

**REGULATORY IMPACT STATEMENT**

***Planning and Development Amendment Regulation 2020 (No 2)***  
***Subordinate Law SL2020–33***

Environment, Planning and Sustainable Development Directorate  
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## Terms Used

In this Regulatory Impact Statement the following terms are used:

ACAT	ACT Civil and Administrative Tribunal
Amendment Regulation	The amending regulation that is the subject of this Regulatory Impact Statement and which amends the Regulation
DA	Development Application under the ACT <i>Planning and Development Act 2007</i>
Exempt	Development that is exempt from the requirement to obtain development approval under the <i>Planning and Development Act 2007</i>
EPSDD	The Environment, Planning and Sustainable Development Directorate
the Act	<i>Planning and Development Act 2007</i>
the Regulation	<i>Planning and Development Regulation 2008</i>
RIS	This Regulatory Impact Statement

## Executive Summary

The purpose of this Regulatory Impact Statement (RIS) is to assess the impact of the *Planning and Development Amendment Regulation 2020 (No 2)* (the amendment regulation). The amendment regulation makes minor amendment to the existing exemption for construction or alteration of buildings or structures on rural leases.

The exemption for rural lease developments under section 1.85 in Schedule 1 of the *Planning and Development Regulation 2008* (the Regulation) have been reviewed and it is considered that it could be expanded to include works to buildings or structures with plan areas up to 216m<sup>2</sup>, up from current maximum of 100m<sup>2</sup> in plan area.

The current drafting of the exemption unnecessarily disqualifies a range of buildings and structures built on rural lands such as grain silos, sheds and greenhouses, which are typically required to be larger than 100m<sup>2</sup> in plan area to be functional.

This means that development applications are required for these low impact proposals that would very likely receive planning approval through the development assessment and approvals process. This unnecessarily complicates the planning system and contributes to the inefficient allocation of public resources.

This amendment seeks to expand the exemptions to capture a greater proportion of minor and low impact developments on rural leases to alleviate these issues.

It is acknowledged that the amendment regulation will result in a regulatory impact on existing statutory rights for development applications. This includes the removal of the opportunity for the public to comment on development applications for some developments and the potential for third-party merits review of development approval decisions. However, the amending regulation is specific, not general in its application, and only exempts a limited amount of additional development types which are considered to have a very minor impact. Further, without this amendment regulation, a development application submitted for these developments would be very likely to receive development approval based on the minimal potential impacts of these developments. Based on this, it is considered unreasonable to put these developments through the development application process, with its associated time and financial costs, where the benefit of that assessment is limited.

It is considered that the extension of the exemptions, with the conditions and limits applied in the provisions, to be a reasonable and justified approach.

## 1. Introduction

### 1.1 Purpose

The purpose of this Regulatory Impact Statement (RIS) is to assess the impact of the *Planning and Development Amendment Regulation 2020 (No 2)* (the amendment regulation) which proposes a change to the exemptions from development approval for a building or alteration of a building or structure on rural leases.

The amendment regulation increases the limit on the maximum plan area permitted under the exempt provision for developments on rural leases to:

- simplify the assessment and approvals process and reduce the regulatory burden for these low impact developments;
- encourage private investment on rural leases that will operate to improve productivity and resilience of the rural sector;
- improve efficacy of the existing exemption to capture the types of rural development that it is intended to facilitate;
- operate in combination with other government initiatives such as government assistance to rural leaseholders to carry out infrastructure works that will improve resilience against ongoing droughts; and
- allow the efficient allocation of public resources.

### 1.2 Background

Schedule 1 of the *Planning and Development Regulation 2008* (the Regulation) provides for types of development that are exempt from the requirement to obtain development approval under the *Planning and Development Act 2007* (the Act), provided certain requirements are met.

The purpose of exempt developments is to remove the regulatory requirement of development approval for low impact proposals. These are proposals that are very likely to receive approval and raise minimal assessment issues if constructed within defined limits.

As exempt developments do not require development approval, they are not subject to the development application (DA) process, including the requirement for public notification, and therefore there is no opportunity for the community to make representations. In addition, there is no potential for third parties, such as a person who makes a representation on a DA, to seek merits review of a decision to approve a development through the ACT Civil and Administrative Tribunal (ACAT).

The detailed background of the exemptions for building works on rural leases and an overview of the proposed amendments is provided in the accompanying Explanatory Statement for the amendment regulation.

### 1.3 Objectives

As outlined above, the objectives of exempt developments and Schedule 1 of the Regulation is to remove the regulatory requirement of obtaining development approval. Exempt developments are

low impact proposals that would very likely receive approval if they were subject to the development application and approvals process.

