

Explanatory Statement

PLANNING AMENDMENT BILL 2020

SERIAL NO. 118 LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

MINISTER FOR INFRASTRUCTURE, PLANNING AND LOGISTICS.

GENERAL OUTLINE

This Bill amends the *Planning Act 1999*.

The purpose of this Bill is to support implementation of the Government's planning reform commitments to increase transparency and accountability within the planning system and to deliver better development outcomes.

NOTES ON CLAUSES

Clause 1. Short Title.

This is a formal clause which provides for the citation of the Bill. When passed the Bill will be cited as the *Planning Amendment Act 2020*.

Clause 2. Commencement.

This clause provides for the commencement of the Bill. The Bill will commence on a day fixed by notice in the Government Gazette.

Clause 3. Act Amended

This clause establishes that this Act amends the *Planning Act 1999*.

Clause 4. Section 2A replaced

This clause repeals the old objects in section 2A to expand upon the purpose and objectives of the Act. The new purpose and objectives establish that the function of the Act is to:

- facilitate planning for the orderly use and development of land;
- establish a planning system that is accessible to the community and incorporates appropriate public consultation;
- ensure decisions under the Act take account of a broad range of considerations that promote sustainable development, intergenerational equity and reflect good planning principles; and
- assist other legislation with regard to resource management, environment and heritage protection and the provision of infrastructure.

Changes to Section 2A reflect the focus of planning reform to strengthen the role of strategic plans and policy to influence planning decisions. In particular, the clause introduces a number of objectives specifically related to the role of strategic planning within planning schemes, and the need for strategic planning to reflect the wishes and needs of the community.

In addition to the above, Section 2A is revised to support the new role of the objectives as mandatory considerations for the Minister in determining planning scheme amendments.

Clause 5. Section 3 amended (Interpretation)

This clause amends Section 3 by revising a number of definitions and introduces new definitions required to assist in the interpretation of amendments in later parts of this Bill and to address historical gender bias in the Act.

In particular the definition of **service authority** has been amended to delete reference to a local authority to allow the Act to recognise that the local authority has responsibilities to the community in relation to planning issues as well as a role as a provider of infrastructure and services.

Clause 6. Section 5A inserted

This clause inserts new section 5A that establishes that Part IIAA of the Criminal Code applies to offences against this Act as is standard for all new and updated Territory legislation.

Clause 7. Section 6A inserted.

This clause inserts new section 6A to clarify the roles of the various persons and bodies that perform functions under the Act.

Section 6A establishes that:

- the Minister has the primary responsibility for administering the Act, including the making and amendments of planning schemes and appointments to other bodies established under the Act;
- the Planning Commission is to develop strategic plans for the Territory and assist the Minister; and
- the Development Consent Authority (DCA) is to make decisions on development application in places where a DCA is established.

Clause 8. Section 9 replaced

This clause replaces Section 9 with new sections 9, 9A, 9B, and 9C to more comprehensively identify and describe the components of a planning scheme, which are:

- a strategic framework;
- overlay provisions;
- zone provisions;
- use and development requirements; and
- interpretive provisions and administrative guidelines.

In particular this amendment responds to the evolving importance of strategic planning, including the hierarchy of strategic policies and plans being produced by the Northern Territory Planning Commission. The intent is to assist in improving understanding of the components of a planning scheme, their relationships to each other and their role in informing decisions.

Clause 9. Section 13 replaced

This clause replaces Section 13 with sections 13, 13AA and 13AB to establish a new process around requests for amendments to a planning scheme and the consideration of such requests.

Subsection 13(2) establishes the information that needs to be addressed in a request to the Minister to amend a planning scheme. Subsection 13(3) allows the Minister to request further information from the person requesting the amendment.

Section 13AA allows the Minister to ask the Planning Commission for a view on a proposal.

Section 13AB establishes what the Minister must consider when considering a request to amend a planning scheme and the actions to be taken depending on the decision.

These amendments reflect the increasing role of strategic policy and the importance of the role of the Planning Commission in providing advice.

The replacement of the current provisions, which provide no guidance as to what a request to the Minister to amend a planning scheme should address or matters that should inform the decision, will improve community confidence about transparency and accountability.

