

2010

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development (Transitional) Amendment Regulation 2010 (No 1)
SL2010-34**

EXPLANATORY STATEMENT

**Presented by
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Minister for Planning**

This Explanatory Statement relates to the *Planning and Development (Transitional) Amendment Regulation 2010 (No 1)* (the amending regulation).

Background

Under Part 10.4 of the *Planning and Development Act 2007* (the Act) there must be plans of management for public land.

Certain procedures must take place in relation to the making of plans of management under the Act. For instance, draft plans must contain certain material and public consultation on draft plans must take place in accordance with s323. Draft plans must also be given to the Minister (s325) and the Legislative Assembly must consider draft plans (s326). There are also provisions relating to notification, presentation and disallowance of plans (s330). The provisions in Part 10.4 are in similar terms to those in the previous *Land (Planning and Environment) Act 1991* (the repealed Act) s197 onwards.

The Act also contains transitional provisions for plans of management. Section 467 provides that a plan of management made under the repealed Act is taken to be a plan of management under the Planning and Development Act. This transitional provision is limited in its operation and the purpose of the amending regulation is to ensure that the transitional arrangements for plans of management also apply to plans that commenced preparation under the repealed Act but had not been made before the commencement of the Act.

Some plans of management were not in existence when the Act began but the preparation of the plans had commenced and many of the steps required under the Act were done when the repealed Act was in force and before the Act became operational.

There is presently no mechanism under the Act to allow recognition of these steps having been undertaken. The amending regulation corrects this by inserting a transitional provision in the Act that allows those actions to be considered as if they were done under the Act. It does this by way of the regulation-making power in

section 429 of the Act which permits a regulation to modify the Act, chapter 15 (Transitional).

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:

(f) a matter of a transitional character;

As the amending regulation provides only for a matter of a transitional character, a regulatory impact statement is not required.

Outline of Provisions

Clause 1 Name of regulation

Names the regulation as the *Planning and Development (Transitional) Amendment Regulation 2010 (No 1)*.

Clause 2 Commencement

States 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 New section 411

Inserts new section 411 **Modification of Act, ch 15 – Act s429** in the Planning and Development Regulation (the regulation) which states that chapter 15 of the Planning and Development Act (the Act) is modified by schedule 21. Schedule 21 is inserted in the regulation by Clause 5 below. New section 411, and schedule 21, expire on 31 March 2013. This date is consistent with the present expiry date for section 467 under section 431 of the Act.

Clause 5 New schedule 21

Inserts new schedule 21 in the regulation.

Section 431 of the Act is modified by schedule 21 as a consequence of the amendments to section 467 of the Act by this amending regulation. In section 431, the words “and section 467” are omitted and the words “,section 467 and 468” are substituted.

Schedule 21 modifies the Act to omit section 467(4). Section 467 (4) states that section 467 is not a section to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws, etc) applies. Section 467(4) means the plans of management referred to in the section will cease to apply as plans of management under the Act when section 467 expires on 31 March 2013. The omission of section 467(4) means section 88 of the Legislation Act applies so that the expiry of section 467 will not affect the transitional provision’s continued operation. Given the complexity, length and number of plans of management affected by section 467 and the fact that it is important that the plans remain in operation, an arbitrary time frame for the expiry of the operation of the transitional provision is not considered appropriate.

Schedule 21 modifies the Act to include new section 468. Under Part 10.4 of the Act there must be plans of management for public land. Some plans of management were not in existence when the Act began but the preparation of the plans had commenced and many of the steps required under the Act were done before the Act became operational. New section 468 inserts a transitional provision in the Act that allows those actions to be considered as if they were done under the Act where preparation of a plan had commenced prior to the commencement of the Act.