

2011

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Planning and Development (Lease Variation Charges) Amendment Bill 2011

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Planning and Development (Lease Variation Charges) Amendment Bill 2011

A Bill for

An Act to amend the *Planning and Development Act 2007*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Planning and Development (Lease Variation*
4 *Charges) Amendment Act 2011.*

5 **2 Commencement**

6 This Act commences on 1 July 2011.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 **3 Legislation amended**

10 This Act amends the *Planning and Development Act 2007* and the
11 *Planning and Development Regulation 2008.*

12 *Note* This Act also amends the following legislation (see sch 1):

- 13 • *Taxation Administration Act 1999*
14 • *Unit Titles Act 2001.*

Part 2 Planning and Development Act 2007

4 Consideration of development proposals New section 138 (4) (da)

insert

(da) if the development proposal relates to a variation of a nominal rent lease—

(i) whether a lease variation charge is payable under division 9.6.3 (Variation of nominal rent leases) in relation to the variation; and

(ii) if asked by the proponent—what the charge is likely to be and how the authority has worked out the charge;

5 New section 138 (6) (ba)

insert

(ba) for subsection (4) (da)—the development proposal that is approved is different from the proposal in relation to which the advice was given; or

6 Form of development applications Section 139 (2) (g)

substitute

(g) if the application is for approval of a s 277 chargeable variation of a nominal rent lease—be accompanied by a valuation by an accredited valuer that works out the amounts represented by **VI** and **V2** in section 277; and

- 1 **7 Section 139 (4), new definition of s 277 chargeable**
2 **variation**
- 3 *insert*
- 4 *s 277 chargeable variation*—see section 276.
- 5 **8 Definitions—ch 9**
6 **Section 234, definition of *residential lease***
- 7 *substitute*
- 8 *residential lease* means a lease that authorises only residential use
9 of the land comprised in the lease.
- 10 **9 Working out amount payable to discharge concessional**
11 **leases**
12 **Section 263 (2), note**
- 13 *substitute*
- 14 *Note* If the variation of the lease is not solely for the purpose of removing the
15 lease's concessional status, a person may also be required to pay a lease
16 variation charge under div 9.6.3.
- 17 **10 Division 9.6.3**
- 18 *substitute*
- 19 **Division 9.6.3 Variation of nominal rent leases**
- 20 *Note 1* This division is a tax law under the *Taxation Administration Act 1999*.
21 As a tax law, this division is subject to provisions of the *Taxation*
22 *Administration Act 1999* about the administration and enforcement of
23 tax laws generally.
- 24 *Note 2* The commissioner for revenue may delegate the commissioner's
25 functions under this division to the planning and land authority (see
26 *Taxation Administration Act 1999*, s 78).

1 **276 Definitions—div 9.6.3**

2 In this division:

3 ***chargeable variation***, of a nominal rent lease, means a variation of
4 the lease other than—

5 (a) a variation, if—

6 (i) the only effect of the variation is to alter a common
7 boundary between 2 or more adjoining leases; and

8 (ii) the authorised use of the land comprised in each
9 adjoining lease (however described) is the same; and

10 (iii) none of the adjoining leases is a rural lease; or

11 (b) a variation if the only effect of the variation is to remove the
12 lease's concessional status; or

13 (c) a variation prescribed by regulation.

14 *Note Variation*, of a lease—see the dictionary.

15 ***LVC determination*** means a determination made under
16 section 276D (Lease variation charges—LVC determination).

17 ***original decision***—see section 277B (1) (b) (Lease variation charge
18 under s 277—working out statement).

19 ***prescribed chargeable variation*** means a chargeable variation
20 prescribed by regulation.

21 ***reconsideration application***—see section 277C (5) (Lease variation
22 charge under s 277—application for reconsideration).

23 ***s 277 chargeable variation*** means—

24 (a) a chargeable variation that is not a prescribed chargeable
25 variation; or

26 (b) a prescribed chargeable variation if no lease variation charge is
27 determined in an LVC determination for the variation.

1 **working out statement**—see section 277B (2) (Lease variation
2 charge under s 277—working out statement).

3 **276A Chargeable variation of nominal rent lease—lease**
4 **variation charge**

- 5 (1) The planning and land authority must not execute a chargeable
6 variation of a nominal rent lease unless the lessee has paid the
7 Territory the lease variation charge for the variation, less any
8 remission under section 278, plus any increase under section 279.