Clause 10. Section 16 amended (Notice relating to rezoning or grant of a permit)

This clause amends section 16 to differentiate between notices published in newspapers or provided to land owners and signs placed on the land.

Amendment to subsection 16(5) provides flexibility for the placement and size of signs to maximise public display of information.

Clause 11. Section 17 amended (Publication of notice of proposal)

This clause amends subsection 17(1)(b) to provide some flexibility as to where a proposal can be available for viewing rather than require physical exhibition at a place. This provides for future transition to making information available via electronic means to enhance accessibility.

Clause 12 Section 18 amended (Exhibition of details of proposal)

This clause amends section 18 to identify the information to be included when a proposed planning scheme amendment is made available for public comment including the application, the proposal and any advice provided by the Planning Commission.

The inclusion of this process information in place of the current provision, which requires no more than exhibition of a notice, will improve transparency and increase community understanding of the system.

Clause 13 Section 19 amended (Notice to local authority if proposal relates to land in council area)

This clause inserts subsection 19(3) to allow the local authority flexibility to provide advice or a comment rather than a submission in the event matters are of a technical nature only.

This amendment allows the local authority to differentiate between comments in relation to its role and a provider of infrastructure and services and submissions in relation to planning issues.

Clause 14 Section 22 replaced

This clause replaces section 22 to require that submissions include names and contact details, provides a local authority with the option to provide comment rather than a submission and gives the Planning Commission the option to not hold a hearing.

The intent of this clause is to maximise ongoing engagement by submitters by ensuring they are contactable and minimising unnecessary administrative processes in situations where submissions raise only minor issues or support proposals.

Clause 15 Section 24 amended (Reports)

This clause amends subsection 24(2) to include an additional requirement that the Commission must report on the reason a hearing of submissions was not considered necessary. This amendment maintains the transparency of processes under the legislation.

Clause 16 Section 25 replaced (Minister's action on amendment of planning scheme)

This clause replaces section 25 to establish what the Minister must consider in making a decision in relation to a proposal to amend a planning scheme following exhibition. The clause also introduces a decision making timeframe and provides the Minister with the ability to request further information.

The introduction of criteria improves transparency in relation to decisions by the Minister and also draws attention to the purpose of the Act and reinforces the significant role of policy.

Clause 17 Section 30C amended (Making concurrent applications)

This clause amends section 30C to reflect the revision of section 13 to establish matters a request to amend a planning scheme must address.

Clause 18 Section 30D amended (Consideration and initial decision by Minister)

This clause inserts new subsection 30D(4A) to reflect the revision of section 13AB in relation to the need for the Minister to consider whether a proposed planning scheme amendment promotes the purpose and objectives of the Act, complies with any strategic framework within a planning scheme and has merit.

Clause 19 Section 30H amended (Notice to local authority)

This clause insert new subsection 30H(3) to allow a local authority to make a submission or provide advice or a comment.

Clause 20 Section 30J amended (Notices on land to which a concurrent application relates)

This clause amends various subsections within section 30J to reflect amendment to section 16 to differentiate between signs (on the land) and (published) notices and the requirements for each.

Clause 21 Section 30M replaced

This clause replaces section 30M to now require that submissions include names and contact details, provides a local authority with the option to provide comment rather than a submission and gives the Planning Commission the option to not hold a hearing.

The intent of this clause is to maximise ongoing engagement by submitters by ensuring they are contactable and minimising unnecessary administrative processes in situations where submissions raise only minor issues or support proposals.

Clause 22 Section 30N amended (Conducting a hearing)

This clause amends section 30N(1)(b) to establish the need to invite individual persons or bodies who lodge submissions to reflect the amendment to section 30M.

Clause 23 Section 30S amended (Matters to be taken into account for amendment decision)

This clause inserts new subsections 30(ab), (ac), (f) and (h) to establish additional matters and clarify existing matters the Minister must take into account in considering an amendment proposal in a concurrent application. These reflect changes to section 25 discussed at Clause 16 above.

Clause 24 Section 30W amended (Determination of development proposals)

This clause replaces subsection 30W (3) – (5) with new subsections (3) – (8) to require the consent authority (Minister when acting as consent authority and Development Consent Authority) to make decisions in accordance with the planning scheme but allow the Minister when acting as the consent authority and the Development Consent Authority, with the approval of the Minister, to make a decision contrary to a strategic framework within a planning scheme.

