LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Legislation Scrutiny Committee

Inquiry into the Planning Amendment Bill 2020

May 2020

Contents

Chair's Preface

This report details the Committee's findings regarding its examination of the Planning Amendment Bill 2020. This Bill forms part of an overall reform programme to restore integrity and confidence in the Northern Territory (NT) planning system. Phase 1 consists of priority reforms and includes fundamental legislative changes, structural planning scheme amendments, and administrative changes while phase 2 will implement a comprehensive review of the NT Planning Scheme and the development of guidelines on a range of matters.

The Committee received 15 submissions to its inquiry. Support for the Bill varied, with the majority of submitters recommending amendments. Common points of contention raised in submissions from community members and environmental organisations relate to climate change, sustainable development and amenity. In addition, issues were identified with a number of the proposed amendments regarding whether they have sufficient regard to the rights and liberties of individuals and are unambiguous and drafted in a sufficiently clear and precise manner.

The Committee has recommended that the Assembly pass the Bill with the 16 amendments proposed in the recommendations. The majority of these recommendations (2-4; 6; 8-17) aim to ensure that the Bill is unambiguous and drafted in sufficiently clear and precise manner.

Recommendation 2 proposes that the Bill be amended to include a definition of "sustainable development" to ensure its meaning is clearly understood while recommendation 3 proposes that section 2A(j) be amended to ensure consistency with the definition of amenity provided in section 3 of the Act. Recommendation 5 aims to ensure that rights and liberties are protected in relation to proposed s 75C which creates an offence relating to the clearing of native vegetation. This term is not defined in the Act, with the subsequent effect that a person could be subjected to criminal liability in circumstances where the indicia of the offence are not clear. Recommendation 7 proposes that section 135B be amended to remove any reference to the Minister issuing directions on how to interpret the Act. While it is appropriate for a Minister to provide guidance on how to administer and apply processes under the Act, interpretation is a matter for the courts.

On behalf of the Committee, I would like to thank all those who made submissions to the inquiry. The Committee also thanks Professor Aughterson and the Department of Planning, Infrastructure and Logistics for their advice. I also thank my fellow Committee members for their bipartisan commitment to the legislative review process.

Mr Tony Sievers MLA

Chair

Committee Members

	**Mr Tony Sievers** Member for Brennan	
	Party:	Territory Labor
	Committee Membership	
	Standing:	House, Public Accounts
	Sessional:	Legislation Scrutiny Committee
	Chair:	Legislation Scrutiny Committee
	**Ms Sandra Nelson MLA** Member for Katherine	
	Party:	Territory Labor
	Parliamentary Position	Acting Deputy Speaker
	Committee Membership	
	Sessional:	Legislation Scrutiny
	Deputy Chair:	Legislation Scrutiny
	**Mr Joel Bowden MLA** Member for Johnston	
	Party:	Territory Labor
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	**Mrs Lia Finocchiaro MLA** Member for Spillett	
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	Party:	Territory Alliance
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	Committee Membership	
	Standing:	Standing Orders and Members' Interests
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Note: Pursuant to Standing Order 181, on Tuesday 10 March the Member for Karama, Ms Ngaree Ah Kit MLA was discharged from the Committee and replaced by Member for Johnston, Mr Joel Bowden MLA.

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The Committee acknowledges the individuals and organisations that provided written submissions.

Acronyms and Abbreviations

ACT	Australian Capital Territory
DCA	Development Consent Authority
ECNT	Environment Centre Northern Territory
EDONT	Environmental Defenders Office NT
HIA	Housing Industry Association
NT	Northern Territory
NSW	New South Wales
PLan	The Planning Action Network Inc
Qld	Queensland
Scarlet Alliance	Scarlet Alliance, Sex Workers' Outreach Program NT, Sex Workers' Reference Group
SA	South Australia
WA	Western Australia

Terms of Reference

Sessional Order 13

Establishment of Legislation Scrutiny Committee

(1) Standing Order 178 is suspended.

(2) The Assembly appoints a Legislation Scrutiny Committee.

(3) The ordinary membership of the scrutiny committee will comprise three Government Members, one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.

The Committee's membership will be supplemented by alternate members who may be nominated to participate at meetings and undertake a role on the committee in the place of ordinary committee members. The nomination of alternate committee members will be in writing by the ordinary member to the committee chair.

Alternate Committee members must be from the same category of Members of the Assembly as the ordinary member nominating them such as the same political party or a non-party aligned Member.

(4) The functions of the scrutiny committee shall be to inquire and report on:

(a) any matter referred to it:

(i) by the Assembly;

(ii) by a Minister; or

(iii) on its own motion.

(b) any bill referred to it by the Assembly;

(c) in relation to any bill referred by the Assembly:

(i) whether the Assembly should pass the bill;

(ii) whether the Assembly should amend the bill;

(iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:

(A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and

(B) is consistent with principles of natural justice; and

(C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and

(D) does not reverse the onus of proof in criminal proceedings without adequate justification; and

(E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and

(F) provides appropriate protection against self-incrimination; and

(G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

(H) does not confer immunity from proceeding or prosecution without adequate justification; and

(I) provides for the compulsory acquisition of property only with fair compensation; and

(J) has sufficient regard to Aboriginal tradition; and

(K) is unambiguous and drafted in a sufficiently clear and precise way.

(iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:

(A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and

(B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and

(C) authorises the amendment of an Act only by another Act.

(5) The Committee will elect a Government Member as Chair.

(6) The Committee will provide an annual report on its activities to the Assembly.

Adopted 27 November 2019

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Planning Amendment Bill 2020 with the proposed amendments set out in recommendations 2-17.

Recommendation 2

The Committee recommends that the Bill be amended to include a definition of sustainable development in section 3 of the Act.

Recommendation 3

The Committee recommends that proposed section 2A(j) be amended to align with the definition of 'amenity' in proposed section 3, such as: "to promote good design and amenity of buildings and localities".

Recommendation 4

The Committee recommends that proposed section 46(3)(aa) be re-drafted to provide greater clarity with regard to the meaning of the term "directly benefit" in subsection (iii).

Recommendation 5

The Committee recommends that the Bill be amended to provide a definition of "native vegetation" either in the Act or by reference to another appropriate instrument.

Recommendation 6

The Committee recommends that the Bill be amended to require that where the Minister terminates the appointment of a community member nominated by the local authority, the Minister provides the local authority and the terminated member with written reasons for their decision.

Recommendation 7

The Committee recommends that proposed s 135B be amended to remove any reference to the Minister issuing directions on how to interpret the Act.

Recommendation 8

The Committee recommends that proposed section 139A(1) be amended to require that, where possible, any document that is required to be published in a newspaper is also published on a website or other electronic platform.

Recommendation 9

The Committee recommends that the letter (b) be removed from proposed section 16(7) and replaced with the letter (a).

Recommendation 10

The Committee recommends that the first instance of the word “in” be removed from proposed s 18.

Recommendation 11

The Committee recommends that the letter (b) be removed from proposed section 30(J)(3B) and replaced with the letter (a).

Recommendation 12

The Committee recommends that proposed s 30W(8) and s 52(6) be amended to insert the words “in writing” after the word “respond”, or words to that effect.

Recommendation 13

The Committee recommends that section 49 of the Bill be amended to:

- Define the term “exhibition period” for the purposes of Part 5 of the Act;
- Clarify whether submissions are to be lodged within the exhibition period or within the period specified in the notice.

Recommendation 14

The Committee recommends that proposed section 80B be amended to make it clear that the default penalty only applies for each day that the offence continues to be committed after the person has been notified that they are committing an offence.

Recommendation 15

The Committee recommends that proposed section 80F be amended by clarifying or replacing the term “declared provision” in subsection (1)(a).

Recommendation 16

The Committee recommends that proposed section 84(5) be amended so its words clearly express its intent, such as by inserting “and a person’s name may be entered on the register”, after the words “consent authority”.

Recommendation 17

The Committee recommends that proposed section 103(1A) be amended to require that the minutes of the Development Consent Authority must record the names of those who attend the meeting and whether a member has been given leave to be absent from the meeting.

1 Introduction

Introduction of the Bill

1.1 The Planning Amendment Bill 2020 (the Bill) was introduced into the Legislative Assembly by the Minister for Infrastructure, Planning and Logistics, the Hon Eva Lawler MLA, on 13 February 2020. The Assembly subsequently referred the Bill to the Legislation Scrutiny Committee for inquiry and report by 5 May 2020.[1]

Conduct of the Inquiry

1.2 On 14 February 2020 the Committee called for submissions by 11 March 2020. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.

1.3 The Bill, associated *Explanatory Statement,* and *Statement of Compatibility with Human Rights* was also forwarded to Professor Ned Aughterson for review of fundamental legislative principles under Sessional Order 13(4)(c).

1.4 As noted in Appendix 1, the Committee received 15 submissions to its inquiry.

Outcome of Committee's Consideration

1.5 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:

(i) whether the Assembly should pass the bill;

(ii) whether the Assembly should amend the bill;

(iii) whether the bill has sufficient regard to the rights and liberties of individuals; and

(iv) whether the bill has sufficient regard to the institution of Parliament.

1.6 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with proposed amendments as set out in recommendations 2-17.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Planning Amendment Bill 2020 with the proposed amendments set out in recommendations 2-17.

[1] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Draft - Daily Hansard – Day 3 – 13 February 2020,* http://hdl.handle.net/10070/756093, p. 9.

Report Structure

1.7 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.