9 *Note* If the planning and land authority has executed a variation of a nominal
10 rent lease, the authority must lodge a copy of the variation with the
11 registrar-general for registration. A lease variation takes effect on
12 registration (see *Land Titles Act 1925*, s 72A).

- 13 (2) A lease variation charge is taken to be paid to the Territory if—
14 (a) the amount of the charge is waived by the Treasurer under the
15 *Financial Management Act 1996*, section 131 (Waiver of debts
16 etc); or
17 (b) part of the amount is waived and the rest of the amount is paid.
18 (3) Payment of the lease variation charge does not affect any right a
19 person may have to apply for reconsideration under section 277D
20 (Lease variation charge under s 277—requirements for
21 reconsideration application).

22 **276B Lease variation charges—amount payable**

- 23 (1) The lease variation charge for a chargeable variation of a nominal
24 rent lease is—
25 (a) for a prescribed chargeable variation for which a charge is
26 determined in an LVC determination—the determined charge
27 for the variation; or
28 (b) for a s 277 chargeable variation—the charge (if any) worked
29 out under section 277 for the variation.

- 1 (2) If a development approval of a development application relates to
2 more than 1 chargeable variation of a nominal rent lease, the lease
3 variation charge is worked out as follows:
- 4 (a) if all the chargeable variations are prescribed chargeable
5 variations for which a charge is determined in an LVC
6 determination—in accordance with the LVC determination;
- 7 (b) if all the chargeable variations are s 277 chargeable
8 variations—in accordance with section 277;
- 9 (c) if 1 or more are a kind of variation mentioned in paragraph (a)
10 and 1 or more are a kind of variation mentioned in
11 paragraph (b)—as prescribed by regulation.

12 **276C Lease variation charges—notice of assessment**

- 13 (1) On approval of a development application for a chargeable
14 variation, the commissioner for revenue must give—
- 15 (a) a notice of assessment of the lease variation charge to the
16 lessee; and
- 17 (b) if the development application in relation to the chargeable
18 variation is made by someone other than the lessee—a copy of
19 the notice to the applicant.

20 *Note 1* The notice of assessment is an assessment under the *Taxation*
21 *Administration Act 1999* as if the lease variation charge were a tax
22 payable by the lessee under that Act (see this Act, s 279B (1)).
23 However, no actual liability to pay the lease variation charge arises on
24 the giving of the notice (see s 279B (2)). The planning and land
25 authority must not execute a variation of the lease unless the lessee has
26 paid the assessed lease variation charge (see s 276A (1)).

27 *Note 2* The commissioner for revenue must give a notice of assessment as soon
28 as possible after the development application for the chargeable
29 variation has been approved (see Legislation Act, s 151B).

- 1 (2) A lease variation charge is taken to be worked out—
2 (a) on the day the development approval of the chargeable
3 variation is approved; or
4 (b) if another day is prescribed by regulation—on that day.
5 (3) A notice of assessment lapses on the earlier of—
6 (a) the day the lease variation charge is paid; or
7 (b) the day the development approval of the chargeable variation
8 lapses.

9 **276D Lease variation charges—LVC determination**

- 10 (1) The Treasurer may determine a lease variation charge for a
11 prescribed chargeable variation.

12 *Note 1* The Legislation Act contains provisions about the making of
13 determinations and regulations relating to fees (see pt 6.3).

14 *Note 2* Power to make a statutory instrument (including a determination)
15 includes the power to make different provision for different categories
16 (see Legislation Act, s 48).

- 17 (2) A determination must be made in accordance with any guidelines
18 approved under section 276E.

- 19 (3) If the Treasurer determines a lease variation charge for a prescribed
20 chargeable variation, the Treasurer may determine a new lease
21 variation charge.

- 22 (4) A determination is a disallowable instrument.

23 *Note* A disallowable instrument must be notified under the Legislation Act.

276E Lease variation charges—guidelines for LVC determination

- (1) The Treasurer may approve guidelines for—
- (a) how lease variation charges in the LVC determination must be determined; and
 - (b) how the LVC determination is prepared, including who the Treasurer may or must consult; and
 - (c) what must be included in the LVC determination.

Example—par (a)

valuation methods and assumptions

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified under the Legislation Act.