The change to this clause responds to the increased focus on the importance of strategic planning and the Minister's responsibility for the contents of the planning scheme.

Clause 25 Sections 37A and 37B inserted

This clause inserts new sections 37A and 37B.

Section 37A allows owners of an existing legally established use that may represent significant investment, to apply for a certificate as evidence of compliant use when selling or if a dispute arises in the future as to the legitimacy of the use.

Section 38B allows the consent authority, in issuing a certificate, to include conditions to define the extent and intensity of the use and requires the consent authority to give reasons for a refusal to issue a certificate.

The intent is not to provide an avenue to legitimise illegal established uses but to protect investment in uses which were legally established under a previous planning regime.

Clause 26 Sections 42A and 42B inserted

This clause inserts new Sections 42A and 42B to provide for Exceptional Development Permits (EDP) to be subject to the same base period as is applicable to a development permit as identified in the new definition. Sections 42A and 42B establish parameters around lapsing and extensions.

Clause 27 Part 4, Division 4 inserted

This clause inserts new section 43D providing the Minister with the ability to issue a certificate certifying the extent of compliance with conditions on an EDP. These provisions align with those already available in relation to a standard development permit.

Clause 28 Section 46 amended (Development Applications)

This clause makes a number of changes to section 46 by inserting subsection (aa) in section 46(3), inserting section 46(3A) and consequential reference to (3) at 46(4)(a), and inserting new sections 46(5) – (9).

The effect of these changes are that:

- an application for consent for a development must now identify any person who directly benefits from the development;

- not all development applications will be required to address all information required by section 46(3); and
- timeframes will be established for requests for further information including the opportunity to apply for extensions.

These amendments will improve transparency with respect to developers and the identification of potential conflicts of interest for Development Consent Authority members, streamline processes for minor applications and ensure all stakeholders are aware of timeframes for various processes.

Clause 29 Section 47 amended (Public notice of development application)

This clause amends clause 47(2)(c) and replaces section 47(3) with new sections 47(3) – (7) to create a framework to facilitate longer exhibition for more complex proposals (to be prescribed by regulations).

Clause 30 Section 47A

This clause amends section 47A within the context of changes to section 47 to separate development applications requiring no public notice from applications requiring limited public notice.

This clause also inserts new section 47B to identify the circumstances in which development applications only require written notification of adjoining owners or occupiers.

These changes distinguish between those applications requiring no notification and those requiring notification to only directly adjacent neighbours. This provision is applicable in a very limited range of applications.

The clause also inserts a new section 47C which introduces a new category of notification for a class of minor developments that are likely to have only local impacts. Written notice to adjoining owners and occupiers and a sign on the land will ensure all who will potentially be impacted by a development will be aware of the proposal without the expense of newspaper advertising.

Clause 31 Section 48 amended (Notice to local authority of development application)

This clause replaces section 48(1)(c) of the Act to reflect changes in the approach to timeframes established by amendment to sections 47 as discussed at clause 29 above.

It also replaces subsection (2) to allow the local authority to provide advice or a comment rather than a submission in the event matters are of a technical nature only.

Clause 32 Section 48A inserted

This clause inserts new section 48A to formalise the process of seeking comment from service authorities including the establishment of timeframes and opportunities for extensions. The requirement to notify applicants of extensions granted will help enhance transparency in relation to processes.

Clause 33 Section 49 amended (Submissions)

This clause amends Subsections 49(4) – (8) to:

- require that submissions include names and contact details;
- provide the local authority with the opportunity to provide a comment rather than a submission; and
- allow any submitter, including a local authority or the public to request an extensions with applicant notification of extensions if granted.

The intent of this clause is to maximise ongoing engagement by submitters by ensuring they are contactable, remove the need for a hearing under section 50(2) in the event the local authority makes comment rather than a submissions and provide the same opportunities for extensions to public submitters and local authorities as are available to service authorities under section 48A as discussed at clause 32 above.

Clause 34 Section 50 amended (Evidence and information)

This clause amends Section 50 that establishes processes around the consideration of information provided in submissions.

This clause inserts new subsection 50(5) to give the consent authority options in relation to advice it receives from a service authority or a local authority. This provision addresses a lack of guidance on this matter in the current Act.