1.8 Chapter 3 considers the main issues raised in evidence received.

2 Overview of the Bill

Background to the Bill

2.1 The Planning Amendment Bill 2020 is part of an overall reform programme to fulfil the Government's election promise to "restore integrity and confidence through reform of the Northern Territory (NT) planning system".[2] Phase 1 of the reform programme consists of priority reforms and includes fundamental legislative changes, structural planning scheme amendments, and administrative changes. Phase 2 will implement a comprehensive review of the NT Planning Scheme and will include a review of definitions, zones and development provisions as well as the development of guidelines for a range of matters such as building design, subdivision and land clearing.[3]

2.2 Phase 1 of the reform programme has been conducted in three stages. Stage 1 included consultation with industry and the community to identify aspects of the planning system that needed to be improved while stage 2 sought feedback on the overall directions of the reform program including a set of initiatives proposed as priority reforms. Stage 3 comprised public consultation on a *Consultation Draft Bill for Amendments to the Planning Act 1999* and the introduction to Parliament of the Planning Amendment Bill 2020.[4]

Purpose of the Bill

2.3 As noted in the Explanatory Statement, the purpose of the 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.[5]

2.4 When presenting the Bill, the Minister noted that the amendments would deliver the following key benefits:

- *Increased emphasis on sustainable development that responds appropriately to the social, economic and environmental needs and values of current Territorians and future generations*
- *More certainty around how and where land uses are expected to change in the future*
- *Planning processes and planning documents that are easier to follow and understand*

[2] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Draft - Daily Hansard – Day 3 – 13 February 2020,* http://hdl.handle.net/10070/756093, p. 9.
[3] Northern Territory Government, *Planning Reform Directions Paper: Building Confidence through Better Planning for the Northern Territory*, https://dipl.nt.gov.au/__data/assets/pdf_file/0009/694692/planning-reform-directions-paper.pdf, p. 4.
[4] Northern Territory Government, *Progressing Planning Reform: A Snapshot,* https://haveyoursay.nt.gov.au/planningreform, pp. 2-3.
[5] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Draft - Daily Hansard – Day 3 – 13 February 2020,* http://hdl.handle.net/10070/756093, p. 9.

- *Planning processes that apply more rigor to assessing complex development and are simpler for 'mum and dad' applications*
- *More local input into local planning matters*
- *A framework that encourages better development outcomes, responds to local factors and supports innovative developments*
- *More information about how decisions are made*
- *More opportunities to review planning decisions*
- *Enforcement powers that will uphold a fairer system.*[6]

[6] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Draft - Daily Hansard – Day 3 – 13 February 2020,* http://hdl.handle.net/10070/756093, p.9.

3 Examination of the Bill

Introduction

3.1 Five submitters considered the Bill should not be passed while four considered the Bill required significant amendments before being passed. [7] These submitters made broad recommendations but did not refer to specific sections of the Bill. Six submitters identified specific amendments they considered necessary before the Bill is passed.[8]

3.2 Nine of the 15 submissions were from individuals, with these generally focusing on broad issues rather than addressing specific sections of the Bill. Key issues raised in these submissions included:

- Amenity
- Climate change
- Ecologically sustainable development
- Community focus
- Holistic approach

3.3 Legal advice from Professor Aughterson raised issues with the drafting of a number of the proposed amendments the majority of which relate to the extent to which they meet the Committee's terms of reference in relation to clear and precise drafting - (4)(c)(iii)(K).

Clause 4 - Proposed section 2A replaced – Purpose and objectives

3.4 This amendment essentially aims to refocus the purpose and objectives of the Act to place a stronger emphasis on the role of strategic plans and policy in influencing planning decisions. In addition, it is intended to "support the new role of the objectives as mandatory considerations for the Minister in determining planning scheme amendments".[9] Three key issues were raised with regard to proposed s 2A, with these focusing on climate change; sustainable development; and amenity.

Climate Change

3.5 Both the Environmental Defenders Office NT, (EDONT) and the Environment Council of the NT (ECNT) considered that proposed s 2A should be amended to make climate change an explicit objective of the Act. In support of their argument, the EDONT noted that:

[7] Submission 2 – Margie West, p. 1; Submission 4 – Nancy Batenburg, p. 2; Submission 10 – Heather Ferguson and Carl Stephens, p. 1; Submission 12 – Jo Vandermark, p. 1; Submission 13 – PLan the Planning Action Network, Inc, p. 2; Submission 1 – Diana Rickman and Greg Chapman; Submission 3 – Elizabeth Benson; Submission 6 – Dianne Koser; Submission 9 – Hugh Bradley.

[8] Submission 5 – Housing Industry Association (HIA); Submission 7 – Litchfield Council; Submission 11 – Environmental Defenders Office NT (EDONT); Submission 14 – Environment Centre NT (ECNT); Submission 15 – Scarlet Alliance/Sex Workers Outreach Program/Sex Workers Reference Group (Scarlet Alliance).

[9] Explanatory Statement, *Planning Amendment Bill 2020 (Serial 118)*, https://parliament.nt.gov.au/committees/LSC/118-2020#kd, p. 1.

> Even the NT Government's own Climate Change Response identifies that one of the central ways it will respond to climate change includes embedding greenhouse gas (GHG) emissions reductions and climate risk response considerations across government decision-making. Despite this, and the fact that the current reform to the Act is a perfect opportunity to embed climate change considerations in planning decision-making, climate change is not referred to once in the Bill.[10]

3.6 The EDONT recommended further amendments to several sections of the Act in order to effectively integrate climate change into its provisions and to:

> more appropriately position the Act to enable the planning system to play a fundamental role in ensuring the NT can appropriately respond to the risks associated with climate change and implement actions to mitigate emissions.[11]

3.7 In the absence of such changes they recommended that the Bill be amended to insert a new subsection on climate change in proposed s 2A to:

> ensure there is a clear mandate in the Act to integrate climate change considerations in the development of strategic plans, the NT Planning Scheme, and overlays under the Act, and for development consent decision-making.[12]

3.8 The ECNT suggested that an explicit objective in proposed s 2A could state:

> Ensure appropriate and effective responses to the challenges of climate change - to reduce release and increase retention of greenhouse gases, and to create built environments and protect and support natural environments that help ensure the 'liveability' of the Northern Territory.[13]

3.9 Planning legislation in most jurisdictions in Australia makes no reference to climate change, although Queensland (Qld) and South Australia (SA) both include climate change as a principle for consideration.[14] South Australian legislation states that "particular effort should be focussed on achieving energy efficient urban environments that address the implications of climate change" and requires the Minister to develop a specific state planning climate change policy while the Qld legislation includes climate change as a factor that should be taken into account when determining how best to maintain the cultural, economic, physical and social wellbeing of people and communities.[15] Further detail on provisions relating to climate change in planning legislation of other Australian jurisdictions is provided in Appendix 2.

3.10 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of including an amendment to provide that an objective of the Act is to promote effective responses to the challenges of climate change and was advised that:

> Direct reference to 'climate change' within the objectives is not considered appropriate as it would raise climate considerations above the many other wide ranging environmental, social and economic issues that planning must consider to ensure the wellbeing of Territorians.

[10] Submission 11 – EDONT, p. 2.
[11] Submission 11 – EDONT, p. 2.
[12] Submission 11 – EDONT, p. 2.
[13] Submission 14 – ECNT, p. 2.
[14] *Planning Act 2016* (Qld); *Planning, Development and Infrastructure Act 2016* (SA).
[15] *Planning, Development and Infrastructure Act 2016* (SA), s 14(e)(ii) and s 62; *Planning Act 2016* (Qld), s 3(3)(c)(iv).

> The increased emphasis on strategic planning and policy within the Bill will allow for any future planning policies around climate change to have more influence on planning decisions. The inclusion of detailed policy within the NT Planning Scheme is considered a more appropriate and effective means of directing the role of planning in climate change action.[16]

Committee's comments

3.11 The Committee is satisfied with the Department's advice.

Sustainable development

3.12 While supporting many measures introduced by the Bill, both the EDONT and the ECNT considered the provisions on sustainable development should be strengthened. The EDONT considered the term "sustainable development" to be confusing as it "remains undefined in the Bill" while both EDONT and ECNT recommended that the Bill explicitly link proposed s 2A(e), "to promote the sustainable development of land", with the definition and principles of ecologically sustainable development (ESD) as set out in the *Environment Protection Act 2019* (s 4 and Part 2, Division 1).[17] The EDONT commented that:

> Adopting the principles of ESD in the Act (as defined in the *Environment Protection Act 2019*) through the objects clause would ensure there is integration and cohesion across related NT statutory frameworks, and embed these fundamental, and directly relevant, environmental principles within the planning system. Again, we refer to Qld's Planning Act (ss 3-4) as a strong model for framing of ecological sustainability and climate change within an objects clause.

3.13 A review of comparable Australian planning legislation indicates that while there is considerable variation in how "sustainable development" is envisaged and provided for, most jurisdictions place significant emphasis on sustainability and provide a reasonably comprehensive definition of what it entails. The New South Wales (NSW) *Environmental Planning and Assessment Act 1979* includes substantial provisions on ecologically sustainable development in *s 1.3 – Objects of the Act* and links the meaning of "ecologically sustainable development" with the definition in its *Protection of the Environment Administration Act 1991* (NSW). The definition is comprehensive and includes provisions on the precautionary principle; inter-generational equity; conservation of biological diversity and ecological integrity; and valuation, pricing and incentive mechanisms. Reasonably comprehensive definitions are also included in planning legislation in Qld, SA, Tasmania and the Australian Capital Territory (ACT), with the ACT definition being similar to that in the *Protection of the Environment Administration Act 1991* (NSW) (see Appendix 2). By contrast, sustainable development is not defined in planning legislation in either Western Australia (WA) or Victoria and references to sustainability or conservation are relatively sparse.[18] Provisions on sustainable development in the NT *Planning Act 1999* are most similar to those in the WA *Planning and Development Act 2005.*[19]

[16] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 2.
[17] Submission 11 – EDONT, pp. 2-3; Submission 14 – ECNT, p. 2.
[18] Section 3, *Planning and Development Act 2005* (WA); Sections 4 and 46AV, *Planning and Environment Act 1987* (Vic).
[19] *Planning and Development Act 2005* (WA), s 3(c).

