the nominator to obtain further information.

This nomination was accepted a number of years ago under a previous version of the Heritage Act. This approach may still be relevant to other existing nominated places awaiting assessment. However, if this type of nomination were received today it would now be rejected prior to the assessment stage as lacking in substance under a different provision of the Heritage Act (see s 29(1)(a)).

A final example is in the decision of the Council as set out in the *Heritage (Decision about Provisional Registration of the Australian War Memorial, Campbell) Notice 2013* (NI2013-163). In this decision, the Council decided not to provisionally register the Australian War Memorial on the ACT Heritage Register because the place is on National Land managed by the Commonwealth and it is already listed on the Commonwealth Heritage List and the National Heritage List. In this instance, a duplication of listing on the ACT Heritage Register would provide no additional legal protection to the place, nor provide any further information to the public about the heritage values of the place. Therefore, the Council decided not to provisionally register the place and did not proceed to undertake a formal assessment of the place against the heritage significance criteria.

This amendment recognises the Council's discretion on whether to provisionally register places or objects as indicated in sections 32(2) and 42A(2)(b)), and ensures that the legislation is consistent throughout.

This amendment does not make a substantive change to decision-making powers under the Heritage Act. The decision-making power for provisional registration is in s 32 of the Act and gives the Council discretion on whether to provisionally register a place or object. This power is unchanged by the amendment.

This amendment relates only to the information that must be included in a written notice under s 34(5) of the Act about a decision made under s 32.

This amendment does not affect the Council's obligation to assess the heritage values of all nominated places or to provide a detailed statement of reasons for a decision to not provisionally register a place or object.

This amendment merely recognises that, on occasion, a decision not to provisionally register does not require a formal assessment against the heritage significance

criteria, as described in the examples above. In these circumstances, the existing requirement to include an assessment against the criteria in the statement of reasons is redundant.

Amendment to the *Nature Conservation Act 2014*

Chapter 9 of the Nature Conservation Act contains offences relating to reserves. Section 252 contains exceptions to the offences set out in chapter 9. These exceptions apply to a specific offence provision if that provision states that the exceptions apply.

Examples of exceptions to offences in s 252 include where the relevant conduct was undertaken by a conservation officer exercising their functions under the Act or that the conduct is authorised by a nature conservation licence.

Section 219 contains an offence of taking plants or plant reproductive material into a reserve. The provision does not state that chapter 9 exceptions apply. However, this is a drafting error as the exceptions should apply because it is the type of conduct that may be required to be undertaken in the course of a conservation officer's duties, or by a person acting under a nature conservation licence. Clause 16 amends s 219 to insert a provision that a person has the benefit of the chapter 9 exceptions for an offence against this section.

Amendments to the *Planning and Development Act 2007*

Division 10.4.2 of the Planning and Development Act outlines the requirement for land management plans to be prepared for public land. Under s 321 of the Act, the custodian of an area of public land must prepare a draft land management plan. When preparing a draft management plan, the custodian must consult the conservator of flora and fauna and the planning and land authority.

Clause 17 adds the environment protection authority (EPA) to the list of people who must be consulted by the custodian. The EPA is currently consulted informally and it is important that consultation does occur because the EPA is responsible for, among other things, the register of contaminated land sites.

Amendment to the *Public Place Names Act 1989*

Section 4(3) of Public Place Names Act requires that when having regard to the use of Aboriginal or Torres Strait Islander vocabulary in public place names, each prescribed entity must be consulted. The Aboriginal and Torres Strait Islander Commission (ATSIC) is the only prescribed entity. ATSIC no longer exists, and there is no equivalent national body that has taken its place. No suitable replacement body at the national level has been found.

Clause 18 amends section 4 to alter the current consultation requirement to now require the Minister to take reasonable steps to consult with an appropriate cultural group. This will give the Minister flexibility to find the most appropriate cultural group for a certain name and ensure that all relevant groups are able to be consulted on each naming.

The amendment requires the taking of reasonable steps to consult, because some local ATSI groups may potentially not be adequately resourced to respond to administrative requests. This drafting means that naming can proceed in the event that there is difficulty consulting with a particular group, or finding an appropriate group to consult with.

The potential human rights and cultural rights implications of this amendment are discussed below.

Amendments to the *Water Resources Act 2007* and the *Water Resources Regulation 2007*

The Bill makes a number of amendments to the Water Resources Act and the Water Resources Regulation in relation to the ACT and region catchment management coordination group. These amendments are minor technical amendments to definitions and do not make substantive changes to the functioning of the catchment management coordination group.

