

2009

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development Amendment Regulation 2009 (No 6)
SL2009-18**

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Planning
Mr Andrew Barr MLA

PLANNING AND DEVELOPMENT AMENDMENT REGULATION 2009 (No 6)

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Overview

The proposed amendments to the *Planning and Development Regulation 2008* (the regulation) will permit the Planning and Land Authority (the authority) to grant leases at less than market value in certain circumstances. These circumstances permit leases to be granted to community organisations for less than market value. These changes are applied in granting a new lease.

This regulation extends the operation of the former charging policies under the repealed *Land (Planning and Environment) Act 1991* (the Land Act). This regulation will be used for an interim period. This regulation is only applicable until such time as the broader charging policy review is complete and more comprehensive charging policies are in place.

This regulation modifies the *Planning and Development Act 2007* (the Act) as permitted by section 429 of that Act. Section 431 of the Act requires section 429 and regulations made under section 429 (including this regulation) to cease two years after the commencement of the Act (i.e. two years after 31 March 2008). Section 429 and the regulations under this section are not saved by section 88 of the *Legislation Act 2001* (because of the exception in section 88(2) of the Legislation Act). As such the modifications made by this regulation are temporary.

Detailed summary of provisions

Clauses 1 – Name of Regulation – states the name of the regulation, which is the *Planning and Development Amendment Regulation 2009 (No 6)*.

Clause 2 – Commencement – states that the regulation commences the day after notification.

Clause 3 – Legislation amended – states that the regulation amends the *Planning and Development Regulation 2008*.

Clause 4 – Modification of Act Schedule 20, section 429EA substitutes 429EA Modification—s 246 (Payment for leases) – substitutes new section 429EA in the *Planning and Development Act 2007* (the Act) modifying section 246 of the Act. Section 246 (1) of the Act states that the authority may not grant a lease for less than market value. Section 246 (2) states that subsection (1) does not apply in particular circumstances, that is, there are specific conditions under which the authority may grant a lease for less than market value. A lease to which the new section 461A and 461B (inserted by Clause 5 below) applies are leases which the authority may grant for less than market value.

The modified section 246 (d) extends the operation of the former charging policies under the repealed Land Act (section 169).

The modified section 246(c) is the same in substance as the previous section 246(d) inserted by a modification of the Act (see *Planning and Development Amendment Regulation 2008 (No.4)*, Clause 15). It has merely been renumbered because of the insertion of modified section 246 (d) by this regulation.

Clause 5 – Schedule 20, new modification 20.9 inserts [20.9] New sections 461A and 461B – modifies the Act by inserting new sections 461A and 461B in the Act.

New section 416A

New section 461A specifies the payment conditions for a lease to a community organisation. In this, a person may apply for the grant of a lease. If the application was made under the Land Act before the Land Act was repealed, the authority may grant the lease under the Land Act. The Land Act section 163 allowed for leases to be granted to community organisations. Clause 5 extends the operation of the former charging policies under section 163 (2) of the Land Act. The Land Act allowed the authority to grant a lease for less than market value by direct grant (section 161 (1) (d)), to a community organisation (section 163), as a special lease (section 164), as a further lease (section 171), as a further rural lease (section 171A) or as a further lease for purposes other than residential or rural (section 172). The new section 461A equates to the Land Act section 163(2).

New section 416B

New section 461B specifies the conditions under which a person may apply for the grant of a new lease where the new lease adjoins another lease granted to the person. The granted lease must be a concessional lease. Payment for the new lease may be calculated in the same way the granted concessional lease was calculated. If, for example, payment for the granted concessional lease was calculated under repealed Land Act provisions, payment for the new lease may also be calculated using the repealed Land Act provisions.