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

TENTH ASSEMBLY

PLANNING AND ENVIRONMENT LEGISLATION AMENDMENT BILL 2024

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

**Presented by
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A/g Minister for Planning
April 2024**

PLANNING AND ENVIRONMENT LEGISLATION AMENDMENT BILL 2024

INTRODUCTION

This explanatory statement relates to the Planning and Environment Legislation Amendment Bill 2024 (the *bill*) as presented to the Legislative Assembly. It has been prepared to assist the reader of the bill and to help inform debate. 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.

This 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*.

OVERVIEW OF THE BILL

This bill is an omnibus bill to enable minor legislative amendments related to the portfolio responsibilities of the Environment, Planning and Sustainable Development Directorate. The omnibus bill process helps the government to be agile and responsive to changing circumstances and to make sure that the statute book remains clear, concise and up to date.

The bill makes a range of amendments to the:

- *Climate Change and Greenhouse Gas Reduction Act 2010*;
- *Commissioner for Sustainability and the Environment Act 1993*;
- *Heritage Act 2004*;
- *Nature Conservation Act 2014*;
- *Professional Engineers Act 2023*; and
- *Surveyors Act 2007*.

The amendments in the bill:

- create a power for the Minister to determine fees under the *Climate Change and Greenhouse Gas Reduction Act 2010*;
- clarify a key function of the Commissioner and contemporise drafting of section 14 of the *Commissioner for Sustainability and the Environment Act 1993*;
- enable the Minister to notify a statement of priorities to assist the ACT Heritage Council to discharge its responsibilities under the *Heritage Act 2004* and align its work with government priorities;
- correct a drafting error within the *Nature Conservation Act 2014* to allow a conservation officer exercising a function under the Act to enter a reserve after it is closed without unintentionally committing an offence;
- amend the commencement date for uncommenced provisions of the *Professional Engineers Act 2023* from 11 October 2023 to 6 March 2025 to support the transition period for applications for registration; and
- update registration and renewal requirements for surveyors registered in the ACT following the commencement of Automatic Deemed Mutual Registration.

CONSULTATION ON THE PROPOSED APPROACH

Consultation on the bill was conducted with the Commissioner for Sustainability and the Environment, internally within the Environment, Planning and Sustainable Development Directorate and with other ACT Government directorates, including Treasury and the Human Rights Unit in the Justice and Community Safety Directorate.

CLIMATE IMPACT

This legislation has been assessed and it has been identified as having no material impact on climate change. None of the amendments contribute to emissions production or abatement within the ACT community nor are there any adaptation impacts against key climate risks to the ACT.

CONSISTENCY WITH HUMAN RIGHTS

During the development of the bill due regard was given to its compatibility with the rights set out in the *Human Right Act 2004* (the **HR Act**), noting the bill is not a Significant Bill and does not engage human rights to a significant extent.

Rights limited

Amendment to Nature Conservation Act 2014

New section 260 (4) of the NC Act corrects a drafting error to provide that it is an exception to the offence of entering a reserve in contravention of a closed reserve declaration for a conservation officer if doing so to exercise a function under the Act. It is often necessary for conservation officers to enter closed reserves, for example, to fight a bushfire or undertake vertebrate pest control within the reserve. It was never intended that it would be an offence for a conservation officer to enter a closed reserve.

Section 22 of the HR Act provides the right to be presumed innocent of a criminal offence until proven guilty by law. This means the prosecution has the burden of proving all the elements of the offence and disproving any exceptions or defences raised by the accused.

New section 260 (4) limits the presumption of innocence by placing the evidential burden for the exception on the defendant. A conservation officer, on the unlikely instance that they were charged with the offence of entering a closed reserve under section 260, will have the evidential burden of proving that they are both appointed as a conservation officer and were present in the closed reserve to exercise a function under the Act. This limitation is reasonable and proportionate as the elements in question are easily within the knowledge and capability for a conservation officer to establish.