Clause 35 Section 50B amended (Significant Development Report)

This clause amends subsection 50(3) requiring the Planning Commission to take account of the strategic framework within the scheme as well as the purpose and objects of the Act in providing a significant development report to the Minister.

It also inserts a new subsection (3A) to require the Commission to identify effects on future land use and development in the Territory.

These changes give effect to the increasing role of strategic planning in informing decisions.

Clause 36 Section 51 amended (Matters to be taken into account)

This clause amends subsection 51(1) to give the consent authority the ability to consider only those matters relevant to a development. It also inserts a new subsection 50(2) requiring the consent authority to limit consideration of matters to only those components of the development that triggered the requirement for consent.

The intention of these amendments is to limit the range of issues that have to be considered in relation to minor developments or when a permitted use becomes merit assessable because of the need for a variation of a development requirement such as a boundary setback. This will significantly streamline the time and resources associated with obtaining consent for minor proposals.

Clause 37 Section 52 replaced

This clause replaces section 52 within the context of the new structure of the planning scheme established at section 9 discussed at Clause 8 above.

The clause requires the consent authority (the Minister acting as the Consent Authority and the Development Consent Authority) to make decisions in accordance with the planning scheme but allow the Minister when acting as the consent authority and the development consent authority, with the approval of the Minister, to make a decision contrary to a strategic framework within a planning scheme

The change to this clause reflects the increased focus on the importance of strategic planning and the Ministers responsibility for the contents of the planning scheme and has no effect on the existing Ministerial discretion in relation to considerations of development applications.

Clause 38 Section 61 replaced

This clause amends section 61 so the offences comply with Part IIAA of the Criminal code and clarifies the circumstances constituting an offence in relation to the subdivision of land and the associated penalty.

Clause 39 Section 63 amended (Purported subdivision or consolidation prohibited)

This clause amends section 63 so the offences comply with Part IIAA of the Criminal code and clarifies the circumstances constituting an offence in relation to a transaction purporting to subdivide land and the associated penalty.

Clause 40 Section 65 amended (Certification of compliance with permit or Part)

This clause amends section 65 to clarify the existing process to apply for and be issued with a certificate certifying the extent of compliance with a development permit or alteration permit by the consent authority (the Minister acting as the Consent Authority and the Development Consent Authority).

Clause 41 Section 66 amended (Minister may revoke or modify permit)

This clause amends section 66 so the offences comply with Part IIAA of the Criminal code and clarifies the circumstances constituting an offence in relation to continuing to use and develop land following notification of the Minister's intention to revoke or modify a permit and the associated grounds of defence and penalty.

Clause 42 Section 68 replaced

This clause replaces section 68 to ensure provisions in relation to the making of contribution plans continue to apply to local authorities as well as service authorities.

This change is a consequence of the differentiation of local authorities and service authorities and has no effect on the process of making contribution plans.

Clause 43 Section 69 amended (Content of Contribution plan)

This clause removes the clarification of 'a service authority that is a local authority' in recognition of the separation of a local authority from service authority.

Clause 44 Section 70 amended (Contribution towards car parking)

This clause amends Section 70 to reflect the differentiation between a local authority and a service authority and also aligns the calculation of contributions for car parking with the calculations for other infrastructure.

Clause 45 Section 71 amended (Contributions payable)

This clause amends section 71 by inserting subsection (1A) to establish the parameters for calculating an owner's contribution for parking or infrastructure.

It also removes existing subsection (8) to remove the limitation around providing for contributions towards infrastructure or car parking that has already been constructed in accordance with a contribution plan.

Clause 46 Section 72 Replaced

This clause replaces section 72 to make it relevant to both a local authority and a service authority and to allow the contributions to reimburse costs in previously providing the infrastructure or car parking.

This amendment clarifies that a contribution can be used not only to provide infrastructure in the future but also to recover amounts already spend on infrastructure required to support future development.

Clause 47 Section 73 amended (Discount, interest rate etc.)

This clause amends section 73 to reflect the distinction between local and service authorities and to clarify the requirements around the making of a declaration around the payment of contributions.

Clause 48 Section 74 amended (Enforcement of contribution plan)

This clause amends section 74 to reflect the distinction between local and service authorities.

