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

**ELEVENTH ASSEMBLY**

**PLANNING (TERRITORY PRIORITY PROJECT) AMENDMENT BILL 2025**

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

**Presented by  
Chris Steel MLA  
Minister for Planning and Sustainable Development  
February 2025**

# PLANNING (TERRITORY PRIORITY PROJECT) AMENDMENT BILL 2025

## INTRODUCTION

This explanatory statement relates to the Planning (Territory Priority Project) Amendment Bill 2025 (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.

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* (the *HR Act*).

## OVERVIEW OF THE BILL

The *Planning Act 2023* (the *Act*) is the foundation of the Territory's long-term aspirations for growth and development of Canberra while acknowledging the value of its character. The Act provides for a more 'spatially-led' and 'outcomes-focussed' planning system. Imbued in the provisions of Act, are the following five key principles:

1. Easy to use;
2. Certainty;
3. Flexibility;
4. Transparency; and
5. Outcomes-focused.

Chapter 8 of the Act establishes the powers for a Territory Priority Project (TPP), with section 216 specifying the meaning of a *territory priority project*. These powers commenced with the Act in November 2023.

A TPP is either declared to be a TPP or is a development proposal that is *related to light rail*.

The policy intent of this power is, that if a development proposal is defined as a TPP under the Act, as is currently the case with a development proposal *related to light rail* (section 216 (b)), the proposal is for infrastructure or facilities that would help achieve a major government policy outcome and will be of significant benefit to the people of the ACT.

This bill amends the Act to provide that a development proposal related to a public health facility and a development proposal related to public housing are captured under the meaning of a *territory priority project* (as per section 216). This effectively establishes a development proposal relating to a public health facility, and to public housing, as distinct categories under section 216 of the Act, as is currently the case for a proposal related to light rail. The effect being, these development proposals will not need to be ‘declared’ as TPPs under section 218 of the Act, given they are proposals of significance and benefit to the Canberra community.

## **CONSULTATION ON THE PROPOSED APPROACH**

Consultation on the bill was conducted with the Territory Planning Authority, internally within the Environment, Planning and Sustainable Development Directorate and with other ACT Government directorates, including Housing ACT within the Community Services Directorate, ACT Health, 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 HR Act. 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 HR Act.

### *Rights engaged*

The bill engages with the right to a fair trial under section 21 of the HR Act.

#### Right to a Fair Trial

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

The right to a fair trial is protected by section 21 of the HR Act. Section 21 protects the right to procedural fairness, and can also extend to protect third parties whose substantive legal rights may be affected by a determination, for example in planning decisions.

The bill limits the right to a fair trial by placing restrictions on appeal rights, as expanding the section 216 definition of a TPP to include a development proposal relating to a public health facility or a development proposal relating to public housing will mean that these proposals are exempt from third party appeal rights in the ACT Civil and Administrative Tribunal (ACAT).

In accordance with chapter 15 and part 6.2 of the Act, all TPPs are exempt from third party appeal rights. This is irrespective of whether the TPP is for a development mentioned in section 216 of the Act, or for a TPP where a declaration is made under section 218 of the Act.

The amendment of section 216 of the Act through clause 4 of the bill results in development applications (DA) for public housing and public health facilities being automatically considered as TPPs without the need for a declaration under section 218 of the Act. In effect, this means that DA decisions for public housing and public health infrastructure projects are exempt from third party ACAT review.

##### *2. Legitimate purpose (s 28 (b))*

The objective sought to be achieved by these provisions is to provide certainty in the development and construction of critical public infrastructure that will help achieve

wider policy and public benefits. The inclusion of public housing and public health facilities as a TPP, will reduce lengthy delays which often result from third-party appeals. At times there have been unnecessary appeals of development applications for public housing, where community members seek to delay or cancel these types of developments with a view to prevent them from occurring. These amendments seek to redress this, by avoiding any lengthy appeal periods in the appeals tribunal.

For significant public housing and public health facilities, these developments will help achieve a major government policy outcome that will be of significant benefit the people of the ACT.

