



Australian Capital Territory

# Commissioner for Sustainability and the Environment Act 1993

A1993-37

**Republication No 16**

**Effective: 9 August 2019**

Republication date: 9 August 2019

Last amendment made by [A2019-20](#)

## About this republication

### The republished law

This is a republication of the *Commissioner for Sustainability and the Environment Act 1993* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 August 2019. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 9 August 2019.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



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Australian Capital Territory

# Commissioner for Sustainability and the Environment Act 1993

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An Act to establish the office of commissioner for sustainability and the environment, and for related matters

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Commissioner for Sustainability and the Environment Act 1993*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 2A Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#) s 127 (1), (4) and (5) for the legal status of notes.

### 2B Objects of Act

The objects of this Act are to—

- (a) ensure regular and consistent reporting on matters relating to the condition and management of the environment in the Territory; and
- (b) ensure regular reporting on progress towards ecologically sustainable development by the Territory and territory authorities; and
- (c) encourage decision-making that facilitates ecologically sustainable development; and
- (d) enhance knowledge and understanding of issues relating to ecologically sustainable development and the environment; and

- (e) encourage sound environmental practices and procedures to be adopted by the Territory and territory authorities as a basis for ecologically sustainable development.

### 3 Entities not necessarily prescribed authorities

- (1) For this Act, an unincorporated body established under an enactment for the purpose of assisting, or exercising functions connected with, a prescribed authority is not taken to be a prescribed authority but action taken by the body, or by a person for the body, is taken to be action by the prescribed authority.

#### Examples of bodies

A board, council and committee

*Note* **Body** includes any group of people joined together for a common purpose (see [Legislation Act](#), dict, pt 1).

- (2) For this Act, a person is not taken to be a prescribed authority only because the person holds or performs the duties of a specified office, but any action taken by or for the person is taken to have been taken by the agency or body concerned.

*Note* **Agency** includes a prescribed authority (see dictionary).

- (3) In this section:

**specified office** means—

- (a) an office the duties of which the person performs as employment duties as an officer of an agency; or
- (b) an office of a member of a body; or
- (c) an office established by an enactment for a prescribed authority; or
- (d) an office prescribed by regulation.

## Part 2 Office of Commissioner

### 4 Commissioner for Sustainability and the Environment

- (1) The Minister must appoint a person as the Commissioner for Sustainability and the Environment.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see [Legislation Act](#), div 19.3.3).

- (2) The commissioner holds office on the terms not provided by this Act that are decided in writing.

### 5 Term of office

Subject to this Act, the commissioner must not be appointed for a term of longer than 5 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def of *appoint*).

### 7 Leave of absence

The Minister may grant leave of absence to the commissioner on the terms and conditions in relation to remuneration or otherwise as the Minister decides in writing.

## 9 Suspension and removal of commissioner

- (1) The Executive may remove the commissioner from office on an address praying for the commissioner's removal on the ground of misbehaviour or physical or mental incapacity being presented to the Executive by the Legislative Assembly.

*Note* A person's appointment also ends if the person resigns (see [Legislation Act](#), s 210).

- (2) The Executive may suspend the commissioner from office on the ground of misbehaviour or physical or mental incapacity.
- (3) If the Executive suspends the commissioner from office, the Minister must present a statement of the grounds of the suspension to the Legislative Assembly within 7 sitting days after the day of the suspension.
- (4) If a statement under subsection (3) has been presented to the Legislative Assembly, the Legislative Assembly may, within 15 sitting days after the day the statement was presented to it, by resolution, declare that the commissioner should be removed from office and, if the Legislative Assembly passes the resolution, the Executive must remove the commissioner from office.
- (5) If, at the end of 15 sitting days after the day the statement was presented, the Legislative Assembly has not passed the resolution, the suspension ends.
- (6) The Executive must end the commissioner's appointment if the commissioner becomes bankrupt or personally insolvent.

*Note* **Bankrupt or personally insolvent**—see the [Legislation Act](#), dictionary, pt 1.

- (7) The commissioner must not be removed or suspended from office except as provided by this section.

- (8) The suspension of the commissioner from office does not affect any entitlement of the commissioner to be paid remuneration and allowances.

**10 Retirement**

The Minister may, in writing with the consent of the commissioner, retire the commissioner on the grounds of physical or mental incapacity from the date and on the terms and conditions the Minister decides.

**11 Delegation by commissioner**

The commissioner may delegate to a public servant the commissioner's functions under this Act.

