

2018

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

**Planning and Development
(Lease Variation Charge Deferred Payment Scheme)
Amendment Bill 2018**

EXPLANATORY STATEMENT

**Presented By
Andrew Barr MLA
Treasurer**

PLANNING AND DEVELOPMENT (LEASE VARIATION CHARGE DEFERRED PAYMENT SCHEME) AMENDMENT BILL 2018

Summary

The Planning and Development (Lease Variation Charge Deferred Payment Scheme) Amendment Bill 2018 amends the:

- *Planning and Development Act 2007* (Planning Act);
- *Planning and Development Regulation 2008* (Planning Regulations);
- *Taxation Administration Act 1999* (Tax Administration Act);
- *Building Act 2004* (Building Act); and
- *Building (General) Regulation 2008* (Building Regulations).

The Bill establishes the legislative framework for the implementation of a deferred payment scheme for the Lease Variation Charge (LVC). In addition, the Bill makes minor changes to simplify and improve the administration of LVC.

Overview

The LVC is administered by the Environmental Planning and Sustainable Development Directorate (EPSDD), the ACT Revenue Office (ACTRO) and Access Canberra under inter-related provisions contained in the Planning Act and the Tax Administration Act.

Deferred payment scheme – Planning Act, Tax Administration Act, Building Act and Building Regulations

A lessee must pay the LVC before a nominal rent lease is varied. Under the deferred payment scheme, lessees with an LVC above a monetary threshold will have the option of deferring the payment of LVC to a later date, after the lease is varied. In this way, lessees that qualify for the scheme can elect to pay LVC nearer the end of a project to match development cashflows.

Lessees of the scheme must enter into a deferral arrangement with the Commissioner of Revenue. The arrangement will set out the terms of payment and a requirement that the LVC and interest, at a rate determined by the Treasurer, must be paid on the earlier of:

- The issuance of a certificate of occupancy for the building work for a development; or
- The expiration of a four year period that commences from the date of the lease variation.

The LVC is a tax under the TAA, and interest and penalty tax may accrue if there is a default in payment by specified timeframes. The LVC payable will also be secured by a first charge on the land the subject of the lease variation. If required, the Commissioner may exercise powers under the TAA to sell the land to recover the debt due to the Territory.

The Bill also makes provision for the more operational aspects of the scheme such as the inclusion of deferral arrangements in the planning and land authority register, the application process for the deferral arrangement, how changes to the deferred amount will be dealt with, and the certification of LVC amounts outstanding in respect of a parcel of land. The monetary threshold and the interest rate applicable on amounts payable under the scheme will be described by disallowable instrument.

Minor LVC changes – Planning Act and Planning Regulations

The Bill makes minor, administrative changes to the LVC regime to improve clarity and readability of the Planning Act by moving the definition for variations that relate to codified LVC into regulations; by establishing a role for the Planning Minister for codified LVC determinations to enable consideration of planning outcomes; by consolidating the heads of power for specific-purpose remissions into a single head of power; removing the provision stating the Treasurer may issue guidelines regarding how lease variation charges must be determined; and inserting a head of power for the Minister for Planning to prescribe circumstances where a lease variation development application is to be lodged along with other documents or information, such as a development application for a building design and siting.

Human rights

This Bill does not have human rights implications.

Commencement

The amendments will commence on the day after the notification day.

**Details of the Planning and Development
(Lease Variation Charge Deferred Payment Scheme) Amendment Bill 2018**

Clause 1 Name of Act

This clause provides that the name of the Act is the *Planning and Development (Lease Variation Charge Deferred Payment Scheme) Amendment Act 2018*.

Clause 2 Commencement

This clause provides that the Act commences on the day after it is notified.

Clause 3 Legislation amended

This clause provides that the Act amends the *Planning and Development Act 2007* (Planning Act) and other legislation described in Schedule 1.

Clause 4 Legislation repealed

This clause provides for the repeal of Disallowable Instruments for remission of lease variation charges, namely DI2011-318 (Community Purpose – Housing Assistance), DI2016-260 (Environmental Remediation), and DI2016-28 (Economic Stimulus and Sustainability), as a consequence of the amendment in this Act to sections 278 to 278F of the Planning Act.

