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

PLANNING AND ENVIRONMENT LEGISLATION AMENDMENT BILL 2020

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

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

PLANNING AND ENVIRONMENT LEGISLATION AMENDMENT BILL 2020

The Bill is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

Introduction

This explanatory statement relates to the *Planning and Environment Legislation Amendment Bill 2020* (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not intended to be, a comprehensive description of the Bill. What is written 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

The Bill forms an important part of maintaining and enhancing the standard of ACT environment, planning and energy law. The Bill is an omnibus bill to enable minor legislative amendments related to the portfolio responsibilities of the Environment, Planning and Sustainable Development Directorate (EPSDD) to be dealt with expediently and to consolidate amendments into one place, making the amendment process more accessible. The omnibus bill process helps to ensure that the government can be agile and responsive to changing circumstances and to ensure that legislation remains clear, concise and up-to-date.

OVERVIEW OF THE BILL

The purpose of the Bill is to make a range of amendments to improve the operation of six pieces of legislation administered by the Environment, Planning and Sustainable Development Directorate (EPSDD), two pieces of legislation administered by Chief Minister, Treasury and Economic Development Directorate (CMTEDD) and one piece of legislation administered by Transport Canberra and City Services Directorate (TCCS), namely:

- *Animal Diseases Act 2005*;
- *City Renewal Authority and Suburban Land Agency 2017*;
- *Fertilisers (Labelling and Sale) Act 1904*;
- *Fisheries Act 2000*;
- *Gas Safety Act 2000*;
- *Nature Conservation Act 2014*;
- *Planning and Development Act 2007*;
- *Utilities (Technical Regulation) Act 2014*; and
- *Waste Management and Resource Recovery Act 2016*

Summary of amendments to the *Animal Diseases Act 2005*

The object of the *Animal Diseases Act 2005* is to make provisions for endemic and exotic animal diseases which may impact on markets relating to animals and animal products. Part 5A of the Act is concerned about the requirements regarding beekeeper registration, and while it is not explicit in the legislation, in line with the object of the Act these registration provisions are only meant to apply to European honeybees.

The amendment makes it clear that the Act was only meant to apply to European honeybees, and that native bees are not subject to the same regulatory requirements.

Summary of amendments to the *City Renewal Authority and Suburban Land Agency Act 2017*

Sections 28 (Appointment of authority CEO) and 56 (Appointment of agency CEO) of the *City Renewal Authority and Suburban Land Agency Act 2017* (the CRASLA Act) do not have an express power for the Board Chairs to employ their respective CEOs as a public servant under the *Public Sector Management Act 1994*. Clauses 4 and 5 of the Bill amend sections 28(3) and 56(3) of the CRASLA Act to expressly provide this power.

The power to employ the CEOs is currently provided by delegation under the *Public Sector Management Act 1994*. These amendments formalise the power in legislation and removes the requirement for the delegation.

Summary of amendments to the *Fertiliser (Labelling and Sale) Act 1904*

The first amendment to the *Fertiliser (Labelling and Sale) Act 1904* updates the definition of fertiliser, as when the Act was initially passed ‘fertiliser’ consisted nearly entirely of manure or similar organic compounds. It is possible for modern agricultural fertiliser to consist of several different chemicals, and it is necessary for the definition in the Act to be updated to reflect this.

In 2015, as a member of the Agricultural Senior Officials Committee the ACT endorsed the adoption of the national Fertiliser Industry Federation of Australia Code of Practice. The second amendment allows for the Minister to declare a code of practice under the Act. The amendment will be a step towards allowing the ACT to harmonise with other jurisdictions that have incorporated the code into their legislation.

Summary of amendments to the *Fisheries Act 2000*

The *Fisheries Act 2000* allows the Minister to make several declarations in relation to fishing, such size/weight limits, quantities that may be taken, species which may be considered noxious and the types of equipment which may be used.

All declarations made under the Act are disallowable instruments, except the declaration of possession limit which is a notifiable instrument. The amendment changes declaration of possession limit from a notifiable instrument to a disallowable instrument to achieve consistency across the Act.

Summary of amendments to the *Gas Safety Act 2000*

In 2014 administrative responsibility and ongoing policy development for the *Gas Safety Act 2000* was transferred from the planning and land authority to the construction occupations registrar.

These two technical amendments to the Act remove the references to the ‘authority’ and substitute them for the ‘registrar’. These amendments remove all doubt that ultimate responsibility for the Act resides with the construction occupations registrar.