*Note* For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

## Part 3                      Functions and powers of commissioner

### 12                      Functions

- (1) The commissioner has the following functions:
- (a) investigating complaints about—
    - (i) the management of the environment by the Territory or a territory authority; and
    - (ii) issues relating to ecologically sustainable development in the ACT;
  - (b) conducting investigations as directed by the Minister;
  - (c) conducting, on the commissioner's own initiative, investigations into actions of an agency where those actions would have a substantial impact on the environment of the ACT.
- Note 1*    **Function** includes authority, duty and power (see [Legislation Act](#), dict, pt 1).
- Note 2*    A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).
- (2) The commissioner is not authorised to investigate action taken by—
- (a) a judge or the associate judge of the Supreme Court; or
  - (b) a magistrate or coroner for the ACT; or
  - (c) a royal commission under the [Royal Commissions Act 1991](#); or
  - (d) a board of inquiry under the [Inquiries Act 1991](#); or

- (e) a panel conducting an inquiry under the *Planning and Development Act 2007*, chapter 8 (Environmental impact statements and inquiries); or
- (f) the ombudsman.

### 13 Complaints

- (1) A person may make a complaint to the commissioner about the following:
  - (a) the management of the environment by the Territory or a territory authority;
  - (b) issues relating to ecologically sustainable development in the ACT.

*Note* If a form is approved under s 28 for this provision, the form must be used.

- (2) A complaint must be made in a way approved by the commissioner.

### 14 Discretion not to investigate certain complaints

- (1) If a complaint has been made to the commissioner in relation to action taken by an agency, the commissioner may decide not to investigate the action or, if investigation has commenced, decide not to investigate the action further—
  - (a) if the commissioner is satisfied that the complainant became aware of the action more than 12 months before the day the complaint was made to the commissioner; or
  - (b) if, in the opinion of the commissioner—
    - (i) the complaint is frivolous or vexatious or was not made in good faith; or
    - (ii) an investigation, or further investigation, of the action is not warranted having regard to all the circumstances.

- (2) If a person who makes a complaint to the commissioner in relation to action taken by an agency has not complained to the agency in relation to that action, the commissioner may decide not to investigate the action.
- (3) If—
- (a) a person who—
    - (i) has made a complaint to the commissioner in relation to action taken by an agency; and
    - (ii) has complained to the agency in relation to that action; and
    - (iii) informs the commissioner that the agency has not responded or has not responded adequately; and
  - (b) the commissioner is of the opinion—
    - (i) if the agency has not responded—that, since the complainant complained to the agency, a reasonable period has elapsed in which the agency could have responded; or
    - (ii) if the agency has responded—that the response was not adequate;
- the commissioner must, subject to this section, investigate the action.
- (4) If a complainant has caused or causes action to which his or her complaint relates to be reviewed by a court, or by a tribunal established under a law of the Territory, the commissioner must not investigate, or continue to investigate, the action unless the commissioner is of the opinion that there are special reasons justifying the investigation or the continued investigation.

- (5) If the commissioner is of the opinion that a complainant has or had a right to cause the action to which the complaint relates to be reviewed by a court, or by a tribunal established under a law of the Territory, but has not exercised that right, the commissioner may decide not to investigate the action or not to investigate the action further, if the commissioner is of the opinion that, in all the circumstances, it would be reasonable for the complainant to exercise, or would have been reasonable for the complainant to have exercised, that right.
- (6) If, before the commissioner commences, or after the commissioner has commenced, to investigate action taken by an agency, being action that is the subject matter of a complaint, the commissioner forms the opinion that adequate provision is made under an administrative practice for the review of action of that kind, the commissioner may decide not to investigate the action or not to investigate the action further—
- (a) if the action has been, is being or is to be reviewed under that practice at the request of the complainant; or
- (b) if the commissioner is satisfied that the complainant is entitled to cause the action to be reviewed under that practice and it would be reasonable for the complainant to cause it to be so reviewed.
- (7) If a complaint is made to the commissioner by a complainant at the request of another person or of a body of persons, this section applies as if references to the complainant were references to the person or the body of persons at whose request the complaint is made.
- (8) If the commissioner decides not to investigate a complaint during a financial year, the report prepared by the commissioner under the *Annual Reports (Government Agencies) Act 2004* for the year must include details of the decision, including the reasons for the decision.

*Note* **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

## 15 Investigations

- (1) The commissioner must, before commencing an investigation under this Act of action taken by an agency, inform the principal officer of the agency that the action is to be investigated.
- (2) The commissioner may from time to time make an arrangement with the principal officer of an agency in relation to the manner in which, and the period within which, the commissioner is to inform the principal officer that the commissioner proposes to investigate action taken by the agency, being action to which the arrangement relates.
- (3) Subject to this part, an investigation must be conducted in private and in the way decided by the commissioner.
- (4) If the Minister directs the commissioner to investigate a matter and states in the direction that it would be in the public interest to conduct a public process for the investigation, the commissioner must arrange for—
  - (a) any public consultation or public hearings; and
  - (b) the taking of any other measures;that the commissioner considers necessary for the proper conduct of the investigation.
- (5) Subject to this Act, the commissioner may, for this Act, obtain information from any person, and make any inquiries, as the commissioner decides.
- (6) Subject to subsection (7), it is not necessary for the complainant or any other person to be afforded an opportunity to appear before the commissioner or any other person in relation to an investigation by the commissioner under this Act.

