

2010

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development Amendment Regulation 2010 (No 4)
SL2010-22**

EXPLANATORY STATEMENT

**Presented by
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Minister for Planning**

This Explanatory Statement relates to the *Planning and Development Amendment Regulation 2010 (No 4)* (the amending regulation).

Background

Under the *Planning and Development Act 2007* (the Act) there are special provisions in relation to dealings with rural leases (Part 9.7). Under section 284 of the Act, a lessee must not deal with a lease without the written consent of the planning and land authority (the authority) and under section 284(4)(ii), the authority must consent if the holding period for the lease has ended. No amount is payable for the consent. A rural lessee cannot deal with a lease during the holding period unless the lessee has paid to the Government a portion of the land value of the lease realised on the sale of the lease.

Section 282 of the Act defines **holding period** as a period ending –

- (a) if the discharge amount is paid – when the discharge amount is paid; or
- (b) in relation to a lease for a term of 21 years or longer – 10 years after the lease commences; or
- (c) in relation to a lease for a term shorter than 21 years – at the end of one third the term of the lease.

Discharge amount is also defined in section 282 as the discharge amount worked out as prescribed by regulation. Part 5.6 of the *Planning and Development Regulation 2008* (the regulation) prescribes the discharge amounts for rural leases.

The amending regulation amends section 191 of part 5.6. The amendments require a lessee of a lease for a term shorter than 21 years to pay the discharge amount in accordance with the formula in section 191(1) only during the first 2 years of the lease. Previously, it could have been for a much longer period – for example, for a 15 year lease the discharge amount in accordance with the formula in s191(1) was payable during the first 5 years of the lease (that is, during the holding period which is one third of the term of the lease).

Under the amending regulation, the discharge amount is \$10 for each year, or part of a year, of the remainder of the holding period for the lease after the 2 year period has expired. The lessee must also pay the “owed amount” as defined in section 191(2), that is, any outstanding rent (plus interest) – see clause 8 of the amending regulation.

Currently, a 99 year rural lease only has a holding period of 10 years (approximately 10% of the lease term) while a 20 year rural lease has a holding period of one third of the term (s282 (b) and (c) of the Act). It is also the case that rural leases granted for a term shorter than 21 years generally have a withdrawal provision whereby part, or all, of the leased land can be withdrawn at short notice, significantly reducing any effective tenure. The disparity between the two categories of rural leases (those shorter than 21 years and those 21 years or longer) is inequitable and the amending regulation seeks to address this.

Regulatory impact statement

The *Legislation Act 2001* section 36 states:

(1) A regulatory impact statement need not be prepared for a proposed subordinate law or disallowable instrument (the proposed law) if the proposed law only provides for, or to the extent it only provides for:

(b) a matter that does not operate to the disadvantage of anyone (other than the Territory or a territory authority or instrumentality) by—

- (i) adversely affecting the person's rights; or
- (ii) imposing liabilities on the person;
- (k) an amendment of a fee, charge or tax consistent with announced government policy.

A regulatory impact statement is not required for the amending regulation because it does not adversely affect any rights and does not impose liabilities, but rather operates to a lessee's advantage by requiring a lessee to pay the higher discharge amount only during the first 2 years of the lease.

Outline of Provisions

Clause 1 Name of Regulation

Names the regulation as the *Planning and Development Amendment Regulation 2010 (No 4)*.

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 Section 191(1)

Substitutes a new section 191(1) in part 5.6. The amendments require a lessee of a lease for a term shorter than 21 years to pay the discharge amount in accordance with the formula in section 191(1) only during the first 2 years of the lease. Previously, it could have been for a much longer period – for example, for a 15 year lease the discharge amount in accordance with the formula in s191(1) was payable during the first 5 years of the lease (that is, during the holding period which is one third of the term of the lease).

Under the amending regulation, the discharge amount is \$10 for each year, or part of a year, of the remainder of the holding period for the lease after the 2 year period has expired. The lessee must also pay the "owed amount" as defined in section 191(2), that is, any outstanding rent (plus interest)

Clause 5 Section 191(2) new definition of *defined rural lease*

Inserts a new definition of defined rural lease as a result of the reference to it in new section 191(1) inserted by clause 4 above.

Defined rural lease means a rural lease -

- (a) for a term shorter than 21 years; and
- (b) that commenced at least 2 years before the discharge amount is paid.

Clause 6 Section 191(2) definition of *first amount*

For consistency of language between s282 of the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008*, substitutes the words "...with a term of not longer than 21 years" with the words "...for a term shorter than 21 years."

Clause 7 Section 191(2), definition of *owed amount*

Substitutes new section 191(2) definition of ***owed amount*** to ensure consistency of language between the *Planning and Development Act 2007* s282 and the *Planning and Development Regulation 2008*.