

2025

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

ELEVENTH ASSEMBLY

HERITAGE AND PLANNING LEGISLATION 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
March 2025**

HERITAGE AND PLANNING LEGISLATION AMENDMENT BILL 2025

This explanatory statement relates to the Heritage and Planning Legislation 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*.

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 (EPSDD), specifically those relating to heritage and planning and sustainable development.

Technical omnibus bills enable the government to keep the statute book up to date and clear.

This bill makes amendments to the:

- *Heritage Act 2004*;
- *Planning Act 2023*; and
- *Planning (General) Regulation 2023*.

The bill:

- updates terms within the *Heritage Act 2004* (the Heritage Act);
- corrects a number of drafting errors in the *Planning Act 2023* (the Planning Act), such as minor typographical errors and other administrative amendments;
- clarifies the expiry of section 521 of the Planning Act, relating to the University of NSW lease provisions, to align with the policy intent set out in the explanatory statement of the Planning Bill 2022; and
- makes technical amendments to the *Planning (General) Regulation 2023* to clarify the greenhouse gas emissions thresholds for significant and minor developments.

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 and entities, including the City Renewal Authority, the Chief Minister, Treasury and Economic Development Directorate and the Human Rights Unit in the Justice and Community Safety Directorate.

CLIMATE IMPACT

The amendments in the bill related to greenhouse gas emission thresholds for significant and minor developments are merely drafting corrections. As such, the climate impact is consistent with existing policy.

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 Rights Act 2004* (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 does not engage human rights to a significant extent. However, the bill does broadly promote the right to education under section 27A of the HR Act.

Rights Promoted

Right to education – UNSW lease provisions

The right to education, specifically the right that every person living in the ACT has the right to access further education and vocational and continuing training on non-discriminatory grounds is promoted by the bill in so far as it facilitates the opportunity for a lease to be granted to the University of NSW (UNSW) to provide educational opportunities to the ACT community. Further, it provides additional choice to members of the community who seek to undertake adult education courses and industry training.

While the amended provision in the Planning Act extends the expiry of the provision to enable the Territory to grant a lease to the UNSW, and does not directly and immediately impact an individual, there will be the longer-term benefits to members of the ACT community from this amendment, as they will have more choice of tertiary education providers in the Territory.

HERITAGE AND PLANNING LEGISLATION AMENDMENT BILL 2025

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Heritage and Planning Legislation 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 *Heritage and Planning Legislation Amendment Act 2025*.

Clause 2 Commencement

This clause provides that the Act will commence on the 7th day after its notification day.

Clause 3 Legislation amended

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

- *Heritage Act 2024*;
- *Planning Act 2023*; and
- *Planning (General) Regulation 2023*.

Part 2 Heritage Act 2004

Clause 4 Part 16 heading

This clause substitutes the heading of part 16 of the Heritage Act 2004 to ***Part 16 – Heritage and public sector bodies***.

This amendment has been made to reflect the changed terminology in the *Annual Reports (Government Agencies) Act 2004* (resulting from the *Public Sector Management Amendment Act 2016*) from ***public authority*** to ***public sector body***.

Clause 5 Meaning of ***public authority*** for pt 16 Section 106

This clause omits the meaning of ***public authority***.

This amendment has been made to reflect the changed terminology in the *Annual Reports (Government Agencies) Act 2004* (resulting from the *Public Sector Management Amendment Act 2016*), as outlined in clause 4.

Clause 6 Section 107 heading

The clause substitutes the heading for section 107 to ***107 – Heritage places and heritage objects for which public sector body responsible***, to align with the changed terminology, as outlined in the above clauses.

Clause 7 Section 107

This clause omits the term **public authority** and substitutes it with **public sector body**, to align with the changed terminology, as outlined in the above clauses.

Clause 8 Section 107 (a)

This clause omits the term **the authority** and substitutes it with **the body**, to align with the changed terminology, as outlined in the above clauses.

**Clause 9 Heritage reports
Section 108 (1)**

This clause omits the term **public authority** and substitutes it with **public sector body**.

Clause 10 Section 108 (1) to (3)

This clause omits the term **the authority** and substitutes it with **the body**.

**Clause 11 Assessment of heritage reports by council
Section 109 (1)**

This clause omits the term **public authority** and substitutes it with **public sector body**.

Clause 12 Section 109 (1) (a)

This clause omits the term **the authority** and substitutes it with **the body**.

Clause 13 Section 109A

This clause substitutes section 109A in its entirety to reflect the changed terminology in the *Annual Reports (Government Agencies) Act 2004* (resulting from the *Public Sector Management Amendment Act 2016*) from **public authority** to **public sector body**.

**Clause 14 Conservation management plan
Section 110 (1) (a)**

Section 110 (1) (a) is substituted to update terminology to reflect the amendments referenced in the above clauses.

Clause 15 Section 110 (2)

This clause omits section 110 (2) and substitutes it with terminology that is reflective of the amendments referenced above.

Clause 16 Section 110 (3) (b)

This clause omits the term *public authority* and substitutes it with *public sector body*.

Clause 17 Section 110 (4) (b)

This clause omits the term *the authority* and substitutes it with *the public sector body*.

Clause 18 Section 110 (5)

This clause omits the term *public authority* and substitutes it with *public sector body*.

Clause 19 Section 110 (6)

The term *The authority* is omitted and substituted with *The public sector body*.

Clause 20 Section 110 (7)

This clause omits the term *public authority* and substitutes it with *public sector body*.

Clause 21 Section 110 (8)

This clause omits the term *an authority* and substitutes it with *a public sector body*.

Clause 22 Dictionary, note 2

The clause inserts a new dot point for *public sector body* under note 2 of the dictionary.