277 Lease variation charges—s 277 chargeable variations

- (1) The commissioner for revenue works out the lease variation charge for a s 277 chargeable variation of a nominal rent lease as follows:

$$\text{LVC} = (V^1 - V^2) \times 75\%$$

- (2) In this section:

LVC means the lease variation charge payable for the s 277 chargeable variation of the lease.

VI—

- (a) for a variation other than a consolidation or subdivision, means the capital sum that the lease might be expected to realise if—
 - (i) the lease were varied as proposed; and

- 1 (ii) the lease were genuinely offered for sale immediately
2 after the variation on the reasonable terms and conditions
3 that a genuine seller would require; and
- 4 (iii) the rent payable throughout the term of the lease or, for a
5 variation that involves the surrender of a lease and issue
6 of a new lease, the new lease, were a nominal rent; or
- 7 (b) for a variation that is a consolidation or subdivision, means the
8 capital sum that the new lease or leases to be granted under the
9 consolidation or subdivision might be expected to realise if—
- 10 (i) the consolidation or subdivision were to take place as
11 proposed; and
- 12 (ii) the new lease or leases were genuinely offered for sale
13 immediately after the variation on the reasonable terms
14 and conditions that a genuine seller would require; and
- 15 (iii) the rent payable throughout the term of the new lease or
16 leases were a nominal rent.
- 17 **V2—**
- 18 (a) for a variation other than a consolidation or subdivision, means
19 the capital sum that the lease might be expected to realise if—
- 20 (i) the lease were not varied during the remainder of its
21 term; and
- 22 (ii) the lease were genuinely offered for sale immediately
23 before the variation on the reasonable terms and
24 conditions that a genuine seller would require; and
- 25 (iii) the rent payable throughout the term of the lease, or lease
26 to be surrendered, were a nominal rent; or

- 1 (b) for a variation that is a consolidation or subdivision, means the
 2 capital sum that the lease or leases to be surrendered under the
 3 consolidation or subdivision might be expected to realise if—
- 4 (i) no consolidation or subdivision were to take place during
 5 the remainder of the term of the surrendered lease or
 6 leases; and
- 7 (ii) the lease or leases were genuinely offered for sale
 8 immediately before the consolidation or subdivision on
 9 the reasonable terms and conditions that a genuine seller
 10 would require; and
- 11 (iii) the rent payable throughout the term of the lease or leases
 12 to be surrendered were a nominal rent.
- 13 (3) If the amount worked out as **VI** is equal to or less than the amount
 14 worked out as **V2**, no lease variation charge is payable.
- 15 (4) If the development approval for the relevant development
 16 application relates to 2 or more s 277 chargeable variations, **VI** and
 17 **LVC** are worked out as if the s 277 chargeable variations were a
 18 single s 277 chargeable variation of the lease.

19 **277A Lease variation charge under s 277—improvements**

- 20 (1) In working out **VI** and **V2** under section 277, an improvement in
 21 relation to the land comprised in the lease must not be taken into
 22 account.
- 23 *Note* Power to make a regulation in relation to a matter includes power to
 24 make provision in relation to a class of a matter (see Legislation Act,
 25 s 48 (2)).
- 26 (2) However, an improvement may be taken into account if—
- 27 (a) for **VI** and **V2**—it is prescribed by regulation; and
- 28 (b) for **V2**—it is an improvement by way of clearing, filling,
 29 grading, draining, levelling or excavating the land.

- 1 (3) A regulation may prescribe the percentage value of an improvement
2 mentioned in subsection (2) that may be taken into account.
- 3 (4) In this section:
- 4 ***improvement***, in relation to land, means an existing or proposed
5 improvement and includes any of the following:
- 6 (a) a building or structure on or under the land;
- 7 (b) an alteration or demolition of an existing building or structure
8 on or under the land;
- 9 (c) the remediation of the land;
- 10 (d) earthworks, planting or other work that affects the landscape of
11 the land;
- 12 (e) anything prescribed by regulation;
- 13 (f) anything mentioned in paragraphs (a) to (e) that is required—
- 14 (i) as a condition of a development approval; or
- 15 (ii) by a statutory approval obtained or required for a
16 development proposal; or
- 17 (iii) under an agreement between the Territory or a territory
18 entity and—
- 19 (A) the lessee; or
- 20 (B) if the lessee is not the applicant for the development
21 approval—the applicant.
- 22 ***remediation***—see the *Environment Protection Act 1997*, dictionary.

