



Standing Committee on Planning, Transport and City Services

Inquiry into Planning Bill 2022 **ANSWER TO QUESTION TAKEN ON NOTICE**

Asked by Ms Jo Clay MLA on 7 December 2022: Environmental Defenders Office took on notice the following question(s):

Reference: Hansard uncorrected proof transcript 7 December 2022, page 9

In relation to: Controlled Activity Orders

THE CHAIR: Can I just check on compliance? This bill removes the ability for an individual person to take over a controlled activity order which is a means of compliance. Do you think this bill would be better if this bill allowed controlled activity laws?

Ms Bradshaw: So, I understand under the bill that the Territory Planning Authority can make a controlled activity order but it is not open to an individual to—

THE CHAIR: No, but individuals can do that now. So, if they think something is not compliant they can apply and have that, sort of, influence. I think it is now being locked down to the Planning Authority.

Ms Bradshaw: I am actually not sure what the current system is. My understanding was that individuals could make a complaint about a person conducting a controlled activity and that a person can also apply for an injunction against someone who has breached a controlled activity order. But I think comparing the current system to what is currently proposed we would have to take that on notice and get back to you.

Environmental Defenders Office: The answer to the Member's question is as follows:—

We confirm that the *Planning Bill 2022 (the Bill)* removes the ability for an individual person to apply for a controlled activity order.

Under the current legislation, the *Planning and Development Act 2007 (P&D Act)*, the following options are available to individuals in relation to controlled activities:

- any person may make a complaint to the planning and land authority about a person undertaking a controlled activity (s 340), which may result in the authority making a controlled activity order (s 345(1)(e));

- a person may apply to the planning and land authority for a controlled activity order (P&D Act, s 350(1)); and
- any person may apply to the Supreme Court for an injunction to restrain a person from contravening a controlled activity order (s 381(2)).

The authority may also, on the authority's initiative, make a controlled activity order (P&D Act, s 353).

Under the Bill, citizen enforcement provisions are more limited than the P&D Act. It remains open to a person to make a complaint to the territory planning authority about a person undertaking a controlled activity (s 409(1)), and to apply to the Supreme Court for an injunction to restrain a person from contravening a controlled activity order (s 452(2)). In addition, the territory planning authority may make a controlled activity order (Bill, s 420). However, there are no provisions in the Bill allowing an individual person to apply for a controlled activity order.

It is not clear to us why the provision enabling individuals to apply for controlled activity orders has been removed from the Bill. The ability for individuals in the ACT to apply for a controlled activity order is an important mechanism to ensure compliance with the Bill.

As outlined in our first submission of 17 June 2022 (Attachment A of our submission to this Committee of 10 November 2022), the citizen enforcement provisions included in the Bill are limited and are only available in relation to controlled activities, the list of which is not that extensive (Bill, Schedule 5).

We maintain our recommendation the Bill should enable any person to access administrative or judicial remedies to enforce a breach, or anticipated breach, of the Bill (Recommendation 34). This could be done by including a provision like s 9.45 of the *Environmental Planning and Assessment Act 1979* (NSW) in the Bill, which provides: '*Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach*' (s 9.45(1)).

However, at a bare minimum, the Bill should maintain, and not reduce, the rights of the ACT community to access justice for breaches of planning and environmental legislation. Therefore, a provision enabling an individual person to apply to the territory planning authority for a controlled activity order should be reintroduced into the Bill. This is particularly important in circumstances where the Bill currently provides only limited recourse to the public for enforcing breaches of the Bill.

By including a provision allowing individuals to apply for a controlled activity order, the Bill will better promote access to justice, which is one of the procedural elements of the right to a healthy environment. Including such a provision would also be consistent with the objects of the Bill, which include providing a scheme for community participation (Bill, s 7(1)(c)).

Approved for circulation to the Standing Committee on Planning, Transport and City Services

Signature: 

Date: 20 December 2022

By Melanie Montalban, Managing Lawyer ACT, Environmental Defenders Office