

2011

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**LEASES (COMMERCIAL AND RETAIL) AMENDMENT
REGULATION 2011 (No 1)**

EXPLANATORY STATEMENT

**Circulated by authority of the
Attorney General
Mr Simon Corbell MLA**

Leases (Commercial and Retail) Amendment Regulation 2011 (No 1)

Overview of the Amendment Regulation

The *Leases (Commercial and Retail) Amendment Regulation 2011 (No 1)* (the amendment regulation) prescribes a shopping centre and exempts certain leases under the *Leases (Commercial and Retail) Act 2001* (the Act).

Prescription of shopping centre – Act, s 8(2)

The amendment regulation prescribes as a ‘shopping centre’ a group of premises located in the City, commonly known as the ‘Canberra Centre’.

Exemption of certain leases – Act, s 12(2)(b)

The amendment regulation exempts from the operation of the Act leases between the ANU and a tenant in the City West precinct, if the term of the lease is 30 years or more and the permitted use under the lease is the same as the permitted use under the relevant crown lease.

The amendment regulation also exempts a listed public company which has moved into private equity ownership.

Clause notes

Clause 1 Name of regulation

This clause states that this regulation is the *Leases (Commercial and Retail) Amendment Regulation 2011 (No 1)*.

Clause 2 Commencement

This clause states that this regulation commences on the day after its notification date.

Clause 3 Legislation amended

This clause states that this regulation amends the *Leases (Commercial and Retail) Regulation 2002* (the Regulation).

Clause 4 New section 2

This clause inserts a new section 2 in the Regulation. New section 2 prescribes a group of premises as a ‘shopping centre’ for the purposes of the *Leases (Commercial and Retail) Act 2001* (the Act).

Section 8 of the Act defines a ‘shopping centre’ as a group of premises where the premises “have, or would have if leased, the same lessor or same head lessor” (s 8(1)(b)(i)), and includes a group of premises prescribed under the regulation (s 8(2)).

The amendment regulation prescribes as a ‘shopping centre’ a group of premises located in the City, commonly known as the Canberra Centre. The Section 84 Development lessor and the Canberra Centre lessor are related entities with each of the individual crown lessees being controlled by QIC Limited. However given that the Section 84 Development and the Canberra Centre have different crown lessees, it is possible that Section 84 of the Canberra Centre could be regarded as two separate shopping centres for the purposes of section 8(1) of the Act. The common control and interest, physical interconnection and the effective and efficient operation as a single shopping centre supports the prescription as one shopping centre for the purposes of the Act.

Clause 5 New section 4(i) and (j)

This clause inserts a new section 4(i) and (j) into the Regulation. Section 4 of the Regulation contains a list of leases to which the Act does not apply.

New section 4(i)

The Australian National University (ANU) holds the crown lease of land in the City West precinct. New section 4(i) exempts from the operation of the Act leases between the ANU and a tenant in the City West precinct, if the term of the lease is 30 years or more and the permitted use under the lease is the same as the permitted use under the relevant crown lease.

The application of the Act to these types of leases is inappropriate and may interfere with fundamental aspects of the planning and contractual regime set in place for the City West precinct by the Government and the ANU.

New section 4(j)

Under section 12(1), the Act applies to retail premises other than ‘large excluded premises’ which are those with a lettable area larger than 1,000m² that are leased to a listed public company or a subsidiary of a listed public company. An unintended anomaly is created in the case of a company which was previously listed, when the company moves into private equity ownership. Contrary to the intention of the legislation, a company in these circumstances is captured by the Act.

Accordingly, the amendment regulation exempts from the operation of the Act a lease of premises with a lettable area larger than 1,000m² that is leased to a listed public company, or a subsidiary of a listed public company, that has changed to a proprietary company.

Clause 6 New section 4(2)

This clause inserts a new section 4(2) in the Regulation, consequential to new section 4(i). New section 4(2) refers the reader to the *Planning and Development Regulation 2008*, section 102, for the definition of ‘City West precinct’.