

**2016**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development (Lease Variation Charge Exemption—Childcare Centres)  
Amendment Regulation 2016 (No 1)**

**SL2016-7**

**EXPLANATORY STATEMENT**

**Presented by  
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## EXPLANATORY STATEMENT

This explanatory statement relates to the Planning and Development (Lease Variation Charge Exemption—Childcare Centres) 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

Under the *Planning and Development Act 2007* (the Act) a lease variation charge (LVC) is payable on the increased value of a lease for a block of land arising from a change in the lease conditions granted. It is determined as part of the development application process.

The Act provides that some lease variations do not require payment of LVC (see s276) and that the LVC can be remitted by the ACT Treasurer (see s 278, 278A –F). Section 170 of the regulation also specifies types of leases that are exempt from LVC.

It has been Government policy since 2011 to provide for 100% remission of the LVC associated with an application to vary a lease to include child care services (see 2011-12 Budget Paper no.3 page 47). This initiative was introduced to provide support for redevelopments involving the provision of child care places with the aim of increasing the number of places available in the ACT. In 2011, a disallowable instrument (DI2011-319) provided that a lease variation application to include child care services was eligible for 100% remission of the LVC. In 2014, a second DI (DI 2014-97) extended this remission to March 2016 as part of a two year Government stimulus package for the ACT. See:

[http://www.planning.act.gov.au/topics/current\\_projects/change/act\\_government\\_stimulus\\_package\\_2014](http://www.planning.act.gov.au/topics/current_projects/change/act_government_stimulus_package_2014)

In December 2015, the Government decided that the remission for child care services should be retained.

### Overview

The amending regulation continues the government policy to remit 100% of the LVC associated with an application to vary a lease to include child care services but in a more efficient manner by rather exempting it from LVC under the Act.

Section 276 of the Act provides that certain nominal rent lease variations are exempt from LVC. It also provides that a regulation can prescribe a variation that is exempt from LVC. The regulation already lists a number of variations that are exempt (see s170).

The amending regulation seeks to include a variation of a lease to include child care services as a lease type that is exempt from the LVC provisions in the Act. It inserts a new section 170(d) in section 170 of the regulation which provides that a variation of a lease to include a child care centre is exempt from the definition of a chargeable variation under section 276 of the Act.

Unlike with a 100% remission, an exemption means that the proponent and the authority do not need to go through the administrative steps to arrive at an outcome where the assessed lease variation charge is not required to be paid. In other words, prescribing an exemption by regulation provides the same result as a 100% remission but has the added advantage of reducing red tape as well as costs for proponents and the authority.

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 proponents, who benefit from savings in valuation expenses and a lease variation being processed more efficiently. The amending regulation also continues the benefits of promoting additional child care facilities 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.

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—Childcare Centres) 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 (d)**

This clause inserts a new section 170(d) in section 170 which provides that a variation of a lease for a child care centre is exempt from the definition of a chargeable variation under section 276 of the Act. This means that a lease variation charge is not payable for such variations.

New s170(d) states that a lease variation charge will not be payable for a lease variation if the only effect of the variation is to:

1. authorise the use of the land for a childcare centre; or
2. both authorise the use of the land for a child care centre and limit the maximum number of children provide care in the centre; or
3. increase the maximum number of children provided care under the lease; or
4. increase the gross floor area of any building or structure permitted for use as a child care centre on the land under the lease.

## **Clause 5 New section 170(2)**

This clause inserts the meaning of **childcare centre** in section 170 because of the addition of section 170(d) by clause 4 of the amending regulation.

## **Clause 6 Section 170A (1) (c)**

This clause is a consequential amendment. Section 170A (1)(c) prescribes for s276A of the Act that a lease variation to increase the maximum number of children provided care in a centre is a section 276E chargeable variation. This is no longer the case as a consequence of the insertion of new section 170(d) by clause 4 of the amending regulation. Clause 6 therefore omits section 170A (1)(c).

## **Clause 7 Section 170A (2), definition of *childcare centre***

This clause is a consequential amendment. The definition of **childcare centre** is no longer required in section 170A because of the omission of section 170A (1)(c) from the regulation by clause 6 of the amending regulation.