The exemptions also serve to improve the efficiency of the development assessment process. This allows both the proponent and government to allocate resources more efficiently by ensuring that only matters that have the potential to result in greater impacts be subject to the development assessment and approvals process.

In summary, the regulation amendment seeks to:

- reduce unnecessary regulatory burden for the development of buildings or structures on rural lands, which are not identified as being on environmentally sensitive lands or contain heritage items provided they do not exceed 216m<sup>2</sup> in plan area;
- increase the efficiency of the development assessment process for buildings and structures built on rural leases; and
- rely on operation of existing general exemption criteria and the restrictions under s1.85 to protect the natural environment, heritage, as well as the rights and amenity of neighbouring properties.

#### **1.4 Identifying the Problem**

The exemptions for rural lease developments have been reviewed and it is considered that they could be expanded to capture an appropriate scale of development. The current drafting of the exemptions unnecessarily disqualifies a range of proposals from being considered through the exemption provisions by limiting exemption to buildings or structures with plan areas of 100m<sup>2</sup> or less. In many cases, farming buildings and structures are required to be larger than 100m<sup>2</sup> to accommodate a variety of farming uses, such as sheds for farm machinery and equipment, grain silos and green houses.

This means that development applications are required for minor and low impact proposals that would very likely receive planning approval through the development assessment and approvals process. This unnecessarily complicates the planning system and contributes to the inefficient allocation of public resources. This amendment seeks to expand the exemptions to capture other minor and low impact developments to alleviate these issues.

## **2. Options Analysis**

The following options have been considered:

1. Do nothing – retain existing Regulation; or
2. Expand the existing exemptions for rural lease developments that are works to a building or a structure]

### **2.1 Do nothing – retain existing Regulation (Option 1)**

This option would result in the retention of the current regulation with no changes. As highlighted in section 1.4 above, there are a several issues raised by the operation of the current exemptions. In summary this would result in:

- The unnecessary elimination of majority of farming buildings and structures from being considered exempt. This adds regulatory burden for low impact development.
- Development applications are required to be assessed by the planning and land authority. This is considered a regulatory and administrative burden, without a commensurate benefit given the low impact nature of these types of identified development and that the developments are very likely to receive approval. This could contribute to inefficiencies in the development assessment and approvals process and prevent other applications from being assessed in a timely manner.
- A development application, with associated timeframes and fees, would continue to be required for building and altering farming buildings and structures of low impact, acting as a barrier and disincentive to carrying out building works that are integral to ongoing improvements in farming operations. In turn, this would have the effect of making rural leaseholders less able to respond to changing circumstances such as droughts and floods, or new opportunities in the marketplace.
- The opportunity for the public to comment on development applications for some construction work to build or alter buildings or structures on rural leases; and the potential for third-party review of decisions on these applications through the ACAT.

Option 1 is not recommended.

## 2.2 Amend the Regulation to expand the exemptions for rural lease developments (Option 2)

This option would involve increasing the maximum plan area of the building or structure permitted to be built or altered under the existing exemptions for rural lease developments. This option would permit:

- A greater proportion of typical farming buildings and structures of low impact development to be considered exempt. This would reduce the regulatory burden of requiring a development approval, thereby simplifying the approvals process and reducing financial burden on rural leaseholders in the Territory.
- Allow rural leaseholders to plan and implement infrastructure works in a flexible and time efficient manner to take advantage of opportunities, such as government funding initiatives, or build resilience against adverse natural events such as drought, bushfires and floods. While many farming buildings and structures will exceed the proposed new size limit of 216m<sup>2</sup>, increasing the plan area limit from 100m<sup>2</sup> to 216m<sup>2</sup> will allow a greater proportion of buildings and structures required on rural lands to be constructed without requiring a development approval.
- Allow the re-allocation of administrative resources within the planning and land authority to higher impact developments that are more likely to benefit from the development assessment and approvals process.

It is acknowledged that this option would:

- Remove opportunity for the public to comment on development applications for some proposed building works on rural leases; and
- Remove the potential for third-party review of decisions on these developments through the ACAT.

However, the inclusion of limitations and statutory criteria within the provisions ensures that the amendments are specific and targeted in their operation. This helps achieve an appropriate balance between reducing red tape and regulatory burden on one hand, and safeguarding environmental standards and good development outcomes on the other.

Option 2 is recommended.

### **3. Consistency with ACT laws**

#### **3.1 Consistency of the proposed law with the authorising law**

Section 133(1)(c) of the Act states that exempt development means *'development that is exempt from requiring development approval under a regulation'*.