3.14 The Committee sought clarification from the Department as to the effect on the operation of the Bill of defining sustainable development in line with the definition and principles of ecologically sustainable development as set out in the *Environment Protection Act 2019* (NT) and was advised that:

> "Ecologically sustainable development" is appropriate to the new *Environmental Protection Act 2019* as that legislation has a narrower objective of protecting the environment of the Territory. However, planning legislation must take into account a far broader range of environmental, social and economic issues in the public interest.
>
> To identify "sustainable development" as being the same as "ecologically sustainable development" in the *Environmental Protection Act 2019* would limit the ability of the Minister and the Consent Authority to consider the broad range of issues that should inform land use planning and development decisions. "Sustainable development" is deliberately referenced in this Bill to ensure that planning for future development has a broader focus, and to avoid duplication with the role of the *Environmental Protection Act 2019* to protect and manage the environment.
>
> The essential principles of ecologically sustainable development that are appropriate to the planning legislation are brought into this Bill through the objectives to:
>
> - promote the sustainable development of land;
> - promote the responsible use of land and water resources to limit the adverse effects of development on ecological processes;
> - maintain the health of natural environment and ecological processes; and
> - protect the quality of life of future generations.[20]

3.15 The Department further advised that the intended meaning of "sustainable development" in relation to proposed s 2A(e) is:

> to achieve balance between economic growth, care for the environment and social well-being in a manner that satisfies the needs of the present population without compromising the capacity of future generations to meet their needs.[21]

Committee's comments

3.16 The Committee is satisfied with the Department's rationale for not linking the term ecologically sustainable development with the definition in the *Environmental Protection Act 2019* (NT), however, it considers that the meaning of the term "sustainable development" as it is applied in the *Planning Act 1999* (NT) should be defined to ensure clarity.

Recommendation 2

The Committee recommends that the Bill be amended to include a definition of sustainable development in section 3 of the Act.

[20] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, pp. 2-3.
[21] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 2.

Amenity - proposed s 2A(j) – to promote good design and amenity of buildings and other works

3.17 A number of submitters commented that proposed s 2A(j) does not adequately reflect the meaning of amenity as typically applied in a planning context,[22] with Heather Ferguson and Carl Stephens commenting that:

> Amenity refers to aspects such as quality of lifestyle, environment and pleasant living conditions. It is fundamental to human health and wellbeing, and takes into consideration the needs of the humans living in the area, along with native animals and plants and development. It is the main reason people choose to live in a location – people do not aspire to live in a concrete high-rise with a concrete car-park next door, and encroaching high rise apartments on all sides. Yet this is the kind of environment the current Act has encouraged and the proposed planning amendment will facilitate.[23]

3.18 The breadth of the meaning of "amenity" is illustrated in the following descriptions:

> Amenity is an elusive concept. It has its usual meaning of pleasantness, but also has a wider ambit. It has a physical (or tangible) component, which could include character and appearance of building and works, proximity to shopping facilities, quality infrastructure and absence of noise, unsightliness or offensive odours. It has been said to embrace all the features, benefits and advantages inherent in the environment in question. It also has a psychological or social component.[24]
>
> A positive element or elements that contribute to the overall character or enjoyment of an area. For example, open land, trees, historic buildings and the inter-relationship between them, or less tangible factors such as tranquillity.[25]

3.19 Noting that the promotion of "amenity" in proposed s 2A(j) is confined to "buildings and other works", some submitters considered this section should be amended to capture the broader application of amenity in terms of locality and neighbourhood, while several submitters suggested that existing objective, s 2A(e), "minimising adverse impacts of development on existing amenity and, wherever possible, ensuring that amenity is enhanced as a result of development" should be retained.[26]

3.20 The Committee sought clarification from the Department regarding the reason for removing s 2A(e) and replacing it with an object that applies a more limited concept of the term amenity and was advised that:

> S 2A(e) from the current Act, has been replaced by s 2A(j) in the Bill to best respond to:
>
> - expansion of the objectives of the Act to embrace a broader range of matters including intergenerational equity; and
> - expansion of the role of the objectives of the Act to make them mandatory considerations for the Minister when making planning scheme amendments.
>
> S 2A(j) of the Bill does not seek to limit the concept of "amenity" within the Act. As noted by the committee, "amenity" retains its definition and it is also retained (without any changes to wording) as a matter that must be considered by the

[22] Submission 1 – Diana and Greg Rickman, p. 1; Submission 2 – Margie West, p. 1; Submission 6 – Dianne Koser, p. 1; Submission 8 – Sue Bradley AM, p. 1; Submission 9 – Hugh Bradley, p. 1.
[23] Submission 10 – Heather Ferguson and Carl Stephens, pp. 2-3.
[24] Victorian Government Solicitor's Office, Client Newsletter, *What is "amenity"?,* August 2008, https://www.vgso.vic.gov.au/sites/default/files/publications/What%20is%20amenity.pdf, p. 1.
[25] United Kingdom, Planning Portal, Glossary, https://www.planningportal.co.uk/directory_record/101/amenity
[26] Submission 1 – Diane Rickman and Greg Chapman, p. 1; Submission 2 – Margie West, p. 1; Submission - 8 Sue Bradley, p. 1; Submission 9 - Hugh Bradley, p. 1; Submission 13 – PLan, pp.4-5.

> consent authority when making a decision about a development application under s 51(n).
>
> The revised objective s 2A(j) uses similar wording to that used in NSW legislation and is considered to strike the appropriate balance between strategic planning for future generations in the long term and the interests of existing residents.[27]

3.21 The Department further advised that the removal of proposed s 2A(j) and the reinstatement of existing s 2A(e) would adversely affect the operation of the Bill, noting that:

> With the new requirement for the Minister to consider and address the objectives under s 2A when making a planning scheme amendment decision, retaining the wording of s 2A(e) would constrain the Minister to preserve the "existing amenity" of a location.
>
> By virtue of protecting existing amenity (the status quo), significant limitations are placed on the achievement of strategic policy objectives that are required to accommodate future population growth, such as increasing density in locations where infrastructure has the best potential to support further development. This has a follow-on effect of undermining intergenerational equity principles by increasing future infrastructure costs and obstructing future generations from convenient access to facilities and employment.[28]

3.22 Whilst acknowledging the Department's concerns regarding the effect on the operation of the Bill of reinstating existing s 2A(j), the Committee is of the view that proposed s 2A(j) does not adequately reflect the application of the concept of amenity as defined in s 3 of the Act:

> **Amenity,** in relation to a locality or building, means any quality, condition or factor that makes or contributes to making the locality or building harmonious, pleasant or enjoyable.

3.23 The Committee notes that while the Bill may not seek to limit the concept of "amenity" within the Act, the reference to the "amenity of buildings and other works" in proposed s 2A(j) is inconsistent with the definition provided in s 3 which, due to its inclusion of "locality", provides for the concept of amenity to be applied more broadly.

Committee's Comments

3.24 Although the Committee is satisfied with the Department's reasons for retaining proposed s 2A(j) and not re-instating existing s 2(e), it is of the view that proposed section 2A(j) should be amended to ensure consistency with the existing definition of amenity in s 3 of the Act.

Recommendation 3

The Committee recommends that proposed section 2A(j) be amended to align with the definition of 'amenity' in proposed section 3, such as: "to promote good design and amenity of buildings and localities".

[27] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 3.
[28] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, pp. 3-4.

Cl 8 – Section 9 replaced – Planning Scheme

3.25 Proposed s 9 describes the elements that comprise a planning scheme, with these including a strategic framework for the land to which the planning scheme applies, overlay provisions, zone provisions, use and development requirements, and interpretive provisions and administrative guidelines. Its purpose is "to assist in improving understanding of the components of a planning scheme, their relationships to each other and their role in informing decisions".[29]

3.26 The EDONT commented that:

> Specific provisions should be included in the strategic planning to require climate change plans, which could be inserted into proposed new sections s 9, 9A and 9B, including for example explicit requirements for climate change overlay(s) in the planning scheme (e.g. sea level rise overlay mapping to guide decision-making).[30]

Committee's comments

3.27 The purpose of proposed s 9 is to improve understanding of the components of a planning scheme. As climate change plans or overlays are not currently a component of the planning scheme it would not be appropriate to include these in proposed s 9. The Committee notes that public consultation on a draft NT Planning Scheme 2020 was undertaken in April 2020 following the introduction of this Bill.[31]

Cl 14, 21, and 33 - Sections 22, 30M and 49 replaced or amended – submissions/hearings

3.28 These sections give the Planning Commission the option of not holding a hearing, provide the local authority with the opportunity to provide a comment rather than a submission, and state that where such a comment does not oppose the application it will not be considered a submission. In relation to a hearing held on planning schemes and proposals the consent authority must invite the local authority to a hearing, if one is held, regardless of whether advice/comment or a submission has been provided (proposed s(9)), however, it is not required to invite the local authority to hearings on concurrent applications (proposed s 30M(4) and (5)) and development permits (proposed 49(6) and (7)) if a local authority has provided advice/comment rather than a submission.

3.29 Litchfield Council commented that providing the Commission with an option to not hold a hearing could reduce transparency and limit the information normally available to Council through a hearing, noting that public hearings enable Council "to revise their comments during the hearing based on new understanding of the amendment revealed during the hearing and based on community views raised during the hearing".[32] They also expressed concern regarding how the Commission would

[29] Explanatory Statement, *Planning Amendment Bill 2020 (Serial 118)*, https://parliament.nt.gov.au/committees/LSC/118-2020#kd, p. 2.
[30] Submission 11 – EDONT, p. 2.
[31] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Draft - Daily Hansard – Day 3 – 13 February 2020*, http://hdl.handle.net/10070/756093, p. 11; NTG, *Have your Say – Planning Reform, https://haveyoursay.nt.gov.au/planningreform,* accessed 6 April 2020.
[32] Submission 7 – Litchfield Council, p. 3.

determine whether or not a hearing would provide further useful information (proposed s 22(6)).

3.30 Scarlet Alliance recommended that provisions allowing local authorities to provide advice or comment to the Commission should be removed or, if retained, should include clarification that such comments or advice should only relate to the local authority's role in providing infrastructure and services as stated in the Explanatory Statement for clause 13.[33] In addition, in order to ensure transparency and accountability they considered that the comments and advice should be made available to the public and that the applicant must be provided with an opportunity to respond.[34] Their recommendation largely arises due to concerns that local authorities may exert undue influence on the outcomes of applications pertaining to the sex industry and result in an inconsistent approach to planning in relation to this industry.