1 **277B Lease variation charge under s 277—working out**
2 **statement**

3 (1) This section applies if—

4 (a) a development application in relation to a s 277 chargeable
5 variation of a nominal rent lease is approved; and

6 (b) the lease variation charge in relation to the s 277 chargeable
7 variation has been worked out (the *original decision*); and

8 (c) the commissioner for revenue gives a notice of assessment of a
9 lease variation charge under section 276C (1); and

10 (d) an application has not previously been made under
11 section 277C for reconsideration of the original decision.

12 (2) The applicant may ask the commissioner for revenue for a statement
13 (a *working out statement*) explaining the commissioner's working
14 out of the original decision.

15 *Note* If a form is approved under s 425 for this provision, the form must be
16 used.

17 (3) The commissioner for revenue must give the applicant a working
18 out statement within 20 working days after the day the applicant
19 asks for the statement unless—

20 (a) the notice of assessment contains the matters that the working
21 out statement would contain; or

22 (b) a document that contains the matters that a working out
23 statement would contain has already been given to the
24 applicant.

1 **277C Lease variation charge under s 277—application for**
2 **reconsideration**

3 (1) The applicant for the development application may apply for
4 reconsideration of the original decision on the earlier of—

5 (a) the day the applicant receives a working out statement; and

6 (b) the end of the 20-working day period mentioned in
7 section 277B (3).

8 (2) If a development approval of a development application relates to
9 more than 1 chargeable variation of a nominal rent lease, this
10 section only applies to the part of the lease variation charge that is
11 worked out for a s 277 chargeable variation.

12 *Note* The total lease variation charge for a development application that
13 relates to more than 1 chargeable variation is worked out in accordance
14 with s 276B (2).

15 (3) This section does not apply to a reassessment of a lease variation
16 charge under section 279A.

17 (4) If the applicant for the development application is not the lessee, the
18 lessee may apply for reconsideration under this section instead of
19 the applicant.

20 (5) An application for reconsideration of the original decision
21 (the ***reconsideration application***) must be made not later than—

22 (a) the later of—

23 (i) 80 working days after the day the notice of assessment
24 under section 276C (1) is given; and

25 (ii) if a later day is prescribed by regulation—that day; or

26 (b) any longer period allowed by the commissioner for revenue.

27 *Note* The commissioner for revenue may extend the period after the end of
28 the period being extended (see Legislation Act, s 151C (3)).

1 **277D Lease variation charge under s 277—requirements for**
2 **reconsideration application**

- 3 (1) The reconsideration application must be in writing and signed by—
4 (a) the lessee; and
5 (b) if the application is made by the applicant for the development
6 application who is not the lessee—the applicant.
- 7 (2) Also, the reconsideration application must—
8 (a) set out the grounds on which reconsideration of the original
9 decision is sought; and
10 (b) in relation to the original decision—include an independent
11 valuation that works out the amounts represented by **VI** and **V2**
12 in section 277; and
13 (c) if the commissioner for revenue gives the applicant a working
14 out statement before the end of the 20-working day period
15 mentioned in section 277B (3)—include the statement.
- 16 (3) If subsection (2) (c) applies, the applicant for the reconsideration
17 must give the valuer for the independent valuation the commissioner
18 for revenue’s working out statement.
- 19 (4) The independent valuation must be prepared by an accredited valuer
20 who—
21 (a) was not involved in working out or advising on the original
22 decision; and
23 (b) is—
24 (i) agreed to by the applicant for the reconsideration and the
25 commissioner for revenue; or
26 (ii) if the applicant and the commissioner cannot agree—
27 appointed in writing by a person prescribed by
28 regulation; and

- 1 (c) satisfies any requirement prescribed by regulation.
- 2 (5) The applicant for the reconsideration is responsible for the cost of
- 3 the independent valuation.
- 4 **277E Lease variation charge under s 277—reconsideration**
- 5 (1) Within 20 working days after receiving a reconsideration
- 6 application, the commissioner for revenue must—
- 7 (a) reconsider the original decision; and
- 8 (b) either—
- 9 (i) make a decision in substitution for the original decision
- 10 that the commissioner could have made; or
- 11 (ii) confirm the original decision.
- 12 (2) The 20-working day period mentioned in subsection (1) may be
- 13 extended for a stated period by agreement between the
- 14 commissioner for revenue and the applicant for the reconsideration.
- 15 (3) In reconsidering the original decision, the commissioner for
- 16 revenue—
- 17 (a) must consider the independent valuation required under
- 18 section 277D (2) (b) and any other information given in the
- 19 reconsideration application; and
- 20 (b) may consider any other relevant information.
- 21 (4) The commissioner for revenue must ensure that, if the original
- 22 decision is made by the commissioner or a person on the
- 23 commissioner's behalf (the *original decision-maker*), someone
- 24 other than the original decision-maker reconsiders the decision.

