

.Australian Capital Territory

Planning (General) Amendment Regulation 2024 (No 1)

Subordinate law SL2024–21

made under the

Planning Act 2023, 523 (Regulation-making power)

EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning (General) Amendment Regulation 2024 (No 1)* (the regulation) as made by the Executive. It has been prepared to assist the reader of the regulation and to help inform any debate on it. It does not form part of the regulation and has not been endorsed by the Legislative Assembly.

This statement must 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 taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW

Unclean leaseholds often raise concerns about appearances, safety, and hygiene for the community. However, the *Planning Act 2023* (the Act) does not require that leased land be kept completely clean or clear.

Section 419 of the Act states that after investigating a complaint about a controlled activity, the territory planning authority (the Authority) must take one or more of a number of actions, which include:

- taking no action;
- taking action under part 12.3 (Controlled activity orders); and
- referring the complaint to a different entity if satisfied that the complaint can be more appropriately dealt with by that entity.

The territory planning authority has powers under part 12.3 of the Act to make a controlled activity order, which may require a lessee to take certain actions to bring the leasehold into compliance with the legislation and the provisions of the relevant Crown Lease.

The regulation is made under section 523(2)(e) of the Act in relation to procedures for investigating a complaint about the controlled activity of failing to keep a leasehold clean.

The Regulation:

- includes the procedures for carrying out the Authority's functions to investigate a complaint about unclean leasehold under Chapter 12 (Development offences and controlled activities) and chapter 13 (Enforcement); and
- sets out some of the circumstances in which a complaint should be referred to another entity.

The regulation is enforced by the Authority, which conducts inspections and handles compliance issues.

The purpose of the regulation is to increase regulatory transparency and certainty and assist the Authority to manage community expectations and respect the quiet enjoyment of lessees on their block.

CONSISTENCY WITH HUMAN RIGHTS

The regulation engages section 12 (right to privacy and reputation) of the *Human Rights Act 2004*, in particular the right to privacy. This right protects individuals from unlawful or arbitrary interference with privacy and home.

The *Planning Act 2023* promotes the right to privacy and encompasses the idea that individuals are entitled to have a separate area of autonomous space free from excessive government intervention and unsolicited intrusion by other individuals.

The detailed human rights assessment for the *Planning Act 2023* is contained in its Explanatory Statement.

Rights limited

The regulation addresses unclean leaseholds and creates limitations on the right to privacy by typically inspecting individuals' homes to determine unclean items. Such inspections may intrude into an individual's private home, which may be seen as a breach of their right to privacy.

Requirements to make specific changes or improvements to a property can also impact an individual's privacy by dictating how they must maintain their home.

Legitimate purpose

The legitimate objective of the regulation is to promote community safety and hygiene as well as maintaining the overall quality of leasehold properties in the ACT.

Rational connection between the limitation and the purpose

The regulation balances the need for maintaining health and safety and community standards with the protection of individual rights. This involves ensuring that any interference with privacy is justified as being necessary for protecting public health or ensuring safety, is proportionate, and is accompanied by a fair process. This means that while addressing unclean conditions is a legitimate goal, inspections should not be excessively intrusive.

Proportionality

The Regulation specifies that an inspection will be undertaken from a public place near the leasehold, minimising intrusion from authorised inspectors.

CLAUSE NOTES

Clause 1 Name of regulation

This clause provides that the name of the regulation is the *Planning (General) Amendment Regulation 2024 (No 1)*.

Clause 2 Commencement

This clause provides that the regulation commences on the day after its notification day.

Clause 3 Legislation amended

This clause provides that the regulation amends the *Planning (General) Regulation 2023*.

Clause 4 new sections 105A, 105B and 105C

Section 105A provides that the Division applies if a person has made a complaint about a controlled activity that is failing to keep a leasehold clean under part 12.2 of the Act – complaints about controlled activities.

There are a number of controlled activities detailed in the Act. This section specifies that the Division only applies to failing to keep a leasehold clean.

Section 105B sets out the steps that the territory planning authority may take when investigating complaints about a lessee failing to keep a leasehold clean, generally referred to as an unclean leasehold. These steps include matters to be considered when inspecting the leasehold, including items of a kind that must be removed and items that do not need to be removed to clean up the leasehold.

Section 105B (1) (a) specifies that the Authority may view the leasehold from a public place. This generally refers to viewing the leasehold from the street, a walkway or other area of public unleased land.

Section 105B (1) (b) states that the Authority may consider whether there are items on the leasehold that can be seen from a public place. Items stored in backyards or areas not generally visible by the public are not considered. Items stored in an approved structure, for example car ports or verandas, are not considered items that can be seen from a public place.

Section 105B (1)(f) allows the Authority to consider any other matter it considers relevant. This may include, for example, the personal circumstances and human rights of the lessee, as well as the general aesthetics, streetscape character and general appearance of the area on a case-by-case basis.

Section 105B (2) (a) outlines some items that, for subsection 105b (1) (c), must be removed to clean up the leasehold. This includes more kinds of items than those stated in section 440 (2) (e) of the Act, which outlines some actions an authorised officer may take to clean up a leasehold. These examples are not exhaustive but give an indication of the type of items that the Authority will consider in its actions.

Subsection 105B (2) (viii) states that graffiti, litter and vegetation are only items that must be removed to clean up a leasehold if they are present on the leasehold along with other items. Vegetation (such as long grass) and litter do not by themselves constitute an unclean leasehold. However, if they are present alongside other items of the kind detailed in this section, they are considered as part of the assessment.

Section 105B (2) (b) details items of a kind that do not need to be removed to clean up the leasehold. This provides for lessees' and occupants' quiet enjoyment of the land and prevents undue interference by the Authority. Leaseholds are not expected to be completely clean or clear, and there may be some circumstances where a leasehold may be seen as untidy, such as during renovations, or repairs being undertaken to a motor vehicle.

Section 105C supports section 419 of the Act and outlines the circumstances in which the Authority must refer the complaint to another entity. This ensures that complaints are dealt with promptly and under the appropriate legislative framework.

The section includes specific referral provisions in regard to:

- graffiti to the entity responsible for administering the *Public Unleased Land Act 2013*; or
- insanitary conditions to the entity responsible for administering the *Public Health Act 1997*; or
- matters about smoke, odour, or noise to the environment protection authority.

This section provides for more explicit referral pathways and supports the examples under section 419 of the Act, such as the referral of litter and rubbish at an open private place to the entity responsible for the *Litter Act 2004*.

This section does not limit the referrals the Authority may make or the entities to which referrals may be made. If particular circumstances exist, the Authority will refer the matter to the appropriate entity.

This clause also includes a technical amendment that inserts a new division heading.