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

ELEVENTH ASSEMBLY

ENVIRONMENT LEGISLATION AMENDMENT BILL 2025

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

**Presented by
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Minister for Climate Change, Environment, Energy and Water
May 2025**

ENVIRONMENT LEGISLATION AMENDMENT BILL 2025

This explanatory statement relates to the Environment 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 climate change, the environment, and energy and water.

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

This bill makes amendments to the:

- *Biosecurity Act 2023*;
- *Biosecurity (National Livestock Identification System) Regulation 2025*;
- *Biosecurity Regulation 2025*;
- *Commissioner for Sustainability and the Environment Act 1993*;
- *Energy Efficiency (Cost of Living) Improvement Act 2012*;
- *Fisheries Act 2000*;
- *Lakes Act 1976*;
- *National Environment Protection Council Act 1994*;
- *Nature Conservation Act 2014*; and
- *Water Efficiency Labelling and Standards (ACT) Act 2015*.

Summary of amendments to Biosecurity legislation

The *Biosecurity (National Livestock Identification System) Regulation 2025* and the *Biosecurity Regulation 2025* commenced in April 2025. Both regulations contain a provision that enables the regulation, and any statutory instrument under the regulation, to apply, adopt or incorporate a law, instrument or standard as in force from time to time. The regulations also have provision to disapply section 47 of the *Legislation Act 2001*. This disapplication allows the regulations to apply, adopt or incorporate a law, instrument or standard without the requirement to make that law, instrument or standard a notifiable instrument.

This bill is relocating those disapplication provisions from the regulations to the *Biosecurity Act 2023*. Provisions of this kind would usually appear in the primary legislation, not regulations. Unfortunately, the provisions were not included in the Act as a drafting error so were included in the regulations as a placeholder. The relevant provisions in each of the regulations made under the Act will be removed to minimise unnecessary duplication.

The provisions transferred into the Biosecurity Act provides that a regulation or instrument may apply, adopt or incorporate a law or standard or another instrument as in force from time to time. The intention is to allow relevant laws, standards or instruments in other jurisdictions under similar biosecurity frameworks to be incorporated, applied or adopted in the ACT. This increases the Territory's ability to be responsive and flexible in addressing biosecurity incidents and supports consistency across States and Territories to address any potential or imminent biosecurity threat.

The provisions transferred into the Biosecurity Act also provide that section 47 (5) and (6) of the Legislation Act do not apply to the laws, standards or instruments applied, adopted or incorporated (the **disapplication clause**). This disapplication clause will allow a consistent approach to the incorporation of laws, standards or instruments.

Australian and Australian/New Zealand Standards are subject to copyright agreements that do not allow the publication of their content. Members of the public who wish to access Australian and Australian/New Zealand standards may do so via the Standards Australia 'Reader Room'. The Reader Room is an online portal provided to members of the Australian public on a no-fee access basis for personal, domestic or household use only. The Reader Room gives a user three unique access tokens, over a 12-month period, which grants read-only access for a 24-hour period.

There may also be instances where it is not practical to publish a law or an instrument as a notifiable instrument due to its volume; or inefficient due to it being otherwise publicly available. In circumstances where a particular incorporated instrument will not be notified under a regulation or disallowable instrument, an explanation as to why, will be set out in the accompanying explanatory statement.

EPSDD is committed to increasing transparency and easy access to government information, to the extent that is permissible and practicable. This clause requires the Director-General to ensure that an instrument, that is applied, adopted or incorporated, is made available to the public, such as a link provided on an ACT Government website. An instrument that is incorporated, applied or adopted is not enforceable unless it has been made accessible in accordance with the above.

There is also a transitional provision to provide clarity that any law, standard or other instrument applied, adopted or incorporated under the regulations will be taken as being applied, adopted or incorporated under the Biosecurity Act. There are also some minor consequential amendments to the regulations.

Amendment to the Commissioner for Sustainability and the Environment Act 1993

This bill changes the timing of the government response to the State of the Environment report (the **SoE report**). Section 19 of the *Commissioner for Sustainability and the Environment Act 1993* (**CSE Act**) provides that the Minister must present a government response to the SoE report within 6 months from receiving the SoE report. With the timing of the reporting period, this means the Minister often receives the SoE report in December and the government loses approximately a month of productive work time to develop a response to the SoE report over the Christmas/New Year period.

