

Australian Capital Territory

Planning and Development (Remission of Lease Variation Charges) Remittance Determination 2011 (No 1)

Disallowable instrument DI2011 - 197

made under the

Planning and Development Act 2007, Section 278F

Explanatory Statement

Overview and commencement

This determination sets out the amounts to be remitted for lease variation charges. The determination is made under s278F of the *Planning and Development Act 2007*.

This determination applies to all lease variation charges for chargeable variations for which a notice of assessment has been given under section 276C in the following financial years:

- 1 July 2011 to 30 June 2012
- 1 July 2012 to 30 June 2013
- 1 July 2013 to 30 June 2014
- 1 July 2014 to 30 June 2015
- 1 July 2015 to 30 June 2016

Section 278F(3) of the Planning and Development Act requires a determination under s278F to be made not less than 1 year before the beginning of the financial year for which the determination will apply. However, this requirement does not apply to this determination. This is because section 278F(6) of the Act provides that subsection 278F(3) does not apply to a determination made within 1 year after the [commencement of s278F].

Background

In summary, a proposed lease variation of a nominal rent lease cannot proceed (be executed) until the relevant lease variation charge (LVC) is paid s276A(1).

Sections 278A to 278F of the Planning and Development Act permit the required LVC to be remitted (ie removed or reduced) in whole or in part by determination (disallowable instrument) in specified circumstances. The requirement to pay the

LVC prior to a lease variation does not apply to charges or portions of charges that are remitted under a determination made under any of the sections 278A to 278F.

This determination is made under s278F of the Planning and Development Act. This determination is a disallowable instrument (s278F(5)). Section 278F permits the Treasurer to determine the amount(s) to be remitted from lease variation charges. The remission amount must be expressed as a percentage of the lease variation charge (s278F(2)). The determination must specify the remission amount for each and every lease variation charge for the financial years covered by the determination (s278F(1)). The Commissioner for Revenue must remit the amount of the LVC that is required to be remitted by this determination (s278F(4)).

There are other circumstances in which no lease variation charge need be paid.

There is no requirement to pay a lease variation charge for lease variations that are not chargeable variations. The s276 definition of chargeable variation lists types of lease variation for which no LVC is payable. This group includes alterations of boundaries between adjoining leases, variations to remove the concessional status of a lease and other variations prescribed in the Regulation.

There is no requirement to pay a lease variation charge prior to the lease variation of a lease that is not a nominal rent lease ie leases for which rent is payable (s276A(1)). The payments required in relation to such lease variations and related steps are set out in *Division 9.6.2 - Variation of rental leases*.

Codification of the LVC commenced on 1 July 2011. In general it is important to adopt appropriate transition arrangements in any change or reform.

The Government agreed to a four year transition period for the residential sector. The remission will commence at 75 per cent in 2011-12, decreasing by 10 per cent in each of the next two years, and decreasing by a further 15 per cent in each of the following two years. After four years, the remission rate will be 25 per cent, as under the previous legislation.

The commercial and industrial sectors will not be subject to transition arrangements, as these sectors are unlikely to be greatly affected by codification, as they have not had access to the low fixed fees seen in the residential sector. The commercial and industrial sectors will continue to be subject to the 75 per cent LVC rate.

The four year transition option will provide sufficient time for adjustment to rectification and codification. It also provides a graduated increase that is unlikely to cause significant distortion in development decisions.

Details of provisions

The determination sets out remission amounts for lease variations:

- (1) to increase the number of dwellings permitted on the land - the development application can be to vary one residential lease to increase the number of dwellings permitted on the land (s276AA(1)(a)) or an application to increase

the number of dwellings when 2 or more leases are consolidated (s276AA(1)(f)(i)) or 1 or more leases are subdivided (s276AA(1)(g)(i)).

(2) to increase the maximum gross floor area on non - residential buildings or structures – the development application can be to vary 1 non residential lease to increase the maximum gross floor area (s.276AA(1)(c)(i)) or an application to increase the gross floor area when 2 or more leases are consolidated (s276AA(1)(f)(ii)) or 1 or more leases is subdivided (s276AA(1)(g)(ii)).

(3) Other chargeable lease variations that are not mentioned in the instrument

Number of dwellings – amount to be remitted

The amount to be remitted is on a sliding scale beginning at 75% of the charge in the financial year ending 30 June 2012 and ending at 25% for the financial year ending 30 June 2016.

Gross floor area – non residential leases - amount to be remitted

The amount to be remitted is 25% of the lease variation charge.

Other chargeable lease variations

The amount to be remitted is 0% of the lease variation charge.

Regulatory impact statement

The *Legislation Act 2001* section 36(1) states in part:

(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 setting out amounts to be remitted for lease variation charges in specified circumstances
- The proposed law amends a charge consistent with Government policy announced in the 2010-2011 Budget.

Retrospectivity

The instrument has retrospective application in that it applies from 1 July 2011 as it needs to be operational from that date. The Government decided that these remissions should apply to all Codified lease variations applications determined after

30 June 2011 i.e. from 1 July 2011 onwards. If the Determination was not retrospective then the remission may not be available to the intended of lease variation applications.

This retrospectivity does not contravene section 76 of the *Legislation Act 2001* because it is non-prejudicial. The effect of the instrument is to reduce a charge that is payable by certain types of LV applications (codified).