

Planning and Environment Amendment Bill 2021

Draft Version

EXPLANATORY MEMORANDUM

General

The purpose of this Bill is to amend the **Planning and Environment Act 1987** to ensure the environment is given a high priority in all planning decisions. It aims to enhance the **Planning and Environment Act 1987** by strengthening the objectives to protect the environment.

In particular the Bill—

- amends the **Planning and Environment Act 1987** to include the protection of the environment and native species as an objective in the framework for the Act;
- introduces an Environmental Impact Statement (EIS) that must be included in all planning applications and amendments to a planning scheme. The EIS will need to assess any potential impact on the environment as a result of the planning application or amendment;
- the proposed EIS will need to cover any negative impacts on flora, fauna, threatened species, protected grasslands or any potential degradation to the soil, land, air or water;
- aims to ensure that the effects of planning applications on the environment are minimised, managed on-site or addressed by the applicant;

- will require the responsible authority to take into account any minor or incremental environmental effects of the application, and respond to any issues identified by the EIS;
- inserts a new subsection to give the Tribunal the power to cancel or amend a planning permit which does not address the report and findings of the EIS;
- includes the ability for the applicant if there are no environmental impacts, to simply include this as a statement in their application.

Overall, the changes allow for the environmental impact of planning applications to be included as a key criterion for informed decision making by the planning authorities and responsible authorities. It aims to put the focus on the protection of the environment, particularly native species as one of the main objectives of the Act.

Clause Notes

- Clause 1 contains the purpose of the Bill, which is to amend the **Planning and Environment Act 1987** to ensure the environment is prioritised in planning decisions.
- Clause 2 sets out when the Bill will come into operation, which is the day after the day on which it receives the Royal Assent.
- Clause 3 states that in the Bill, the **Planning and Environment Act 1987** is called the Principal Act
- Clause 4 amends section 1 of the Principal Act, so that the purpose of the Principal Act includes the protection of the environment and native species.
- Clause 5 inserts 2 new definitions into section 3(1) of the Principal Act; *environmental impact statement* and *native species*.

- Clause 6 amends section 4(2) of the Principal Act, so that the objectives of the planning framework established by the Principal Act include a focus on the protection of the environment and native species.
- Clause 7 amends section 12(2)(b) of the Principal Act to require a planning authority to take into account any effects, including minor and incremental effects, which it considers a planning scheme or planning scheme amendment might have on the environment.
- Clause 8 amends section 14 of the Principal Act to make it a duty of a responsible authority—
- to protect the environment and conserve native species; and
 - when implementing the objectives of the planning scheme, to give consideration to environmental protection by responding in writing to any issue identified in an environmental impact statement that accompanies a permit application.
- Clause 9 amends section 17(1) of the Principal Act to require a planning authority that prepares a planning scheme amendment to also include an environmental impact statement in the copies of the amendment and accompanying documents that the planning authority is required to give to certain persons under that subsection. The clause also makes a consequential amendment to section 17(3) of the Principal Act.
- Clause 10 amends section 18 of the Principal Act to require a copy of the environmental impact statement for a proposed amendment to a planning scheme to be made publicly available.
- Clause 11 inserts a new subsection (4A) into section 24 of the Principal Act to prohibit a panel from making a recommendation in relation to the adoption of a planning scheme amendment unless the environmental impact statement has been considered and responded to in the report.
- Clause 12 inserts a new subparagraph (ia) into section 35(1)(a) of the Principal Act to require the Minister to consider and respond to any measures recommended in the environmental impact statement before approving a planning scheme amendment or part of a planning scheme amendment.

- Clause 13 inserts a new paragraph (ca) into section 47(1) of the Principal Act to require a permit application to be accompanied by an environmental impact statement.
- Clause 14 inserts a new paragraph (ea) into section 60 of the Principal Act to require the responsible authority to consider the environmental impact statement and the extent to which the proposed use or development in the permit application has minimised any negative environmental impacts or enhanced the location. The clause also amends section 60(1A)(g) so the responsible authority may also consider environmental protection policy as part of considering the permit application.
- Clause 15 amends section 62(1) of the Principal Act to require the responsible authority, in granting a permit, to include conditions to minimise any negative impacts identified in the environmental impact statement that had not been addressed in the permit application.
- Clause 16 inserts a new paragraph (db) into section 84B(2) of the Principal Act to require the Tribunal to take account of the environmental impact statement and the responsible authority's response to it when determining an application for review under the Act.
- Clause 17 inserts a new paragraph (ca) into section 87(1) of the Principal Act to give the Tribunal the power to cancel or amend a permit if it considers that there has been a substantial failure to consider and respond to the environmental impact statement.
- Clause 18 amends section 96E(1)(b) of the Principal Act to allow a panel to recommend that a permit, being a permit recommended by the panel under section 96E, be subject to conditions relating to matters that the environmental impact statement recommends to be addressed.
- Clause 19 contains the repeal date for this Bill, which is the first anniversary of the commencement date. Clause 19 also contains a note that refers to section 15(1) of the **Interpretation of Legislation Act 1984** and states that the repeal of this Bill does not affect the continuing operation of the amendments made by it.