**Clause 5 Contents of public register
Section 28 (1) (e)**

This clause amends section 28 (1) (e) to remove the reference to section 278E as section 278E will be replaced with a new section 278 for remission of lease variation charges.

Clause 6 New section 28 (1) (ea)

This clause inserts a new section 28 (1) (ea) that the public register of the planning and land authority must contain the date a deferral arrangement is entered into and the amount of the lease variation charge deferred.

**Clause 7 Form of development applications
New section 139 (2) (ia)**

This clause inserts a new section 139 (2) (ia) that allows the Minister for Planning to specify certain applications for approval of a chargeable variation of a nominal rent lease be accompanied by any information or document prescribed by regulation.

Clause 8 New subdivision 9.6.3.1 heading

This clause inserts a new subdivision 9.6.3.1 heading for Definitions for division 9.6.3.

Clause 9 **Definitions—div 9.6.3**
Section 276, new definition of *deferral arrangement*

This clause inserts in section 276 a new definition for a lease variation charge *deferral arrangement* that is described in section 279AB (2).

Clause 10 **Section 276, definitions of *s 276E chargeable variation* and *s 277 chargeable variation***

The definitions in section 276 for *s 276E chargeable variation* and *s 277 chargeable variation* are substituted with a definition that describes a section 276E chargeable variation to mean a variation that is prescribed by regulation and the definition for *s 277 chargeable variation* which is the same as the definition under section 276A.

Clause 11 **Meaning of *s 276E chargeable variation* and *s 277 chargeable variation***
—div 9.6.3
Section 276A

This clause omits section 276A which defines a *s 276E chargeable variation* and a *s 277 chargeable variation*.

Clause 12 **New subdivision 9.6.3.2 heading**

This clause inserts a new subdivision 9.6.3.2 heading for Chargeable variations.

Clause 13 **Chargeable variation of nominal rent lease—lease chargeable variation**
Section 276B (1), except note

This clause substitutes section 276B (1) for a section that provides that the planning and land authority must not execute a chargeable variation of a nominal rent lease unless the lease variation charge has been paid to the Territory, or if a deferral arrangement in relation to the lease variation charge has been entered into.

Clause 14 **Section 276B (3)**

This clause substitutes section 276B (3) for a section that provides that the payment of the lease variation charge, or the entering into of a deferral arrangement does not affect a person's right to apply for a reconsideration of lease variation charge under section 277C.

Clause 15 **Lease variation charges—*s 276E chargeable variations***
Section 276E (1)

This clause amends section 276E (1) to clarify that the Minister for Planning plays a role in the determination of a lease variation charge.

Clause 16 Section 276E (3) (d) and (6)

This clause omits sections 276E (3) (d) and 276E (6) that refer to guidelines approved under section 276F as a consequence of the amendment in this Act to omit section 276F.

**Clause 17 Lease variation charges—guidelines for LVC determination
Section 276F**

This clause omits section 276F as it has not been used and no guidelines have been issued. Any future guidelines for determining and preparing lease variation charges may be provided for under section 276E.

Clause 18 Sections 278 to 278F

Sections 278, 278A, 278B, 278C, 278D, 278E and 278F are replaced by a new section 278 that amalgamates the remission provisions under one section. Specific purpose remissions will continue to be determined by disallowable instrument. The Minister for Planning may determine which circumstances will attract an LVC remission, with the Treasurer to determine the amount of the remission.

Clause 19 New subdivision 9.6.3.3

Clause 19 inserts new subdivision 9.6.3.3 Deferring lease variation charges, comprised of new sections 279AA, 279AB, 279AC, 279AD and 279AE.

New section 279AA applies where the applicant for a development application for a chargeable variation of nominal rent lease is assessed for a lease variation charge, the lease variation charge is at least the monetary threshold amount determined by the Treasurer in a disallowable instrument, and the applicant satisfies any other criteria determined by the Treasurer.