1 **277F Lease variation charge under s 277—no action by**
2 **commissioner within time**

3 If the commissioner for revenue does not make a substitute decision,
4 or confirm the original decision, by the end of the 20-working day
5 period mentioned in section 277E (1), or the period as extended by
6 agreement under section 277E (2), the commissioner is taken to
7 have confirmed the original decision.

8 **277G Lease variation charge under s 277—notice of decisions**
9 **on reconsideration**

10 The commissioner for revenue must give written notice of the
11 decision on the reconsideration to—

12 (a) the lessee; and

13 (b) if the application is made by the applicant for the development
14 application who is not the lessee—the applicant.

15 *Note* The notice must be a reviewable decision notice (see s 408 (2)).

16 **278 When commissioner must remit lease variation charge**

17 (1) The commissioner for revenue must remit all or part of a lease
18 variation charge for a chargeable variation of a nominal rent lease as
19 prescribed by regulation.

20 (2) A regulation may prescribe the amount to be remitted under
21 subsection (1).

1 **279 When commissioner must increase lease variation**
2 **charge**

- 3 (1) The commissioner for revenue must increase a lease variation
4 charge for a chargeable variation of a nominal rent lease as
5 prescribed by regulation.
- 6 (2) A regulation may prescribe the amount of the increase under
7 subsection (1).

8 **279A Lease variation charge—reassessment**

- 9 (1) This section applies if—
- 10 (a) a development application for approval of a chargeable
11 variation of a nominal rent lease is approved; and
- 12 (b) the commissioner for revenue gives a notice of assessment of a
13 lease variation charge under section 276C (1); and
- 14 (c) the planning and land authority executes a variation of the
15 lease to which the lease variation charge relates.
- 16 (2) The commissioner for revenue may reassess the lease variation
17 charge under the *Taxation Administration Act 1999*, section 9
18 (Reassessment).
- 19 (3) The commissioner for revenue must give—
- 20 (a) a notice of assessment of the lease variation charge to the
21 lessee; and
- 22 (b) if the development application in relation to the chargeable
23 variation is made by someone other than the lessee—a copy of
24 the notice to the applicant.

25 *Note* The assessment notice must show the amount of the reassessment and
26 the amount by which the assessment has been increased or decreased
27 (see *Taxation Administration Act 1999*, s 14 (3)).

- 1 (4) For this division, the *Taxation Administration Act 1999*, part 10
2 (Objections and reviews) applies only to a reassessment of a lease
3 variation charge under this section.

4 *Note 1* Either the lessee or, if the lessee is not the applicant for the development
5 approval, the applicant for the development approval, may apply under
6 this Act for reconsideration of a notice of an assessment of a lease
7 variation charge worked out under s 277 (see s 277D).

8 *Note 2* A notice of a reassessed lease variation charge is an internally
9 reviewable decision (see *Taxation Administration Act 1999*, s 107,
10 def *internally reviewable decision*), and the notice of assessment must
11 be an internal review notice (see that Act, s 107B).

12 **279B Application of Taxation Administration Act**

- 13 (1) The *Taxation Administration Act 1999* applies to this division as if a
14 lease variation charge for a chargeable variation were a tax payable
15 from the day the development application in relation to the
16 chargeable variation is approved.

- 17 (2) For this division, a tax liability in relation to a chargeable variation
18 only arises if the planning and land authority executes a variation of
19 the lease to which the chargeable variation relates.

20 *Note* The planning and land authority must not execute a variation of a
21 nominal rent lease unless the lessee has paid the lease variation charge
22 worked out under s 276A, less any remission under s 278, plus any
23 increase under s 279 (see s 267A (1)).

24 **279C Taxation Administration Act—disclosure of information**

25 For the *Taxation Administration Act 1999*, division 9.4 (Secrecy), a
26 tax officer under that Act may disclose information obtained under
27 or in relation to the administration of this division to the planning
28 and land authority or a person authorised by the authority to receive
29 the information.

