



Australian Capital Territory

# Planning and Development Amendment Regulation 2009 (No 1)

**Subordinate Law SL2009-3**

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The Australian Capital Territory Executive makes the following regulation under the *Planning and Development Act 2007*.

Dated 20 February 2009.

ANDREW BARR  
Minister

SIMON CORBELL  
Minister

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**Planning and Development Act 2007**

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**1 Name of regulation**

This regulation is the *Planning and Development Amendment Regulation 2009 (No 1)*.

**2 Commencement**

This regulation commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

**3 Legislation amended**

This regulation amends the *Planning and Development Regulation 2008*.

**4 New section 20 (3) to (6)**

*after the notes, insert*

- (3) Also, development that is exempt under this section does not require development approval for a modification of the development if—
- (a) the development has not been completed; and
  - (b) the modification would not need development approval if the modification were made after completion of the development.

**Example—exemption**

Construction of a dwelling that is an exempt development is in progress. The developer wishes to change the slope of the roof by less than 2° (see sch 1, s 1.24). The developer may construct the dwelling with the changed roofslope (the *modification*) without seeking approval for the modification.

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) Also, development that is exempt under this section does not require development approval for a variation of the development if—
- (a) the development has not been completed; and
  - (b) the variation consists of adding an exempt development to the development.

**Example—exemption**

Construction of a dwelling that is an exempt development is in progress. The developer wishes to incorporate a skylight that complies with the conditions in sch 1, s 1.26, and so is an exempt development. The developer may construct the dwelling with the skylight (the *variation*) without seeking approval for the variation.

- (5) Also, a development (the *composite development*) is exempt from requiring development approval if the development can be notionally separated into components, each of which is an exempt development.

**Example—composite development**

A development consists of a dwelling with a garage, windows, doors, chimney and an aerial (the *components*). As each of the components is an exempt development, the composite development is an exempt development.

- (6) However, subsections (3), (4) and (5) do not apply in relation to a development if the modification, variation or composite development results in non-compliance with 1 or more of the following:
- (a) schedule 1, section 1.17 (Criterion 7—no multiple occupancy dwellings);
  - (b) the requirement under schedule 1, section 1.41 that there be not more than 2 exempt class 10 buildings in a boundary clearance area in conjunction with schedule 1, section 1.18 (Criterion 8—compliance with other applicable exemption criteria);

- (c) the requirement under schedule 1, section 1.100 (Single dwellings—new residential land) that there be not more than 1 dwelling on a block.

## 5 New section 35 (2), (3) and (4)

*after the notes, insert*

- (2) Also, development in accordance with the changed development proposal is taken to be in accordance with the development approval if the change would not need development approval if the change were made after completion of the development.

### **Example—change**

Construction of a dwelling has development approval. The developer wishes to change the slope of the roof by less than 2° (see sch 1, s 1.24). The developer may construct the dwelling with the changed roofslope without seeking approval for the change.

*Note 1* The change may still need building approval, or further building approval, under the *Building Act 2004*.

*Note 2* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) Also, development in accordance with the changed development proposal is taken to be in accordance with the development approval if the change consists of adding an exempt development to the development.

### **Example—change**

Construction of a dwelling has development approval. The developer wishes to incorporate a skylight that complies with the conditions in sch 1, s 1.26, and so is an exempt development. The developer may construct the dwelling with the skylight without seeking approval for the skylight.

- (4) However, subsections (2) and (3) do not apply if the change results in non-compliance with 1 or more of the following:
- (a) schedule 1, section 1.17 (Criterion 7—no multiple occupancy dwellings);
  - (b) the requirement under schedule 1, section 1.41 that there be not more than 2 exempt class 10 buildings in a boundary clearance area in conjunction with schedule 1, section 1.18 (Criterion 8—compliance with other applicable exemption criteria);
  - (c) the requirement under schedule 1, section 1.100 (Single dwellings—new residential land) that there be not more than 1 dwelling on a block.

## **6 New section 404**

*insert*

### **404 Application of Planning and Development Amendment Regulation 2008 (No 5) and Planning and Development Amendment Regulation 2009 (No 1)**

This regulation, as amended by the *Planning and Development Amendment Regulation 2008 (No 5)* and the *Planning and Development Amendment Regulation 2009 (No 1)*, applies to developments that are started, and development applications that are made, before or after the commencement of the *Planning and Development Amendment Regulation 2008 (No 5)*.

## **7 Schedule 1, section 1.10 (f)**

*omit*



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**8 Schedule 1, new section 1.15 (2)**

*after the note, insert*

- (2) For subsection (1) (a), a provision of a development approval is taken to be a condition of the approval only if the approval is expressed to be given on the condition that the provision is complied with.

