

2010

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development Amendment Regulation 2010 (No 3)
SL2010-14**

EXPLANATORY STATEMENT

**Presented by
Mr Andrew Barr MLA
Minister for Planning**

This Explanatory Statement relates to the *Planning and Development Amendment Regulation 2010 (No 3)* (the amending regulation).

Background

The purpose of the amending regulation is to correct an anomaly in schedule 1, section 1.15 of the *Planning and Development Regulation 2008* which occurred as a result of an incorrect amendment inadvertently being made to the section. The incorrect amendment happened when two different pieces of legislation that amended the section were made in the wrong time sequence.

Those two pieces of legislation were the *Planning and Development Amendment Act 2010* (the Amendment Act) and the *Planning and Development Amendment Regulation 2010 (No. 1)* (the Amendment Regulation).

It had originally been intended that the Amendment Regulation would be made before the Amendment Act but this did not, in fact, occur. Because the Amendment Regulation was made after the Amendment Act, section 1.15(1)(a) of schedule 1 is not correct and an important provision was incorrectly removed from section 1.15.

The amending regulation puts section 1.15 in its intended state and ensures it is consistent with the law that would have prevailed if the Amendment Act and Amendment Regulation had been made in the correct time sequence.

The amending regulation reinstates the general exemption criterion that a development must not be inconsistent with a provision of a lease to which the development relates. It deletes from the general exemption criteria the requirement that a development must not be inconsistent with a condition of a development approval for a development on the block. This requirement is now prescribed by the *Planning and Development Act 2007*, section 133(b) which provides as follows:

133 What is an exempt development?

In this Act:

exempt development—

- (a) means development that is exempt from requiring development approval under—
 - (i) the relevant development table; or
 - (ii) section 134; or
 - (iii) a regulation; but
- (b) for paragraph (a) (i) and (iii)—does not include development on land if—
 - (i) the development is inconsistent with a provision of a development approval for other development on the land; and
 - (ii) the development approval is given on the condition that the provision is complied with.

Outline of Provisions

Clause 1 Name of Regulation

Names the regulation as the *Planning and Development Amendment Regulation 2010 (No 2)*.

Clause 2 Commencement

Provides that the regulation commences on the day after its notification.

Clause 3 Legislation amended

States that the regulation amends the *Planning and Development Regulation 2008*.

Clause 4 Schedule 1, section 1.15

Substitutes a new section 1.15 in schedule 1. New section 1.15 provides that Criterion 5 of the general exemption criteria is that a development must not be inconsistent with -

- (a) a provision of a lease to which the development relates; or
- (b) an agreement collateral to the grant of a lease to which the development relates.