11 New chapter 17

insert

**Chapter 17 Transitional—Planning and
Development (Lease Variation
Charges) Amendment Act 2011**

**471 Transitional—application for development approval of
variation of nominal rent lease**

- (1) This section applies in relation to a development application if—
- (a) the application is made before 1 July 2011; and
 - (b) the application includes an application to vary a nominal rent lease; and
 - (c) immediately before 1 July 2011—
 - (i) division 9.6.3 (Variation of nominal rent leases) applied to the variation; and
 - (ii) the planning and land authority had not worked out the change of use charge for the variation.
- (2) Division 9.6.3 continues to apply to the variation as if the *Planning and Development (Lease Variation Charges) Amendment Act 2011* had not commenced.
- (3) However, if before 1 October 2011, the applicant gives the commissioner for revenue notice in writing that it wishes to have the variation dealt with as if the development application had been made after 1 July 2011, the development application is taken to have been made after 1 July 2011.

Note If a form is approved under s 425 for this provision, the form must be used.

472 Expiry—ch 17

This part expires 1 July 2012.

12 Schedule 1, items 27 to 29

substitute

27	decision under s 277E (1) (b) (i) on reconsideration about amount of lease variation charge for variation of lease	commissioner for revenue	applicant for the reconsideration	
28	decision under s 277E (1) (b) (ii) to confirm original decision on reconsideration about amount of lease variation charge for variation of lease	commissioner for revenue	applicant for the reconsideration	
29	decision under s 278 about amount of remission of lease variation charge other than a decision prescribed by regulation	commissioner for revenue	applicant for development approval of chargeable variation	
29A	decision under s 279 about amount of an increase of lease variation charge other than a decision prescribed by regulation	commissioner for revenue	applicant for development approval of chargeable variation	

13 Dictionary, new definition of *accredited valuer*

insert

accredited valuer means a valuer accredited by—

- (a) the Australian Property Institute Incorporated ABN 49 007 505 866; or
- (b) if another entity is prescribed by regulation—that entity.

14 Dictionary, definition of *change of use charge*

omit

1 **15 Dictionary, new definitions**

2 *insert*

3 *chargeable variation*, of a nominal rent lease, for division 9.6.3
4 (Variation of nominal rent leases)—see section 276.

5 *lease variation charge*, for a variation of a nominal rent lease,
6 means the lease variation charge applying under section 276B.

7 *LVC determination*, for division 9.6.3 (Variation of nominal rent
8 leases)—see section 276.

9 **16 Dictionary, definition of *original decision***

10 *substitute*

11 *original decision*—

12 (a) for division 7.3.10 (Reconsideration of decisions on
13 development applications)—see section 191 (1) (a); and

14 (b) for division 9.6.3 (Variation of nominal rent leases)—see
15 section 277B (1) (b).

16 **17 Dictionary, new definition of *prescribed chargeable***
17 ***variation***

18 *insert*

19 *prescribed chargeable variation*, of a nominal rent lease, for
20 division 9.6.3 (Variation of nominal rent leases)—see section 276.

1 **18 Dictionary, definition of *reconsideration application***

2 *substitute*

3 *reconsideration application*—

4 (a) for division 7.3.10 (Reconsideration of decisions on
5 development applications)—see section 191 (3); and

6 (b) for division 9.6.3 (Variation of nominal rent leases)—see
7 section 277C (5).

8 **19 Dictionary, new definitions of *s 277 chargeable variation***
9 **and *working out statement***

10 *insert*

11 *s 277 chargeable variation*, of a nominal rent lease, for
12 division 9.6.3 (Variation of nominal rent leases)—see section 276.

13 *working out statement*, for division 9.6.3 (Variation of nominal rent
14 leases)—see section 277B (2).

1 **Part 3** **Planning and Development**
2 **Regulation 2008**

3 **20** **Part 5.5 heading**

4 *substitute*

5 **Part 5.5** **Lease variation charges**

6 **21** **New divisions 5.5.1A and 5.5.1B**

7 *insert*

8 **Division 5.5.1A** **Chargeable variations**

9 **171** **Exempt variations—Act, s 276, def *chargeable variation*,**
10 **par (c)**

11 A variation of a holding lease is prescribed.

12 **172** **Prescribed chargeable variations—Act, s 276,**
13 **def *prescribed chargeable variation***

14 (1) The following chargeable variations are prescribed:

- 15 (a) if a development application relates to the chargeable variation
16 of only 1 residential lease—a variation to increase the number
17 of dwellings permitted on the land under the lease;

18 **Example**

19 a variation of a nominal rent lease to increase the maximum number of
20 20 residential units permitted on the land under the lease to 40 units

21 *Note* An example is part of the regulation, is not exhaustive and may
22 extend, but does not limit, the meaning of the provision in which
23 it appears (see Legislation Act, s 126 and s 132).

