

**2011**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development (Lease Variation Charges)  
Amendment Regulation 2011 (No 1)  
SL2011-22**

**EXPLANATORY STATEMENT**

**Presented by  
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and Sustainable Development**

This Explanatory Statement relates to the *Planning and Development (Lease Variation Charges) Amendment Regulation 2011 (No 1)* (the amending regulation).

## **Background**

To provide a context to how the new lease variation charge model works it is helpful to understand the recent changes to the legislation that replaced the *Change of Use* (CUC) model with the new *Lease Variation Charge* (LVC) model.

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) of the *Planning and Development Act 2007*). Previously the charge that would have to be paid was calculated using the CUC formula which established a pre and after value for the variation. This is now done through a codification process for the majority of lease variations i.e. by application of the LVC Determination (Code) made under section 276A..

These changes were brought in through the *Planning and Development (Lease Variation Charges) Amendment Act 2011* (the amending Act) which amended the *Planning and Development Act 2007* (the Act) and the *Planning and Development Regulation 2008* (the regulation). These amendments are effective from 1 July 2011.

The Explanatory Statement for the amending Act details how these changes work and can be accessed at [www.legislation.act.gov.au](http://www.legislation.act.gov.au) . Put simply a lessee of a block that is codified will now be able to look at the LVC Determination on the Legislation Register, or on ACTMAPi, for their specific block and section and establish what the LVC charge is. If the block is not codified then s277 of the Act applies for the calculation of the lease variation charge.

This amending regulation further expands the types of codifiable LVC charges already contained in the Act.

## **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 supplements other legislative reform that delivered on a major Government policy objective announced in the 2009-2010 Budget.

## Outline of Provisions

### **Clause 1 Name of Regulation**

Names the regulation as the *Planning and Development (Lease Variation Charges) Amendment Regulation 2011 (No 1)* (the amending regulation).

### **Clause 2 Commencement**

Provides that the regulation will commence the day after the regulation is notified.

### **Clause 3 Legislation amended**

States that the regulation amends the *Planning and Development Regulation 2008* (the regulation) and the *Unit Titles Act 2001* (UTA).

The majority of the amendments are to the regulation however clause 8 amends that UTA. The purpose and explanation of each amendment are explained at the respective clauses.

### **Clause 4 Division 5.5.1**

#### **New Division 5.5.1 Chargeable variations.**

The clause substitutes the existing Division 5.5.1 with a new Division 5.5.1. In essence the amendments insert a number of new sections in the Division and relocate the existing section 170 to Division 5.5.3. The new sections are made under section 276, s276A (1) (h), s276C (2) (c), s276D (2) (b) and s277 of the Act.

#### **New section 170, Exempt variations – Act, s276, def chargeable variation, par (c)**

Section 170 replaces existing section 170 which is relocated to Division 5.5.3. The new section is made under section 276 of the Act. Section 276 provides definitions for Division 9.6.3 which is about variation of nominal rent leases.

The section prescribes a variation of a holding lease for section 276 of the *Planning and Development Act 2007* (the Act). “Holding lease” is identified in the existing regulation dictionary and provides that a holding is a lease as defined at s7 (7) of the *Districts Act 2002*.

#### **New section 170A, S 276E chargeable variations – Act, s276A (1) def s 276E chargeable variation, par (h)**

This section prescribes other chargeable variations to those already included in the Act and are treated the same way as those in the Act. The types of chargeable variations included in the regulation respond to Government policy initiatives.

The section specifies the following chargeable variations:

- (a) for 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.
- (b) for a nominal rent lease that 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 use
- (c) for a childcare centre – a variation to increase the maximum number of children provided care in the centre permitted under the lease.

**New section 170A (1) (a) & (c)** are types of variations (to the lease) that are not about changing the existing use already allowed by the lease rather it is about increasing the capacity of the use on that lease. This amendment helps support Government policy for example to provide more aged care units and more places in child-care centres.