Clause 49 Part 7 Replaced

This clause replaces Part 7 to establish an enhanced enforcement regime to help overcome the lack of available tools to discourage, investigate, penalise and order rectification of the illegal use or development of land. These substantial changes will help build a culture of compliance, create a fairer system for those who do the right thing, introduce penalties to better reflect the value the community places on compliance and strengthen protection of the environment and amenity of all Territorians.

Division 1 Sections 75 and 75A are amended so that the offences comply with Part IIAA of the Criminal code. Penalties for these offences are increased from 200 penalty units and 4 penalty units default penalty to 500 penalty units and 4 penalty units. If a body corporate is found guilty of an offence in accordance with the *Sentencing Act 1995* the court may impose a maximum fine of an amount equal to 5 times the fine specified in the provision (i.e. 2500 penalty units). These increases recognise that the current penalties are significantly lower than those in other jurisdiction and that as such they do not reflect the bad faith of a breach or community expectations around protections from impacts of offences.

A new section 75D create the new offence of failure to comply with an Enforcement Notice issued under the new process at Division 3 Enforcement notice and a new section 75E creates an offence of failure to provide to an authorised officer or police officer a person's name and address upon request. A maximum penalty of 50 penalty units will apply.

Division 2 Enforcement Powers comprising of sections 76 and 76A to 76I establishes a robust process around the appointment, roles and responsibilities and management of authorised officers including:

- Ministerial responsibility for appointment;
- The function and powers of the officers subject to direction from the Chair of the DCA and the Minister;
- The issuance of identify cards and responsibility to carry and return said card;
- An offence associated with obstruction of an authorised officer acting in an official capacity including a maximum penalty of 200 penalty units or imprisonment for 2 years;
- Inspection and evidence gathering powers; and
- Application for and issuance of search warrants by a Local Court Judge.

These provisions address the current lack of detail around the powers and responsibilities of authorised officers and will significantly enhance the ability of such officers to investigate and gather evidence to facilitate improved enforcement of the planning scheme.

Division 3 Enforcement Notice, comprising of sections 77 and 77A to 77D establish a new 'Show Cause Notice' and 'Enforcement Notice' process. This process addresses the limited scope of the current 'Notice to Cease' provisions. The new provisions include:

- The option to issue a 'Show Cause Notice' providing a minimum of 20 business days to respond;
- Subsequent issue of an 'Enforcement Notice' including the actions required to be taken; and
- The immediate issue of an 'Enforcement Notice' in circumstance where a 'Show Cause Notice' is not considered appropriate such as the clearing of vegetation.

The implementation of this enhance enforcement tool kit will, over time, discourage illegal activity and create a culture of compliance.

Division 4 Complaints and Investigations comprising sections 78, 79 and 79A provides for the lodging of complaints and the action the consent authority is to take in relation to complaints. These actions include initiating or refusing to initiate an investigation and the taking of necessary action including the issue of an Enforcement Notice if warranted.

The provisions include responsibilities for notification of both complainants and the person subject to the complaint at each step in the process to enhance transparency.

Division 5 Other Enforcement Matters comprising sections 80 and 81A – 81G establish various additional provision in relation to enforcement matters including:

- the ability of the court:
 - to order a defendant to pay consent authority costs associated with investigations;
 - to order compensation for loss or damages or expenses incurred;
 - to impose a default penalty for continuing offences; and
 - remedy a contravention or failure;
- procedures around certificate evidence;
- provision for infringement notices instead of a penalty for offences prescribed by regulation;
- provisions for criminal liability of an executive officer of a body corporate and grounds for defence to prosecution;
- that prosecution can only be brought in the name of the Development Consent Authority or the Minister; and
- a 2 year time limit on commencing a prosecution.

Clause 50 Section 81B amended (Functions)

This clause amends various subsections within section 81B to align the role and functions of the Planning Commission with the new terminology in the Bill and the increased functions established by the Bill.

Subsection 81B(e) and (h) are amended to reflect new terminology adopted in the Bill.

Subclause 81B(f) acknowledges that the Commission now has responsibility to provide a number of reports to the Minister including a view on the strategic implications of a request to amend a planning scheme, significant development reports and reports in relation to consideration of submissions in relation to planning scheme amendments.

Clause 51 Section 81D replaced

This clause replaces section 81 to increase the guidance around the role and responsibilities of Planning Commission members.