- (b) if a development application relates to the chargeable variation of only 1 residential lease—a variation to limit the number of dwellings permitted on the land under the lease;

Example

A lease permits land to be used for residential purposes but does not state any limit on the number of permitted residences on the land. The lessee proposes to subdivide the land under the *Unit Titles Act 2001*. That Act, s 20 (2A) does not allow the lease to be subdivided unless the lease provides for the number of dwellings on the land. The lessee must vary the lease to limit the number of dwellings permitted on the land before subdividing the land.

- (c) if a development application relates to the chargeable variation of only 1 non-residential lease—a chargeable variation of the lease that—

(i) increases the maximum gross floor area of any building or structure permitted for non-residential use on the land under the lease; or

(ii) has the effect of increasing the maximum gross floor area of any building or structure permitted for non-residential use on the land under the lease; or

(iii) increases or limits the number of dwellings permitted on the land under the lease;

- (d) the consolidation of 2 or more nominal rent leases;

- (e) the subdivision of 1 or more nominal rent leases.

Note 1 **Gross floor area**—see the territory plan (13 Definitions).

Note 2 If a chargeable variation is not a prescribed chargeable variation the lease variation charge is worked out under the Act, s 277 (see Act, s 276B).

- (2) In this section:

non-residential lease means a lease other than a residential lease.

- 1 **Division 5.5.1B Independent valuation of s 277 lease**
2 **variation charge**
- 3 **174 Appointment of independent valuer—Act,**
4 **s 277D (4) (b) (ii)**
- 5 The president of the ACT division of the Australian Property
6 Institute Incorporated ABN 49 007 505 866 is prescribed.
- 7 **175 Requirements for independent valuer—Act, s 277D (4) (c)**
- 8 A valuer preparing an independent valuation must be a current
9 member of the Australian Property Institute Incorporated
10 ABN 49 007 505 866.
- 11 **22 Division 5.5.2 heading**
- 12 *omit*
- 13 **change of use**
- 14 *substitute*
- 15 **lease variation**
- 16 **23 Section 175**
- 17 *omit*
- 18 **24 Section 176**
- 19 *omit*
- 20 change of use
- 21 *substitute*
- 22 lease variation

1	25	Section 177
2		<i>omit</i>
3	26	Division 5.5.3 heading
4		<i>omit</i>
5		change of use
6		<i>substitute</i>
7		lease variation
8	27	Sections 181 and 182
9		<i>omit</i>
10		change of use
11		<i>substitute</i>
12		lease variation
13	28	Dictionary, note 3
14		<i>omit</i>
15		<ul style="list-style-type: none">• change of use charge
16	29	Dictionary, note 3
17		<i>insert</i>
18		<ul style="list-style-type: none">• lease variation charge
19		<ul style="list-style-type: none">• LVC determination
20	30	Dictionary, definition of <i>added value</i>
21		<i>substitute</i>
22		<i>added value</i> , for the variation of a nominal rent lease, for part 5.5
23		(Lease variation charges)—see section 170.

- 1 **31 Dictionary, definition of *recently commenced lease***
- 2 *omit*
- 3 change of use
- 4 *substitute*
- 5 lease variation

Schedule 1 Other amendments

(see s 3)

Part 1.1 Taxation Administration Act 1999

[1.1] New section 4 (ia)

insert

(ia) the *Planning and Development Act 2007*, division 9.6.3
(Variation of nominal rent leases);

Part 1.2 Unit Titles Act 2001

[1.2] New section 20 (2A)

insert

(2A) Also, if a unit title application relates to a lease located within a prescribed zone, the planning and land authority may approve the application only if the lease states the number of units (however described) permitted on the land and the application is for not more than the permitted number of units.

[1.3] Section 20 (8), new definition of *prescribed zone*

insert

prescribed zone means a zone identified in the territory plan that is prescribed by regulation.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2011.

2 Notification

Notified under the Legislation Act on 2011.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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