**Example—condition**

Development plans do not include windows in the front wall. The approval is expressed to be subject to the condition that the front wall not have windows.

**Example—not a condition**

Development plans do not include windows in the front wall. The approval is given without explicit mention of windows in the front wall being a condition of the approval.

*Note* An approval may be given subject to conditions, see the Act, s 165 (Conditional approvals).

**9 Schedule 1, section 1.16**

*omit*

**10 Schedule 1, section 1.100 heading**

*substitute*

**1.100 Compliant single dwellings—new residential land****11 Schedule 1, new section 1.100A**

*insert*

**1.100A Otherwise non-compliant single dwellings—new residential land**

- (1) The building of a single dwelling on a block if—
- (a) another dwelling has not been built on the block; and

- (b) if the block is a preliminary block—the dwelling is built by the lessee of the holding lease; and
- (c) the dwelling does not comply with—
  - (i) the relevant rules in any relevant precinct code; or
  - (ii) the relevant rules in the Residential Zones Single Dwelling House Development Code; and
- (d) each non-compliance relates to the encroachment of the dwelling—
  - (i) beyond the front, side or rear setback required under the rules mentioned in paragraph (c); or
  - (ii) beyond the building envelope that applies, under the rules mentioned in paragraph (c), to the block where the dwelling is being built; or
  - (iii) into the minimum private open space required under the rules mentioned in paragraph (c); and
- (e) the planning and land authority declares (an *exemption declaration*) that the building of the single dwelling does not stop being an exempt development because of a non-compliance under paragraph (c) identified in the declaration.

*Note 1* **Relevant rules**—see the Act, dictionary.

*Note 2* The general exemption criteria are not applied because the relevant rules in the territory plan include requirements to similar effect as the criteria.

*Note 3* Other territory laws, including the *Heritage Act 2004*, must be complied with (see s 1.4 and s 1.14).

- (2) For subsection (1) (b), a dwelling is taken to be built by the lessee even if some or all of the building work is done by an employee or contractor of the lessee.

- (3) An exemption declaration must state the following distances (each of which is an *extended distance*):
- (a) the distance that any element of the dwelling may extend beyond the building envelope that applies, under the rules mentioned in subsection (1) (c), to the block where the dwelling is being built;
  - (b) the distance by which any setback for the dwelling, that is required by the rules mentioned in subsection (1) (c), is reduced to allow for the encroachment;
  - (c) the distance by which any element of the dwelling may encroach into the minimum private open space required under the rules mentioned in subsection (1) (c).
- (4) Not later than 10 working days after a person applies to the planning and land authority for an exemption declaration the authority must—
- (a) make the declaration; or
  - (b) refuse to make the declaration.
- Note 1* If a form is approved under the Act, s 425 for this provision, the form must be used.
- Note 2* A fee may be determined under the Act, s 424 for this provision.
- Note 3* The requirement to make a decision under s (4) does not lapse if the 10-day time limit is not met (see Legislation Act, s 152).
- (5) However, the planning and land authority must not make an exemption declaration in relation to a non-compliant dwelling unless satisfied that—
- (a) the non-compliance is minor; and

(b) building the dwelling other than in accordance with the rules mentioned in subsection (1) (c)—

(i) will not adversely affect someone other than the applicant; and

(ii) will not increase the environmental impact of the dwelling more than minimally.

(6) In this section:

*block*—see section 1.100 (4).

*preliminary block*—see section 1.100 (4).

*setback*—see the territory plan (13 Definitions).

## **12 Schedule 1A, section 1A.10 (2) (a) (i)**

*omit*

25mm

*substitute*

50mm

## **13 Schedule 1A, new section 1A.10 (2A) and (2B)**

*insert*

(2A) If the planning and land authority makes an exemption declaration that extends the permitted horizontal dimension of a dwelling, the distance of 340mm mentioned in subsection (2) (b) is reduced—

(a) if the dimension is extended by not more than 290mm—by the extended distance stated in relation to the dimension in the exemption declaration; or

(b) if the dimension is extended by more than 290mm—by 290mm.

(2B) In this section:

*exemption declaration*—see section 1.100A (1) (e).

**14 Schedule 1A, new section 1A.11 (2A) and (2B)**

*insert*

(2A) If the planning and land authority makes an exemption declaration that extends a permitted height criterion of a dwelling, the distance of 340mm mentioned in subsection (2) (a) (i) is reduced—

- (a) if the criterion is extended by not more than 290mm—by the extended distance stated in the exemption declaration for the criterion; or
- (b) if the criterion is extended by more than 290mm—by 290mm.

(2B) In this section:

*exemption declaration*—see section 1.100A (1) (e).

**15 Schedule 1A, part 1A.3**

*omit*

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**Endnotes**

**1 Notification**

Notified under the Legislation Act on 24 February 2009.

**2 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).