The will enhance community and industry confidence that the work of the Commission is undertaken in a professional manner in accordance with a code of conduct to be established by the Minister that will apply to both the Commission and Development Consent Authority members.

Clause 52 Section 81F amended (Constitution and appointment of members)

This clause amends section 81F to align titles with the new terminology in the Bill and to introduce a requirement that at least one person appointed to the Commission must be a qualified planner or member of a planning association or institute recognised by the Minister.

This will ensure that the Commission has at least one member with direct planning expertise.

Clause 53 Section 81L amended (Community Consultation)

This clause amends section 81L by including new subsection (2) which requires the Commission to prepare one or more policies for approval by the Minister in relation to community engagement and public education and to publish these policies on its website.

This requirement will formalise the Commissions engagement policies and improve public awareness of what can be expected and continuity of activities across changes of membership.

Clause 54 Section 81M amended (Preparation of significant development report)

This clause amends section 81M to align titles with the new terminology in the Bill.

Clause 55 Section 81X amended (Committees)

This clause amends section 81M to align titles with the new terminology in the Bill.

Clause 56 Section 81Y amended (Annual Report)

This clause amends section 81Y by inserting a new subsection (2) which identifies details to be included in the Commission's annual report including details and results of its activities and details of performance in relation to community engagement policies.

This change, in combination with the requirement to publish engagement policies will increase awareness of the activities of the Commission and encourage community involvement in the establishment of plans for the future.

Clause 57 Section 81ZA replaced

This clause amends section 81ZA so offences related to the unauthorised disclosure of confidential information comply with Part IIAA of the Criminal code and clarifies the circumstances constituting an offence. The maximum term of imprisonment is increased from 6 months to 2 years.

Clause 58 Section 84 amended (Functions and powers of Development Consent Authority)

This clause amends section 84 by adding subsections (3) to (5) to establish the role and functions of a panel of specialist advisors available to the Development Consent Authority and administrative protocols around engagement with the advisors.

This will help address concerns about the expertise of members of the Development Consent Authority.

Clause 59 Section 87 amended (Constitution of Development Consent Authority)

This clause amends section 87 to align titles with the new terminology in the Bill and to insert subclause (3) such that employees of the agency administering the Act are not eligible for appointment to the Development Consent Authority.

The change will address perceptions of conflict of interest and protect the independence of the Development Consent Authority.

Clause 60 Section 88 amended (Chairman and Deputy Chairman)

This clause amends the title of section 88 and various subclauses to align titles with the new gender neutral terminology in the Act and inserts subclause (1A) requiring the Minister to be satisfied about the skills, qualifications or experience of a potential appointment of a Chair.

This will further assist in addressing concerns about the expertise of members of the Development Consent Authority.

Clause 61 Section 89 replaced

This clause amends section 89 and introduces a new clause 89A.

The amendment to section 89 clarifies that members nominated by a local authority are community members, that employees of a local authority are ineligible for appointment as a community member for that local authority and that the Minister may also appoint appropriately qualified specialist members.

Section 89A requires training be provided for members of the DCA.

These changes will address the current confusion about the role of members nominated by a local authority, minimise real or perceived conflicts of interest and will restore confidence in the DCA decisions by improving knowledge.

Clause 62 Section 91 replaced

This clause replaces section 91 to establish revised protocols around the nomination of community members who will be appointed under amended section 89(1).

The effect of these changes are that the local authority must nominate a number of persons at least one greater than the vacancies to be filled

This change will give the Minister some discretion in relation to the appointment of community members.

Clause 63 Section 92 amended (Term of office of member)

This clause inserts new subsection 92(4) to provide the Minister with discretion in relation to membership of the Development Consent Authority in event a local authority is placed under management under the *Local Government Act 2008*.

Clause 64 Section 93 amended (Chairman may appoint member to act in another Division)

This clause amends section 93 to align titles with new gender neutral terminology in the Act.

Clause 65 Section 97 amended (Disclosure of interest)

This clause amends section 97 by deleting subsection 97(3) and replacing it with subsections (3) to (5). This change enhances transparency by establishing criteria under which the Chair can determine that a member can continue to participate in the meeting.