Summary of amendments to the *Nature Conservation Act 2014*

It is recognised that both growing and non-growing (dead) plants may have both commercial and ecological value. The first amendment to the *Nature Conservation Act 2014* clarifies that offence provisions relating to the removal of native plants from unleased land applies equally to both growing and dead plants alike.

The second amendment removes section 178. This section gives the Minister the power to direct the planning and land authority to prepare either a planning report or strategic environmental assessment in relation to draft reserve management plans (DRMP). However, planning reports have no relevance to management plans, and strategic environmental assessments are a precursor document to the DRMPs and cannot be prepared afterwards. As such these provisions are redundant and have never been used.

Under the Act it is an offence to use or possess a net in a reserve for the purposes of capturing an animal, and the third amendment makes an exception for use of a landing net while fishing. This amendment makes the *Nature Conservation Act 2014* consistent with the provisions of the *Fisheries Act 2000*.

Currently when a conservation officer orders a person to leave a reserve (leave reserve direction), they are required to tell that person that they may return to the reserve within 24 hours. Given that reserves may be closed for lengthy periods of time due to extreme fire danger or animal management and operations, it is not practicable for a leave reserve direction to state a person can return to a reserve within 24 hours. The fourth amendment removes this requirement, permitting a conservation officer to issue a direction which factors in how long a reserve will be closed.

Summary of amendments to the *Planning and Development Act 2007*

The first amendment to the *Planning and Development Act 2007* is a technical amendment which gives effect to the intent of the provisions which established and defined the operations of the National Capital Design Review Panel. Essentially these amendments ensure that if a development applicant is referred to the Design Review Panel, then they must include the Panel’s comment in the subsequent development application and that their response to the comments must be in writing.

The second amendment to the Planning and Development Act is to insert a minor discretionary power for the planning and land authority to be able to extend the time in which a development must commence after a development approval takes effect.

The current COVID-19 emergency is placing significant pressure on the development industry and has highlighted the inflexibility of the Act in being able to keep development approvals live.

An amendment to the Act is required to provide the authority the ability to extend the commencement timeframe for a development in order to assist businesses by providing more time to plan and resolve financial, workforce and supply chain issues.

The extension power will be supported by guidelines prepared by the authority which will specify the circumstances in which an application can be made, the information to be provided and the length of extension that the authority will consider for different types of development approvals

Summary of amendments to the *Utilities (Technical Regulation) Act 2014*

Currently there is no express power under the *Utilities (Technical Regulation) Act 2014* for the technical regulator to delegate their functions. This amendment will insert an express delegation power which will harmonise the Act with other legislation creating statutory positions, which all contain express delegation powers.

Summary of amendments to the *Waste Management and Resource Recovery Act 2016*

The first two amendments are about making a clear distinction between reverse vending machines (RVM) and recycling collection points opposed to fully regulated waste facilities. It is recognised that the environmental impact from RVM and collection points is not as significant as regulated waste facilities, and therefore they should be subject to the same licensing requirements. These amendments make this explicit.

The third amendment is a technical amendment to the definition of 'collection point' which will ensure consistency in the use of language throughout the Act.

CONSULTATION ON THE PROPOSED APPROACH

As the Bill is an omnibus bill designed to make minor and technical changes to various pieces of legislation, consultation on the Bill was conducted internally with ACT Government Directorates only.

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

The Bill may engage the right to freedom of movement in section 13 of the Human Rights Act 2004 (HRA).

1. Nature of the right and the limitation (s 28(a) and (c))

Section 13 of the HRA provides:

Everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence.

The amendment to the *Nature Conservation Act 2014* could be perceived as being a limitation on this right, as conservation officers will no longer have to inform a person that they may return to a reserve within 24 hours of being issued with a direction to leave. However, as the reserve may be closed for longer than a 24-hour period for reasons which include public safety during bushfires, it is not practical for a conservation officer to include this information in a direction to leave the reserve.

2. Legitimate purpose (s 28(b))

Section 325 of the *Nature Conservation Act 2014* requires a direction for a person to leave a nature reserve to include a time when the person may return to the reserve. The time must be no more than 24 hours after the direction is given to the person.

This section does not recognise that reserves sometimes need to be closed for days or weeks at a time for public safety reasons such extreme fire danger or ongoing culling operations. In these circumstances it makes no sense for a conservation officer to have to tell someone that they may return in 24 hours. In fact, doing so may endanger that person's life.

