

Submission for changing the Planning (Exempt Development) Regulation 2022

Summary proposed of changes

Removal of the following from Schedule 1 Part 1.4 Division 1.4.9 Section 1.111 (1)

(g) averaged over a period of 7 days, the conduct of the business does not generate more than 5 vehicle arrivals each day at the lease; and

Addition of the following to Schedule 1 Part 1.4 Division 1.4.9 Section 1.111 (1)

(g) the business does not generate more than 3 persons in attendance for the business at any one time at the lease; and

(h) the business operates only between Monday to Friday 8am to 6pm; and

(i) the business does not conduct group activities on the premises.

Example- gym, boot camps, personal group training, group swimming lessons.

Addition of the following to Schedule 1 Part 1.4 Division 1.4.9 Section 1.111

(3) If the home business is found to have breached the Planning (Exempt Development) Regulation 2022 on at least three occasions over the period of a year then the business is to be considered no longer exempt and will require a development application.

Reasoning

Removal of the following from Schedule 1 Part 1.4 Division 1.4.9 Section 1.111 (1)

(g) averaged over a period of 7 days, the conduct of the business does not generate more than 5 vehicle arrivals each day at the lease; and

This current exemption is impossible to monitor and enforce.

- ACT employees that address complaints associated with this exemption need to witness the infringement personally as video and written evidence given by a complainer are not accepted as proof.
- ACT employees that address complaints associated with this exemption only operate within business hours. As a result; businesses that operate early or late in the day or on weekends are not able to be monitored or observed.
- This exemption requires the honesty of the home business operator to comply with ensuring their business does not generate 35 vehicle arrivals but for a less honest operator who disregards any or all of the exemptions then any breaches will never be addressed. As a personal example there is a home business operating in my street that breached this exemption 68 times between 1/9/2016 to 22/02/2018
- It is unrealistic and impractical for ACT employees to undertake a 24 hour a day, 7 day a week (24x7) stakeout of a residential premises to gather the evidence of an infringement for this exemption.

Addition of the following to Schedule 1 Part 1.4 Division 1.4.9 Section 1.111 (1)

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 - (h) the business operates only between Monday to Friday 8am to 6pm; and
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- Example- gym, boot camps, personal group training, group swimming lessons.

Addition of the following to Schedule 1 Part 1.4 Division 1.4.9 Section 1.111

- (3) If the home business is found to have breached the Planning (Exempt Development) Regulation 2022 on at least three occasions over the period of a year then the business is to be considered no longer exempt and will require a development application.

As this draft legislation is targeted at focusing on livability, prosperity and the well-being of all Canberrans then home business operators can and do significantly impact the well-being of their neighbours.

There are no current restrictions on the time at which a home business can operate which can cause significant noise and disruption impacting the street and neighbourhood.

If a home business operates outside of what everyday Canberrans would call “Normal Business Hours” then it should not be exempt from submitting a Development Application as it has a significant likelihood of impacting the neighbouring residential leases.

Most Canberrans work Monday to Friday and as such like to have the weekend for recovery and relaxation however this may not be possible if they are impacted by a home business.

For example:

Currently a personal trainer can operate a boot camp on a residential lease at 3 or 4am every morning of the week with no restriction to the number of clients.

Assuming this boot camp makes only people noise (yelling and shouting) this is not treated as an EPA noise infringement.

The client vehicles (having multiple vehicles all turning up at the same time also not an EPA noise infringement) make an impact on the neighbourhood as it seems that clients need to open and slam at least 2 doors and the boot on arrival plus the sitting and idling whilst waiting for other clients to park. After an hour the clients all leave with more door slamming and vehicle congestion.

ACT Planning and Land Authority who investigate infringements do not work out of hours or weekends (with the exception of EPA) which means that monitoring investigating or enforcing breaches of Section 1.111 is not practical from a departmental operational standpoint (overtime might be given for special circumstances but in my experience dealing with ACTPLA it requires managerial consent which is rarely if ever approved as home businesses are not deemed a business priority).

While having a day and time restriction does not solve the overtime operational issues it would simplify the evidence gathering for a breach rather than a 24x7 stakeout counting client vehicles as per Section 1.111 (1)(g).

There are no current restrictions on the number of clients attending a home business at the same time, large groups of clients attending at the same time need to be legislated.

An attempt to curb the number of vehicles by way of Section 1.111 (1)(g) which can be deemed as ineffective and unenforceable appears to be an attempt to address client numbers.

When we think home business we might think Accountant, Hairdresser, Architect etc, a business that has one or two clients at a time that has little to no impact on overall street traffic, noise or the quiet enjoyment of residents that live in that street.

One would assume that if a home business expected to impact the residents then the owner would submit an appropriate development application for approval and not hide behind outdated and poorly envisioned exemption criteria.

I doubt that the original legislators envisaged commercial home gyms or swimming pool operators conducting lessons of multiple clients of up to 20+ people at a time. Other types of businesses that attract these type of numbers are heavily regulated i.e. Child Care Centres and Brothels.

It is totally unreasonable for a residential lease to operate a full decked out commercial gym in a residential neighbourhood and then proceed to conduct large group sessions at any time of day or night using the exemption clauses of this legislation to avoid a development application. This is simply not fair or equitable to the residents who would be quite reasonable and accommodating of a low impact home business but are stymied trying to have a highly disruptive home business decrease its overall impact to their quiet enjoyment of their residential lease.

Home businesses that are not compliant continue to operate without a development application and continue to flaunt Section 1.111 with no meaningful attempt to ever be compliant.

From my experience ACTPLA take an education approach when it comes to dealing with home business breaches of Section 1.111.

1. A complaint is lodged
2. The complaint is verified insofar as a breach of an exemption clause occurred
3. Education by ACTPLA is undertaken
4. The business owner promises to rectify the issue
5. Complaint closed

Unfortunately this cycle repeats over and over again, a couple of weeks go by and the education seems to be forgotten and the same breach repeated over and over until more education is required.

Getting ACTPLA to actually address a complaint seriously requires contacting the Ombudsman office or Minister which is not ideal and really shouldn't be the case.

Removal of the application for a controlled activity order for home businesses means that ACTPLA may never take action on legitimate complaints (due to staffing or any other issues) leaving the aggrieved affected residents seeking expensive recourse through the courts for an injunction.

Access Canberra's risk-based regulatory model will always place home business concerns last as the perceived risk by ACTPLA will always be lower than a physical building construction issue. While I don't disagree that a building issue that could affect the health of Canberrans is probably higher risk than a home business parking issue, over a prolonged period the mental health of residents affected by an ongoing disruptive home business may be of equal or higher health risk.

As a real life example of disruption, one of my family members needed to change their working hours because the operation of a nearby home business would wake them early in the morning depriving them of getting eight hours sleep.

Ongoing multiple breaches of the exemption clauses in Section 1.111 (1) need to have some kind of limit before a home business can no longer use these exemptions to avoid a development application.

After three warnings it is simply not fair to the nearby residents to put up with a business owner who would continually disregard the legislation.

Thank you for taking the time to read my submission

Sincerely

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by

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