Clause 66 Section 98 replaced

This clause replaces section 98 to clarify activities for all members of the Development Consent Authority which may constitute an offence. The clause also introduces section 98A which establishes requirements to ensure the independence of community members.

These changes provide clarity around the independence of community members nominated by a local authority and offences related to conflicts of interest which will assist in restoring confidence in the decision making processes of the DCA.

Clause 67 Section 100 replaced

This clause amends section 100 by replacing section 100 with a new section which establishes a code of conduct for members of the Planning Commission and Development Consent Authority. The clause also introduces new section 100A which replaces the existing section 100.

Clause 68 Section 101 (Meeting of the Authority)

This clause amends section 101 to align titles with new gender neutral terminology in the Act.

Clause 69 Section 102 amended (Attendance of public at meetings)

This clause amends section 102 to align titles with new gender neutral terminology in the Act.

Clause 70 Section 103 amended (Minutes)

This clause inserts new subsection 103(1A) that will establish information that must be recorded in the Minutes of a meeting of the Development Consent Authority including those members present, matters voted on, conflicts of interest declared and number of votes for or against or abstaining from a decision.

This change will improve the transparency relating to decisions made by the Development Consent Authority

Clause 71 Section 104A inserted

This clause inserts section 104A which requires the Development Consent Authority to provide the Minister with a report on its performance to be tabled in the Legislative Assembly.

This change will improve the transparency around the processes and decisions of the Development Consent Authority.

Clause 72 Sections 106 and 107 replaced

This clause replaces sections 106 and 107 to present issues relating to disrupting a meeting and the disclosure of information in a format that complies with Part IIAA of the Criminal code and clarifies the circumstances constituting an offence in relation.

Other changes reflect changes in drafting styles.

Clause 73 Sections 111 and 112 replaced

This clause amends sections 111 and 112 to identify all provisions in the Act that will be reviewable including new provisions introduced in the Bill. The changes include the ability for third party rights of review in certain circumstances established in the Regulations in relation to a decision to not issue an Enforcement Notice in relation to a complaint. These changes will clarify opportunities for review.

Apart from the changes making reference to new provisions which may be subject to review, the other changes reflect simplified drafting to clarify provisions around review.

Clause 74 Section 115 replaced

This clause amends section 115 to reflect the distinction within the Bill between a local and a service authority. Other changes reflect changes in drafting styles.

Clause 75 Section 118A amended (Parties to application for review)

Section 118A is amended to reflect the distinction within the Bill between a local authority and a service authority.

Clause 76 Section 119 replaced

This clause replaces Section 119 to deal with issues relating to activity under a permit when the permit is subject to an application for review. The new section 119 presents the information in a format that complies with Part IIAA of the Criminal code. Penalties for this offence are increased from 200 penalty units and 4 penalty units default penalty, to 500 penalty units and 4 penalty units. If a body corporate is found guilty of an offence in accordance with the *Sentencing Act 1995* the court may impose a maximum fine of an amount equal to 5 times the fine specified in the provision (i.e. 2500 penalty units). The new section has the same terms as the original section.

Clause 77 Section 120 amended (Authorities to provide information)

This clause amends Section 120 to reflect the differentiation between a local authority and a service authority.

Clause 78 Section 130 amended (Determination of application for review)

This clause amends subsection 130(2) to align the matters the Tribunal must take into account with the revisions to section 30P(2) and 51. The amendments to 30P(2) and 51 provide discretion as to the matters that need to be considered and it is appropriate that the Tribunal have similar discretion.

Subsections 130(5)(a) and (b) and 130(6) are also amended to reflect the differentiation between local authority and service authority.

Clause 79 Section 135B inserted

This clause inserts section 135B that will allow the Minister to issue and publish directions to guide the Planning Commission and Development Consent Authority in relation to administration of provisions in the Act. Such directions will clarify processes and procedures under the Act informing the community and industry and improving understanding of the planning system.

Clause 80 Section 136 amended (Planning schemes to be available to public)

This clause amends subsections 136(1)(c) and (2) to acknowledge that documents may have been prepared under are more than one 'former Act'.

Clause 81 Section 138 amended (Registers and plans for public inspection)

This clause amends subsection 138(c) to acknowledge that documents may have been prepared under are more than one “former Act”.