The bill is slightly adjusting the timeframe by requiring the government response to be provided 6 months from the tabling of the SoE report in the Legislative Assembly. Under section 22 of the CSE Act the Minister must table a SoE report within 6 sitting days of receiving it.

Amendment to the Energy Efficiency (Cost of Living) Improvement Act 2012

The bill inserts a provision into section 25 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* to enable codes of practice made under the Act to apply, adopt or incorporate laws, Australian standards or other instruments as in force from time to time. This provision enables laws, standards or instruments that are relevant to ensuring electricity retailers comply with the Act can be utilised within a code of practice. It is not uncommon for the Territory to apply technical codes and/or standards on industry.

The bill also inserts a provision to disapply section 47 (5) and (6) of the Legislation Act. Disapplication removes the requirement to notify on the legislation register any laws, standards or instruments that are applied, adopted or incorporated. This disapplication clause will allow a consistent approach to the incorporation of laws, standards or instruments.

As mentioned above, Australian and Australian/New Zealand standards are subject to copyright agreements that do not allow the publication of their content. Note that electricity retailers require their staff to access standards as part of standard

business and to ensure the company can comply with many State, Territory and national laws.

There may also be instances where it is not practical to publish a law or an instrument due to its volume; or inefficient due to it being otherwise publicly available.

No human rights are engaged by the insertion of this disapplication clause as codes of practice under the Act only apply to electricity retailers and not to individuals.

EPsDD is committed to increasing transparency and easy access to government information, to the extent that is permissible and practicable. This clause requires the administrator under the Act to ensure that an instrument that is applied, adopted or incorporated is made available to the public, such as a link provided on an ACT Government website. An instrument that is incorporated, applied or adopted is not enforceable unless it has been made accessible in accordance with the above.

Amendments to the Fisheries Act 2000

The bill corrects a drafting error by replacing the term **waste manager** with the term **director-general** in section 72H of the *Fisheries Act 2000*. Section 72H currently incorrectly identifies the waste manager (a statutory officer created by the *Waste Management and Resource Recovery Act 2016* who has no functions under the Fisheries Act) as the person who may undertake certain activities in relation to seized things under the Fisheries Act. The Director-General responsible for the administration of the Fisheries Act is the correct person for this kind of function as a person with senior oversight of the enforcement functions of the Act.

There is also a minor amendment to update a reference to repealed legislation.

Amendments to the Nature Conservation Act 2014

The bill inserts new provisions into section 153 of the *Nature Conservation Act 2014* (**NC Act**) to provide exceptions to offences in chapter 6, if a person is acting under a biosecurity emergency declaration or a biosecurity control declaration made under the Biosecurity Act.

The bill also redrafts section 325 of the NC Act. Section 325 enables a conservation officer to direct a person to leave a reserve if the conservation officer *believes on reasonable grounds* the person is: (a) in the reserve; and (b) has acted in an offensive way, is creating a public nuisance or has committed, is committing, or is about to commit, an offence against the NC Act.

The bill merely redrafts the current provision so a conservation officer may direct a person to leave the reserve if: (a) the person is in a reserve; and (b) the conservation officer *believes on reasonable grounds* that the person has acted in an offensive way, is creating a public nuisance or has committed, is committing, or is about to commit, an offence against the NC Act.

This nuanced amendment removes ‘reasonable belief’ from the element of ‘being in a reserve’ so it becomes a question of fact and is no longer linked to the ‘reasonable belief’ of the conservation officer enforcing the NC Act.

Section 326 contains a strict liability offence not to comply with a direction under section 325. Please refer to the explanatory statement for the *Nature Conservation Amendment Bill 2024* that undertakes a human rights analysis for the offence in section 326 of the NC Act.

Other amendments

The bill also updates wording to align with current drafting practices and contemporises references to Commonwealth and New South Wales legislation, including making minor amendments to the *Lakes Act 1976*, the *National Environment Protection Council Act 1994* and the *Water Efficiency Labelling and Standards (ACT) Act 2015*.