Committee's comments

3.31 Although the Committee acknowledges the concerns raised by Litchfield Council, it notes that part of the intent of these amendments is to "minimise unnecessary administrative processes in situations where submissions raise only minor issues or support proposals".[35] Under these circumstances it considers it reasonable for the Planning Commission to have discretion as to whether a hearing is required (proposed s 22(6)). The Committee notes that if the local authority has significant concerns regarding a concurrent application or development permit it has the option of providing a submission rather than comment or advice.

3.32 The Committee considers that the concerns raised by Scarlet Alliance are adequately addressed by the Bill and existing processes, noting that where a local authority makes advice or comment it is taken not to be a submission unless it opposes or contradicts the application (proposed s 22(5); 30M(5); 49(7)). By implication, if it opposes or contradicts the application it will be treated as a submission. In addition, the Committee understands that at the end of the exhibition period the applicant is provided with any submissions received and has an opportunity to respond to any issues raised at the public hearing.

Cl 24 – Section 30W amended – Limits on consent (Part 2A – concurrent applications) and Cl 37 - section 52 amended (Part 5 – Development permits)

Concern regarding discretionary power of Minister

3.33 These sections require the 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.

[33] Explanatory Statement, *Planning Amendment Bill 2020 (Serial 118)*, https://parliament.nt.gov.au/committees/LSC/118-2020#kd, p. 3.
[34] Submission 15 – Scarlet Alliance, p. 3.
[35] Explanatory Statement, *Planning Amendment Bill 2020 (Serial 118)*, https://parliament.nt.gov.au/committees/LSC/118-2020#kd, p. 3.

3.34 Several submitters expressed concern regarding the discretionary power of the Minister to consent to a proposed development despite it being contrary to any strategic framework in the planning scheme (proposed s 30W(5) and (6); proposed s 52(3) and (4)).[36] Litchfield Council commented that no criteria have been provided against which those decisions are to be reported or measured, while ECNT called for transparency in relation to any decision made under proposed s 53.[37]

3.35 The Committee sought clarification from the Department regarding the rationale for enabling the Minister and the Development Consent Authority (under Minister's authority) to consent to a proposed development that is contrary to a strategic framework in the planning scheme and was advised that:

> The Minister is responsible for the establishment of the strategic framework in the planning scheme, including strategic policies and land use plans that guide the development of land. Within that context it is considered appropriate that the Minister be in a position to respond to proposals that may not have been anticipated or addressed by the strategic framework.
>
> At s 30W(5) of the current *Planning Act 1999*, the Minister already has discretionary power to consent to a proposed development or approve the DCA consenting to a proposed development despite it being contrary to a planning scheme provision being a statement of policy in respect of the use in development of land. This discretionary power has not been increased at s 30W(5) and (6) in the Bill. The existing provisions have merely been redrafted to reflect the replacement of 'statements of policy' with the 'strategic framework'.
>
> It is noted that this discretionary power applies only to the contradiction of and not to noncompliance with any other requirement in the scheme including zoning and development requirements.[38]

3.36 Regarding criteria that the Minister or the DCA are required to consider when determining whether to consent to a proposed development that is contrary to a strategic framework, the Department advised that:

> The Minister is responsible for the establishment of the strategic framework in the planning scheme. Amendment to s 13 in the Bill has introduced, for the first time, criteria which the Minister must consider when considering a request to amend the planning scheme.
>
> These criteria would also be appropriate for the Minister to consider in deciding whether to consent to a proposed development that is contrary to a strategic framework. However, given the unpredictability of circumstances which may require approval for the granting of consent to a proposal contrary to the strategic framework, it is considered that the specific introduction of criteria may limit the Minister's ability to respond in a timely manner to a proposal that accords with all aspects of the scheme other than the strategic framework.[39]

3.37 The Committee notes that transparency regarding decisions occurring under proposed sections 30W and 52 is provided by s 30X and s 53A which require determinations, including reasons for a determination, to be provided to applicants and submitters and to be made publically available.

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[36] Submission 1 – Diana and Greg Rickman, p. 2; Submission 7 – Litchfield Council, p. 4; Submission 14 – ECNT, pp. 2-3.
[37] Submission 7 – Litchfield Council, p. 4; Submission 14 – ECNT, pp. 2-3.
[38] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 4.
[39] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, pp. 4-5.

Committee's comment

3.38 The Committee is satisfied with the Department's response.

Cl 28 – Section 46 amended – Development applications

3.39 Proposed s 46(3)(aa) aims to ensure that the application for consent for a development identifies any person who directly benefits from the development.

3.40 Litchfield Council considered the meaning of the phrase "directly benefit from the development" to require further clarification, noting that a:

> subsidy [sic] company that is currently involved in the future development proposed and would reap direct financial benefit could be feasible to note; however, an individual or company who may be the future renter of a new independent unit or commercial warehouse may be a more difficult and private link to establish or meet any burden of proof.[40]

3.41 The Committee sought clarification from the Department as to the effect on the operation of the Bill of defining what is meant by "directly benefiting from the development" and was advised that:

> This requirement to identify the direct beneficiary is intended to improve transparency within the system while recognising that the ultimate benefit is to the land owner. Concern was expressed by the community and members of the Development Consent Authority that an application made on behalf of a land owner provides no indication of the intended developer, creating the potential for perceived or real conflict of interest.
>
> An Assembly Amendment to provide greater clarity around the meaning of 'direct benefit' will be progressed in consultation with Parliamentary Counsel. It is also intended that the approved form required when lodging a development application will provide additional detail.[41]

Committee's comments

3.42 The Committee is satisfied with the Department's response and has made a recommendation accordingly.

Recommendation 4

The Committee recommends that proposed section 46(3)(aa) be re-drafted to provide greater clarity with regard to the meaning of the term "directly benefit" in subsection (iii).

Clauses 42-46 – Sections 68, 69, 70, 71 and 72 - Contributions and contribution plans

3.43 Sections 68-70 introduce technical amendments to reflect the differentiation between local authorities and service authorities that is proposed by the Bill (s 3, definition of

[40] Submission 7 – Litchfield Council, p. 4.
[41] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 5.

service authority). Proposed sections 70-72 provide for a range of matters relating to contributions and contribution plans as set out in the Explanatory Statement.[42]

3.44 The Housing Industry Association (HIA) requested clarification regarding amendments to these sections, noting that "Levies and charges applied to development to cover physical and social infrastructure significantly affect new housing affordability. They are in effect a tax on new homebuyers".[43]

3.45 The Committee sought clarification from the Department regarding the impact of the proposed amendments on industry and was advised that:

> The impact to industry and housing affordability from these amended and replaced sections is negligible. The changes will facilitate improved operation of contribution plans by clarifying contributions that are payable under a contributions plan, including that a contribution can be used to provide infrastructure in the future or to recover amounts already spent on infrastructure required to support future development.[44]

Committee's comments

3.46 The Committee is satisfied with the Department's response.

Cl 49 – Proposed s 75C - Clearing native vegetation

Defining "native vegetation"

3.47 This provision creates an offence relating to the clearing of "native vegetation", however, the term "native vegetation" is not defined. Professor Aughterson commented that:

> A person should not be subjected to criminal liability in circumstances where the indicia of the offence are not clear. Compare, for example, the detailed definition of 'native vegetation' in the NSW *Native Vegetation Conservation Act 1997*.[45]

3.48 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of defining the term "native vegetation" and was advised that:

> The 'clearing of native vegetation' is defined in the Northern Territory Planning Scheme which is the applicable planning scheme referenced at s 75C(1)(a). This is the same as the offence at existing s 75A which has been subject to successful prosecution.
>
> Section 7 of the Act applies the NT Planning Scheme to the whole of the Territory, except that which is not otherwise covered by another planning scheme or which is not specifically excluded in the NT Planning Scheme itself. The NT Planning Scheme contains a definition for 'clearing of native vegetation' as well as 'native vegetation'.
>
> There are only two schemes currently in existence in the NT (the other being the Jabiru scheme). Any future scheme that may come into existence to supersede the NT Planning Scheme for an area of land would have its own requirements about the clearing of native vegetation.

[42] Explanatory Statement, Planning Amendment Bill 2020 (Serial 118), https://parliament.nt.gov.au/committees/LSC/118-2020#kd, pp. 8-9.
[43] Submission 5 –HIA, p. 2.
[44] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, Responses to Written Questions, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 6.
[45] Professor Ned Aughterson, Legal Advice, Planning Amendment Bill 2020, pp. 2-3

> Consequently, for the purposes of s 75C the NT Planning Scheme and definitions therein would apply and it is proposed that no amendment is necessary.[46]

Committee's comments

3.49 The Committee notes that the Act forbids the clearing of native vegetation and while it allows a planning scheme to provide an exception, it does not allow a planning scheme to define what native vegetation is. A planning scheme cannot define a term for the purposes of the Act unless the Act states that it can. The Act as proposed only allows a planning scheme to define the exemptions, not the offence itself. If the Act is to adopt a planning scheme definition, then this needs to be specified in the Act.

Recommendation 5

The Committee recommends that the Bill be amended to provide a definition of "native vegetation" either in the Act or by reference to another appropriate instrument.

Recommendation that higher penalties be applied to the unlawful clearing of native vegetation.

3.50 The EDONT, while supporting the amendment to make the unlawful clearing of native vegetation a strict liability offence, considered that higher penalties should apply, as the current proposal of 500 penalty units is not high enough to act as a deterrent for large scale development.[47] Under s 75A of the Act, which this proposed section replaces, the maximum penalty for an offender who is a natural person is 200 penalty units while for body corporates it is 1,000 penalty units but these are not strict liability offences. The EDONT considered that:

> a tiered structure of offences (as per the drafting in the recent *Environment Protection Act 2019*) should be introduced that includes differing levels of liability and associated penalties, tied to the seriousness of an offence (e.g. to differentiate between wilful or negligent offences). This would ensure consistency in approach to other recently reformed legislation in the NT, as well as more rigorous offence provisions being available to suit individual circumstances.[48]

3.51 The Committee sought comment from the Department as to whether any consideration had been given to introducing a "tiered structure of offences" as described by the EDONT and was advised that:

> The tiered approach is appropriate to the *Environment Protection Act 2019* to reflect the complexity of offences that can occur under that Act. It allows penalties to range in severity proportionate to the degree of environmental harm and negligence. Advice from the Department of Attorney-General and Justice (Legal Policy) was that a tiered approach is not necessary for the offence of unauthorised clearing of native vegetation given the far simpler nature of this offence - either vegetation was cleared or it was not.[49]

[46] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 14.
[47] Submission 11 – EDONT, p. 4.
[48] Submission 11 – EDONT, p. 3.
[49] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions,* 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 7.

