

2012

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

**PLANNING AND DEVELOPMENT AMENDMENT REGULATION 2012
(NO 4)**

SL2012-40

EXPLANATORY STATEMENT

Presented by
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EXPLANATORY STATEMENT

This explanatory statement relates to the Planning and Development Amendment Regulation 2012 (No 4) (the amending regulation) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the regulation and to help inform debate on it. It does not form part of the regulation and has not been endorsed by the Assembly.

The Statement is to be read in conjunction with the regulation. It is not, and is not meant to be, a comprehensive description of the regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of the provision, this being a task for the courts.

Terms Used

The following terms are used in this statement:

“the Act”	refers to the <i>Planning and Development Act 2007</i> ;
“the Regulation”	refers to the <i>Planning and Development Regulation 2008</i> ;
“amending regulation”	refers to the Planning and Development Amendment Regulation (No 4); and
“section X...”	is a reference to a section in the Act unless otherwise indicated.

Background

New leases typically require construction of specified works to commence and complete by specified dates, for example 12 months (from the date of grant) to commence and 24 months to complete. Section 298A of the Act permits a lessee to apply for an extension of time to commence and complete the works under the lease. The application is assessed under s298B.

The lessee may apply to the planning and land authority at any time before or after the stated time has ended, to extend the stated time (s298A(2)). The application must be accompanied by the most recent assessment notice for rates on the land (s298A(3)).

If the application for extension is approved, the extension is subject to payment of the prescribed fee (s298C(1)), in other words the extension does not take effect until the prescribed fee is paid.

Section 298C(1) sets out the formula for calculation of the above prescribed fee. The formula for calculation of the fee is:

$$A \times D / 365 \times B$$

- A is the figure, not more than 5, prescribed by regulation for the relevant year of the period of extension;
- B is the amount of rates imposed under the *Rates Act 2004*, section 14 in relation to the land for the financial year in which the application is made;
- D is the number of days for which the extension is sought in the relevant year.

Under the current Regulation, the amounts prescribed as A increase for each successive year of extensions sought or granted. For example, for standard applications to which s203 of the Regulation apply, the figures for A is set out in table 203 in s203(2) and are:

- 1 for the first year of extension
- 2 for the second year
- 3 for the third year
- 4 for the fourth year
- 5 for the fifth year and each year thereafter.

For applications made for hardship reasons (eg personal illness) to which s204 applies the fees also increase for successive years but at a lower rate. The fees under s204(2) table 204 are:

- 0 for the first year of extension
- 0 for the second year
- 2 for the third year
- 3 for the fourth year
- 4 for the fifth year and each year thereafter.

For applications for extension necessitated by a failure of the Territory to complete relevant infrastructure or to approve relevant statutory approvals, the fee is zero (s205 of the Regulation). The fee is also zero if the extension is sought in the context of a forced transfer of the lease due to death, divorce, bankruptcy etc (s206 of the Regulation). Section 207 of the Regulation permits the fee to be zero in certain circumstances related to the transition to the new fee structure.

Overview

The amending regulation prescribes new amounts for the prescribed figure “A” used in the abovementioned formula set out in s298C(1) of the Act for the calculation of the extension fee.

The changes apply to applications for extension of time where a year, or part of a year, of the period of extension falls on or after 22 June 2012. There is to be no change to the fees required to be paid for extensions of time up to 21 June 2012.

To achieve this the amending regulation inserts new figures into s203 (standard applications) and s204 (applications made in the circumstance of hardship).

On 21 June 2012, the Treasurer and Minister for Economic Development indicated the Government’s intention to waive and subsequently abolish Extension of Time fees for commercial, mixed-use and multi-unit residential developments, and single residential. A start date of 22 June 2012 is the earliest practical date for implementation.

The amendments to s203(2) set new figures for “A” in relation to periods of extension from 22 June 2012. The new figures are 0.01 for the first to fourth years of extension. The figure A remains unchanged for the fifth and subsequent years, i.e, 5.

The amending regulation also reduces the fees payable for extensions of time sought in circumstances of hardship under s204 of the Regulation. The amending regulation reduces the fees for periods from 22 June 2012 only. The new figures are 0 for the first and second years, 0.01 for the third and fourth years. In the fifth and subsequent years the figure remains unchanged, ie 4.

The amending regulation makes no other changes to the regulation. So the figure of zero prescribed for A in ss205, 206, 207 of the Regulation remains unchanged.

Retrospective effect

The amending regulation does have retrospective effect. The new fees apply to applications for extension of time to commence or complete works required under a lease in respect to extensions of time from 22 June 2012 onwards. This retrospective effect does not affect the validity of the regulation because the provision is not a prejudicial provision and as such is permitted under section 76 of the Legislation Act. This is because the new fees are lower than the existing fees and as such the new fees do not operate to the disadvantage of any member of the public as they do not adversely affect anyone’s rights and do not impose any new liabilities.

Regulatory Impact Statement

A Regulatory Impact Statement was not considered necessary, as the amending regulation does not adversely affect anyone’s rights and does not impose new liabilities on any person (refer above). To the contrary, the amending regulation provides a financial benefit to some lessees. For this reason, a regulatory impact statement is not required consistent with s36(1)(b) of the Legislation Act.

Outline of Provisions

Clause 1 Name of regulation

Clause 1 names the amending regulation as the Planning and Development Amendment Regulation 2012 (No 4)

Clause 2 Commencement

Clause 2 states the amending regulation commences on the day after its notification day.

Clause 3 Legislation amended

Clause 3 notes that this amending regulation amends the *Planning and Development Regulation 2008*.

Clause 4 Section 203(2), including table 203

Clause 4 inserts a new section 203(2), into the Regulation, and replaces the current table 203 with new tables at 203.1 and 203.2.

The clause provides that if a year, or part of a year, of the period of extension falls on or after 22 June 2012, table 203.1 must be used in calculation of the fee. If a year, or part of a year, of a year, of the period of extension falls before 22 June 2012, table 203.2 must be used in calculation of the fee.

The new table 203.1 for periods from 22 June 2012 prescribes new figures for A that are lower than the existing figures. The new figures are 0.01 for the first to fourth years of extension. A continues to be 5 for the fifth and subsequent years.

The new table for periods up to 21 June 2012 (table 203.2) is the same as the table in the existing regulation under existing s203(2). In other words there is to be no change to the fees required to be paid for extensions of time up to 21 June 2012.

Clause 5 Section 203(3), note

Clause 5 omits the note in section 203(3) of the Regulation.

Clause 6 Section 204(2), including table 204

Clause 6 inserts a new section 204(2) into the Regulation and replaces the current table 204 with new tables 204.1 and 204.2. These tables apply to applications for extension of time in the circumstances of hardship.

The clause provides that if a year, or part of a year, of the period of extension falls on or after 22 June 2012, table 204.1 must be used in calculation of the fee. If a year, or part of a year, of the period of extension falls before 22 June 2012, table 204.2 must be used in calculation of the fee.

The new table 204.1 for periods from 22 June 2012 prescribes new figures for A that are lower than the existing figures. The new figures are 0 for the first and second years, 0.01 for the third and fourth years. In the fifth and subsequent years the figure remains unchanged, ie 4.

The new table for periods up to 21 June 2012 (table 204.2) is the same as the table in the existing regulation under existing s204(2). In other words there is to be no change to the fees required to be paid for extensions of time up to 21 June 2012.