- (7) The commissioner must not make a report in relation to an investigation under this Act in which the commissioner sets out opinions that are, either expressly or impliedly, critical of an agency or person unless, before completing the investigation, the commissioner has—
- (a) if the opinions relate to an agency—given the principal officer of the agency and the officer principally concerned in the action to which the investigation relates opportunities to appear before the commissioner or before an authorised person, and to make any submission, either orally or in writing, in relation to that action as they decide; and
  - (b) if the opinions relate to a person—given that person an opportunity to appear before the commissioner or before an authorised person, and to make any submission, either orally or in writing, in relation to the action to which the investigation relates as the person decides.
- (8) If the commissioner gives the principal officer of an agency an opportunity to appear before the commissioner or before an authorised person under subsection (7), the principal officer may appear in person or a person authorised by the principal officer may appear on behalf of the principal officer.
- (9) If the commissioner gives a person other than the principal officer of an agency an opportunity to appear before the commissioner or before an authorised person under subsection (7), the person may, with the approval of the commissioner or of the authorised person, be represented by another person.

- (10) If, in relation to an investigation under this Act, the commissioner proposes to give a person an opportunity to appear before the commissioner or before an authorised person and to make any submission under subsection (7), or proposes to make a requirement of a person under section 17—
- (a) if a complaint was made orally in relation to the action and the complaint has not been put in writing—the complaint must be put in writing; and
  - (b) the commissioner must, if the commissioner has not previously informed the responsible Minister that the action is being investigated, inform the Minister accordingly.
- (11) The commissioner may, either before or after the completion of an investigation under this Act, discuss any matter that is relevant to the investigation with a Minister concerned with the matter.
- (12) If the commissioner forms the opinion, either before or after completing an investigation under this Act, that there is evidence that a person, who is an officer of an agency, has been guilty of a breach of duty or of misconduct and that the evidence is, in all the circumstances, of sufficient force to justify doing so, the commissioner must bring the evidence to the notice of—
- (a) for an administrative unit—
    - (i) if the person is the principal officer of the administrative unit—the Minister responsible for the administrative unit; or
    - (ii) if the person is a member of the administrative unit but is not the principal officer—the principal officer of the administrative unit; or

- (b) for a prescribed authority—
  - (i) if the person is the principal officer of the authority—the responsible Minister of the authority; or
  - (ii) if the person is not the principal officer of the authority—the principal officer of the authority.

**16 Power to enter premises**

- (1) For an investigation under this Act the commissioner or an authorised person may, at any reasonable time of the day, enter any place occupied by an agency and may carry on the investigation at that place.
- (2) For an investigation under this Act, an authorised person is entitled to inspect any documents relevant to the investigation that are kept at premises entered under this section, other than documents to which a certificate under section 17 (6) applies, at a reasonable time of the day arranged with the principal officer of the agency concerned.

**17 Power to obtain information and documents**

- (1) If the commissioner has reason to believe that an agency is capable of providing information or producing documents or other records relevant to an investigation under this Act, the commissioner may, by written notice given to the head of the agency, require the agency, at any place, and within any period or on any day and at any time, as is stated in the notice—
  - (a) to provide to the commissioner the information, in writing; or
  - (b) to produce to the commissioner the documents or other records as are stated in the notice; or
  - (c) to provide to the commissioner the information and to produce to the commissioner the documents or other records as are stated in the notice.

- (2) If the commissioner has reason to believe that an officer of an agency is capable of providing information or producing documents or other records relevant to an investigation under this Act, or both providing information and producing documents or other records of that kind, but the commissioner does not know the identity of the officer, the commissioner may, by written notice given to the principal officer of the agency, require the principal officer or a person nominated by the principal officer, at any place, and within any period or on any day and at any time, as is stated in the notice—
- (a) to attend before a person stated in the notice to answer questions relevant to the investigation; or
  - (b) to produce to a person stated in the notice the documents or other records as are stated; or
  - (c) to attend before a person stated in the notice to answer questions of that kind and to produce to the person stated, the documents or other records as are stated.
- (3) If documents or other records are produced to the commissioner in accordance with a requirement under subsection (1) or (2) or an order under section 26 (2), the commissioner—
- (a) may take possession of, and may make copies of, or take extracts from, the documents or other records; and
  - (b) may keep the documents or other records for any period necessary for the investigation to which the documents or other records relate.
- (4) If a document is kept by the commissioner under subsection (3), a person who would be entitled to inspect the document, if it were not in the possession of the commissioner, may at any reasonable time inspect the document.