Clause 20 amends the definition of the ‘Australian capital water catchment region’. The region is currently defined by reference to the boundaries of certain NSW local councils which has proven problematic given recent NSW local council amalgamations. The Bill amends the definition in s 67B to instead define the region by reference to the river catchment itself, being the catchment area of the Murrumbidgee River upstream of Burrinjuck Dam.

Clauses 19 and 20 make editorial amendments to correct inconsistencies in the use of the term ‘Australian capital water catchment region’ in the Act, such as including the word ‘Australian’ in the definition and the word ‘water’ in s 67B (2)(a) of the Act.

Section 67E defines the membership of the catchment management coordination group. This includes any person prescribed by regulation (under s 67E(1)(g)). Section 11 of the Water Resources Regulation prescribes nominated representatives of particular NSW local councils. Clause 25 of the Bill contains an amendment to instead prescribe that a representative of each council within the Australian capital water catchment region is a member of the coordination group, rather than prescribing representatives of named councils. This amendment is required because of changes to council names as a result of NSW council amalgamations. Referring to councils within the region rather than naming them will mean that amendments will not be required as a result of any future changes to the names or areas of councils.

Membership of the coordination group also includes the Directors-General of named directorates (under s 67E(1)(a)). The names of some of these directorates are out of date as a result of changes to the Administrative Arrangements. Further, the current directorate names may similarly become outdated by future changes to the Administrative Arrangements. Clause 23 amends s 67E(1)(a) so that the coordination group instead includes the Directors-General of the directorates responsible for legislation prescribed by regulation. Clause 24 creates a regulation prescribing legislation which will have the effect of maintaining the current membership of the coordination group. This is merely a technical amendment to the way in which membership of the coordination group is determined and does not make a substantive change to the membership. The amendment creates the flexibility to respond to future changes in the Administrative Arrangements.

Editorial Amendments

Clause 13 of the Bill makes an editorial amendment to correct section references in the *Environment Protection Act 1997*. Section 76 of the Environment Protection Act allows the EPA to require a person to commission an environmental audit of activities (s 76(1)) or contaminated land (s 76(2)). Section 76(4) contains details of what the EPA must notify the person of when requiring an audit, and s 76(5) sets out that it is an offence to fail to comply with the EPA's notice. Sections 76(4) and (5) currently only refer to audits of activities, whereas they should refer to both types of audits. Clause 13 amends sections 76(4) and (5) to insert a reference to s 76(2) (audits of contaminated land) to fix this oversight.

Editorial amendments are also made to the *Electricity Feed-in (Renewable Energy Premium) Act 2008* by clauses 10 and 11 to update references to the legislation under which technical codes are made and the website where they can be found. This is to reflect changes that were made by the introduction of the *Utilities (Technical Regulation) Act 2014*.

Human Rights

None of the amendments contained in the Bill have a material impact on human rights. Amendments to the Energy Efficiency (Cost of Living) Improvement Act and the Public Place Names Act could be considered to engage with the right to privacy and cultural rights, respectively.

The amendment to the information sharing provision in the Energy Efficiency (Cost of Living) Improvement Act may appear to impact on the right to privacy (s 12 of the Human Rights Act). This is because the provision allows for the release of what could be considered to be personal information relating to activities that have been conducted including addresses, phone numbers, the type of activity, the abatement achieved, the number of activities undertaken and the models or type of items that are purchased and installed. To the extent that it could be considered to impact on this right, because it may involve the storage and release of personal information, this amendment is appropriate, proportionate and justified.

The amendment lessens one of the restrictions that apply to the ability to share compliance information. This will have the effect that compliance information will be able to be shared with some additional agencies in other jurisdictions. This is because the current construction of the provision is too restrictive to achieve its original intent of supporting the effectiveness and integrity of energy efficiency and greenhouse gas abatement schemes in the ACT and other jurisdictions.

Under s 28C of the Energy Efficiency (Cost of Living) Improvement Act (EEI Act), compliance information is already collected by the administrator and used for the purpose of administering the scheme and ensuring the integrity of audit and accounting measures.

The additional powers to release information introduced by this amendment are limited to the purposes of compliance with the EEI Act and energy efficiency or greenhouse gas abatement schemes in other jurisdictions. There are also limitations within the provision on the purposes for which information can be released and allows for the administrator to impose conditions on non-territory agencies on the use, storage and sharing of the information. These safeguards, combined with the protections in the *Information Privacy Act 2014*, ensure that appropriate checks remain in place for the release and use of this information.