Committee's comments

3.52 The Committee is satisfied with the Department's advice.

Cl 49 – Enforcement - Complaints and investigation – Proposed s 79 – Investigation of complaint

3.53 Proposed s 78 allows a person to lodge a complaint that another person has contravened the Act or regulations. Professor Aughterson commented that:

> By s 79(3), where the consent authority investigates a complaint they must give to the person the subject of the complaint a notice which includes 'the substance of the complaint'. By s 79(4), the recipient of the notice may respond in writing. However, there is no requirement to tell the person the subject of the complaint the name of the complainant. That detail could give context to the substance of the complaint and its reliability, including any motive for misrepresentation, and be an important consideration in formulating any response. It could, for example, give rise to suggestions as to other appropriate people the consent authority might consult. Certainly, it is unusual that a person who is the subject of an investigation does not know the identity of their accuser, in circumstances where following the investigation an enforcement notice can be issued: see s 79A(1)(b).

3.54 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of amending proposed s 79(3) to provide that the written notice provided to the person who is the subject of the complaint include the name of the complainant and was advised that:

> The types of conduct for which a complaint might be lodged under s 78 cover a range of issues. Generally speaking, those kinds of complaints would be for types of conduct where the credibility of the complainant is not relevant. For example; whether or not something is on land in contravention of a provision of the Act.
>
> In those circumstances, the substance of the complaint can be independently verified and presented to the person who is the subject of the complaint without divulging the name of the complainant. The person would not be impeded in their ability to answer the complaint by not knowing the name of the complainant.
>
> Because of the nature of the environment in which such complaints are received, the identities of complainants is generally kept private as knowledge of the complainant could give rise to retribution, particularly in small communities. The consent authority also has the ability to consider if a complaint is frivolous or vexatious, including the reliability and motivation of the complainant.
>
> If however, the credibility of the complainant were a factor in the person who is the subject of the complaint being able to understand the substance of the complaint and respond to it, the person who is the subject of the complaint might be entitled to know the identity of the complainant. The provision is drafted in such a way that the complainant's name is not required to be provided, but the consent authority is not specifically precluded from providing it either, should it be necessary.[50]

Committee's comments

3.55 The Committee is satisfied with the Department's advice and considers no amendment is required.

[50] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 15.

Cl 50 – Section 81D replaced – Independence of the Planning Commission

3.56 Proposed s 81D replaces existing s 81D, with subsection (2) providing increased guidance around the role and responsibilities of Planning Commission members. In doing this it requires members of the Commission to comply with any code of conduct established under s 100 and with any policies made by the Commission under s 81L(2).

3.57 Professor Aughterson drew attention to the potential for issues to arise in relation to subsection (2) noting that:

> Proposed s 81D: s 81D(1) provides that the Commission must perform its powers independently, impartially and in the public interest. Proposed s 81D(2)(d) then provides that the Chairperson and other members of the Commission *must* in the performance of their functions and the exercise of their powers 'comply with any policies made by the Commission under s 81L(2)'. It is very unusual to elevate policies to mandatory status. More usually they reflect guidelines and aspirations and, generally, are not legally binding. Not infrequently, circumstances will arise where it is appropriate to depart from policies. If this provision is preserved, a great deal of thought will need to be given to the formulation of the policies, both in substance and drafting, to ensure that all contingencies are covered. Also, it could give rise to a good deal of litigation, questioning whether the policy has been observed in given cases.[51]

3.58 The Committee sought comment on Professor Aughterson's observations and was advised that:

> The policies made by the Commission under s 81L(2) require approval by the Minister. It is considered appropriate that a policy endorsed by the Minister should be binding on members of the Commission in the performance of their functions and exercise of their powers. It is agreed that careful drafting of policies will be required. It is proposed that no amendment is necessary.[52]

Committee's comments

3.59 The Committee is satisfied with the Department's advice.

Cl 53 – Section 81L amended – Community consultation

3.60 Proposed s 81L requires the Commission to prepare policies for approval by the Minister in relation to community engagement and public education and to publish these on its website.

3.61 The HIA commented that industry engagement is as important as community engagement and considered that specific reference should be made to communication and engagement activities relevant to industry, similar to the requirement for community in proposed s 81L.

3.62 The Committee sought clarification from the Department regarding the effect on the operation of the Bill of requiring policies on industry communication and engagement to be developed and was advised that:

[51] Professor Ned Aughterson, Legal Advice, Planning Amendment Bill 2020, p. 4.
[52] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 16.

> The NT Planning Commission currently has comprehensive consultation protocols in place including engagement with the community, industry and service agencies notwithstanding that the current s 81L refers only to community consultation.
>
> The insertion of new s 81L(2) requires the commission to develop, seek Ministerial approval for and publish policies for consultation with the public and specific participants in the planning process.
>
> This will improve transparency around the Commission's consultation and reflect the current commitment to engagement with industry and all other stakeholders in the planning process.
>
> The Bill as it is currently drafted introduces a requirement that a policy for consultation with all relevant stakeholders be prepared and published. The future publication of this policy making specific reference to stakeholders other than the community will reassure industry.[53]

Committee's comments

3.63 The Committee is satisfied with the Department's advice.

Cl 61 – Proposed s 89 – Appointment of members within council area and proposed s 91 - Nomination of community members

3.64 Proposed s 89 clarifies who can be appointed by the Minister as a member of the Development Consent Authority. The Minister must appoint two community members and one alternate community member all of whom are to be nominated by the local authority. In addition, the Minister must appoint two specialist members and must maintain a register of persons eligible and willing to be appointed as specialist members. Employees of the local authority are not eligible to be appointed as a community member for that local authority.

3.65 Both the Litchfield Council and the HIA requested clarification regarding membership of the DCA in relation to criteria and selection processes.[54] The HIA queried whether industry representatives or staff, or members of an industry association could be appointed to the DCA. Litchfield Council commented that the prohibition on the appointment of council employees as community members to the DCA should be extended to include employees of any service authority to which an application is referred for formal comment. It is also not entirely clear as to whether employees of a local authority, who satisfy the Minister's criteria for specialist members, could be appointed to the DCA.

3.66 The Committee sought clarification from the Department regarding submitters' concerns and the selection processes for membership of the DCA and was advised that:

> Anyone other than an employee of a local authority or the Department of Infrastructure, Planning and Logistics may be nominated by a local authority for selection as a community member of the Development Consent Authority.
>
> Employees of a local authority are only precluded from being appointed as a community member of the DCA. An employee of a local authority could nominate

[53] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, pp. 7-8.
[54] Submission 5 – HIA, p. 2; Submission 7 – Litchfield Council, p. 2.

> to be a specialist member and, subject to the Minister being satisfied that the person has the skills, qualifications or experience prescribed in the regulation, be appointed as a specialist member.
>
> Employees of a service authority could achieve membership of the DCA as a community member if nominated by the relevant local authority. They may serve as a specialist member if the Minister was satisfied that the person had the relevant qualifications, skills or experience.[55]

3.67 The Department further noted that additional detail regarding the selection criteria for specialist members will be included in the Planning Amendment Regulations 2020, with these on public exhibition in April 2020. Further information can be found in the Department's *Responses to Written Questions.*[56]

Committee's comments

3.68 The Committee is satisfied with the Department's advice.

Cl 66 – Proposed s 98A – Independence of community member when making decisions as a member of a Development Consent Authority (DCA)

3.69 Proposed s 98A(1) states that any decision on a development application made by a community member of the DCA must be independent of any direction or decision from the local authority. Subsection (2) qualifies this by stating that "the community member may take into account the opinion of a local authority in relation to a development application made by an applicant other than the local authority".

3.70 Scarlet Alliance, while generally supporting the provision, expressed concerns that proposed s 98A(2) could potentially undermine the independence of community members. They commented that it is not clear "how the opinion of the local authority can be received, on what grounds and in relation to what matters and if anyone else is aware of the opinion of the local authority".[57] This is considered to allow for "a level of undue influence and a lack of transparency into the decision making process".[58] Scarlet Alliance considered that community members should rely on the same information as other members of the DCA and that the only opinion of a local authority available to them should be in the form of a submission.

Committee's comments

3.71 The Committee notes that proposed s 98A does not represent any significant change from the existing provisions under s 98 of the Act other than to simplify the drafting and to adjust the terminology from "local authority member" to "community member". The Committee understands that the intention of these sections is to clarify that, when making a decision on a development proposal, a community member is not bound by information in a submission, or comment or advice provided by the Council, but

[55] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, pp. 8-9.
[56] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 9.
[57] Submission 15 – Scarlet Alliance, p. 3.
[58] Submission 15 – Scarlet Alliance, p. 3.

can, as is common to all members of the Development Consent Authority, independently take that information into account. The Committee is satisfied that the process is sufficiently transparent and considers that no amendment is required.

Cl 67 – Proposed s 100A – Development Consent Authority – removal from office

3.72 Proposed s 100A sets out the reasons by which the Minister may terminate the appointment of a member of the DCA.

3.73 Litchfield Council recommended that proposed s 100A be amended to provide that where the Minister terminates the appointment of a member nominated by the local authority they must provide the local authority with written reasons for the termination. Similarly, if the local authority requests the termination of a community member they should be required to provide reasons to the Minister for the request. Litchfield Council commented that "These requirements would support transparency in the membership process and avoid the potential and/or perceived politicisation of nominations by either the Minister or local Councils".[59]

3.74 The Committee sought comment from the Department as to the effect on the operation of the Bill of amending proposed s 100A to require written reasons to be given for termination and was advised that:

> This amended clause does not represent any change to the provisions in the existing Act. New s 100A is simply a renumber version of the current s 100. The renumbering is required because of the inclusion of a new s 100 which gives the Minister the ability to establish and publish a code of conduct that members must abide by.
>
> Notwithstanding that standard practice would see the Minister provide reasons, inclusion of a requirement to provide reasons for decisions to a terminated member and a local authority in the case of a community member nominated by the local authority under s 100A would improve transparency within the planning system.