- (5) If the commissioner has reason to believe that a person is able to give information relevant to an investigation under this Act, the commissioner may, by written notice given to the person, require the person to attend before a person stated in the notice, on the day and at the time and place as are stated in the notice, to answer questions relevant to the investigation.
- (6) If the Minister certifies in writing that the disclosure to the commissioner of information about a stated matter (including the providing of information in answer to a question) or the disclosure to the commissioner of the contents of any documents or records would be contrary to the public interest—
- (a) because it would involve the disclosure of communications between a Minister and a Commonwealth Minister or a Minister of a State or of a Territory, being a disclosure that would prejudice relations between the Territory and the Commonwealth, between the Territory and a State or between the Territory and another Territory; or
  - (b) because it would involve the disclosure of deliberations or decisions of the Executive or of a committee of the Executive;
- the commissioner is not entitled to require a person to provide any information about the matter, to answer questions about the matter or to produce those documents or records to the commissioner.
- (7) Despite the provisions of any law of the Territory, a person is not excused from providing any information, producing a document or other record or answering a question when required to do so under this Act on the ground that the providing of the information, the production of the document or record or the answer to the question—
- (a) would contravene the provisions of any other law of the Territory, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty; or

- (b) would disclose legal advice provided to a Minister or an agency; but the information, the document or record produced or the answer to the question is not admissible in evidence against the person in proceedings other than—
  - (c) an application under section 26 (2); or
  - (d) a prosecution for an offence against the [Criminal Code](#), part 3.4 (False or misleading statements, information and documents) or section 361 (Obstructing Territory public official).
- (8) A person is not liable to any penalty under the provisions of any other law of the Territory because of the person having provided information, produced a document or other record or answered a question when required to do so under this Act.

## **18 Assistance to commissioner**

If—

- (a) the commissioner requests in writing that the principal officer of an agency provide information for use in preparing a state of the environment report; and
- (b) the agency does not provide that information within a reasonable time;

the principal officer must, at the written request of the commissioner, make staff available for a period of not more than 3 months to assist the commissioner in the preparation of the report.

## Part 4 Reports

### 19 State of the environment report

- (1) The commissioner must, no later than the reporting day, give a state of the environment report to the Minister for each reporting period.
- (2) A state of the environment report must include—
  - (a) an assessment of the condition of the environment, including an assessment of any of the following matters that the commissioner considers necessary:
    - (i) the components of the earth, including soil, the atmosphere and water;
    - (ii) any organic or inorganic matter and any living organism;
    - (iii) human made or modified structures and areas;
    - (iv) ecosystems and their constituent parts, including people and communities;
    - (v) the qualities and characteristics of places and areas that contribute to their biological diversity and ecological integrity, scientific value and amenity;
    - (vi) the interactions and interdependencies within and between the things mentioned in subparagraphs (i) to (v);
    - (vii) the social, aesthetic, cultural and economic conditions that affect, or are affected by, the things mentioned in subparagraphs (i) to (v);
  - (b) an evaluation of the adequacy and effectiveness of environmental management, including an assessment about the degree of compliance with national environment protection measures made by the National Environment Protection Council; and

- (c) an assessment of pressures and sustainability trends; and
- (d) an evaluation of the effectiveness of sustainability plans; and
- (e) any other matters, whether or not occurring within the triennium to which the report relates, that—
  - (i) the Minister states in written notice given to the commissioner; or
  - (ii) the commissioner considers relevant.
- (3) The Minister must, within 6 months after the day of receiving a state of the environment report, present to the Legislative Assembly a statement that sets out the response of the government to the report.
- (4) The commissioner must, within 12 months after the day the Minister presents a state of the environment report to the Legislative Assembly under section 22, give the Minister a recommendation about—
  - (a) the day on which the period to be covered by the next state of the environment report should end; and
  - (b) the reporting day, for that period, by which the next state of the environment report should be given to the Minister.
- (5) The Minister must, after considering the commissioner's recommendation, determine—
  - (a) a reporting period that must—
    - (i) begin on the day after the end of the period covered by the previous state of the environment report; and
    - (ii) be not more than 4 years; and
  - (b) a reporting day for the period that must be no less than 3 and no more than 6 months after the end of the reporting period.

- (6) A determination under subsection (5) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (7) In this section:

**reporting day**, for a reporting period, means the day determined by the Minister under subsection (5) for that period.

**reporting period** means the period determined by the Minister under subsection (5).

**sustainability plan** means a plan that—

- (a) includes a sustainability goal; and
- (b) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## 20 Information to be included in commissioner’s annual report

A report prepared by the commissioner under the [Annual Reports \(Government Agencies\) Act 2004](#) for a financial year must include details of—

- (a) any special factor that the commissioner believes had a significant impact on the environment during the year; and
- (b) measures taken during the year by or for the Territory in relation to the implementation of any recommendation in a state of the environment report under section 19 or special report under section 21; and

- (c) any recommendation in a report mentioned in paragraph (b) that the commissioner believes is still to be implemented or fully implemented.

