

2018

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Treasurer)

# **Planning and Development (Lease Variation Charge Deferred Payment Scheme) Amendment Bill 2018**

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## **A Bill for**

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

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

**1 Name of Act**

This Act is the *Planning and Development (Lease Variation Charge Deferred Payment Scheme) Amendment Act 2018*.

**2 Commencement**

This Act commences on the day after its notification day.

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

**3 Legislation amended**

This Act amends the *Planning and Development Act 2007*.

*Note* This Act also amends other legislation (see sch 1).

**4 Legislation repealed**

(1) The following legislation is repealed:

- *Planning and Development (Remission of Lease Variation Charge for Environmental Remediation) Determination 2016 (No 1)* (DI2016-260)
- *Planning and Development (Remission of Lease Variation Charges) Determination 2015 (No 1)* (DI2015-216)
- *Planning and Development (Remission of Lease Variation Charges—Economic Stimulus and Sustainability) Determination 2016 (No 1)* (DI2016-28)
- *Planning and Development (Remission of Lease Variation Charges for Community Purpose—Housing Assistance) Determination 2011 (No 1)* (DI2011-318).

(2) To avoid any doubt, the *Planning and Development (Lease Variation Charges) Determination 2017 (No 2)* (DI2017-208) continues to have effect despite the amendment under this Act to the *Planning and Development Act 2007*, section 276E.

1	<b>5</b>	<b>Contents of public register</b>
2		<b>Section 28 (1) (e)</b>
3		<i>omit</i>
4		to section 278E
5	<b>6</b>	<b>New section 28 (1) (ea)</b>
6		<i>insert</i>
7		(ea) for each deferral arrangement under section 279AB (2)—
8		(i) the date the arrangement was entered into; and
9		(ii) the amount of the lease variation charge deferred under
10		the arrangement at the date the arrangement was entered
11		into;
12	<b>7</b>	<b>Form of development applications</b>
13		<b>New section 139 (2) (ia)</b>
14		<i>insert</i>
15		(ia) if the application is for approval of a chargeable variation of a
16		nominal rent lease prescribed by regulation—be accompanied
17		by any information or document prescribed by regulation; and
18	<b>8</b>	<b>New subdivision 9.6.3.1 heading</b>
19		<i>before section 276, insert</i>
20		<b>Subdivision 9.6.3.1 Definitions—div 9.6.3</b>
21	<b>9</b>	<b>Definitions—div 9.6.3</b>
22		<b>Section 276, new definition of <i>deferral arrangement</i></b>
23		<i>insert</i>
24		<i>deferral arrangement</i> , for a lease variation charge—see
25		section 279AB (2).

**10 Section 276, definitions of s 276E chargeable variation and s 277 chargeable variation**

*substitute*

*s 276E chargeable variation*, of a nominal rent lease, means a chargeable variation prescribed by regulation.

*s 277 chargeable variation* means—

- (a) a chargeable variation that is not a s 276E chargeable variation; or
- (b) a s 276E chargeable variation if no lease variation charge is determined in an LVC determination for the variation.

**11 Meaning of s 276E chargeable variation and s 277 chargeable variation—div 9.6.3  
Section 276A**

*omit*

**12 New subdivision 9.6.3.2 heading**

*before section 276B, insert*

**Subdivision 9.6.3.2 Chargeable variations**

**13 Chargeable variation of nominal rent lease—lease variation charge  
Section 276B (1), except note**

*substitute*

- (1) The planning and land authority must not execute a chargeable variation of a nominal rent lease unless—
  - (a) the lease variation charge for the variation, less any remission under section 278, plus any increase under section 279 (the *total charge*) has been paid to the Territory; or



- 1 (b) a deferral arrangement in relation to the total charge has been  
2 entered into.

3 **14 Section 276B (3)**

4 *substitute*

- 5 (3) Payment of the lease variation charge, or entering into a deferral  
6 arrangement in relation to the lease variation charge, does not affect  
7 any right a person may have to apply for reconsideration under  
8 section 277C (Lease variation charge under s 277—application for  
9 reconsideration).

