

Australian Capital Territory

# Planning and Development (Circumstances for, and Amount of, Change of Use Charge Remission-Prohibition of Smoking) Policy Direction 2009 (No 1)

Disallowable instrument DI2009–221

made under the

Planning and Development Regulation 2008 section 177

## EXPLANATORY STATEMENT

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This disallowable instrument is being re-made as a result of its repeal under subsection 428(2) of the *Planning and Development Act 2007* (the Act).

### OVERVIEW

Under the *Planning and Development Regulation 2008*, section 177, the Minister may make a policy direction for section 175(1)(b) to state the circumstances in which the Planning and Land Authority must remit all or part of a change of use charge. The Minister may also make a policy direction for section 175(2(a) for determining the amount of the change of use charge to be remitted for the variation of a lease. This is a policy direction related to these regulations.

### BACKGROUND

The *Smoking (Prohibition in Enclosed Public Places) Act 2003* came into effect on 1 December 2006. In order to assist occupiers of premises to comply with this Act, which prohibits smoking in all enclosed public places, it is intended to make provision for the remission of change of use charge for related lease variations, under the *Planning and Development Regulation 2008*, and through this associated policy direction.

### DETAILS OF THE POLICY DIRECTION

Clause 3 provides for the circumstances where the Planning and Land Authority must remit a change of use charge. There must be an application for a variation of a lease to permit an increase in the gross floor area of a building on the lease that is necessary to permit the construction of facilities to assist occupiers of premises affected by the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, part 2

(Smoking prohibited in enclosed public places). The application to vary the lease must be to increase the gross floor area by not more than 10% of the gross floor area permitted under the lease at the time of the application to vary the lease. The application to vary the lease must be necessitated solely by an application to provide additional facilities because of the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, part 2 (Smoking prohibited in enclosed public places).

Clause 4 sets out the amount of remission of the change of use charge. For the circumstances in clause 3, the Authority must entirely remit the change of use charge.

Section 76 of the *Legislation Act 2001* provides that a statutory instrument may provide that a non-prejudicial provision of the instrument commences retrospectively. A non-prejudicial provision is a provision that does not adversely affect a person's rights or impose liabilities on the person. The instrument does not contain provisions that adversely affect a person's rights or impose liabilities on the person. The instrument therefore commences on 31 March 2008 which is the day of commencement of the *Planning and Development Act 2007*.

## **FINANCIAL IMPLICATIONS**

The ACT Planning and Land Authority has estimated that application of the proposed remission will result in minimal foregone revenue as Section 175(1)(a)(vii) is due to expire on 30 November 2009.