*Note* **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

## 21 Special reports

- (1) If—
  - (a) the Minister has directed the commissioner to conduct an investigation; or
  - (b) the commissioner has initiated and conducted an investigation into an issue of environmental significance to the Territory;the commissioner must—
  - (c) prepare a special report on the investigation; and
  - (d) within 28 days after the day of completion of the report, give the report to the Minister.
- (2) For a special report required by the Minister under subsection (1) (a), the Minister must—
  - (a) for a report about a matter for which the Minister is responsible—within 6 months after the day of receiving the report, present to the Legislative Assembly a statement that sets out the response of the government to the report; or
  - (b) for a report about a matter for which another Minister is responsible—within 10 working days after the day of receiving the report, give the report to the Minister responsible for the matter; or

- (c) for a report about a matter for which the Minister and another Minister are responsible—within 6 months after the day of receiving the report, in consultation with the other Minister, present to the Legislative Assembly a statement that sets out the response of the government to the report.
- (3) For a special report given to a Minister responsible for the matter under subsection (2) (b), the Minister responsible for the matter must, within 6 months after the day of receiving the report, present to the Legislative Assembly a statement that sets out the response of the government to the report.
- (4) In this section:

*administrative arrangements* means a determination made under the [Public Sector Management Act 1994](#), section 14 (1).

*matter*, for which a Minister is responsible, means a matter mentioned in the administrative arrangements, for which responsibility is allocated to a Minister.

## 22 Minister to table reports and recommendations

The Minister must, within 6 sitting days after the day of receiving a report under section 19 or 21 or a recommendation under section 19 (4), present the report or recommendation to the Legislative Assembly.

## Part 5 Miscellaneous

### 23 Information to be included in agency annual reports

A report prepared by an agency under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include details of—

- (a) any request under section 18 (Assistance to commissioner) received by the agency during the year; and
- (b) any assistance provided by the agency during the year in response to the request; and
- (c) any investigation by the commissioner during the year in relation to any activity of the agency; and
- (d) any recommendation made by the commissioner during the year following an investigation of the agency's activities; and
- (e) any action the agency has taken during the year in relation to the recommendation.

*Note* **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

### 24 Commissioner not to be sued

Neither the commissioner, a person to whom the commissioner has delegated any of his or her powers, nor a person acting under the commissioner's direction or authority is liable to an action, suit or proceeding in relation to any act done or omitted to be done honestly in the exercise or purported exercise of any power or authority under this Act.

**25 Referral to ombudsman**

If the commissioner forms the opinion that a complaint falls within the jurisdiction of the ombudsman, the commissioner must, whether or not the commissioner has commenced an investigation, refer the complaint, together with relevant documents and information, to the ombudsman.

**26 Powers of Supreme Court**

- (1) If a question in relation to the exercise of a power, or the performance of a function, of the commissioner by or under this Act or any other enactment arises between the commissioner and the principal officer of any agency that is affected by that exercise or performance, the commissioner or the principal officer of the agency may, subject to subsections (3) and (4), make an application to the Supreme Court for a determination of the question.
- (2) If a person fails to comply with a requirement made by the commissioner by notice under section 17 to provide information, to produce documents or other records or to attend before the commissioner to answer questions, the commissioner may make an application to the Supreme Court for an order directing that person to provide the information, to produce the documents or other records, or to attend before the commissioner to answer questions, at any place, and within any period or on any day and at any time, as is stated in the order.
- (3) The commissioner must not make an application to the Supreme Court under this section unless the commissioner has informed the responsible Minister of the agency concerned in writing of the reasons for the proposed application.
- (4) The principal officer of an agency must not make an application to the Supreme Court under subsection (1) unless the principal officer has informed the responsible Minister of the agency in writing of the reasons for the proposed application.

- (5) The Supreme Court has jurisdiction in relation to matters arising under this section for which applications are made to the Supreme Court.

## **28 Approved forms**

- (1) The commissioner may approve forms for this Act (other than for section 26).
- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

## **29 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

## Dictionary

(see s 2)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- bankrupt or personally insolvent
- Executive
- exercise
- function
- head of service
- Minister (see s 162)
- penalty unit (see s 133)
- public servant
- sitting day
- territory authority
- the Territory.

***agency*** means an administrative unit or a prescribed authority.

***authorised person*** means a person appointed by the commissioner to be an authorised person for this Act.

***commissioner*** means the Commissioner for Sustainability and the Environment appointed under section 4.

***ecologically sustainable development*** means the effective integration of 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) improved valuation and pricing of environmental resources.