CONSULTATION ON THE PROPOSED APPROACH

Consultation on the bill was conducted with the Office of the Commissioner for Sustainability and the Environment, the Conservator of Flora and Fauna, and policy and operational areas within EPSDD. The Human Rights Unit within the Justice and Community Safety Directorate was also consulted about the bill.

CLIMATE IMPACT

This legislation has been assessed and it has been identified as having no material impact on climate change, as the amendments are minor and technical in nature, and therefore do not impact existing climate change 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.

Amendments to biosecurity legislation

The amendments to the Biosecurity Act may impact on individuals and down the line could have consequences for human rights. The amendments that allow for the automatic incorporation (or adoption or application) of laws, instruments and standards do not limit human rights at first instance, but the documents to be incorporated may engage with human rights depending on their content. There is no way to predict which human rights may be engaged and whether those rights would be promoted or limited.

Biosecurity measures are not designed in themselves to affect humans, but rather to address biosecurity risks to the environment, economy and community from pest plants, pest animals, and plant and animal diseases. However, these measures may impact the rights of people dealing with biosecurity matters which pose or are likely to pose a biosecurity risk.

As discussed above, the purpose of enabling documents to be automatically incorporated is to allow relevant laws, standards or instruments in other jurisdictions under similar biosecurity frameworks to be incorporated in the ACT. The ACT biosecurity framework relies upon inter-operability with the NSW biosecurity system in consideration of the Territory's geographic location surrounded by NSW. It is also crucial that the Territory is responsive and flexible in addressing biosecurity incidents and can maintain consistency with States and other Territories to address any potential or imminent biosecurity threat.

It is important to note, however, that any document incorporated will be interpreted in a way that is compatible with human rights, pursuant to the HR Act, section 30. and decision-makers under those laws are also bound by the HR Act. Additionally, under the HR Act, section 40B, decision-makers under the Biosecurity Act, as public authorities, are required to give proper consideration to relevant human rights when making a decision, which would include deciding whether to incorporate a document into ACT law.

In circumstances where a particular incorporated instrument will not be notified under a regulation or disallowable instrument, an explanation as to why will be set out in the accompanying explanatory statement. Additionally, the amendments to the Biosecurity Act requires the Director-General to ensure that an instrument, that is applied, adopted or incorporated, is made available to the public, such as a link provided on an ACT Government website so that individuals will be aware of their obligations under those instruments.

ENVIRONMENT 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 **Environment 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 *Environment Legislation Amendment Act 2025*.

Clause 2 Commencement

This clause provides that the Act will commence on the 14th day after its notification day.

Clause 3 Legislation amended

This clause provides that the legislation amended by the Act are mentioned in parts 2 to 11.

Part 2 Biosecurity Act 2023

Clause 4 New section 232A

This clause inserts a new provision into the Biosecurity Act to enable a regulation or instrument to apply, adopt or incorporate a law or standard or another instrument as in force from time to time.

This clause also provides that section 47 (5) and (6) of the Legislation Act do not apply to the laws, standards or instruments applied, adopted or incorporated.

Clause 5 New part 16B

This clause inserts a transitional provision into the Biosecurity Act. This new part clarifies that any law, standard or instrument that was applied, adopted or incorporated under a regulation made under the Biosecurity Act will be taken to have been applied, adopted or incorporated under new section 232A.

Clause 6 Reviewable decisions Schedule 1, item 13, column 3

This clause corrects a drafting error by substituting the term ***order*** with ***notice***.

Part 3 Biosecurity (National Livestock Identification System) Regulation 2025

Clause 7 Incorporating, applying or adopting documents Section 92

This clause omits the disapplication clause from the *Biosecurity (National Livestock Identification System) Regulation 2025* (the **NLIS Regulation**). A disapplication clause is being inserted into the Biosecurity Act above at clause 4 to cover all regulations and instruments within the biosecurity legislative framework.

Clauses 8 and 9

These clauses substitute the note in each of the relevant provisions in the NLIS Regulation to recognise that the disapplication provision now sits in new section 232A of the Biosecurity Act.

Part 4 Biosecurity Regulation 2025

Clauses 10 to 14

These clauses substitute the note in each of the relevant provisions in the *Biosecurity Regulation 2025* to recognise the disapplication provision now sits in new section 232A of the Biosecurity Act.