Committee's comments

3.75 The Committee is satisfied with the Department's response and has made a recommendation accordingly.

Recommendation 6

The Committee recommends that the Bill be amended to require that where the Minister terminates the appointment of a community member nominated by the local authority, the Minister provides the local authority and the terminated member with written reasons for their decision.

[59] Submission 7 – Litchfield Council, p. 2.

Cl 79 – Proposed s 135B – Administrative directions

3.76 Proposed 135B provides that the Minister may issue directions on how to interpret and administer the provisions of the Act, the regulations and planning schemes. Professor Aughterson noted that:

> It is quite extraordinary that a Minister be given power to issue directions on how to interpret an Act of Parliament. Interpretation is a matter for the courts. It might be asked what status is to be given to the Minister's direction where the meaning of a provision of the Act is being considered by a Court. I could find no equivalent provision in any other Australian legislation.[60]

3.77 The Committee sought comment from the Department and was advised that:

> The purpose of proposed s 135B is to provide the Minister with the ability to provide guidance to the Development Consent Authority and Planning Commission as to how to administer and apply processes under the Act. Similar types of provisions are in other environmental/planning legislation such as the *Environment Protection Bill 2019* … and the Queensland *Planning Act 2016* … and a more general power exists in the South Australian *Planning Development and Infrastructure Act 2016* s 42-43.
>
> It is considered appropriate and necessary that the Minister should have the ability to issue Guidelines for the administration of the Act. However, it is acknowledged that the proposed wording of s 135B, in particular the use of 'directions' and 'interpret', could be alternatively expressed as 'Guidelines' that the Development Consent Authority and Planning Commission must take into account in performing their functions and exercising their powers. It is proposed that this will be addressed through an Assembly Amendment.[61]

Committee's comments

3.78 The Committee acknowledges the Department's comment with regard to the fundamental purpose of proposed s 135B and is satisfied with the Department's proposal for amending this section to more accurately reflect this purpose.

Recommendation 7

The Committee recommends that proposed s 135B be amended to remove any reference to the Minister issuing directions on how to interpret the Act.

Cl 82 – Proposed s 139A – Electronic publication

3.79 New section 139A(1) provides for future transition to electronic publication of notices. While the amendment does not make electronic publication mandatory, the subsection states that requirements for publication under this Act "may be satisfied by publishing the document on a website or other electronic platform that is capable of informing the same audience".

3.80 Litchfield Council commented that proposed s 139A would reduce transparency and limit access to information for some people, particularly those who may not be comfortable using the Internet and those without Internet access.[62]

[60] Professor Ned Aughterson, Legal Advice, Planning Amendment Bill 2020, p. 4.
[61] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, pp. 17-18.
[62] Submission 7 – Litchfield Council, pp. 3-4.

3.81 The Committee sought comment from the Department regarding the effect on the operation of the Bill of amending this section to require publication in both a newspaper and electronically and was advised that:

> The provisions of s 139A that provide for a future transition to online platforms are being included into all statutes in accordance with best practice of future proofing all legislation in the Northern Territory.
>
> Existing requirements for newspaper publication are being retained and notices are already published on established electronic platforms. Enhancement of online information in relation to planning in the Northern Territory is progressing and it is hoped it will go live when the new legislation and planning scheme are commenced.[63]

Committee's comments

3.82 While the Committee notes that the intention is to continue to publish documents in newspapers as well as to encourage online publication it considers that the wording of proposed section 139A could allow documents to only be published online. The Committee considers that the Bill should be amended to make it clear that the requirement for documents to be published in a newspaper remains regardless of whether the document is published electronically.

Recommendation 8

The Committee recommends that proposed section 139A(1) be amended to require that, where possible, any document that is required to be published in a newspaper is also published on a website or other electronic platform.

Cl 84 – Proposed s 148 – Regulations

3.83 Proposed s 148 increases the maximum penalty units that can be prescribed for offences against the Regulations under the Act from 10 penalty units to 100 penalty units.

3.84 The HIA expressed concern regarding the significant increase in penalty units provided for by the Bill and recommended that industry be thoroughly consulted prior to the introduction of increased penalties.[64] They proposed a:

> consultative transitionary approach with greater focus on education and a warning system and a staged increase in penalty units over several years should the Northern Territory still consider it is necessary to be on par with other State and Territory jurisdictions.[65]

3.85 Penalty units in the NT *Planning Act 1999* are significantly lower than in other Australian jurisdictions and a key purpose of the Bill is to update the "enforcement toolset" to better reflect "the bad faith of a breach or community expectations around

[63] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 10.
[64] Submission 5 – HIA, p. 5.
[65] Submission 5 – HIA, p. 3.

protections from impacts of offences".[66] In addition, the Bill aims to more closely align penalties with other jurisdictions and NT environmental enforcement legislation.

3.86 The Committee sought clarification from the Department as to whether consideration had been given to ensuring industry is informed of the increases in penalty rates and the effect on the operation of the Bill of implementing transitional arrangements for proposed sections 148(1)(j) and (k), and was advised that:

> The Planning Amendment Regulations 2020 are currently out for consultation and do not include any increases to penalties within the current Regulations. Penalties associated with infringement notices are to be 4 units for an individual, and 20 for a body corporate.
>
> The amendments to s 148(1) are intended to create the ability to apply higher penalties should it be necessary in the future.
>
> Any future change to penalty rates would be subject to consultation.
>
> Transitional arrangements are not required as these sections have not introduced any increases to penalties in the regulations.[67]

Committee's comments

3.87 The Committee is satisfied with the Department's advice.

Technical Issues

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

3.88 Proposed s 16(7) imposes strict liability for the offence under s 16(6), applying this to subsections (6)(b) and (c). The reference should be to subsections (6)(a) and (c) as subsection (6)(b) includes the fault element of intention - strict liability is the imposition of liability on a party without finding fault – neither (a) nor (b) include a fault element.[68]

Recommendation 9

The Committee recommends that the letter (b) be removed from proposed section 16(7) and replaced with the letter (a).

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

3.89 The word "in" in proposed s 18 is extraneous and should be deleted.[69]

Recommendation 10

The Committee recommends that the first instance of the word "in" be removed from proposed s 18.

[66] Explanatory Statement, *Planning Amendment Bill 2020 (Serial 118)*, https://parliament.nt.gov.au/committees/LSC/118-2020#kd, p. 9
[67] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, pp. 10-11.
[68] Professor Ned Aughterson, Legal Advice, Planning Amendment Bill 2020, p. 1.
[69] Professor Ned Aughterson, Legal Advice, Planning Amendment Bill 2020, p. 1.

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

3.90 Proposed s 30J(3B) imposes strict liability for the offence under s 30J(3A) and contains a similar technical error to that in clause 10. Professor Aughterson noted that the reference to strict liability should be to s (3A)(a) and (c), rather than (b) and (c), as subsection (3A)(b) includes the fault element of intention.[70]

Recommendation 11

The Committee recommends that the letter (b) be removed from proposed section 30(J)(3B) and replaced with the letter (a).

Clauses 24 and 37 - Sections 30W(8) amended and proposed s 52(6) – Ministerial approvals for DCA to make decision contrary to strategic planning scheme

3.91 Professor Aughterson observed that:

> By proposed 30W(6), the Minister may give the Development Consent Authority ('DCA') approval to consent to a proposed development despite it being contrary to a strategic framework in the planning scheme. Proposed 30W(7) provides:
>
> > The Minister's approval may be obtained by written request setting out the Development Consent Authority's reasons for the request.
>
> By use of the word 'may' does that mean a request can, alternatively, be oral? Or should the subsection be framed in terms of, for example: 'Any request by the DCA for the Minister's approval must be in writing and include reasons for the request'.
>
> Proposed s 30W(8) then provides:
>
> > The Development Consent Authority is taken to have the Minister's approval if the Minister does not respond to the request within 14 days after receiving the request.
>
> For evidential purposes and to avoid uncertainty, it might be appropriate to specify that the deemed approval arises where the Minister does not respond to the request in writing.
>
> The same issue arises in relation to proposed s 52(5) and (6).[71]

3.92 The Committee sought clarification from the Department regarding the precise intention of proposed sections 30W(7); 30W(8); 53(5); and 53(6). In relation to proposed section 30W(7) the Department advised that:

> It is considered that the provision as drafted means that an application may be made, but it is to be in writing with reasons. It is proposed that no amendment is necessary.[72]

3.93 Regarding proposed section 30W(8) the Department advised that:

> It is proposed that it will be clarified that the lack of a written response is necessary for the Development Consent Authority to proceed assuming approval be provided via an Assembly Amendment.[73]

[70] Professor Ned Aughterson, Legal Advice, Planning Amendment Bill, 10 March 2020, p. 1.
[71] Professor Aughterson, Legal Advice, Planning Amendment Bill 2020, 10 March 2020, pp. 1-2.
[72] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 12.
[73] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions,* 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 12.

Committee's comments

3.94 The Committee is satisfied with the Department's response to both of the queries raised by Professor Aughterson and notes that while providing a discretion for an application to be made in writing may connote that an oral application is an option, the Act does not actually provide that option. To state that an application must be made in writing could be taken as a command to make an application, unless made conditional.

3.95 The Committee notes that proposed s 52(6) will need to be amended in the same way as proposed s 30W(8).

Recommendation 12

The Committee recommends that proposed s 30W(8) and s 52(6) be amended to insert the words "in writing" after the word "respond", or words to that effect.