**law of the Territory** includes part of such a law.

**officer** means—

- (a) in relation to an administrative unit—
  - (i) a public servant (including the principal officer of that administrative unit) who is a member of that administrative unit; or
  - (ii) any other person (other than a Minister) authorised to exercise functions for that administrative unit by the principal officer of that administrative unit; and

*Note* **Function** includes authority, duty and power (see [Legislation Act](#), dict, pt 1).

- (b) in relation to a prescribed authority—
  - (i) the person who constitutes, or is acting as the person who constitutes, the authority; or
  - (ii) a person who is, or is acting as, a member of the authority or is a deputy of such a member; or
  - (iii) a person who is employed in the service of, or is a member of the staff of, the authority, whether or not the person is employed by the authority; or
  - (iv) a person authorised by the authority to exercise any functions of the authority for the authority.

**pre-election year** means the calendar year before a calendar year in which a general election of members of the Legislative Assembly would be required in accordance with the [Electoral Act 1992](#), section 100 (1).

***prescribed authority*** means—

- (a) a body corporate, or an unincorporated body, established for a public purpose under a law of the Territory other than—
  - (i) an incorporated company or association; or
  - (ii) a body that, under section 3 (1) (Entities not necessarily prescribed authorities) or a regulation, is not a prescribed authority for this Act; or
- (b) any other body, whether incorporated or unincorporated, that is declared by regulation to be a prescribed authority for this Act, being—
  - (i) a body established by the Executive or by a Minister; or
  - (ii) an incorporated company or association over which the Territory is in a position to exercise control; or
- (c) subject to section 3 (2), the person holding or performing the duties of an office, other than the office of ombudsman, established by a law of the Territory; or
- (d) a person holding, or performing the duties of, an office declared by regulation to be an office the holder of which is a prescribed authority for this Act, being an office created by the Executive or by a Minister other than under a law of the Territory.

***principal officer*** means—

- (a) in relation to an administrative unit—the head of service or the director-general of that unit; or

- 
- (b) in relation to a prescribed authority—
- (i) if a regulation declares an office to be the principal office in relation to the authority—the person holding, or performing the duties of, that office; or
  - (ii) in any other case—the person who constitutes that authority or a person acting in the person’s office or, if the authority is constituted by 2 or more people, the person who is entitled to preside at any meeting of the authority at which the person is present or a person acting in the person’s office.

**responsible Minister**, in relation to an agency, means—

- (a) subject to paragraphs (b) and (c), the Minister who is responsible for that agency; or
- (b) in relation to a prescribed authority mentioned in the definition of **prescribed authority**, paragraph (c)—the Minister administering the law of the Territory concerned; or
- (c) in relation to a prescribed authority mentioned in the definition of **prescribed authority**, paragraph (b) or (d)—the Minister declared by regulation to be the responsible Minister in relation to that authority;

or another Minister acting for that Minister.

**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.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

The *Commissioner for Sustainability and the Environment Act 1993* was originally the *Commissioner for the Environment Act 1993*. It was renamed by the *Commissioner for the Environment Amendment Act 2012* A2012-25 (see s 5).

#### **Commissioner for Sustainability and the Environment Act 1993 A1993-37**

notified 29 June 1993 (Gaz 1993 No S111)  
s 1, s 2 commenced 29 June 1993 (s 2 (1))  
ss 3-18 and ss 20-28 commenced 1 July 1993 (s 2 (2) and Gaz 1993 No S129)  
remainder (s 19) commenced 29 December 1993 (s 2 (3))

as amended by

#### **Public Sector Management (Consequential and Transitional Provisions) Act 1994 A1994-38 sch 1 pt 17**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 17 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

#### **Annual Reports (Government Agencies) (Consequential Provisions) Act 1995 A1995-25 sch**

notified 5 September 1995 (Gaz 1995 No S212)  
sch commenced 5 September 1995 (s 2)

#### **Ombudsman (Amendment) Act 1996 A1996-17 s 11**

notified 1 May 1996 (Gaz 1996 No S71)  
commenced 1 May 1996 (s 2)

#### **Commissioner for the Environment (Amendment) Act 1997 A1997-29**

notified 16 July 1997 (Gaz 1997 No S185)  
commenced 16 July 1997 (s 2)

#### **Remuneration Tribunal (Consequential Amendments) Act 1997 A1997-41 sch 1 (as am by A2002-49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)  
commenced 24 September 1997 (s 2 as am by A2002-49 amdt 3.222)

## Endnotes

3 Legislation history

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**Statute Law Revision (Penalties) Act 1998 A1998-54 sch**

notified 27 November 1998 (Gaz 1998 No S207)

s 1, s 2 commenced 27 November 1998 (s 2 (1))

sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Commissioner for the Environment Amendment Act 2000 A2000-73**

notified 21 December 2000 (Gaz 2000 No S69)

commenced 21 December 2000 (s 2)