Clause 15 Miscellaneous Part 9

This clause omits the disapplication clause from the Biosecurity Regulation. A disapplication clause is being inserted into the Biosecurity Act above at clause 4 to cover all regulations and instruments within the biosecurity legislative framework.

Part 5 Commissioner for Sustainability and the Environment Act 1993

Clause 16 State of the environment report Section 19 (3)

This clause amends the timing within which the Minister must present the government response to a state of the environment report.

Part 6 Energy Efficiency (Cost of Living) Improvement Act 2012

Clause 17 Codes of practice Section 25 (1) and (2), notes

These notes are omitted to comply with current drafting practice.

Clause 18 Section 25 (3) and notes

This clause inserts a new provision into the *Energy Efficiency (Cost of Living) Improvement Act 2012* to enable a code of practice to apply, adopt or incorporate a law, standard or another instrument as in force from time to time.

This clause also provides that section 47 (5) and (6) of the Legislation Act does not apply to the laws, standards or instruments applied, adopted or incorporated.

Part 7 Fisheries Act 2000

Clause 19 **Meaning of *suitability information* about a person—pt 4**
Section 24, definition of *suitability information*,
paragraph (a) (vii), example 3

This clause substitutes a reference to repealed New South Wales legislation.

Clause 20 **Return of things seized**
Section 72H (2) (b)

This clause corrects a drafting error by replacing the term **waste manager** with **director-general**.

Part 8 Lakes Act 1976

**Clause 21 Application
Section 5**

This clause amends the term ***Territory land*** to align with current drafting practice.

Clause 22 to clause 26

These clauses replace references to repealed Commonwealth legislation.

Clause 27 **Meaning of *appropriate lifejacket*—div 5.2**
Section 41, definition of *appropriate lifejacket*,
paragraph (a) (ii) and note

This clause replaces the term ***RMS*** with ***TfNSW*** to reflect the change of name of the relevant New South Wales government agency.

Clause 28 New section 41 (2)

This clause inserts a signpost definition for the term ***TfNSW***.

Clause 29 Dictionary, note 2

This clause is consequential to the amendment at clause 21 above.

Clause 30 and clause 31

These clauses replace references to repealed Commonwealth legislation.

Clause 32 Dictionary, definition of *RMS*

This clause removes an outdated definition, consequential to the amendment in clause 27 above.

Part 9 National Environment Protection Council Act 1994

Clause 33 Sections 8 (3) and 10 (3)

This clause updates wording to align with current drafting practice.

Clause 34 Council may make national environment protection measures Section 13 (2) (b)

This clause replaces a reference to repealed Commonwealth legislation.

Clause 35 Sections 13 to 17 etc

This clause updates wording to align with current drafting practice.

Clause 36 Section 58 heading

This clause corrects a heading that refers to repealed Commonwealth legislation.

Clause 37 Section 58

This clause updates wording to align with current drafting practice and replaces a reference to repealed Commonwealth legislation.

Clause 38 Review of operation of Act Section 63 (1)

This clause updates wording to align with current drafting practice.

Clause 39 Schedule 1 heading, reference

This clause amends a reference to signpost the correct provision.

Part 10 Nature Conservation Act 2014

Clause 40 Chapter 6 exceptions New section 153 (2) (b) (ia) and (ib)

This clause inserts new provisions that provide exceptions to the chapter 6 offences of the *Nature Conservation Act 2014* where an emergency or control declaration has been made under the *Biosecurity Act 2023*.

**Clause 41 Direction to leave reserve
Section 325 (1) and note**

This clause redrafts the current provision in the NC Act so the element of being ‘in a reserve’ is no longer linked to the ‘reasonable belief’ of a conservation officer enforcing the Act and is now a question of fact.

**Part 11 Water Efficiency Labelling and
Standards (ACT) Act 2015**

**Clause 42 Application of Commonwealth administrative laws to applied
provisions
Section 17 (5)**

This clause replaces a reference to repealed Commonwealth legislation.

Clause 43 Section 17 (5)

This clause corrects a reference to repealed Commonwealth legislation.

**Clause 44 Dictionary, definition of *Commonwealth administrative laws*,
paragraph (a)**

This clause replaces a reference to repealed Commonwealth legislation.