Amendments to the Surveyors Act 2007

The amendments to sections 6 to 8 of the *Surveyors Act 2007* provides a limit on the right to work and other work-related rights under section 27B of the HR Act. This right includes the freedom to choose and accept work where it is

available. The eligibility requirements for registration and renewal as a surveyor provide restrictions on who can be registered as a surveyor. This limitation is important. Ensuring a person has appropriate education and experience to work as a surveyor protects industry integrity and public safety. The consequences if a survey of land is incorrect can be devastating and wide-reaching. It is important to note that a person not registered as a surveyor is still lawfully able to work in the surveying profession and undertake certain activities; however, only a registered surveyor is able to submit plans or certify survey documentation. Decisions to refuse to register a person as a surveyor and refuse to renew registration are reviewable decisions, which is a safeguard to the limitation on section 27B.

The requirements under new section 7C of the Surveyors Act also engage the right to privacy and reputation (HR Act, section 12). This right protects individuals from unlawful or arbitrary interference with privacy, family, home or correspondence and is intended to protect individuals from excessive government intervention. An applicant for registration as a surveyor may be requested by the surveyor-general to provide additional information. If the applicant does not provide the information as requested, the surveyor-general may refuse to consider the application. Providing additional information may be perceived as an interference with an applicant's privacy. In Australia, however, surveyors are a regulated profession for the purpose of industry integrity and public safety. It is reasonable for the surveyor-general to ensure they have all necessary information before deciding a registration application. It is a safeguard to this limitation that under new section 7C (1), the information requested must be 'information that the surveyor-general reasonably needs to decide the application'.

PLANNING AND ENVIRONMENT LEGISLATION AMENDMENT BILL 2024

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 2024**. 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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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

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 2024*.

Clause 2 Commencement

This clause provides that the Act, other than part 6, will commence 7 days after its notification day. This is to allow time for administrative processes to be completed before the amendments come into force.

The amendment to the *Professional Engineers Act 2023* (Part 6) will commence on the day after this Act is notified.

Clause 3 Legislation amended

This clause lists the legislation amended by the Act. The Act will amend the:

- *Climate Change and Greenhouse Gas Reduction Act 2010*;
- *Commissioner for Sustainability and the Environment Act 1993*;
- *Heritage Act 2004*;
- *Nature Conservation Act 2014*;
- *Professional Engineers Act 2023*; and
- *Surveyors Act 2007*.

The Act also makes technical amendments to some of the above legislation as well as the *Water Resources Act 2007*, as provided in schedule 1.

Part 2 Climate Change and Greenhouse Gas Reduction Act 2010

Clause 4 New section 26A

This provision inserts a new power into the *Climate Change and Greenhouse Gas Reduction Act 2010* to enable the Minister to determine fees for the Act.

Part 3 Commissioner for Sustainability and the Environment Act 1993

Clause 5 Functions New section 12 (1) (d)

Section 19 of the *Commissioner for Sustainability and the Environment Act 1993* (the **CSE Act**) requires the Commissioner for Sustainability and the Environment (the **commissioner**) to provide the Minister with a state of the environment report.

This clause inserts the function of preparing a state of the environment report for each reporting period into section 12 of the CSE Act to provide it as a function of the commissioner.

Clause 6 Section 12 (3), new definition of *reporting period*

This clause inserts a signpost reference to ***reporting period***, which is defined in section 19 (7) of the CSE Act.

Clause 7 Section 14

This clause redrafts existing section 14 to conform to contemporary drafting standards. The intent of existing section 14 is retained.

The provision applies if a person makes a complaint to the commissioner about a government agency. This clause provides that the commissioner has the discretion to not investigate complaints in certain circumstances. For instance, if the commissioner is satisfied that a complainant became aware of

the circumstance(s) subject to the complaint more than 12 months before making the complaint, the commissioner has the discretion to not investigate the action.

New section 14 (4) clarifies the reference to **complainant**, in relation to a complaint under this clause.