To the extent that there is an impact on privacy, it is that the same information can now be shared with a broader range of non-territory agencies. The reason for the amendment is that information is required to be shared with a broader range of agencies to ensure the integrity and effectiveness of the schemes that energy retailers participate in. The sharing of information is necessary to ensure that there is no double counting of activities under the schemes of different jurisdictions.

This is necessary to protect the purpose of these schemes, which is to achieve energy efficiency gains and greenhouse gas abatement. There is no less restrictive means of achieving the desired outcome because the nature of the impact (sharing information with a broader range of agencies) is the very reason for the amendment and is vital to achieving the purpose of the EEI Act.

The amendment is justified because it is necessary to ensure that the ACT scheme and schemes in other jurisdictions can run effectively and be supported by accounting and auditing measures to ensure compliance with the rules of each scheme.

The amendment in clause 18 to the *Public Place Names Act 1989* may appear to engage the cultural rights of Aboriginal and Torres Strait Islander peoples to protect their language (see s 27 of the Human Rights Act). However, the amendment does not negatively impact on this right because consultation is still required when having regard to Aboriginal or Torres Strait Islander vocabulary while naming a public place.

The amendment simply changes the nature of the consultation to make allowance for the fact that ATSIC no longer exists, and to ensure that an appropriate cultural group is consulted in its place. It is in fact a positive impact because it replaces a redundant requirement with a requirement to consult with appropriate cultural groups.

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 2017*.

Clause 2 Commencement

This clause provides that the Act commences on the day after its notification day.

Clause 3 Legislation amended

This clause lists the Acts and Regulations that are amended.

Clause 4 Legislation repealed

This clause repeals the *Public Place Names Regulation 2001*. This is a consequence of the amendment to the *Public Place Names Act 1989* in clause 18 of the bill. The Regulation prescribes ATSIC as an entity that is required to be consulted with. As ATSTIC no longer exists, the amendment in clause 18 means that there are no longer prescribed entities and so the regulation is no longer required.

Part 2 Climate Change and Greenhouse Gas Reduction Act 2010

Clause 5 Annual report by council Section 19 (4)

This clause amends the climate change council annual report requirement to make provision for the circumstance where the period for the tabling of the climate change council's annual report coincides with the pre-election period. The reference to the definition for pre-election period is inserted by clause 6 below. In this circumstance, the annual report must now be tabled on the second sitting day after the election. This amendment is consistent with the approach taken in s 13 of the *Annual Reports (Government Agencies) Act 2004*. Clause 21 inserts a similar provision into the *Water Resources Act 2007*.

Clause 6 Section 19 (5), new definition of *pre-election period*

This section defines 'pre-election period' as having the same meaning as in the *Electoral Act 1992*. This is required because this term is used in the provision added by clause 5.

Part 3 Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011

Clause 7 New section 26

This clause inserts a new section 26 into the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011*. This section is the mechanism through which a new regulation under the Act is created. It gives effect to the regulation which is inserted by clause 8 below. This enables a regulation to be made by an Act and still function as a normal regulation. This section provides that schedule 1 (inserted by clause 8) is taken to be a regulation made under the Act. The regulation can be treated as if it were a normal Regulation made through the regular process. The section is self repealing and provides for the expiry of the schedule. It will not appear in the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act*

2011 after the amendment is made, but will exist as an ongoing and separate regulation under the Act.

Clause 8 New schedule 1

This clause inserts new schedule 1 into the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011*. Schedule 1 is a regulation prescribing NSW council areas for the purpose of defining the 'Australian capital region'. These council areas are the same as those previously included in the Act; however, the names have been updated to take account of recent NSW council amalgamations.

The Regulation contains the following clauses:

Clause 1 Name of regulation

This clause names the regulation as the *Electricity Feed-in (Large scale Renewable Energy Generation) Regulation 2017*.

Clause 2 Prescribed areas – Act, dict, def ***Australian capital region***, par (b)

This clause prescribes the areas of the listed councils for the purpose of defining the 'Australian capital region'.

Clause 9 Dictionary, definition of ***Australian capital region***

This clause amends the dictionary of the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* so that 'Australian capital region' is defined as being made up of the ACT and any areas prescribed by regulation. These areas were previously listed in the definition in the Act, but clauses 7 and 8 have now moved this to the regulation to make it easier to update in the future should council names change. The names of the councils have been updated to take account of NSW council amalgamations. No substantive change has been made to the area covered by the Australian capital region.