Clause 33 – Section 49 amended – Submissions

3.96 Professor Aughterson observed that:

> There are two questions here. First what is the 'exhibition period' for the purposes of the section and, second, how does the time frame of 'within the exhibition period' in the proposed subsections 49(4), (6) and (8) sit with the time frames specified in the existing and ongoing subsections 49(1) to (3) of the Act. In relation to the first question, s 3 of the Act defines the term 'exhibition period' only for the purposes of concurrent applications and refers to s 30F(3) of the Act. Section 30F(3) makes it clear that it is defining the term for the purposes of concurrent applications only. Concurrent applications are dealt with in Part 2A of the Act. Proposed s 49 will appear in Part 5 of the Act, which deals with development permits. There does not appear to be any definition of the term 'exhibition period' for the purposes of Part 5 of the Act.
>
> As to the second question, existing subsections 49(1) to (3), which have not been amended, require written submissions to be made 'within the period specified in the public notice about the application'. However, proposed s 49(4) and (6) require that submissions be lodged 'within the exhibition period'. By proposed s 49(8), the consent authority may extend the times in subclauses (4) and (6). It would seem that the section as a whole should refer either to the exhibition period (to be defined) or the period specified in the notice.[74]

3.97 The Department agreed that these sections would benefit from clarification and advised the Committee that the issues identified by Professor Aughterson would be addressed through Assembly amendments.[75]

Recommendation 13

The Committee recommends that section 49 of the Bill be amended to:

- **Define the term "exhibition period" for the purposes of Part 5 of the Act;**
- **Clarify whether submissions are to be lodged within the exhibition period or within the period specified in the notice.**

[74] Professor Ned Aughterson, Legal Advice, Planning Amendment Bill 2020, p. 2.
[75] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, Responses to Written Questions, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 13.

Clause 41 – Section 66 amended – Minister may revoke or modify permit

3.98 Professor Aughterson observed that:

> by existing s 66(1) the Minister may 'revoke or modify' a development permit. By proposed s 66(6) a person, having been served with a notice of the proposed revocation or modification, commits an offence if they intentionally continue to use or develop the land and the use or development is permitted only under the permit. See also proposed s 66(7). Where there is only a proposed *modification* of the permit, and perhaps only a minor modification, a question arises as to whether it is necessary to impose a blanket suspension of work on the development, rather than a suspension of work that is related to the proposed modification only.[76]

3.99 The Department considered an amendment unnecessary noting that:

> The provisions in the Bill mirror the provisions in the existing Act with changes limited to those necessary to update provisions in relation to penalties. As the final extent and nature of the proposed modification of the permit is not finalised until an inquiry has been conducted under s 144 and the Minister has subsequently made a decision under s 66(4), it is considered appropriate that any use or development permitted under the permit must cease until the Minister has notified the decision. This is the same limitation under existing s 66(5).[77]

Committee's comments

3.100 The Committee is satisfied with the Department's advice.

Clause 49 – Proposed s 75D – Contravention of notice

3.101 Proposed s 75D provides that a person issued an enforcement notice (see s 77) commits an offence if they intentionally contravene the notice. Proposed subsection 75D(2) applies strict liability in relation to the issue of the enforcement notice. Professor Aughterson commented that:

> It is not clear how the notice is to be issued to a person. Proposed 77D provides that where there is a variation or revocation of the enforcement notice it must be served on each person bound by the notice. Particularly given the fact of strict liability, there is a question of why service is not required in relation to the notice itself.[78]

3.102 The Department advised that:

> Existing s 139 provides for the process for the service of notices and documents and this will apply to enforcement notices. It is proposed that no amendment is necessary.[79]

Committee's comments

3.103 The Committee is satisfied with the Department's advice.

[76] Professor Ned Aughterson, Legal Advice on the *Planning Amendment Bill 2020*, p. 2.
[77] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 14.
[78] Professor Ned Aughterson, Legal Advice on the *Planning Amendment Bill 2020*, p. 3.
[79] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 14.

Clause 49 – Proposed s 80B – Default penalty for continuing offences

3.104 Professor Aughterson commented that:

> Proposed s 80B: provides that in addition to any penalty for an offence under the Act, a court may impose a default penalty 'in respect of each day during which the offence continued to be committed after the first day on which it was committed if:
>
> (a) the offence provides for a default penalty; and
>
> (b) the Court is satisfied that the person continued to commit the offence after the date the person is notified of the alleged offence'.
>
> The impact of subsection (b) is unclear. If, for example, the offence is discovered and the person is notified of the alleged offence 100 days after the offence was first committed, and continues for one further day after notification, are they subject to a default penalty of 101 days or one day?[80]

3.105 The Department advised that:

> The wording of s 80B(b) is considered to be correct. The default penalty would only apply for each day that the offence continues to be committed after they are notified that they are committing an offence. However, as the Committee's Legal Counsel has identified a potential lack of clarity the meaning of s 80B will be clarified through an Assembly Amendment.[81]

Committee's comments

3.106 The Committee considers it important to clarify the meaning of this section and has made a recommendation accordingly.

Recommendation 14

The Committee recommends that proposed section 80B be amended to make it clear that the default penalty only applies for each day that the offence continues to be committed after the person has been notified that they are committing an offence.

Clause 49 - Proposed s 80F – Criminal liability of executive officer of body corporate – legal burden of proof on prosecution

3.107 Professor Aughterson commented on a lack of clarity in relation to the terms used in proposed section 80F(1), querying:

> what is a 'declared provision' in s 80F(1)(a)? – there is no other reference to a 'declared provision' in the Act or the Bill. Should it refer to contravention of a provision of the Bill/Act? There are 'declared offences': see s 80F(7).
>
> Also, by what measure is the officer in a 'position of influence' within the meaning of s 80F(1)(b)? It is noted that strict liability applies in relation to that subsection.[82]

3.108 The Department agreed that the term "declared provision" is incorrect and should be addressed through an Assembly amendment.[83]

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[80] Professor Ned Aughterson, Legal Advice on the *Planning Amendment Bill 2020*, p. 3.
[81] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, pp. 15-16.
[82] Professor Ned Aughterson, Legal Advice on the *Planning Amendment Bill 2020*, p. 4.
[83] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 16.

Recommendation 15

The Committee recommends that proposed section 80F be amended by clarifying or replacing the term "declared provision" in subsection (1)(a).

3.109 In relation to Professor Aughterson's query regarding "by what measure is the officer in a 'position of influence' within the meaning of s 80F(1)(b)" the Department advised that:

> 80F(1)(b) refers to an officer being in a 'position to influence' rather than 'position of influence'. This is a question of fact due to standard wording used in s 125D of the Criminal Code. It is proposed that no amendment is necessary.[84]

Committee's comments

3.110 The Committee is satisfied with the Department's advice regarding Professor Aughterson's query concerning proposed s 80F(1)(b).

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

3.111 Proposed s 85(5) provides for the Minister to maintain a register of persons willing to act as specialist advisors to the consent authority.

3.112 Professor Aughterson queried whether this section should be redrafted to read as follows (see italics):

> The Minister may maintain a register of any person willing to act as a specialist advisor to the consent authority *and a person's name may be entered on the register* if the Minister is satisfied the person has the skills, qualifications or experience prescribed by regulation.[85]

3.113 The Department considered no amendment to be necessary noting that "The person is registered as a specialist advisor only if the Minister is satisfied the person has the skills, qualifications or experience prescribed by regulation".[86]

Committee's comments

3.114 A normal reading of the words as drafted is that the Minister's ability to maintain a register is dependent on whether the Minister is satisfied that a person has the skills, qualifications or experience prescribed by regulation. It is arguable that the context could force a meaning in line with the intent of the section, which is to make the Minister's ability to add a person to the register dependent on the Minister being satisfied that the person fulfils these requirements. The Committee considers that it is preferable that a provision has the effect in line with the usual meaning of its words and considers that the provision should be amended accordingly.

[84] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 16.
[85] Professor Ned Aughterson, Legal Advice on the *Planning Amendment Bill 2020*, p. 4.
[86] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 16.

Recommendation 16

The Committee recommends that proposed section 84(5) be amended so its words clearly express its intent, such as by inserting "and a person's name may be entered on the register", after the words "consent authority".

Clause 67 – Proposed s 100A(2)(a) – Development Consent Authority – removal from office

3.115 Professor Aughterson observed that proposed s 100A(2)(a):

> provides that the Minister may terminate the appointment of a member of the Development Consent Authority if the member is absent from 3 consecutive meetings of the Development Consent Authority. However proposed s 103(1A) specifies that the minutes of meetings must record, among other things, 'the number of members attending the meeting'. There is no requirement to record the names of those who attend. On that basis, a question arises as to how absences are to be established. Also, there is no requirement to record whether a person has leave to be absent.[87]

3.116 The Department agreed with Professor Aughterson's concerns and advised that:

> the Minutes should record the names of any members present or absent at a meeting and it is proposed that this will be addressed through an Assembly Amendment. The important element is that individual voting by members is not recorded in the minutes, only the numbers for or against a proposal.[88]

Recommendation 17

The Committee recommends that proposed section 103(1A) be amended to require that the minutes of the Development Consent Authority must record the names of those who attend the meeting and whether a member has been given leave to be absent from the meeting.

[87] Professor Ned Aughterson, Legal Advice on the *Planning Amendment Bill 2020*, p. 4.
[88] Hon Eva Lawler MLA, Minister for Infrastructure, Planning and Logistics, *Responses to Written Questions*, 15 April 2020, https://parliament.nt.gov.au/committees/LSC/118-2020#Tabled%20Papers, p. 17.