New section 14A redrafts existing section 14 (3) to provide that if a complainant makes a complaint in relation to action taken by an agency, and that the agency has not responded, or the response is not satisfactory, the commissioner must investigate an action if, in their opinion, that agency has not provided a satisfactory response within a reasonable about of time.

Section 14B redrafts existing section 14 (8) and is included to ensure transparency and accountability. The clause provides that where the commissioner decides not to investigate a complaint during a reporting year, the commissioner must include details of the decision not to investigate, and the reasons for the decision, in the report prepared by the commissioner under the *Annual Reports (Government Agencies) Act 2004*.

Clause 8 State of the environment report
Section 19 (7), new definition of *National Environment Protection Council*

This clause amends section 19 (7) to provide a definition of the term ***National Environment Protection Council***, which is used in section 19 (2) (b).

Clause 9 Information to be included in commissioner’s annual report
Section 20

This clause replaces the term ***financial year*** with the term ***reporting year***, which is the term currently used in the *Annual Reports (Government Agencies) Act 2004*.

Clause 10 Section 20 (b)

This clause amends section 20 (b) of the CSE Act to bring it into line with current drafting practices.

Clause 11 Section 20, note

This clause omits a note that is no longer relevant due to recent amendments to the *Annual Report (Government Agencies) Act 2004*.

**Clause 12 Minister to table reports and recommendations
Section 22**

This clause amends section 22 of the CSE Act for drafting consistency.

**Clause 13 Information to be included in agency annual reports
Section 23**

This clause replaces *financial year* with *reporting year*, which is the term used in the *Annual Reports (Government Agencies) Act 2004*.

Clause 14 Section 23, note

This clause omits a note that is no longer relevant due to recent amendments to the *Annual Report (Government Agencies) Act 2004*.

Clause 15 Dictionary, note 2

This clause inserts signpost terms into note 2 of the dictionary for terms defined in the *Legislation Act 2001*.

Clause 16 Dictionary, note 2

This clause omits a term that is no longer used in the CSE Act.

Clause 17 Dictionary, definition of *pre-election year*

The term *pre-election year* is removed from the dictionary by this clause as the term is no longer used in the Act.

Clause 18 Dictionary, new definitions

Clause 19 adds the new definitions of *reporting year*, *special report* and *state of the environment report* in the dictionary, for completeness.

Part 4 Heritage Act 2004

Clause 19 New section 18A

This clause inserts new section 18A into the *Heritage Act 2004* to allow the Minister to notify a statement of priorities (the **statement**). The statement will set out the government's priorities in relation to heritage in the ACT to assist the council to discharge its responsibilities under the Heritage Act and align its work with government priorities. In current administrative practice, the Minister already provides the Heritage Council with a statement setting out the government's priorities and expectations. Inclusion of this statement within statute allows the statement to be notified on the Legislation Register, increasing the transparency of the government's priorities for heritage conservation in the ACT.

New section 18A also sets out requirements for the statement to meet when the Minister decides to use their discretion in notifying a statement.

Part 5 Nature Conservation Act 2014

Clause 20 Offence—enter closed reserve Section 260 (3), note

This clause corrects a drafting error in the *Nature Conservation Act 2014* (the **NC Act**) by inserting an exception to the offence in section 260 to allow a conservation officer to enter a reserve that is subject to a closed reserve declaration, when that officer is carrying out their official functions under the NC Act.

Part 6 Professional Engineers Act 2023

Clause 21 Section 2 (2)

This clause substitutes section 2 (2) of the *Professional Engineers Act 2023* to provide a commencement date for any uncommenced provisions of 6 March 2025.

The registration scheme established by the *Professional Engineers Act 2023* opened for applications for registration on 6 March 2024. Applications are opening in a phased manner across the prescribed areas of engineering. It will not become mandatory to be registered as an engineer until 6 March 2025.