Part 4 Electricity Feed-in (Renewable Energy Premium) Act 2008

Clause 10 Meaning of ***compliant*** Section 5E (5), definition of ***service and installation rules***

This clause is a minor editorial amendment which replaces a reference to the *Utilities Act 2000* with a reference to the *Utilities (Technical Regulation) Act 2014* because this is now the Act under which technical codes are made.

Clause 11 Section 5E (5), note

This clause is an editorial amendment to the note in section 5E(5) to replace a reference to the *Utilities Act 2000* with a reference to the *Utilities (Technical Regulation) Act 2011* because this is now the Act under which Technical Codes are made.

It also alters the note to state that Technical Codes are available at the Legislation Register, rather than at www.icrc.act.gov.au, to reflect the fact that the location of the Technical Codes has changed.

Part 5 Energy Efficiency (Cost of Living) Improvement Act 2012

Clause 12 Sharing information–non territory agencies Section 28C (1) (b)

This clause amends the circumstances in which compliance information can be shared under s 28C of the Energy Efficiency (Cost of Living) Improvement Act 2012. The clause substitutes a new s 28C(1)(b) to loosen the restriction on sharing compliance information with non-territory agencies (i.e. the Commonwealth and other state agencies).

Section 28C now allows information to be shared if it relates to compliance with a law of another jurisdiction that provides for energy efficiency or greenhouse gas abatement.

This will enable the sharing of information for the purpose of compliance with a broader range of laws relating to energy efficiency schemes and greenhouse gas abatement in other jurisdictions. Section 28C contains a number of other requirements that must be met before information can be shared and these remain unchanged.

Part 6 Environment Protection Act 1997

Clause 13 Authority may require environmental audit Subsection 76 (4) and (5)

This clause makes an editorial amendment to correct section references in the *Environment Protection Act 1997*. Section 76 of the Act allows the EPA to require a person to commission an environmental audit of activities (s 76(1)) or contaminated land (s 76(2)). Sections 76(4) and (5) currently only refer to audits of activities, whereas they should refer to both types of audits. This clause amends s 76(4) and (5) to insert a reference to s 76(2) (audits of contaminated land).

Part 7 Heritage Act 2004

Clause 14 Notice of decision about provisional registration Section 34 (5) (b) (iv) and (v)

This clause substitutes new subsections into s 34(5)(b) of the Heritage Act which provides for the content of a notice of decision to not provisionally register a place or object.

Specifically the amendment makes a minor alteration to the content for what the reasons for the decision must contain. At present, in every instance the reasons for the decision must contain an assessment of the place or object against the heritage significance criteria. However, this assessment is not always undertaken as it may not be necessary for the council to proceed to a formal assessment because the Council has made the decision on other grounds. Further information and examples are provided in the overview section above.

This clause amends the provision to state that the council must provide its reasons for decision, but may only provide an assessment against the criteria if that has been undertaken.

Part 8 Nature Conservation Act 2014

Clause 15 Ramsar wetland management plan–monitoring and review Section 203 (2)

This clause amends the requirement in s 203 of the Nature Conservation Act for the conservator of flora and fauna to report to the Minister about each Ramsar wetland management plan once every five years to now be required once every seven years.

This amendment is made to align with Commonwealth reporting requirements and will allow for administrative efficiencies and better implementation, review and reporting of any management actions that are undertaken.

Clause 16 Offence–take plant or plant reproductive material into reserve New section 219 (4)

This clause inserts a new subsection into section 219 of the Nature Conservation Act stating that the chapter 9 exceptions to offences apply to the offence in section 219 of taking plant or plant reproductive material into a reserve. The chapter 9 offences are set out in s 252 of the Nature Conservation Act.

This amendment is correcting a drafting oversight when the provision was originally drafted. Most other offences in this part of the Act have the benefit of the chapter 9 offences.

Part 9 Planning and Development Act 2007

Clause 17 Draft land management plan–custodian to prepare New section 321 (2) (c)

This clause adds the environment protection authority (EPA) as a person who must be consulted by the custodian in the preparation of a draft land management plan for an area of public land.

The amendment to s 321 of the Planning and Development Act reflects the current informal practice of consulting with the EPA on public land sites as the EPA is responsible for, among other things, the register of contaminated land sites.

Part 10 Public Place Names Act 1989

Clause 18 Regard given to certain names Section 4 (3)

This clause amends section 4 of the Public Place Names Act 1989 to remove the requirement to consult prescribed entities and replace it with a requirement to consult an appropriate cultural group.