**Legislation (Consequential Amendments) Act 2001 A2001-44 pt 67**

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 67 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Statute Law Amendment Act 2002 (No 2) A2002-49 pt 1.1, amdt 3.222**

notified LR 20 December 2002

s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))

pt 1.1 commenced 17 January 2003 (s 2 (1))

amdt 3.222 commenced 24 September 1997 (s 2 (3))

**Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1  
pt 1.7**

notified LR 19 March 2004

s 1, s 2 commenced 19 March 2004 (LA s 75 (1))

sch 1 pt 1.7 commenced 13 April 2004 (s 2 and see [Annual Reports \(Government Agencies\) Act 2004 A2004-8](#), s 2 and [CN2004-5](#))

**Criminal Code (Theft, Fraud, Bribery and Related Offences)  
Amendment Act 2004 A2004-15 sch 2 pt 2.18**

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.18 commenced 9 April 2004 (s 2 (1))

**Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.20**

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.20 commenced 12 April 2007 (s 2 (1))

**Planning and Development (Consequential Amendments) Act 2007  
A2007-25 sch 1 pt 1.7**

notified LR 13 September 2007  
s 1, s 2 commenced 13 September 2007 (LA s 75 (1))  
sch 1 pt 1.7 commenced 31 March 2008 (s 2 and see [Planning and Development Act 2007](#) A2007-24, s 2 and [CN2008-1](#))

**Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.15**

notified LR 1 September 2009  
s 1, s 2 commenced 1 September 2009 (LA s 75 (1))  
sch 3 pt 3.15 commenced 22 September 2009 (s 2)

**Statute Law Amendment Act 2010 A2010-18 sch 1 pt 1.4**

notified LR 13 May 2010  
s 1, s 2 commenced 13 May 2010 (LA s 75 (1))  
sch 1 pt 1.4 commenced 3 June 2010 (s 2)

**Administrative (One ACT Public Service Miscellaneous Amendments)  
Act 2011 A2011-22 sch 1 pt 1.30**

notified LR 30 June 2011  
s 1, s 2 commenced 30 June 2011 (LA s 75 (1))  
sch 1 pt 1.30 commenced 1 July 2011 (s 2 (1))

**Commissioner for the Environment Amendment Act 2012 A2012-25**

notified LR 28 May 2012  
s 1, s 2 commenced 28 May 2012 (LA s 75 (1))  
remainder commenced 29 May 2012 (s 2)

**Courts Legislation Amendment Act 2015 A2015-10 pt 4**

notified LR 7 April 2015  
s 1, s 2 commenced 7 April 2015 (LA s 75 (1))  
pt 4 commenced 21 April 2015 (s 2 (2))

**Public Sector Management Amendment Act 2016 A2016-52 sch 1  
pt 1.13**

notified LR 25 August 2016  
s 1, s 2 commenced 25 August 2016 (LA s 75 (1))  
sch 1 pt 1.13 commenced 1 September 2016 (s 2)

## Endnotes

3 Legislation history

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### **Planning and Environment Legislation Amendment Act 2019**

#### **A2019-20 pt 2**

notified LR 8 August 2019

s 1, s 2 commenced 8 August 2019 (LA s 75 (1))

pt 2 commenced 9 August 2019 (s 2)

## 4 Amendment history

### Long title

long title am [A2012-25](#) s 4

### Name of Act

s 1 sub [A2007-3](#) amdt 3.93; [A2012-25](#) s 5

### Dictionary

s 2 om [A2001-44](#) amdt 1.765  
ins [A2007-3](#) amdt 3.97

### Notes

s 2A ins [A2007-3](#) amdt 3.97

### Objects of Act

s 2B ins [A2012-25](#) s 6

### Entities not necessarily prescribed authorities

s 3 defs reloc to dict [A2007-3](#) amdt 3.96  
sub [A2007-3](#) amdt 3.97  
def **Department** om [A1994-38](#) sch 1 pt 17  
def **Ombudsman** om [A1996-17](#) s 11

### Commissioner for Sustainability and the Environment

s 4 hdg sub [A2012-25](#) s 7  
s 4 sub [A2007-3](#) amdt 3.98  
am [A2012-25](#) s 8

### Term of office

s 5 sub [A2007-3](#) amdt 3.98

### Remuneration and allowances

s 6 om [A1997-41](#) sch 1

### Resignation

s 8 om [A2007-3](#) amdt 3.99

### Suspension and removal of commissioner

s 9 am [A2007-3](#) amdt 3.100, amdt 3.101; [A2010-18](#) amdt 1.9

### Delegation by commissioner

s 11 sub [A2007-3](#) amdt 3.102

### Functions

s 12 am [A2007-25](#) amdt 1.32; [A2009-20](#) amdt 3.35, amdt 3.36;  
[A2012-25](#) s 9; [A2015-10](#) s 15