10 **15 Lease variation charges—s 276E chargeable variations**  
11 **Section 276E (1)**

12 *after*

13 may

14 *insert*

15 , after consulting with the Minister,

16 **16 Section 276E (3) (d) and (6)**

17 *omit*

18 **17 Lease variation charges—guidelines for LVC**  
19 **determination**  
20 **Section 276F**

21 *omit*

**18 Sections 278 to 278F**

*substitute*

**278 Remission of lease variation charges**

- (1) The Minister may determine circumstances in which an amount of a lease variation charge for a chargeable variation of a nominal rent lease must be remitted.
- (2) If a determination is made under subsection (1), the Treasurer must determine an amount to be remitted for each lease variation charge for a chargeable variation to which the determined circumstances apply.
- (3) The amount must be expressed as a percentage of the lease variation charge for a chargeable variation.
- (4) The commissioner for revenue must remit the amount determined under subsection (2) for a chargeable variation to which the determination applies.
- (5) A determination under this section is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

**19 New subdivision 9.6.3.3**

*before section 279A, insert*

**Subdivision 9.6.3.3 Deferring lease variation charges**

**279AA Application to defer payment of lease variation charges**

- (1) This section applies if—
  - (a) the applicant for a development application for a chargeable variation of nominal rent lease is given a notice of assessment of the lease variation charge under section 276D (1); and

- 1 (b) the lease variation charge to be deferred is at least the amount  
2 determined by the Treasurer; and
- 3 (c) the applicant satisfies any other criteria determined by the  
4 Treasurer.
- 5 (2) The applicant for the development application may apply to the  
6 commissioner for revenue to defer payment of the lease variation  
7 charge.
- 8 (3) An applicant must provide the commissioner with any information  
9 that the commissioner considers necessary to decide the application.
- 10 (4) If the applicant for the development application is not the lessee, the  
11 lessee—
- 12 (a) may apply for the deferral instead of the applicant; or  
13 (b) must sign the deferral application.
- 14 (5) A determination under this section is a disallowable instrument.
- 15 *Note* A disallowable instrument must be notified, and presented to the  
16 Legislative Assembly, under the [Legislation Act](#).

## 17 **279AB Approval to defer payment of lease variation charges**

- 18 (1) The commissioner for revenue must approve an application under  
19 section 279AA (2) if satisfied section 279AA (1) applies.
- 20 (2) However, an approval under subsection (1) is subject to the  
21 applicant entering into an arrangement under the [Taxation](#)  
22 [Administration Act 1999](#), section 52 (Arrangements for payment of  
23 tax) about payment of the amount of the deferred lease variation  
24 charge (a *deferral arrangement*).
- 25 *Note* An amount payable under a deferral arrangement is a debt owing to the  
26 Territory and is a charge on the land (see [Taxation Administration](#)  
27 [Act 1999](#), s 56H).

1           (3) If the applicant for the development application is not the lessee, the  
2           lessee—

3           (a) may enter into the deferral arrangement instead of the  
4           applicant; or

5           (b) must sign the deferral arrangement.

6           *Note*     A decision to approve an application and a decision to impose  
7           conditions under a deferral arrangement are reviewable decisions (see  
8           [Taxation Administration Act 1999](#), sch 1).

## 9   **279AC   Conditions of deferral arrangement**

10          (1) The conditions of a deferral arrangement include the following:

11          (a) the amount of the lease variation charge, and any accrued  
12          interest, must be paid to the commissioner for revenue not later  
13          than the earlier of—

14               (i) if stated in the deferral arrangement—the date a  
15               certificate of occupancy is issued for part of the building  
16               work for the development to which the lease variation  
17               relates; or

18               (ii) the date a certificate of occupancy is issued for all of the  
19               building work for the development to which the lease  
20               variation relates; or

21               (iii) 4 years from the date of the lease variation;

22          (b) any other condition determined under subsection (2).

