



Exempt Development and Exemption Declarations

(Draft Planning Bill)

The planning system currently allows low-risk development to occur without development approval. This is called exempt development. Things like garden sheds, clothes lines and single dwelling homes may be exempt when certain requirements are met.



Exempt development allows the planning system to operate more effectively.

The new planning system creates a standalone Exempt Development Regulation, which will make it easier to find out about the types of exempt development.

What's different?

Given the regular use of exemptions by the development and building industries, the approach through the reform process has been to prioritise certainty over change, with change happening only where necessary. Minor changes to some of the existing provisions have been made to make them clearer.

The General Exemption Criteria will also remain as they provide important safeguards for exempt works and require other regulatory schemes to be considered before exemptions can apply.

New exemptions

Murals

A new exemption has been added to allow some murals (street art) to be painted on to buildings without development approval. This reflects a desire to support street art, which adds to the vibrancy and attractiveness of the city. The new exemption contains important limitations to protect against offensive or unsightly murals, and potential driver distraction.



Minor utility works

A new exemption for minor utility works exempts minor works that are necessary for utilities to support essential services to the community, such as fences around their facilities, lighting, modifications to existing infrastructure and excavation for exempt work. The new exemption contains important limitations to protect against impacts to nearby residents and the public including, where relevant, height and plan area limits, a limit on distance to residential blocks, written public notice and compliance with other regulatory schemes.





Exemption declarations

Single dwellings may be exempt from requiring development approval under the current planning system where they meet the requirements of the Single Dwelling Housing Development Code (and other required criteria).

An exemption declaration is a type of minor approval that can be issued by the Territory Planning Authority. It allows a single dwelling, which would be exempt except for one or more minor departures from the requirements (called encroachments), to continue to be dealt with as exempt development. For example, to depart slightly from the boundary setback requirements or the need to provide open space on your own block.

This minor approval process allows many developments to avoid the lengthy and expensive development application process in circumstances where the minor departure is unlikely to have an adverse impact on anyone but the owner of that house.

Under the current legislation, the planning authority can declare a dwelling to be exempt even with a minor departure from the rules of the Single Dwelling Code. In all cases, the departures must be consistent

with the applicable criteria under the Single Dwelling Code and the planning authority must be satisfied the departures are minor and will not adversely affect neighbours.

Exemption declarations have caused concern amongst some community members who believe there is a lack of transparency around the issuing of exemption declarations. Sometimes neighbours tell us they are impacted by an encroachment.

These concerns have been considered and weighed against the important role exempt development and exemption declarations play in keeping low-impact developments outside of the development assessment process. It is proposed they will remain in the new Exempt Development Regulation but with additional transparency measures and a change for solar encroachments.

The draft Regulation also introduces an expiry for exemption declarations. Exemption declarations will be effective for 36 months (i.e. the exempt development must happen during this period), or such longer period as is specified in writing by the planning authority.

Increasing transparency

The draft Exempt Development Regulation aims to increase transparency where exemption declarations are issued:

- The Territory Planning Authority may only make a declaration where it is satisfied the requirement to provide information to neighbours has been met.
- Neighbours will be entitled to receive:
 - site plans
 - elevation plans
 - shadow diagrams where an encroachment into the solar building envelope is proposed.

Limits for solar building envelope

The draft regulation provides that encroachments into the solar building envelope may only be the subject of an exemption declaration where the encroachment does not cause shadowing to any habitable room or principal private open space of another block. This will protect neighbours and make clear that exemption declarations that relate to encroachments into the solar building envelope are only available in very limited circumstances.

Example: An encroachment (blue area) into the area between the boundary line and the setback line. An exemption declaration could be issued to approve this encroachment.