**New section 170A (1) (b) & (d)** are types of variations that determine how a lease can be used. For example s170A (1) (b) is about a lease that references an incorporated association (use of that lease is restricted to the incorporated association) and a variation to remove the reference to the association so that the lease can be used by anyone for a use that is already provided.

**New section 170A (2)** provides definitions for the section. Specifically definitions are provided for care bed, childcare centre, incorporated association, retirement complex, non-residential lease and self-care units. Where possible the definitions draw on existing definitions for example the definition for *care bed* references the *Aged Care Act 1997*. Use of this type of referencing ensures that there is minimal opportunity for conflicting definitions to apply. This promotes clarity.

**New section 170B, Lease variation charge – working out charge for combination of s276E and s277 chargeable variations – Act, s276C (2) (c)**

This section sets out how the lease variation charge is worked out when there is a combination of section 276E and s277 chargeable variations. The lease variation charge (LVC) is the total of the determined charge for each s276 chargeable variation **and** the charge worked out under s277 for each s277 chargeable variation. Put simply for each type of variation, whether it is codifiable or under s277 (where  $V_1$  and  $V_2$  formula is used), a charge is levied. This allows a lessee to apply for whatever variations they choose in one application and pay one transaction cost.

**New section 170C, Lease variation charge – when charge taken to be worked out for transitional applications – Act, s276D (2) (b)**

This section provides for the proponent or applicant to decide, for an existing development application (which included a lease variation) lodged before the 1 July 2011 and where the CUC had not been finalised, whether they would like the applicable charges for the variation determined under the previous legislation i.e. CUC or under the new LVC model. The applicant needs to give notice, about their decision to opt for the new LVC model to be used, before 1 October 2011.

Section 471 of the Act provides for transitional matters for implementing the new LVC model.

This provision expires on 1 July 2012.

**Clause 5 New section 179**

**Section 179 Meaning of added value – div 5.5.3**

This section is relocated from Div 5.5.1 Added value. Prior to the amendments, by the amending Act there was no definition for *added value*. Because of the amendments made by the amending Act it became important to provide a clear definition for *added value*

(although the definition retains the existing meaning for added value). New section 179 is only used in Div 5.5.3.

There is no substantive change to the provision other than changing what the section applies to. In Div 5.5.1 it applied to the 'part' whereas in Div 5.5.3 it applies to the Division. The section also makes it clear that it is about the variation of a nominal rent lease.

### **Clause 6 Dictionary, note 3**

Inserts terms in note 3 as a consequence of amendments made by this amending regulation. Note 3 now includes chargeable variation (see s276); s276E chargeable variation (see s276A) and s277 chargeable variation (see s276A).

### **Clause 7 Dictionary, definition of *added value***

Substitutes a new definition for ***added value*** as a consequence of amendments made by this amending regulation (see clause 5).

### **Clause 8 Unit Titles Regulation 2001, new division 2.3A**

Inserts new **Division 2.3A Prescribed zones** (and **new section 8A**) in the *Unit Titles Regulation 2001*.

### **Section 8A Unit Title applications – prescribed zones – Act, s20 (8), def *prescribed zone***

This section prescribes 7 Territory Plan zones. Section 276A (1) (b) provides that a variation for a lease that seeks to insert a number of dwellings permitted on the lease where the lease does not prescribe a number is a chargeable variation. That is the lease may say that you can have a 'residential dwelling' but it does not say 'one residential dwelling' permitted. An application to vary a lease to insert a number permitted in the lease is in itself a chargeable variation under section 276 of the Act.

The Territory Plan zones listed cover all residential and industrial (and not commercial) zones.

Under amendments to the Unit Titles Act by the amending Act (refer schedule 1 other amendments, item 1.2) a unit title application cannot be made if the lease does not state how many dwellings are permitted on the lease. Item 1.3 in the amending Act inserted a new definition for *prescribed zone*. The definition defines a *prescribed zone* as a zone identified in the Territory Plan.

The net effect of the above amendments and this regulation ensures that there is no significant change to this rule as it applied under the existing legislation before the amending Act.