

2020

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

**GOVERNMENT AMENDMENTS TO THE
PLANNING LEGISLATION AMENDMENT BILL 2020**

SUPPLEMENTARY EXPLANATORY STATEMENT

Presented by

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INTRODUCTION

This explanatory statement relates to Government amendments to the Planning Legislation Amendment Bill 2020 (the Bill) as presented to the Legislative Assembly by Ms Caroline Le Couteur MLA. 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 ACT Government estimates that from 2020, the use of gas is expected to make up 21% of the ACT's greenhouse gas emissions. Transitioning to 100% renewable electricity presents an opportunity to transition away from gas by electrifying our heating and cooling systems.

The [ACT Climate Change Strategy 2019–2025](#) outlines the next steps to establish a pathway for achieving net zero emissions by 2045.

As part of that goal, the Government has committed to develop a plan for achieving zero emissions from gas use by 2045, including setting timelines with appropriate transition periods for phasing out new and existing gas connections.

The proposed Government amendment to development application documentation requirements is an interim step to promote public awareness and discussion, while the Government develops its plan, and associated regulatory responses, to reduce emissions from stationary energy.

The Government is proposing a new requirement for documentation required to be submitted with a development application to include an *expected greenhouse gas emissions statement*. The statement would require information to be provided about the expected greenhouse gas emissions from the annual operations of the building/development.

The statement would then be notified with the development application documentation during the public notification period. This is an interim measure to promote awareness and community discussion, including with the developer, about the expected emissions of buildings/development.

It would provide an opportunity for the community to provide comment to the developer about the energy usage and expected emissions from the building/development, and to encourage a shift towards low-emissions buildings/development and the provision of energy efficient appliances within the development.

OVERVIEW OF THE GOVERNMENT AMENDMENTS

The Government proposes amendments to the Planning Legislation Amendment Bill 2020 (the Bill) as presented to the Legislative Assembly by Ms Caroline Le Couteur MLA.

The amendments propose to remove clauses 13 and 14 from the Bill as presented, being additional considerations for decision-makers when deciding development applications in the merit track and the impact track under the *Planning and Development Act 2007* (the Act).

The Government amendments propose to insert a new requirement for the form of development applications under s 139 of the Act, being the information required to be lodged with a development application.

The Government amendments propose to insert a new section 139(2)(t) into the Act, which will require an *expected greenhouse gas emissions statement* for the proposed development to be lodged with the application where the expected annual greenhouse gas emissions are above a certain amount. The requirement would relate to the annual amount of expected greenhouse gas emissions from operating the development. This means the emissions from energy usage in the operational phase of the development and does not include emissions from the construction phase. The requirement to provide written information would apply to developments with expected annual greenhouse gas emissions above a prescribed amount, with the amount to be prescribed by regulation in the future, following research and policy development about an appropriate threshold.

The amendments also insert a new definition for the *expected greenhouse gas emissions statement*. The definition provides that the statement requires written information stating the annual amount of expected greenhouse gas emissions from operating the development. It is proposed that this information will be required to be submitted through an approved form, which serves the purpose of the statement.

The planning and land authority, in consultation with the Climate Change and Energy Policy officers within the ACT Government and other relevant stakeholders, will prepare information about the method for calculating expected emissions from various development types and where the services of a relevant professional may be required. This information will be provided to the development industry well in advance of the commencement of the proposed provisions to allow time for this documentation to be prepared and submitted with a development application.

The final Government amendment is to clause 23 of the Bill as presented. This amendment proposes changes to the drafting of the proposed new item 9 of part 4.3 of schedule 4 of the Act to limit item 9 to considering the annual expected greenhouse gas emissions from operating the development. This ensures the focus of the item is on the emissions from the

annual operations of the development and does not include consideration of emissions from the construction phase. Finally, it is proposed to insert an ability to prescribe the amount by regulation in the future, following research and policy development about an appropriate threshold.

HUMAN RIGHTS

The Government amendments do not limit rights set out in the *Human Rights Act 2004* (HRA). The expected greenhouse gas emissions from the operations of a development, on an estimated and aggregated basis, is not personal information and therefore the right to privacy in section 12 of the HRA is not engaged.

Further, as the amendments only relate to the provision of information, and not decision-making powers, they are not considered to engage any other rights protected under the HRA or established through the *Planning and Development Act 2007*.

CLAUSE NOTES

Amendments moved by the Minister for Planning and Land Management

Amendment 1 Clause 2 Commencement

This clause provides that the proposed Government amendments outlined below will commence on 1 July 2021.

The other commencement provisions from the Bill as presented remain unchanged.

Amendment 2 Clause 13

This amendment proposes to oppose clause 13 of the Bill as presented.

Amendment 3 Clause 14

This amendment proposes to oppose clause 14 of the Bill as presented.

Amendment 4 Clause 14A Form of development applications, New section 139 (2) (t)

This amendment proposes to insert a new section 139(2)(t) into the Act, which will require an *expected greenhouse gas emissions statement* for the proposed development to be lodged with the application where the expected annual greenhouse gas emissions are above a certain amount.

The requirement would relate to the annual amount of expected greenhouse gas emissions from operating the development and does not include emissions from the construction phase.

The requirement to provide written information would apply to developments with expected annual greenhouse gas emissions above a prescribed amount, with the amount to be prescribed by regulation in the future, following research and policy development about an appropriate threshold.

Clause 14B Section 139 (8), new definition of *expected greenhouse gas emissions statement*

This amendment is a consequential amendment to the one proposed above and inserts a new definition for the *expected greenhouse gas emissions statement*. The definition provides that the statement requires written information stating the annual amount of expected greenhouse gas emissions from operating the development. It is proposed that this information will be required to be submitted through an approved form, which serves

the purpose of the statement, with the calculation of the expected emissions to be undertaken by a relevant professional.

Amendment 5 Clause 23 Development proposals requiring EIS-areas and processes

Schedule 4, part 4.3, new item 9

This amendment proposes to substitute a new clause 23 to the Bill as presented. The proposed amendment changes the drafting of the proposed new item 9 of part 4.3 of schedule 4 of the Act to limit item 9 to considering the annual expected greenhouse gas emissions from operating the development. This ensures the focus of the item is on the emissions from the annual operations of the development and does not include consideration of emissions from the construction phase. The amendment inserts an ability to prescribe the amount by regulation in the future, following research and policy development about an appropriate threshold.