Section 4 of the Public Place Names Act concerns consultation on the use of Aboriginal or Torres Strait Islander vocabulary in public place names. The only prescribed entity was ATSIC, which no longer exists. Therefore, this is replaced by a requirement to take reasonable steps to consult an appropriate cultural group.

The new wording of the provision recognises that it is sometimes difficult to find an appropriate group to consult with, and some local cultural groups do not have the resources to respond to consultation requests on public place naming. The broad wording of consulting with an appropriate cultural group is deliberate and seeks to avoid placing unfair administrative burden on particular groups.

Part 11 Water Resources Act 2007

Clause 19 Coordination group–functions Section 67B (2) (a)

This clause amends s 67B(2)(a) of the Water Resources Act to insert the word ‘water’ after ‘capital’ so that an incorrect reference to ‘Australian capital catchment region’ becomes ‘Australian capital water catchment region’.

This is an editorial amendment to ensure consistency of terminology throughout the Act.

Clause 20 Section 67B (4)

This clause amends s 67B(4) by substituting a new definition of the ‘Australian capital water catchment region’.

The region is now defined by reference to the river catchment area, rather than as an area defined by NSW council names. This is in response to changes to names and areas of NSW councils as a result council amalgamations. It is no longer appropriate to define the region by naming NSW councils, as this does not define the area with sufficient accuracy.

Further, the definition previously defined the term ‘capital water catchment region’, whereas ‘Australian capital water catchment region’ was the term used in the adjacent provisions. This clause corrects this by using the term ‘Australian capital water catchment region’.

Clause 21 Annual report by coordination group New section 67D (4)

This clause amends the catchment management coordination group annual reporting requirement in s 67D to make provision for the circumstance where the period for the tabling of the coordination group’s annual report coincides with the pre-election period. In this circumstance, the annual report must now be tabled on the second sitting day after the election. This amendment is consistent with the approach taken in s 13 of the *Annual Reports (Government Agencies) Act 2004*. Clause 5 inserts a similar provision into the *Climate Change and Greenhouse Gas Reduction Act 2010*.

Clause 22 Section 67D (5), new definition of *pre-election period*

This section defines 'pre-election period' as having the same meaning as in the *Electoral Act 1992*. This is required because this term is used in the provision added by clause 21.

Clause 23 Coordination group–membership Section 67E (1) (a)

This clause amends s 67E of the Water Resources Act and maintains the current membership of the catchment management coordination group while altering the mechanism through which the membership is described.

Instead of listing the Directors-General of named directorates, the Act now states that the Head of Service and the Directors-General responsible for prescribed legislation are members of the coordination group. Clause 26 of the Bill amends the Regulation to prescribe a number of Acts for the purpose of this section.

The Head of Service is included to update the reference to the Director-General of the Chief Minister, Treasury and Economic Development Directorate because the Head of Service is a defined statutory position and is not liable to change as a result of changes to the Administrative Arrangements. The other members are as specified in clause 24 below.

This amendment is made so that the provision is sufficiently flexible to adapt to future changes to the Administrative Arrangements.

Part 12 Water Resources Regulation 2007

Clause 24 New section 10A

This clause creates a new section 10A in the Water Resources Regulation to prescribe the following Acts for the purpose of the membership of the coordination group as per clause 23. The prescribed legislation reflects the current membership of the catchment management coordination group and is an appropriate way of ensuring that the group has the appropriate Directors-General in the group who has responsibility for water related matters.

The *Public Health Act 1997*, Part 14 of the *Utilities Act 2000*, and the *Water Resources Act 2007* are prescribed.

The purpose of including the Director-General responsible for the Water Resources Act is to replace the Director-General of the Environment and Planning Directorate. The Director-General of the Environment, Planning and Sustainable Development

Directorate (which currently has responsibility for the Water Resources Act) provides input on a range of policy areas within the directorate, not only water policy. If these were to be in a different directorate then it would be necessary to include the Director-General of the appropriate directorate as well. The amendment allows this to be done by prescribing relevant Acts.

Clause 25 Membership of coordination group–Act, s 67E (1) (g) Section 11 (1)

This clause amends section 11 of the Water Resources Regulation which prescribes members of the coordination group. Currently, representatives of named NSW councils are prescribed. The amendment changes this to prescribe a representative of any council within the area of the Australian capital water catchment region.

The other entities prescribed, a representative of ICON Water Limited and a representative of South East Local board of the Local Land Services, remain unchanged.

Clause 26 Section 11 (2), new definitions

This clause inserts definitions of ‘area’, ‘Australian capital water catchment region’ and ‘council’ into the regulation. These terms are used in the provision added by clause 25.