

2016

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development (Lease Variation Charge Exemption) Amendment
Regulation 2016 (No 1)
SL2016-6**

EXPLANATORY STATEMENT

**Presented by
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Minister for Planning and Land Management**

EXPLANATORY STATEMENT

This explanatory statement relates to the Planning and Development (Lease Variation Charge Exemption) Amendment Regulation 2016 (No 1) as presented to the ACT 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 is a task for the courts.

Background

The University of Canberra (the University) opened in 1968 as the Canberra College of Advanced Education, the first centre for adult education (CAE) in Australia. In 1990, the University was re-created as a university as a part of national educational reforms. Today the University is one of the major tertiary education establishments within the Australian Capital Territory (ACT) and Australia.

As a highly competitive market, elite universities around Australia and the world provide a range of high quality services and facilities to attract the best students and staff. These facilities include not only educational and residential accommodation but also industry and convenient commercial services. Recognising the shift in the types of services and facilities contemporary universities are providing staff, students and the wider community, the University has prepared a campus master plan which sets out the future vision for the campus.

The University is a unique case in terms of land use planning as it is one of the few lessees in the ACT to have its own Act: the *University of Canberra Act 1989* (the UC Act). The UC Act sets out the powers and functions of the University. Due to the University's importance to Canberra, the UC Act requires involvement of the ACT Government with respect to certain functions, such as appointment to the University Council. As such, the ACT Government has a relatively large degree of control over the University when compared to almost all other development within the ACT.

However, *Planning and Development Act 2007* (the Act) continues to apply to the University with the University required to seek development approval for development proposals contemplated by the campus master plan and permitted by the Territory Plan.

Overview

Developments undertaken by the University of Canberra require a development application (DA) under the Act. Some developments allowed by the territory plan may not be allowed by the lease. In these circumstances, the lease would need to be varied if the lessee wants to seek approval to undertake the development. A lease variation is "development" for the purposes of the Act (s7 (1) (f)) meaning a development application (DA) for development approval is required unless exempt from requiring approval under s133 of the Act (and s20 of the *Planning and*

Development Regulation 2008 (the regulation)). Under s276B of the Act, the authority must not execute a chargeable variation of a nominal rent lease unless the lessee has paid the Territory the Lease Variation Charge (LVC) for the variation. If the lease variation is for approval of a s277 chargeable variation of a nominal rent lease, s 139(2)(h) of the Act requires that a DA for such a variation must be accompanied by a valuation report prepared by an accredited valuer that works out the amounts represented by V_1 and V_2 as defined in s 277 of the Act.

The only exemptions to LVC currently relate to boundary realignments, a variation where the only effect of the variation is to remove the concessional status of the lease, variation of a holding lease and secondary residences. Section 276 of the Act provides, amongst other things, that a variation of a lease can be excluded from being a chargeable variation if it is prescribed by regulation (s276(c)) and section 170 of the regulation prescribes -

- (a) a variation of a holding lease; and
- (b) a variation to authorise the use of the land under the lease for a secondary residence.

The amending regulation gives effect to the Government's policy position as set out in the Agreement of Strategic Intent dated 4 March 2015. In that Agreement the Government indicated that "...it is not seeking to impose a tax or other value capture mechanism in relation to the Agreed initiatives." Lease variation charge is a mechanism to capture value uplift when a lease variation that delivers increased rights is approved.

Further, under the Financial Management Act 2001 the Treasurer can exercise a power under section 131 to waive any determined LVC in full or part. The amending regulation negates the need to exercise this power.

However, because variation of a perpetual Crown lease held by the University of Canberra is not exempt from the definition of a "chargeable variation" under section 276 of the Act, the planning and land authority (the authority) is required to go through the process of assessing and determining the LVC.

The amending regulation inserts a 3rd type of lease variation in section 170 – a variation of a perpetual Crown lease held by the University of Canberra. This means that a Development Application to vary the University's perpetual Crown lease does not need to be accompanied by a valuation report as required by s 139(2)(h) of the Act and the authority does not have to go through the process of assessing and determining the LVC.

The amending regulation therefore provides many benefits – for the Government, because the authority does not have to go through an administrative process for an outcome that would result in no LVC being paid, and for the University, which benefits from savings in valuation expenses and a lease variation being processed more efficiently.

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.

In this case, a regulatory impact statement is not required. This is because the regulation does not adversely affect any rights and does not impose liabilities. The regulation instead provides the advantage of reducing the need to go through an administrative process where the outcome would be the same as it would be without the regulation. The regulation also operates to the benefit of the community by negating the need to do an administrative process for no benefit. Resources can instead be directed to necessary projects.

Outline of Provisions

Clause 1 Name of regulation

This clause names the amending regulation as the *Planning and Development (Lease Variation Charge Exemption) Amendment Regulation 2016* (No 1).

Clause 2 Commencement

This clause states that the amending regulation commences on the day after its notification.

Clause 3 Legislation amended

This clause notes that the amending regulation amends the *Planning and Development Regulation 2008*.

Clause 4 New section 170(c)

This clause inserts a new section 170(c) in section 170 which provides that a variation of a perpetual Crown lease held by the University of Canberra is exempt from the definition of a chargeable variation under section 276 of the Act.

This means that the authority does not have to go through the process of assessing and determining the LVC when the University of Canberra successfully applies for approval of a development proposal that involves a lease variation.

The same LVC outcome is achieved by the exemption as without the exemption. The benefit to the community is that the exemption means resources can instead be used productively elsewhere.