3. Rational connection between the limitation and the purpose (s 28(d))

By dropping the requirement to tell someone that they can return to the reserve within 24 hours, a conservation officer will be better placed to give that person a direction which considers the conditions which led to the closure of the reserve. This will enhance safety for members of the public who regularly visit nature reserves in the ACT and give conservation officers flexibility to respond to changing conditions in the reserve.

4. Proportionality (s 28 (e))

The amendment in the Bill is considered to be a reasonable and proportionate response to the practical problems with the operation of section 325 of the *Nature Conservation Act 2014*. There was no other less restrictive means to allow a conservation officer to issue a direction to leave a reserve for as long as necessary which was also consistent with the requirement to tell them they may return within 24 hours.

Planning and Environment Amendment Bill 2020

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Planning and Environment Legislation Amendment Bill 2020**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

OUTLINE OF PROVISIONS OF THE BILL

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Planning and Environment Legislation Amendment Act 2019*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commences on the day after its notification day.

Clause 3 Legislation amended

This clause lists the legislation which is amended by the Act.

Part 2 Animal Diseases Act 2005

Clause 4 Definitions – Pt 5A, Section 62A

This clause amends the definition of 'beekeeper' in section 62A of the Animal Diseases Act to ensure that the regulatory provisions affecting beehives only apply to European honey bees.

Clause 5 Sections 62B(2)(a) and 62I(e)

This clause amends sections 62B(2)(a) and 62I(e) of the Animal Diseases Act to remove references to the repealed *Apiaries Act 1985 (NSW)* and replace it with the current legislation being the *Biosecurity Act 2015 (NSW)*.

Part 3 City Renewal Authority and Suburban Land Agency Act 2017

Clause 6 Appointment of authority CEO, Section 28(3A)

This clause amends section 28(3) of the City Renewal Authority and Suburban Land Agency Act to provide an express power for the chair of the authority board to employ the authority CEO under the *Public Sector Management Act 1994*.

Clause 7 Appointment of agency CEO, Section 56(3A)

This clause amends section 56(3) of the City Renewal Authority and Suburban Land Agency Act to provide an express power for the chair of the agency board to employ the agency CEO under the *Public Sector Management Act*.

Part 4 Fertilisers (Labelling and Sale) Act 1904

Clause 8 Dictionary Section 1A, note 1

This clause amends the Fertilisers (Labelling and Sale) Act to remove Note 1 from section 1A. As another amendment to the Act removes the definition of 'fertiliser' Note 1 needs to be removed as well as it is a signpost definition of 'fertiliser'.

Clause 9 Meaning of Fertiliser, Section 2

This clause amends the Fertilisers (Labelling and Sale) Act to remove the definition of 'fertiliser' as it is now considered to be antiquated and out of date. It is now intended to instead to rely on the ordinary dictionary meaning of 'fertiliser'.

Clause 10 Vendor to give statement, New section 3(4)

This clause amends the Fertilisers (Labelling and Sale) Act to insert a new subsection into section 3. This new subsection provides that a vendor does not commit an offence under the Act if a statement provided to a purchaser complies with the code of practice introduced by clause 11 of this Bill.

Clause 11 Dictionary, definition of fertiliser

This clause amends the Fertilisers (Labelling and Sale) Act by removing the circular reference in the dictionary which refers the reader back to the section 2 definition of 'fertiliser' which is being removed.

Clause 12 New Section 4A

This clause amends the Fertilisers (Labelling and Sale) Act by giving the Minister the power to determine a code of practice under the Act.

Part 5 Fisheries Act 2000

Clause 13 Declaration of possession limit, Section 16A(2)

This clause amends the Fisheries Act by changing the declaration of possession limit in section 16A(2) from a notifiable instrument to a disallowable instrument. This amendment makes the declaration of possession limit consistent with the other declarations under the Fisheries Act.

Part 6 Gas Safety Act 2000

Clause 14 Construction occupations registrar may require information and documents, Section 38(1)

This clause amends the Gas Safety Act by substituting the word 'authority' for the word 'registrar'. This amendment recognises that regulatory authority for this Act has passed from the planning and land authority to the construction occupations registrar.

Clause 15 Appointment of inspectors, Section 40(3)(c)

This clause amends the Gas Safety Act by substituting the word 'authority' for the word 'registrar'. This amendment recognises that regulatory authority for this Act has passed from the planning and land authority to the construction occupations registrar.