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

Restricting third parties who may wish to challenge DAs limits review rights, meaning fewer parties are able to seek ACAT review.

Reducing the number of potential reviews on these development decisions will maximise efficient decision-making and will help ensure timely delivery of critical public infrastructure. These developments will help achieve a major government policy outcome that will be of significant benefit the people of the ACT.

### *4. Proportionality (s 28 (e))*

The limitations on the right to a fair trial are considered proportionate to the legitimate purpose.

In the case of limiting the ability to review a DA on public housing and public health facility development proposals, the limitations are proportionate to the significant benefits these projects provide to the ACT community, such as easing pressures on the public health system, which is received through timely delivery of additional public health facilities.

Limiting the ability to review decisions of developments mentioned in clause 4 of the bill is justified on the basis that division 7.5.4 of the Act includes extensive public notification requirements for all DAs, including those related to TPPs. During this process, the decision-maker is required to consider all representations made during the public notification period.

Limiting the application of these changes to only public health facilities and public housing helps achieve the legitimate purpose of assisting to deliver infrastructure that will be of significant benefit to the people of the ACT. Specifically, private health facilities were excluded as their services are not provided equitably to all members of the community, which does not align with the legitimate purpose. Private housing was excluded as these proposals account for the majority of development, and its inclusion would exacerbate the limitation on the right to a fair trial where it would no longer be proportionate to the legitimate purpose.

# PLANNING (TERRITORY PRIORITY PROJECT) AMENDMENT BILL 2025

## *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Planning (Territory Priority Project) Amendment Bill 2025**. 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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Tara Cheyne 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 (Territory Priority Project) Amendment Act 2025*.

#### Clause 2 Commencement

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

#### Clause 3 Legislation amended

This clause sets out that the Act amends the *Planning Act 2023*.

#### Clause 4 Meaning of *territory priority project* Section 216, definition of *territory priority project*, new paragraphs (c) and (d)

This clause inserts new paragraphs (c) and (d) into section 216 to provide that a development proposal related to a public health facility or a development proposal related to public housing, as being territory priority project.

#### Clause 5 New sections 217A and 217B

This clause, through new section 217A establishes a definition of what is ***related to a public health facility***.

This clause establishes that it applies only to developments undertaken by, or on behalf of the Territory or a territory entity. This is to clearly establish that private health facilities are not included in this definition.

This clause also provides that a health facility, that is owned, or intended to be owned, or operated by the Territory or a territory entity, include essentially all works associated with facilities that provide health care services, such as diagnosis, preventative care or rehabilitation, medical or surgical treatment in both in-patient and out-patient environments. It also accounts for care accommodation and housing that is associated with the facility.

Through new section 217B, this clause establishes a definition of what is ***related to public housing***.

This clause establishes that it applies only to developments undertaken by, or on behalf of the housing commissioner. This is to clearly establish that private housing projects are not included in this definition.

This clause clarifies that the construction, operational maintenance, repairs or refurbishment of housing on land that is leased, controlled or held, or contracted by



the housing commissioner (or ACT Housing) is captured. This provides that initial construction, knockdown-rebuilds and other extension or additions are captured. Community housing and affordable housing are excluded from the definition as the amendments intend to capture only public housing developments.

**Clause 6 Declaration of territory priority projects  
Section 218 (1) (c), note**

This clause omits the note under section 218 (1) (c) that outlines that significant infrastructure or facilities includes community, social and public housing projects of any scale.

The note has caused confusion with it being incorrectly interpreted as community, social and public housing projects as automatically meeting all the associated criteria under section 218 (1), to be declared as territory priority projects.

This bill and removal of the note clarifies the types of housing projects that are automatically considered to be territory priority projects.

**Clause 7 Dictionary, note**

This clause inserts a note for the term ***housing commissioner***. in the *Legislation Act 2001* dictionary.

**Clause 8 Dictionary, new definitions**

This clause includes signpost definitions to the terms ***related to a public health facility*** and ***related to public housing*** in the dictionary. This refers to the definitions established through new sections 217A and 217B in clause 5.