Clause 82 Section 139A inserted

This clause inserts a new section 139A to provide for future transition to electronic publication of notices. The amendment does not mandate electronic publication but recognises that, in time and with appropriate digital notification protocols established, that transition from newspaper advertisements as the primary means of notification may not be the best way to communicate information to the community.

Clause 83 Section 144 amended (Inquiries)

This clause amends subsections 144(1), (2) and (3) to align titles with the new gender neutral terminology in the Act.

Clause 84 Section 148 amended (Regulations)

This clause replaces existing subsection 148(j) with new subsections (j) and (k) to increase the maximum penalty units that can be prescribed for offences against the Regulations under this Act from 10 penalty units to 100 penalty units.

These increases recognise that the current penalties are significantly lower than those in other jurisdiction and that as such they do not reflect the bad faith of a breach or community expectations around protections from impacts of offences.

Clause 85 Section 150 amended (Definitions)

This clause amends section 150 in recognition of the need to identify the former Act.

Clause 86 Section 180 amended (Savings of restrictions on power under easements)

This clause amends section 180 by inserting a new subclause (2) to avoid any doubt that provisions in relation to the protection of rights associated with easements are available to local authorities as well as service authorities,

Clause 87 Part 12 Division 6 inserted

This clause inserts a new Division dealing with transitional matters required as a consequence of the commencement of this Act.

Section 209 defines commencement for the purposes of this Division.

Section 210 establishes that members of the Planning Commission and the Development Consent Authority continue to hold office on the same terms and conditions and that a person with authority to enter land is taken to be an authorised officer under the new legislation.

Section 211 establishes that the new Act applies to an existing permit.

Section 212 establishes that other than for Specific Use Zones an undetermined application is to be subject to the Act and the Planning Scheme in force at the time the determination is made.

Section 213 establishes that for a period of at least 5 years after commencement, existing specific use zones will continue to apply in accordance with the Act and the Planning scheme prior to commencement. This timeframe will provide for the review and subsequent amendment of the specific use zones to reflect the revisions to the Act and the Scheme.

Part 3 Amendment of the Crown Lands Act 1992**Clause 88 Act amended**

This clause identifies that the *Crown Lands Act 1992* is amended.

Clause 89 Section 44 amended (Subdivision applications where *Planning Act 1999* applies)

This clause amends subsection 44(1) to reference the correct part of the *Planning Act 1999*.

Part 4 Amendment of Cullen Bay Marina Act 1992**Clause 90 Act amended**

This clause amends the *Cullen Bay Marina Act 1992*.

Clause 91 Section 3 amended (Subdivision of development area)

This clause amends subsection 3(2)(e) to reference the correct section of the *Planning Act 1999*.

Part 5 Amendment of Local Government (Darwin Parking Local Rates) Regulations 1982**Clause 92 Regulations amended**

This clause amends the *Local Government (Darwin Parking Local Rates) Regulations 1982*.

Clause 93 Regulation 4 amended (Parking usage schedule)

This clause amends Regulation 4(e)(i) to reference the correct sections of the *Planning Act 1999*.

Part 6 Amendment of Unit Title Act 1975**Clause 94 Act amended**

This clause amends the *Unit Title Act 1975*.

Clause 95 Section 26J amended (Variation of disclosure statement)

This clause amends *the Unit Titles Act 1975* subsection 3(2)(e) to reference the correct section of the *Planning Act 1999*.

Clause 96 Section 26W amended (Variation of disclosure statement)

This clause amends *the Unit Titles Act 1975* subsection 3(2)(e) to reference the correct section of the *Planning Act 1999*.

Part 7 Amendment of Fisheries Regulations 1992**Clause 97 Regulations amended**

This clause identifies that the *Fisheries Regulations 1992* are amended.

Clause 98 Regulation 162 amended (Place of processing to be subject to license)

This clause amends Regulation 162 of the *Fisheries Regulations 1992* to omit reference to control plans and correctly reference the applicable planning scheme.

Clause 99 Regulation 200 amended (Place of trade to be set out in licence)

This clause amends Regulation 200(2) of the *Fisheries Regulations 1992* to omit reference to control plans and correctly reference the applicable planning scheme.

Clause 100 Repeal of Act

This is a standard clause that will ensure that this Bill will not remain on the statute book once it has completed its task of amending the *Planning Act 1999*.