### Complaints

s 13 sub [A2001-44](#) amdt 1.766  
am [A2012-25](#) s 10

## Endnotes

### 4 Amendment history

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#### **Discretion not to investigate certain complaints**

s 14 am [A1995-25](#) sch; [A2004-9](#) amdt 1.8

#### **Investigations**

s 15 am [A1994-38](#) sch 1 pt 17; [A1997-29](#); ss renum R3 LA

#### **Power to obtain information and documents**

s 17 am [A2004-15](#) amdt 2.44

#### **Assistance to commissioner**

s 18 am [A1994-38](#) sch 1 pt 17

#### **State of the environment report**

s 19 sub [A1997-29](#)  
am [A2000-73](#) s 4; [A2001-44](#) amdt 1.767; [A2009-20](#) amdt 3.37;  
[A2012-25](#) ss 11-13

#### **Information to be included in commissioner's annual report**

s 20 om [A1995-25](#) sch  
ins [A1997-29](#)  
sub [A2004-9](#) amdt 1.9

#### **Special reports**

s 21 am [A1997-29](#); [A2012-25](#) s 14; [A2019-20](#) s 4

#### **Minister to table reports and recommendations**

s 22 am [A1995-25](#) sch  
sub [A2000-73](#) s 5  
am [A2012-25](#) s 15

#### **Information to be included in agency annual reports**

s 23 sub [A1995-25](#) sch; [A2004-9](#) amdt 1.10

#### **Referral to ombudsman**

s 25 am [A1997-29](#)

#### **Offences**

s 27 am [A1998-54](#) sch  
om [A2004-15](#) amdt 2.45

#### **Approved forms**

s 28 sub [A2001-44](#) amdt 1.768

#### **Regulation-making power**

s 29 ins [A2001-44](#) amdt 1.768

#### **Validation**

pt 6 hdg ins [A2002-49](#) amdt 1.1  
exp 17 January 2003 (s 32)

**Validation of appointment**

s 30 ins [A2002-49](#) amdt 1.1  
exp 17 January 2003 (s 32)

**Validation of acts, rights and obligations**

s 31 ins [A2002-49](#) amdt 1.1  
exp 17 January 2003 (s 32)

**Expiry of pt 6**

s 32 ins [A2002-49](#) amdt 1.1  
exp 17 January 2003 (s 32)

**Dictionary**

dict ins [A2007-3](#) amdt 3.103  
am [A2010-18](#) amdt 1.10; [A2012-25](#) s 16; [A2016-52](#) amdt 1.48  
def **agency** am [A1994-38](#) sch 1 pt 17  
reloc from s 3 [A2007-3](#) amdt 3.96  
def **authorised person** reloc from s 3 [A2007-3](#) amdt 3.96  
def **commissioner** reloc from s 3 [A2007-3](#) amdt 3.96  
sub [A2012-25](#) s 17  
def **ecologically sustainable development** ins [A2012-25](#)  
s 18  
def **law of the Territory** reloc from s 3 [A2007-3](#) amdt 3.96  
def **officer** am [A1994-38](#) sch 1 pt 17  
reloc from s 3 [A2007-3](#) amdt 3.96  
def **pre-election year** ins [A1997-29](#) s 4  
reloc from s 3 [A2007-3](#) amdt 3.96  
def **prescribed authority** am [A2007-3](#) amdt 3.94, amdt 3.95  
reloc from s 3 [A2007-3](#) amdt 3.96  
def **principal officer** am [A1996-17](#) s 11  
reloc from s 3 [A2007-3](#) amdt 3.96  
am [A2011-22](#) amdt 1.96; [A2016-52](#) amdt 1.49  
def **responsible Minister** reloc from s 3 [A2007-3](#) amdt 3.96  
def **the inter-generational equity principle** ins [A2012-25](#)  
s 19  
def **the precautionary principle** ins [A2012-25](#) s 19

## Endnotes

### 5 Earlier republications

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#### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	<a href="#">A1994-38</a>	31 January 1995
2	<a href="#">A1997-41</a>	31 December 1997
3	<a href="#">A2001-44</a>	15 January 2002
4	<a href="#">A2002-49</a>	17 January 2003
5	<a href="#">A2002-49</a>	18 January 2003
5 (RI)	<a href="#">A2002-49</a> ‡	6 February 2003
6	<a href="#">A2004-15</a>	9 April 2004
7	<a href="#">A2004-15</a>	13 April 2004
8	<a href="#">A2007-3</a>	12 April 2007
9*	<a href="#">A2007-25</a>	31 March 2008
10	<a href="#">A2009-20</a>	22 September 2009
11	<a href="#">A2010-18</a>	3 June 2010
12	<a href="#">A2011-22</a>	1 July 2011
13	<a href="#">A2012-25</a>	29 May 2012
14	<a href="#">A2015-10</a>	21 April 2015
15	<a href="#">A2016-52</a>	1 September 2016

‡ includes retrospective amendments by [A2002-49](#)

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