

Australian Capital Territory

Planning and Development Amendment Regulation 2022 (No 1)

Subordinate law SL2022–3

made under the

Planning and Development Act 2007, s 426 (Regulation-making power)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning and Development Amendment Regulation 2022 (No 1)* (the **amendment regulation**) as made by the Executive. It has been prepared to assist the reader of the amendment regulation and to help inform any debate on it. It does not form part of the amendment regulation and has not been endorsed by the Legislative Assembly.

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

OVERVIEW OF THE AMENDMENT REGULATION

The amendment regulation amends chapter 3 of the *Planning and Development Regulation 2008* (the **regulation**). Chapter 3 of the regulation provides for development approvals under the *Planning and Development Act 2007* (the **Act**).

In 2020, a range of changes were made to the Act (the *Planning Legislation Amendment Act 2020* - the **amendment Act**) in response to a private member's bill.

Among the changes enacted by the amendment Act included the need for expected annual amount of operational greenhouse gas emissions to be disclosed in an expected greenhouse gas emissions statement as part of a development application (**DA**), where the emissions exceed an amount prescribed by regulation.

Through amendments to schedule 4, part 4.3 of the Act, the amendment Act also established the requirement for development proposals to require an environmental impact statement (**EIS**) where the expected annual amount of operational greenhouse gas emissions exceeds an amount prescribed by regulation.

The amendment regulation introduces sections 19A and 25AA to prescribe these amounts.

The amendment regulation comes into effect from 1 March 2022.

Analysis has been undertaken to identify the appropriate amounts prescribed with respect to the aim of the amendment and the projected impact on development.

Section 19A, part 3.1AA

Part 3.1AA of the regulation identifies certain development proposals that require an EIS, in accordance with schedule 4 of the Act.

Clause 4 of the amendment regulation introduces section 19A to part 3.1AA. Section 19A prescribes development proposals that expect to emit more than 1 kilotonne of greenhouse gases from operating the development per annum as requiring an EIS.

Analysis indicates that the amount prescribed is substantive to warrant an EIS and is reasonable in terms of the type and size of developments that would be affected. Commercial and residential developments are not intended or expected to be captured by this provision, unless they are of a very large scale. The types of development that are intended to be captured are some medium- to large-scale industrial proposals, high gas users or high diesel users.

Section 25AA, part 3.2

Part 3.2 of the regulation prescribes various matters required for DAs, including documentation and assessment requirements.

Clause 5 of the amendment regulation introduces section 25AA to part 3.2. Section 25AA prescribes development proposals expected to emit more than 250 tonnes of operational greenhouse gases per year as required to submit a greenhouse gas emissions statement.

Analysis indicates that the amount prescribed is well-balanced and will capture a range of development types, including high-emitting proposals while not capturing low-emitting or small development proposals. The types of development intended to require the statement with their development application are significantly sized residential, commercial, and industrial developments or those with high gas or diesel usage.

REGULATORY IMPACT STATEMENT

A regulatory impact statement is not required as the amendment regulation does not impose appreciable costs on the community, or part of the community under section 34 (1) of the *Legislation Act 2001*.

The regulatory impact of requiring an expected greenhouse gas emissions statement or an EIS for some development proposals was considered during the parliamentary process that the private member's bill was subject to before being passed (refer *Planning Legislation Amendment Act 2020*).

CONSISTENCY WITH HUMAN RIGHTS

As above, the amendment Act was subject to detailed consideration through the parliamentary process, including scrutiny by the Standing Committee on Justice and

Community Safety for compatibility with the *Human Rights Act 2004*. There are no human rights impacts related to the amendment regulation.

CONSULTATION ON THE PROPOSED APPROACH

The amendment regulation has been prepared in consultation with the Climate Change and Energy Division within the Environment, Planning and Sustainable Development Directorate.

The development industry has been provided with an information package to assist them in preparing for the amendment regulation to take effect from 1 March 2022.

CLAUSE NOTES

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Planning and Development Amendment Regulation 2022 (No 1)*.

Clause 2 Commencement

This clause provides that the regulation commences on 1 March 2022.

Clause 3 Legislation amended

This clause provides that the regulation amends the *Planning and Development Regulation 2008*.

Clause 4 New section 19A

This clause inserts new section 19A to part 3.1AA of the regulation. This clause prescribes proposals expecting to emit more than 1 kilotonne of greenhouse gases per annum from operating the development as requiring an environmental impact statement (EIS).

This gives practical effect to schedule 4, part 4.3, item 9 of the *Planning and Development Act 2007*, as introduced by the amendment Act.

Clause 5 New section 25AA

This clause inserts new section 25AA to the regulation. This clause prescribes proposals expecting to emit more than 250 tonnes of greenhouse gases per annum to submit an expected greenhouse gas emissions statement with their development application.

This gives practical effect to section 139 (2) (u) of the Act, as introduced by the amendment Act.

Clause 6 Dictionary, note 3

This clause inserts a new signpost definition for *greenhouse gas emissions* to note 3 of the dictionary, which provides that this term has the same meaning in the regulation as it does in the Act.