Clause 23 Dictionary, definitions of *heritage object* and *heritage place*

The clause omits the term *public authority* in the dictionary and substitutes it with *public sector body*.

Clause 24 Dictionary, definition of *public authority*

The clause omits the definition of *public authority* in the dictionary to align with the above amendments.

Part 3 Planning Act 2023

Clause 25 Subdivision design applications Section 43 (1), note 2

This clause amends note 2 of section 43 (1) by omitting the term ***ie an area within a suburb*** and substituting it with ***eg an area within a division*** to comply with contemporary drafting practice.

Clause 26 Section 43 (2)

This clause amends section 43 (2) of the *Planning Act 2023* to make the amendments to section 44 and 84 (as below) simpler. This amendment does not substantively change the operation of the provision.

Clause 27 Effect of approval of subdivision design application Section 44 (1) (b) (i) and (c) (i)

This clause corrects a minor drafting error by omitting the reference to ***section 43 (2) (g)*** and substituting it with the reference to ***section 43 (2)***.

Clause 28 Contents of territory plan Section 48 (1) (a)

The clause omits the reference to '(the ***territory plan map***)', as the term is not used in the *Planning Act 2023*.

Clause 29 What is a ***minor plan amendment*** and is consultation needed? Section 84 (2) (b)

This clause amends an incorrect cross reference to section 43 (2) (g), as per clause 26.

Clause 30 Application for development approval Section 166 (4) (b)

The clause corrects a minor drafting error, so ***item 6*** is now substituted with ***item 7***.

Clause 31 End of development approvals generally Section 211 (3)

This clause corrects a drafting error and omits ***within*** and substitutes it with the phrase ***not later than***.

Clause 32 Section 211 (4) (a)

The clause amends section 211 (4) (a) to create two subparagraphs to provide for circumstances where (i) an application for review is made to the ACT Civil and

Administrative Appeals Tribunal (ACAT); or (ii) an appeal is made to a court in relation to the development approval.

Clause 33 Section 211 (4) (b)

Section 211 (4) (b) is an amendment consequential to the amendments in clause 32.

**Clause 34 End of development approvals for lease variations
Section 212 (2) (b) (ii)**

Clause 34 substitutes section 212 (2) (b) (ii) to align with the amendments in clause 32.

**Clause 35 Restrictions on dealings with concessional leases
Section 306 (3) (b) (i) and (ii)**

Clause 35 amends section 306 (3) (b) (i) and (ii) as the *Federal Circuit and Family Court of Australia Act 2019* (Cwlth) renamed the Family Court of Australia as the Federal Circuit and Family Court of Australia (Division 1) and the Federal Circuit Court as the Federal Circuit and Family Court of Australia (Division 2).

Additional amendments were also made at that time to change the jurisdiction of the former Family Court so that the new Division 2 Court became responsible for hearing most family law matters.

The amendment reflects the abovementioned changes and is not intended to substantively change the operation of the existing subparagraphs. The substituted subparagraph is intended to have the same outcome without the need to refer to the name of the courts.

**Clause 36 Exceptions to s 350 and s 351
Section 352 (b) (i) and (ii)**

As per clause 35.

**Clause 37 Transfer of land subject to building and development provision
Section 370 (b) (i) and (ii)**

As per clause 35.

**Clause 38 Time for making controlled activity order
Section 426 (3)**

The clause omits section 426 (3), as the Chief Planner does not have the power to delegate their functions.

Clause 39 Use and disclosure of protected information
Section 518 (5), definition of *information holder*,
paragraph (a) (iii)

This clause omits this subparagraph as there is no relevant '*commission*' in the *Planning Act 2023*.

Clause 40 Expiry of University of NSW lease provisions
Section 521

Clause 40 amends section 521 of the *Planning Act 2023* so that the provision sunsets 5 years after the commencement of the Planning Act. This aligns the intended outcome of the provision with that set out in the explanatory statement to the Planning Bill 2022.

As the *Planning Act 2023* commenced on 27 November 2023, and according to the ordinary rules of working out periods of time, 5 years after the day the Planning Act commenced is 26 November 2028.

Thus, section 521 has been amended so as to expire on 26 November 2028.

Clause 41 Dictionary, definition of *territory plan map*

The clause omits the dictionary definition of *territory plan map*, to align with the amendment in clause 28.

Part 4 Planning (General) Regulation 2023

Clause 42 Expiry of University of NSW lease provisions
Section 107 (1)

The amendment of section 107 (1) is consequential to the amendment made by clause 40.

Clause 43 Section 107 (2)

As above.

Clause 44 Development proposals requiring environmental impact assessment
Schedule 1, part 1.2, item 24, column 2

This clause amends the reference to *the amount prescribed under s 32* of the *Planning (General) Regulation 2023* (the Planning (General) Regulation), and substitutes it with **1kt**.

The threshold amount prescribed under the Planning (General) Regulation, section 32, is 250t. However, this amendment to substitute the threshold with 1kt (under schedule 1, part 1.2, item 24, column 2), rather than referring to the threshold

set under section 32 of the Planning (General) Regulation, corrects a drafting error in relation to the requirements of development proposals for significant developments.

This amendment reflects the policy intent to retain the previously set thresholds (established under the repealed *Planning and Development Act 2007* and repealed *Planning and Development Regulation 2008*) to reduce the regulatory burden for developments that emit less greenhouse gases.

In effect, this amendment reinstates the intended operation of the provision, to prescribe that the amount of greenhouse gas emissions required for an environmental impact statement to be completed prior to the submission of a development application, is 1kt of greenhouse gas emissions per annum.