

2013

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**PLANNING AND DEVELOPMENT (EXEMPT LEASE VARIATION) AMENDMENT
REGULATION 2013 (No 1)**

Subordinate law 2013-22

EXPLANATORY STATEMENT

Presented by
Mr Simon Corbell MLA
Minister for the Environment and Sustainable Development

EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning and Development (Exempt Lease Variation) Amendment Regulation 2013 (No 1)* (the amending regulation) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the amending regulation and to help inform debate on it. It does not form part of the amending regulation and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the amending regulation. It is not, and is not meant to be, a comprehensive description of the amending regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Terms used

In this explanatory statement the following terms are used:

“the Act” means the *Planning and Development Act 2007*

“the regulation” means the *Planning and Development Regulation 2008*;

“the amending regulation” means the amending regulation that is the subject of this explanatory statement.

Background

Draft Variation DV306 to the Territory Plan commenced on 5 July 2013. DV306 introduced the use of a **secondary residence** in all residential zones. A **secondary residence** may only be developed in association with single dwelling housing and is limited under the Territory Plan to a dwelling of less than 75 square metres. Subdivision to provide separate title to a **secondary residence**, including subdivision under the *Unit Titles Act 2001*, is not permitted. Provision for a **secondary residence** is an affordable housing initiative.

A variation of a Crown lease to permit a **secondary residence** is not required if the purpose clause of the Crown lease is for **residential purposes**. Any number of dwellings may be constructed on a “residential purposes” lease. Under the Territory Plan, a **secondary residence** means a second dwelling on a block. If the purpose clause of a Crown lease permits single dwelling housing only, construction of a **secondary residence** requires a lease variation.

Overview

Section 276 of the Act defines a “chargeable variation”. Lease variation charges payable for lease variations under Division 9.6.3 of the Act apply only to “chargeable variations”. The section 276 definition lists lease variations types that are deemed to not be chargeable variations. These exclusions include variations prescribed in the regulation under s276(c). Currently there is only one variation prescribed, that is, variations to a holding lease (s170 of the regulation).

The amending regulation adds to the existing list of lease variations in the regulation that are excluded from the definition of “chargeable variation”. The amending regulation does this by amending section 170 of the regulation. The amendment adds lease variations that are made for the purpose of authorising the use of the land for a secondary residence. This addition means that such a variation ceases to be a chargeable variation. As a consequence of this no lease variation charge is payable for such variations.

Section 139(g) of the Act requires a valuation report and certificate prepared by an accredited valuer to be submitted with a development application for a chargeable variation of a nominal rent lease. The amending regulation means that this section will no longer apply to variations to authorise a secondary residence because such variations will no longer be chargeable variations.

This amendment will remove lease variations to add a secondary residence from the lease variation charge process. Under the Territory Plan, there is no opportunity to subdivide or unit title a lease which authorises the use of a secondary residence. In practice, it would be unlikely that such a variation would attract a lease variation charge. The removal of assessment of the lease variation charge applicable to such variations would result in no significant loss of revenue to the Government. Therefore, there is no justification to impose the costs and time involved in the lease variation charge assessment process on lessees seeking such variations.

Regulatory Impact Statement

Section 36(1)(b) of the *Legislation Act 2001* states that a regulatory impact statement is not required for matters that do not adversely affect people’s rights or impose liabilities. This amending regulation is a regulation of this type and as such a regulatory impact statement has not been prepared. The amending regulation simply removes the liability for payment of a lease variation charge by the lessee for a variation of a Crown lease to add the use of ***secondary residence***.

Outline of Provisions

Clause 1 Name of the regulation

Clause 1 names the regulation as the *Planning and Development (Exempt Lease Variation) Amendment Regulation 2013 (No 1)*.

Clause 2 Commencement

Clause 2 states that the amending regulation commences on the day after its notification.

Clause 3 Legislation amended

Clause 3 notes that the amending regulation amends the *Planning and Development Regulation 2008*.

Clause 4 Section 170

Clause 4 substitutes a new section 170.

This amendment has the effect of excluding lease variations to authorise the use of a **secondary residence** from the definition of **chargeable variation** in section 276 of the Act.

This means that adding the use **secondary residence** to the purpose clause of a Crown lease will not attract a lease variation charge.

This amendment also means that s139(g) of the Act (requiring the preparation and lodgement of a valuation report and certificate) will no longer apply to development applications for variations to authorise a secondary residence because such variations will no longer be chargeable variations.