23          *Note*     A certificate of occupancy is issued under the [Building Act 2004](#), s 69.

24          (2) The Treasurer may determine other conditions to which a deferral  
25          arrangement is subject, including the rate of interest charged on the  
26          amount payable under the arrangement.

27          *Note*     There may be additional interest and penalty tax payable under the  
28          [Taxation Administration Act 1999](#).

- (3) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (4) This section does not limit the [Taxation Administration Act 1999](#), section 52, but any arrangement under that section about deferred payment of a lease variation charge under this subdivision must not be inconsistent with the conditions under subsection (1).

## **279AD Lease variation charge changed after reconsideration etc**

- (1) This section applies if—

(a) an applicant for a development application for a chargeable variation of a nominal rent lease has entered into a deferral arrangement; and

(b) after the deferral arrangement was entered into, the amount of the lease variation charge in relation to the chargeable variation is increased or decreased from the amount deferred under the arrangement because of a reconsideration, reassessment or review under this Act or the [Taxation Administration Act 1999](#).

- (2) If the lease variation charge is decreased, the deferral arrangement applies to the decreased amount.

- (3) If the lease variation charge is increased, the deferral arrangement applies to the increased amount unless the applicant applies, and the commissioner for revenue agrees, to vary the conditions of the deferral arrangement.

- (4) If the applicant for the development application is not the lessee—

(a) the lessee—

(i) may apply for the variation instead of the applicant; or

- 1 (ii) must sign the application; and  
2 (b) if the application is approved, the lessee must sign the  
3 variation.

4 **279AE Certificate of lease variation charge and other amounts**

- 5 (1) This section applies if there is a charge on land under the *Taxation*  
6 *Administration Act 1999*, section 56H (Tax payable is charge on  
7 land) in relation to a lease variation charge.  
8 (2) A person may apply to the commissioner for revenue for a  
9 certificate that sets out the amount of—  
10 (a) the lease variation charge that remains unpaid at the date of the  
11 certificate; and  
12 (b) any interest and penalty tax payable under this division, a  
13 deferral arrangement, or the *Taxation Administration Act 1999*.  
14 (3) The commissioner must give the applicant the certificate.  
15 (4) The certificate is conclusive proof for an honest buyer for value of  
16 the matters certified.  
17 (5) For this section, the lease variation charge and other amounts  
18 payable are taken to be payable immediately even though any  
19 necessary time after a date or event, or the service of a notice, has  
20 not ended.

21 **20 New subdivision 9.6.3.4 heading**

22 *before section 279B, insert*

23 **Subdivision 9.6.3.4 Application of Taxation Administration**  
24 **Act**

**21 Application of Taxation Administration Act  
Section 279B, note**

*substitute*

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

**22 New chapter 24**

*insert*

**Chapter 24 Transitional—Planning and  
Development (Lease Variation  
Charge Deferred Payment  
Scheme) Amendment Act 2018**

**496 Meaning of *commencement day*—ch 24**

In this chapter:

*commencement day* means the day the *Planning and Development (Lease Variation Charge Deferred Payment Scheme) Amendment Act 2018*, section 3 commences.

**497 Development applications received before  
commencement day but not assessed etc**

(1) This section applies if the following applies:

- (a) a development application for a chargeable variation of a nominal rent lease is lodged before the commencement day;
- (b) a notice of assessment of the lease variation charge has not been given to the applicant for the development application under section 276D (1) before the commencement day;

- 1 (c) if the development application had been lodged after the  
2 commencement day—section 279AA would have applied.
- 3 (2) For division 9.6.3 (Variation of nominal rent leases), the  
4 development application is taken to have been lodged after the  
5 commencement day.

