

Australian Capital Territory

Planning and Development (Change of Use Charge—GP Practice Clinics) Policy Direction 2010 (No 1)

Disallowable instrument DI2010-275

made under the

Planning and Development Regulation 2008, Section 177

Explanatory Statement

Overview

The instrument sets out a policy direction pursuant to section 177 of the *Planning and Development Regulation 2008* (the regulation) for determining the circumstances in which the planning and land authority (the authority) must remit 100% of the change of use charge paid for a lease variation required in relation to development for GP Practice Clinics, for the period from 1 July 2010 to 30 June 2014. The instrument is a Disallowable Instrument under s177 (2).

Background

In July 2009, the ACT Government announced a \$12 million package over four years to support and grow our GP Workforce through five separate initiatives.

The GP Development Fund is a four year bi-annual grants pool, totalling \$4 million, for general practices that commit to supporting the attraction, retention and development of the general practice workforce.

The GP Development Fund aims to develop, attract and retain the general practice workforce through:

- Practice infrastructure grants to support and maintain the general practice workforce
- Supporting teaching and learning at all levels in general practice
- Supporting ideas to attract and retain the general practice workforce
- Encouraging innovation in the organisation and provision of primary health care services to the ACT.

A leaseholder, who has GP Development Funding may need to seek a lease variation to include the use of *health facility* or increase *gross floor area* to allow them to deliver the outcomes of their funding proposal. This process is managed through the *Planning and Development Act 2007* (the Act) requires

a formal application and may incur a change of use charge (CUC). Under this policy, payment of the CUC is remitted.

The intent of funding, under the GP Development Fund, is not to use the funding for paying for CUC rather it is for delivery of outcomes in the proposal for funding. The policy direction responds to this.

Authorising law

Section 276 of the Act provides that the authority must not execute a variation of a nominal rent lease unless the lessee has paid the Territory any change of use charge worked out by the authority, less any remission under section 278, plus any increase under section 279. The change of use charge is worked out under s 277, which sets the rate at 75% of the uplift in value.

Section 278 provides for the authority to remit all or part of a change of use charge for a variation of a lease under section 276 as prescribed by regulation. Section 278(2) provides that a regulation may prescribe the amount to be remitted.

Section 175 of the regulation provides for the remission of change of use charges generally. Section 175(1) sets out the circumstances when the authority must remit all or part of a change of use charge for a variation of a lease. A circumstance can be stated in a policy direction (section 175(1)(b)).

The amount of the change of use charge to be remitted is an amount worked out in accordance with a policy direction, if one exists, or, in any other case, an amount the planning and land authority decides is appropriate in the circumstances (section 175(2)).

Section 177 of the regulation provides that the Minister may make a policy direction for section 175(1)(b) or (2)(a).

The policy direction

The policy direction implements the Budget initiative. It states that the authority must remit 100% of the amount of a charge of use charge paid in respect of a variation of a lease if the following conditions are met:

- (1) This policy direction applies to an application for a lease variation:
 - a. on a lease which does not have the permitted use of *health facility*, to solely add the use of *health facility* and no other use; and
 - b. on a lease which has a permitted use of *health facility* (either as part of the application being considered or otherwise);
 - (i) to consolidate land, held under another lease, with the relevant lease; or
 - (ii) to increase the *gross floor area* (GFA); or
 - (iii) both of the above; and

- c. the leaseholder provides evidence, from ACT Health, of full or partial funding for the relevant lease, under the GP Development Fund.
- (2) where an application meets the above (applicable) conditions the planning and land authority shall remit one hundred percent (100%) of the amount of the change of use charge in respect to the variation of the relevant lease at the time the change of use charge is determined.
- (3) for the avoidance of doubt, the planning and land authority must not remit a change of use charge under this policy direction to a lessee in respect of a variation of a lease where the change of use charge in respect of that variation, or part thereof, was paid before 1 July 2010.

The policy direction will have the effect of permitting a refund of the change of use charge at the time the lease variation has been approved and CUC has been determined. This is before the actual variation to the lease is registered.

The instrument will operate retrospectively from 1 July 2010 and continues to 30 June 2014 (unless extended). This recognises the GP Development Program funding cycle and ensures that those funding proposals funded in the last Round in 2013 will have sufficient time to seek a lease variation (if required).

Regulatory impact statement

The *Legislation Act 2001* section 36 states:

(1) A regulatory impact statement need not be prepared for a proposed subordinate law or disallowable instrument (the proposed law) if the proposed law only provides for, or to the extent it only provides for:

- (b) a matter that does not operate to the disadvantage of anyone (other than the Territory or a territory authority or instrumentality) by—
 - (i) adversely affecting the person's rights; or
 - (ii) imposing liabilities on the person;
- (k) an amendment of a fee, charge or tax consistent with announced government policy.

A regulatory impact statement is not required for this instrument for the following reasons:

- The proposed law does not adversely affect any rights and does not impose liabilities, but rather operates to remove an existing liability by providing a 100% remission of the change of use charge in the specified circumstances; and
- The proposed law amends a charge consistent with Government policy announced in the 2010-2011 Budget.