Appendix 1: Submissions Received

Submissions Received

1. Diana Rickman and Greg Chapman
2. Margie West
3. Elizabeth Benson
4. Nancy Batenburg
5. Housing Industry Association (HIA)
6. Dianne Koser
7. Litchfield Council
8. Sue Bradley
9. Hugh Bradley
10. Heather Ferguson and Carl Stephens
11. Environmental Defenders Office NT (EDONT)
12. Jo Vandermark
13. PLan the Planning Action Network (PLan)
14. Environment Centre Northern Territory (ECNT)
15. Scarlett Alliance, Sex Worker Outreach Program NT (SWOP), Sex Worker Reference Group NT (SWRG)

Note

Copies of submissions are available at: https://parliament.nt.gov.au/committees/LSC/118-2020#Submissions

Appendix 2: Comparison with legislation in other Australian Jurisdictions

	Issue
Jurisdiction	**Defining Sustainable Development**
NSW	***Environmental Planning and Assessment Act 1979* (NSW)** **S 1.3 Objects of the Act** (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making environmental planning and assessment, (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats, (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State **s 1.4 – Definitions** ***ecologically sustainable development*** has the same meaning it has in section 6(2) of the *Protection of the Environment Administration Act 1991*. ***Protection of the Environment Administration Act 1991* (NSW)** **6 Objectives of the Authority** (1) The objectives of the Authority are: (a) to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development, and …… (2) For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of social, economic and environmental considerations in decision-making processes. Ecologically sustainable development can be through the implementation of the following principles and programs: (a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by: (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and (ii) an assessment of the risk-weighted consequences of various options, (b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations, (c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration, (d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as: (i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement, (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,

	Issue
	(iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.
ACT	***Planning and Development Act 2007*** **(ACT)** **S6 Object of Act** The object of this Act is to provide a planning and land system that contributes to the orderly and sustainable development of the ACT— (a) consistent with the social, environmental and economic aspirations of the people of the ACT; and (b) in accordance with sound financial principles **S 9 Meaning of *sustainable development*** (1) For this Act: ***sustainable development*** means the effective integration of social, economic and environmental considerations in decision-making processes, achievable through implementation of the following principles: (a) the precautionary principle; (b) the inter-generational equity principle; (c) conservation of biological diversity and ecological integrity; (d) appropriate valuation and pricing of environmental resources. (2) In this section: ***the inter-generational equity principle*** means that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations. ***the precautionary principle*** means that, if there is a threat of serious or irreversible environmental damage, a lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. **S 12 – Authority Functions** (3) The planning and land authority must exercise its functions— (a) in a way that, as far as practicable, gives effect to sustainable development; and (b) taking into consideration the statement of planning intent
Qld	***Planning Act 2016*** **(Qld)** An Act providing for an efficient, effective, transparent, integrated, coordinated and accountable system of land use planning and development assessment to facilitate the achievement of ecological sustainability. **S 3 – Purpose of Act** (1) The purpose of this Act is to establish an efficient, effective, transparent, integrated, coordinated, and accountable system of land use planning (***planning***), development assessment and related matters that facilitates the achievement of ecological sustainability. (2) ***Ecological sustainability*** is a balance that integrates— (a) the protection of ecological processes and natural systems at local, regional, State, and wider levels; and (b) economic development; and (c) the maintenance of the cultural, economic, physical and social wellbeing of people and communities. (3) For subsection (2)— (a) protecting ecological processes and natural systems includes— (i) conserving, enhancing or restoring the life-supporting capacities of air, ecosystems, soil and water for present and future generations; and (ii) protecting biological diversity; and

	Issue
	(b) achieving economic development includes achieving diverse, efficient, resilient and strong economies, including local, regional and State economies, that allow communities to meet their needs but do not compromise the ability of future generations to meet their needs; and … See also, *5 Advancing purpose of the Act*
Vic	***Planning and Environment (Planning Schemes) Act 1996*** **(Vic)** Nothing on sustainable development **Planning and Environment Act 1987** **S 4 – Objectives** (1)The objectives of planning in Victoria are— (a) to provide for the fair, orderly, economic and sustainable use, and development of land; (b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity; **46AV - Contents of Statement of Planning Policy** (2) The declared area framework plan must provide a framework for decision making in relation to the future use and development of land in the declared area that— (a) integrates environmental, social, cultural and economic factors for the benefit of the community and encourages sustainable development and identifies areas for protection and conservation of the distinctive attributes of the declared area; and • No definition of sustainable development or ecologically sustainable development • No reference to definitions in other legislation
WA	***Planning and Development Act 2005*** **(WA)** **3. Purposes and interpretation of this Act** (1) The purposes of this Act are to - (c) promote the sustainable use and development of land in the State. There is no definition for sustainable use or development and no reference to other legislation.
SA	**Planning, Development and Infrastructure Act 2016** **12 - Objects of Act** (1) The primary object of this Act is to support and enhance the State's liveability and prosperity in ways that are ecologically sustainable and meet the needs and expectations, and reflect the diversity, of the State's communities by creating an effective, efficient and enabling planning system, linked with other laws, that— **14 – Principles of good planning** (e) *sustainability principles* as follows: (i) cities and towns should be planned, designed and developed to be sustainable; (ii) particular effort should be focussed on achieving energy efficient urban environments that address the implications of climate change; (iii) policies and practices should promote sustainable resource use, reuse and renewal and minimise the impact of human activities on natural systems that support life and biodiversity; **62A—Biodiversity policy** The Minister must ensure that there is a specific state planning policy (to be called the biodiversity policy) that specifies policies and principles that are to be applied with respect to enhancing biodiversity and minimising adverse effects of development on biodiversity within the State.

	Issue
	57 – Principles (in Part 5 – Statutory Instruments) (e) rules and standards must seek to protect the environment and the pursuit of ecologically sustainable development;
Tas	**Land Use Planning and Approvals Act 1993** Little direct reference to sustainable development **3 – Interpretation** **conservation** includes preservation, maintenance, sustainable use and restoration of the natural and cultural environment; **State Policy** means a Tasmanian Sustainable Development Policy made under section 11, or that comes into operation under section 12, of the State Policies and Projects Act 1993; **12B. Contents and purposes of Tasmanian Planning Policies** (TPPs) (2) The TPPs may relate to the following: (a) the sustainable use, development, protection or conservation of land; (b) environmental protection; (c) liveability, health and wellbeing of the community; (d) any other matter that may be included in a planning scheme or a regional land use strategy. **Schedule 1 – Objectives, Part 1 – Objectives of the resource management and planning system of Tasmania** 1 - The objectives of the resource management and planning system of Tasmania are – (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and (c) to encourage public involvement in resource management and planning; and (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State. 2. In clause 1(a), **sustainable development** means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while – (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.
Jurisdiction	**Climate change**
NSW	Nothing on climate change in either the *Environmental Planning and Assessment Act 1979* (NSW) or the *Protection of the Environment Administration Act 1991* (NSW)
ACT	Nothing on climate change
Qld	***Planning Act 2016*** **(Qld)** **S 3 – Purpose of Act** (2) ***Ecological sustainability*** is a balance that integrates …. (3) For subsection (2)— (c) maintaining the cultural, economic, physical and social wellbeing of people and communities includes— (iv) accounting for potential adverse impacts of development on climate change, and seeking to address the impacts through sustainable

	Issue
	development (sustainable settlement patterns or sustainable urban design, for example). **S 5 – Advancing purpose of Act** (1) An entity that performs a function under this Act must perform the function in a way that advances the purpose of this Act. (2) Advancing the purpose of this Act includes— (j) avoiding, if practicable, or otherwise minimising the adverse effects of development (climate change, urban congestion or declining human health, for example).
Vic	Nothing on climate change in either the *Planning and Environment Act 2987* (Vic) or the *Planning and Environment (Planning Schemes) Act 1996*
WA	There is nothing on climate change in the *Planning and Development Act 2005* (WA)
SA	**Planning, Development and Infrastructure Act 2016** **– Principles of good planning** (e) sustainability principles as follows: (i) cities and towns should be planned, designed and developed to be sustainable; **(ii) particular effort should be focussed on achieving energy efficient urban environments that address the implications of climate change**; (iii) policies and practices should promote sustainable resource use, reuse and renewal and minimise the impact of human activities on natural systems that support life and biodiversity; **62—Climate change policy** The Minister must ensure that there is a specific state planning policy (to be called the climate change policy) that specifies policies and principles that are to be applied with respect to minimising adverse effects of decisions made under the Act on the climate and promoting development that is resilient to climate change. **113 – EIS process** (4) The EIS must, subject to any practice direction, include a statement of - (b) the expected effects of the development on the climate and any proposed measures designed to mitigate or address those effects;
Tas	Nothing on climate change in the *Land Use Planning and Approvals Act 1993* (Tas)
Jurisdiction	**Amenity**
NSW	**NSW Environmental Planning and Assessment Act 1979** S 1.3 Objects of Act (g) to promote good design and amenity of the built environment,
ACT	***Planning and Development Act 2007*** **(ACT)** Nothing on amenity in objects and very little in the Act
Qld	***Planning Act 2016*** **(Qld)** 3 Advancing purpose of the Act – (2) Advancing the purpose of this Act includes - (i) applying amenity, conservation, energy use, health and safety in the built environment in ways that are cost-effective and of public benefit; and
Vic	Nothing on amenity in either the Planning and Environment Act 2987 (Vic) or the Planning and Environment (Planning Schemes) Act 1996
WA	***Planning and Development Act*** **(WA)** **S 27 Matters to be considered when preparing State planning policy** In the preparation of a State planning policy the Commission is to have regard to - (e) amenity, design and environment; and References to amenity appear throughout the Act but there appears to be no definition of amenity nor is it referenced in the purpose of the Act.
SA	***Planning, Development and Infrastructure Act 2016*** **(SA)**

	Issue
	3 - Interpretation ***amenity*** *of a locality or building means any quality, condition or factor that makes, or contributes to making, the locality or building harmonious, pleasant or enjoyable;*
Tas	Nothing on amenity in the *Land Use Planning and Approvals Act 1993* (Tas)

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Dissenting report by Mrs Finocchiaro

Inquiry into the Planning Amendment Bill 2020

I dissent to Recommendation 2 of the Draft Report, which recommends "that the Bill be amended to include a definition of sustainable development in section 3 of the Act."

It is my opinion, and that of the CLP Opposition and the urban development industry, that such a definition will create further uncertainty and risk in the marketplace and possibly even create an unfair disadvantage against proposed development.

The point of the Planning Act is to create a planning scheme which balances competing interests in order to develop the Northern Territory. Any part of the legislation that weighs one interest differently than another is unfair.

It is my view that the sustainability of a development should be determined based on the merits of competing interests and ensuring that the concerns of all parties have been taken into consideration. Therefore, it is a matter for the relevant Consent Authority to define, not the Assembly.

I support the remainder of the Draft Report and its Recommendations, as written.

Lia Finocchiaro MLA

Member for Spillett

1 May 2020