6 **498 Lease variation charges unpaid before commencement**  
7 **day**

- 8 (1) This section applies if the following applies:
- 9 (a) the applicant for a development application for a chargeable  
10 variation of a nominal rent lease is given a notice of  
11 assessment of the lease variation charge under  
12 section 276D (1) before the commencement day and the charge  
13 is not paid before the commencement day;
- 14 (b) if the development application had been lodged after the  
15 commencement day—section 279AA would have applied.
- 16 (2) The applicant may apply under section 279AA to defer payment of  
17 the lease variation charge as if the development application had  
18 been lodged after the commencement day.

19 **499 Expiry—ch 24**

20 This chapter expires 12 months after the commencement day.

21 *Note* Transitional provisions are kept in the Act for a limited time.  
22 A transitional provision is repealed on its expiry but continues to have  
23 effect after its repeal (see [Legislation Act](#), s 88).

24 **23 Dictionary, new definition of *deferral arrangement***

25 *insert*

26 ***deferral arrangement***, for a lease variation charge, for  
27 division 9.6.3 (Variation of nominal rent leases)—see  
28 section 279AB (2).



1	<b>24</b>	<b>Dictionary, definitions of s 276E chargeable variation and</b>
2		<b>s 277 chargeable variation</b>
3		<i>omit</i>
4		section 276A
5		<i>substitute</i>
6		section 276

## Schedule 1      Other amendments

(see s 3)

### Part 1.1      Building Act 2004

#### [1.1]      Section 69 (4), except note

*substitute*

(4) A regulation may prescribe—

(a) matters that must be considered by the construction occupations registrar in deciding whether a building is fit for occupation and use; and

(b) requirements that must be satisfied before a certificate of occupancy may be issued.

### Part 1.2      Building (General) Regulation 2008

#### [1.2]      Section 35A

*omit*

69 (4)

*substitute*

69 (4) (a)

1 **[1.3] New section 35B**

2 *in division 3.4, insert*

3 **35B Certificates of occupancy—requirements—Act,**  
4 **s 69 (4) (b)**

5 If a deferral arrangement under the *Planning and Development*  
6 *Act 2007*, section 279AC applies in relation to land where the  
7 building work was carried out, the following must be paid to the  
8 commissioner for revenue before a certificate of occupancy is  
9 issued:

- 10 (a) an amount of lease variation charge, and any accrued interest,  
11 under the deferral arrangement;
- 12 (b) any interest or penalty tax under the *Taxation Administration*  
13 *Act 1999* that relates to the amounts mentioned in  
14 paragraph (a).

## Part 1.3 Planning and Development Regulation 2008

### [1.4] Section 170A

*substitute*

#### 170A S 276E chargeable variations—Act, s 276, def s 276E chargeable variation

(1) The following chargeable variations are prescribed:

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

**Example**

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

*Note* An example is part of the regulation, 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).

- (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 (4) 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.

- 1 (c) if a development application relates to the chargeable variation  
2 of only 1 non-residential lease—a chargeable variation of the  
3 lease that—
- 4 (i) increases or limits the number of dwellings permitted on  
5 the land under the lease; or
- 6 (ii) increases, or has the effect of increasing, the maximum  
7 gross floor area of any building or structure permitted for  
8 non-residential use on the land under the lease;
- 9 (d) the consolidation of 2 or more nominal rent leases;
- 10 (e) the subdivision of 1 or more nominal rent leases;
- 11 (f) if 2 or more nominal rent leases are consolidated—a variation  
12 that—
- 13 (i) increases the number of dwellings permitted on the land  
14 under the consolidated lease; or
- 15 (ii) increases, or has the effect of increasing, the maximum  
16 gross floor area of any building or structure permitted for  
17 non-residential use on the land under the consolidated  
18 lease;
- 19 (g) if 1 or more nominal rent leases are subdivided—a variation  
20 that—
- 21 (i) increases the number of dwellings permitted on the land  
22 under the subdivided lease; or
- 23 (ii) increases, or has the effect of increasing, the maximum  
24 gross floor area of any building or structure permitted for  
25 non-residential use on the land under the subdivided  
26 lease;