This amendment supports the announced approach and mandatory registration date by setting the default commencement date as 6 March 2025. This time provides the engineering profession with a fair transition to the scheme prior to compliance and enforcement activity commencing while also delivering these reforms to consumers in a timely manner. It also supports the Government to manage demands on the scheme and provide a more manageable and responsive scheme.

Part 7 Surveyors Act 2007

Clause 22 Sections 6 to 8

This clause redrafts the registration process for surveyors in the *Surveyors Act 2007*. The new process reduces red tape and allows the surveyor-general to process registrations and renewals more efficiently and effectively.

The eligibility for registration includes a requirement for a person, who has not previously been registered, to obtain a certificate of competency from the Board of Surveying and Spatial Information (**BOSSI**), a statutory body established by section 27 of the *Surveying and Spatial Information Act 2002* (NSW).

The ACT contributes to the accreditation process that is the basis for the BOSSI certificate of competency pursuant to the *2023 Memorandum of Understanding between the NSW Board of Surveying and Spatial Information and the Surveyor-General of the Australian Capital Territory for Cooperative Arrangements between the Board and the Surveyor-General of the ACT*. Allowing BOSSI to determine the competency of potential registered surveyors in the ACT, at the same time as assessing surveyors in New South Wales, is a more efficient process due to the small population of surveyors who work solely in the ACT. The surveyor-general of the ACT is an observer at meetings of BOSSI.

Clause 23 Section 10

This clause replaces current section 10 of the Surveyors Act to sit more effectively with the new registration and renewal process in new sections 6 to 8.

The registration certificate is only issued once when a surveyor is first registered. A surveyor will not be able to rely on their registration certificate after the first year, as the wording on the certificate will specify that the date of commencement is for initial registration only and ongoing registration is subject to renewal.

**Clause 24 Details to be entered in surveyors register
 Section 12 (1) (e)**

This clause amends section 12 (1) (e) of the Surveyors Act to ensure the details entered in the surveyors register lines up with the new registration process.

**Clause 25 Continuing registration
 Division 3.1**

This clause omits division 3.1 from the Surveyors Act. The convoluted ‘continuing registration’ process is being replaced with a new streamlined registration process being inserted at new sections 6 to 8.

Clause 26 Power of entry generally
Section 45 (2), new note

This clause inserts a new note at section 45 (2) of the Surveyors Act to remove any confusion about the different ways a notice to enter land may be given to the occupier of the land. Both the **occupier** and **owner** of land are defined by current section 45 (5).

Clause 27 New section 45 (2A)

This clause brings the Surveyors Act up to date with the current practice of surveyors keeping a record of the notice given under section 45 (2) and clarifying that a record can be a copy of the notice given, or a file note if notice was provided verbally.

Clause 28 Surveyor-general practice directions
New section 55 (1A)

This clause displaces the operation of section 47 (3) of the *Legislation Act 2001*. The intention of this clause is to enable the surveyor-general to issue practice directions that may apply guidelines as in force from time to time. The guidelines enable the surveyor-general to be agile and responsive to changing circumstances within the parameters of the practice directions. The guidelines will be notifiable instruments under the Legislation Act, section 47, which ensures surveyors have transparency in relation to the requirements for their work.

Clause 29 Reviewable decisions
Schedule 1, Item 1

This clause updates the table of reviewable decisions to reflect the new registration process.

Clause 30 Dictionary, definition of *continuation notice*

This clause removes a definition that will no longer be used in the Surveyors Act due to the amendments to the registration process made by this bill.

Clause 31 Dictionary, definitions of *registration certificate* and *registration number*

This clause inserts new signpost definitions that have been introduced with the new registration process for surveyors.

Schedule 1 Technical amendments

Schedule 1 makes technical amendments to the:

- *Commissioner for Sustainability and the Environment Act 1993*;
- *Nature Conservation Act 2014*;
- *Surveyors Act 2007*; and
- *Water Resources Act 2007*.