Part 7 Nature Conservation Act 2014

Clause 16 Offence – take native plant – unleased land, Section 140 and 141

This clause amends sections 140 and 141 of the Nature Conservation Act to remove the word 'growing', which clarifies that it is an offence to remove both live and dead native plants from unleased land and offer them for sale.

Clause 17 Draft reserve management plan – planning reports and strategic environmental assessments, Section 178

This clause amends the Nature Conservation Act by removing section 178. As planning reports and strategic environmental assessments are not used to inform draft reserve management plans this section is redundant.

Clause 18 Offence – weapons and traps in reserve, Section 217(2A)

This clause inserts a new provision into the Nature Conservation Act which makes an exception to allow landing nets for fishing to be used in reserves.

Clause 19 Section 217(4), new definition of *landing net*

This clause inserts a new provision into the Nature Conservation Act which defines the term 'landing net'. This definition makes clear the distinction between nets used for fishing and other nets which remain prohibited.

Clause 20 Direction to leave reserve, Section 325(3)

This clause amends the Nature Conservation Act by removing subsection 325(3). Given that reserves may be closed for undetermined periods of time it is not practicable to impose an obligation on a conservation officer to tell a person they may return within 24 hours. This is directly counter to a conservation officer's duty to maintain public safety.

Part 8 Planning and Development Act 2007

Clause 21 Meaning of associated document – pt 3.6, Section 30(1)(g)

This clause amends section 30(1)(g) of the Planning and Development Act to include the words 'design advice'. This amendment clarifies that the initial advice from the Design Review Panel as well as the response to that advice are both associated documents for the purpose of lodging development applications.

Clause 22 Form of development applications, Section 139(s)

This clause amends section 139(s) of the Planning and Development Act to add the requirement that when submitting a development application, the initial advice from the Design Review Panel must be included, and that the response to that advice must be in writing.

Clause 23 Section 188 heading

This clause substitutes a new heading for section 188 to reflect the insertion of a new decision-making power to extend the commencement timeframe for a development approval set out in clause 24 below.

Clause 24 Section 188 (2)

This clause inserts new subsections (2) to (6) into section 188 of the Act to provide a discretionary decision-making power for the planning and land authority to extend the period of a development approval.

On application by an applicant, or on its own initiative, the authority may extend the time period for commencing a development after the approval takes effect.

This will allow the authority to extend the period to commence a development for a maximum total period of five years from the time the approval takes effect (inclusive of the original period (generally two years) and the extended period, i.e. an extension of up to three years).

The amendment also includes the ability for the authority to make guidelines to support the application of the provision and the exercise of the decision-making power. Guidelines may provide guidance on matters such as the circumstances in which an application can be made, the information to be provided and the length of extension that the authority will consider for different types of development approvals. The guidelines are a notifiable instrument.

Part 9 Utilities (Technical Regulation) Act 2014

Clause 25 New section 77A

This clause inserts a new provision into the Utilities (Technical Regulation) Act to provide an express power for the technical regulator to delegate their functions under the Act. This ensure the Act is consistent with other legislation which creates statutory positions.

Part 10 Waste Management and Resource Recovery Act 2016

Clause 26 Meaning of waste facility, Section 14

This clause inserts a new subsection into section 14 of the Waste Management and Resource Recovery Act. The new subsection clarifies that the definition of waste facility does not include a reverse vending machine.

Clause 27 Definitions – Pt10A, definition of collection point operator, Section 64B

This clause amends section 64B of the Waste Management and Resource Recovery Act to substitute a new definition of ‘collection point operator’ in place of the existing definition. The new definition of ‘collection point operator’ does not require the operator to hold a waste facility licence, making a regulatory distinction between operators of waste facilities and collection points.

Clause 28 Meaning of collection point – pt10A, Section 64D new definition

This clause amends section 64D of the Waste Management and Resource Recovery Act to update the definition of ‘collection point’. Under the updated definition, a collection point may be defined as a waste facility, a reverse vending machine or a site for collection of materials for further processing at a waste facility in the future.

Clause 29 Content of network operator agreements, Section 64N(1)

This clause amends section 64N of the Waste Management and Resource Recovery Act to substitute the word ‘establishment’ for the word ‘administration’. This is a technical amendment which does not substantially alter the operation of the section.