(h) if the development application relates to a retirement complex—a variation to increase the maximum number of—

(i) self-care units in the complex permitted under the lease;  
or

(ii) care beds in the complex permitted under the lease;

(i) if a nominal rent lease authorises an incorporated association to use the land in the lease for a stated purpose—a variation to remove the reference in the lease to the association in relation to the stated purpose;

**Example**

A lease authorises an incorporated association to use land for office accommodation. The lessee applies for development approval to vary the lease to remove the reference to the association so that the lease may be used for office accommodation by anyone.

(j) a variation to limit the number of non-residential units (however described) permitted on the land under a non-residential lease.

**Example**

A non-residential lease authorises commercial use of the land under the lease but does not limit the number of permitted buildings, units or structures on the land. The lessee proposes to subdivide the land under the *Unit Titles Act 2001* and to develop a warehouse on the land into commercial and retail units. That Act, s 20 (4) does not allow the lease to be subdivided unless the lease states the number of units (however described) permitted on the land. The lessee must vary the lease to limit the number of units permitted on the land before subdividing the land.

*Note* If a chargeable variation is not a s 276E chargeable variation the lease variation charge is worked out under the *Act*, s 277 (see the *Act*, s 276C).

(2) In this section:

***care bed***, in a retirement complex, means a bed used by a person 55 years old or older who requires residential care services under the *Aged Care Act 1997* (Cwlth).

1        ***consolidated lease*** means a lease granted during a consolidation  
2        involving the surrender of 1 or more nominal rent leases.

3        ***incorporated association*** means an association incorporated under  
4        the *Associations Incorporation Act 1991* or a law of another  
5        jurisdiction corresponding, or substantially corresponding, to that  
6        Act.

7        ***non-residential lease*** means a lease other than a residential lease  
8        under the *Act*, section 234.

9        ***retirement complex*** means premises used for—

10        (a) permanent residential accommodation for people 55 years old  
11        or older, in self-care units; and

12        (b) one or more of the following:

13            (i) a hostel;

14            (ii) a nursing home.

15        *Note*        Self-care units that are part of a retirement complex may also be within  
16        the meaning of ‘retirement village’ in the *territory plan* (13 Definitions).

17        ***self-care unit***, in a retirement complex, means a unit for use by a  
18        person 55 years old or older who is not provided, as a condition of  
19        occupancy of the unit, residential care or similar services (excluding  
20        access to facilities or services provided within the complex).

21        **Example—facilities or services provided within the complex**

22        gymnasium, medical centre, swimming pool, therapy room, kiosk facility

23        ***subdivided lease*** means a lease granted during a subdivision  
24        involving the surrender of 1 or more nominal rent leases.

## Part 1.4                      Taxation Administration Act 1999

### [1.5]                      New section 56F (ba)

*insert*

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

*Note*                      An unpaid amount of tax may arise under the *Planning and Development Act 2007*, div 9.6.3 if an amount is deferred under a deferral arrangement or due to a reconsideration, reassessment or review.

### [1.6]                      New section 56H (3) (a) (iv)

*insert*

(iv) for tax payable under the *Planning and Development Act 2007*, division 9.6.3 (Variation of nominal rent leases)—the *Planning and Development Act 2007*, section 279AE in relation to the parcel before the purchase; and

### [1.7]                      Schedule 1, new section 1.2 (l), (m) and (n)

*insert*

(l) under the *Planning and Development Act 2007*,  
section 279AB (1); or

(m) under the *Planning and Development Act 2007*,  
section 279AB (2) and this Act, section 52 in relation to the  
conditions of a deferral arrangement; or

(n) under the *Planning and Development Act 2007*,  
section 279AD (3) and this Act, section 52 in relation to the  
variation of a deferral arrangement.



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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 15 February 2018.

**2 Notification**

Notified under the [Legislation Act](#) on 2018.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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