The amending regulation is within the parameters of the authorising law. Section 133(1)(c) of the Act expressly authorises the making of exemptions from the requirement to obtain development approval. Building works on rural leases, subject to the recommended size limitation, are types of development that are currently considered exempt from requiring development approval. There are also a number of other existing development approval exemptions set out in Schedule 1 to the Regulation. The amending regulation would be consistent with existing exemptions for other minor developments set out in Schedule 1.

The proposed amendment is also consistent with the objects of the Act, as noted in section 4.2 below.

The amending regulation does not create a new category of exempt development, rather it modifies one aspect of the qualifying criteria and supporting provisions of developments that are already exempt.

#### **3.2 Consistency of the proposed law with Scrutiny of Bills Committee principles**

The Committee's terms of reference require it to consider whether (among other things) any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):

- (a) is in accord with the general objects of the Act under which it is made;
- (b) unduly trespasses on rights previously established by law;
- (c) makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions;
- (d) contains a matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly.



The Legislation Act requires a brief assessment of the consistency of the proposed law with the scrutiny committee principles (see section 35(5)). This amendment is consistent with the scrutiny committee principles as outlined below:

(a) The amending regulation is consistent with the object of the Act in that it maintains the orderly and sustainable development of the ACT and is consistent with the social, environmental and economic aspirations of the people.

The amending regulation will increase the maximum building size permitted under the existing exemptions for rural lease developments. Although this will remove the requirement for a small amount of development applications to be lodged, the changes will maintain orderly and sustainable development. This is because the amendment regulation is specific, not general in its application, and only exempts limited additional types of development from requiring development approval. Additionally, the development assessment and approvals process very rarely improve the development outcome for low impact proposals such as these.

(b) As discussed above, the amending regulation will result in the exemption of a small number of additional developments. Therefore, the proposals in the amending regulation will not be subject to public notification, and the possibility of third-party review in the ACAT.

However, as the amending regulation is specific, not general in its application, only a limited amount of additional development types will be exempt. Additionally, without this amendment regulation, a development application submitted for these types of development would very likely receive development approval based on the minimal potential impacts. It should also be noted that these are minor increases to existing categories of exemptions for these development types. On this basis, the amendment regulation is not considered to unduly trespass on the statutory rights to comment on a DA and seek merits review, as the minor increases are reasonable and justified.

(c) The proposed amending regulation does not make rights, liberties and/or obligations unduly dependent upon non reviewable decisions. The amending regulation will exempt some developments from requiring approval, thereby removing the ability of the public to comment and potential third-party appeal rights. However, this decision is made in the context that these developments are unlikely to affect the general public or adjoining lessees, therefore there is no planning or development rationale to require development approval.

(d) Section 133(1)(c) of the Act expressly authorises the making of exemptions from the requirement for development approval. The types of development in the amendment regulation are currently considered exempt from requiring development approval under Schedule 1 of the Regulation. It should also be noted that Schedule 1 of the Regulation also exempts numerous other types of development and the amending regulation would be of a type that is consistent with existing exemptions.

The types of development mentioned in the amending regulation are not likely to adversely impact on the public, therefore there is no planning or development rationale to require development approval. It is appropriately dealt with through an exemption in the Regulation.

In summary, the amending regulation does not create a new category of exempt development, rather it modifies the qualifying criteria to retain existing development rights and these changes are consistent with the types of development that are already exempt under the Regulation.

For these reasons, the proposed amendment regulation is considered to be consistent with the Scrutiny of Bills Committee's principles.

### **3.3 Human Rights analysis**

The amendment regulation potentially engages the right of taking part in public life, in particular the right and/or opportunity to take part in the conduct of public affairs, being the development application and approval process. The right is defined in Section 17(a) of the *Human Rights Act 2004*. However, the approach proposed is considered to be the least restrictive way of achieving the desired outcome. This is discussed in more detail in the Explanatory Statement.

### **3.4 Transitional arrangements**

The proposed regulation does not have retrospective effect. No transitional arrangements are necessary.

### **3.5 Mutual Recognition**

There are no mutual recognition issues.

## **4. Conclusion**

The proposed regulation amendment increases the maximum plan area permitted under the exempt provision for rural lease developments from 100m<sup>2</sup> to 216m<sup>2</sup>. This increase in maximum plan area will allow a greater range of farming buildings and structures to be built on rural lands without a development application. This will assist in streamlining the planning approvals process for these developments, create efficiencies, reduce red tape and decrease regulatory burden. It is considered that the regulatory impact of removing these developments from the development application is reasonable and justified, given the low impact nature of the developments and that these developments are unlikely to affect the general public or neighbouring lessees.