Under these circumstances, an applicant may apply to the Commissioner for Revenue for a deferral of the payment of the lease variation charge. In doing so, the applicant must provide the Commissioner with any information the Commissioner considers necessary. If the applicant for the development application is not the lessee, the lessee may apply for a deferral. Irrespective of who applies, the lessee must sign the deferral application.

Under **new section 279AB** the Commissioner must approve an application if satisfied that the application is given a notice of assessment of lease variation charge, the lease variation charge is at least the amount determined by the Treasurer and the applicant satisfies any other criteria determined by the Treasurer. The approval is subject to the applicant entering into an arrangement with the Commissioner about the payment of the deferred lease variation charge. If the applicant for the development application is not the lessee, the lessee may enter into the deferral arrangement. Irrespective of who enters into the deferral arrangement, the lessee must sign the deferral arrangement.

New section 279AC sets out the conditions of a deferral arrangement. These include the requirement to pay the amount of the lease variation charge and any interest that may accrue to the Commissioner for Revenue no later than the earlier of the following trigger dates or events:

- (i) If stated in the deferral arrangement, the date a certificate of occupancy is issued for part of the building work for the development; or
- (ii) The date the certificate of occupancy is issued for all of the building work for the development; or
- (iii) Four years from the date of the lease variation.

An example of the payment being triggered under (i) is where a certificate of occupancy is issued for the completion of building works on building but there is another certificate of occupancy still to be issued for the building of a number of utility sheds on the same parcel of land. In that situation, the deferral arrangement may state that the payment of the deferred lease variation charge and any interest is payable when the first certificate of occupancy is issued on the completion of the building.

In addition to the stated conditions of payment, the Treasurer may determine (by way of a disallowable instrument) other conditions for a deferral arrangement, including the rate of interest charged on the amounts payable under the arrangement.

New section 279AC (4) provides that the conditions that the Commissioner for Revenue may determine for a deferral arrangement under section 52 of the *Taxation Administration Act 1999* (Tax Administration Act) must not be inconsistent with the conditions of new section 279AC.

New section 279AD applies where there is a change in the amount of the lease variation charge deferred under a deferral arrangement. If the lease variation charge is decreased, the deferral arrangement applies to the decreased amount however if the charge is increased, the arrangement applies to the increased amount unless the applicant (or lessee) applies and the Commissioner for Revenue agrees, to vary the conditions of the deferral arrangement.

New section 279AE applies if there is a charge on land under section 56H of the Tax Administration Act in relation to a lease variation charge. A person may apply to the Commissioner for Revenue for a certificate of the amount of the lease variation charge that remains unpaid and any interest and penalty tax under division 9.6.3, a deferral arrangement or the Tax Administration Act.

The certificate is conclusive proof for an honest buyer for value of the matters certified. Further the lease variation charge and other amounts payable are taken to be immediately payable even though any necessary time after a date or event, or the service of a notice, has not lapsed.

Clause 20 New subdivision 9.6.3.4 heading

This clause inserts a new subdivision 9.6.3.1 heading for Application of Taxation Administration Act.

**Clause 21 Application of Taxation Administration Act
Section 279B, note**

This clause substitutes the Note to section 279B to provide that the planning and land authority must not execute a variation of a nominal rent lease unless the lessee has paid or deferred the lease variation charge.

Clause 22 New chapter 24

This clause inserts a new chapter to make provision for transitional arrangements for the lease variation charge deferred payment scheme.

New section 496 defines *commencement day* for the purposes of the transitional provisions.

Under new sections 497 and 498, lease holders with development applications for a chargeable variation of a nominal rent lease which have either not been assessed or paid before the commencement day, can apply to defer payment of LVC as if the development application had been lodged after commencement day.

New section 499 provides that the transitional provisions expire 12 months after the commencement day.

Clause 23 Dictionary, new definition of *deferral arrangement*

This clause inserts a definition for *deferral arrangement* in the Dictionary to the Planning Act.

Clause 24 Dictionary, definitions of *s 276E chargeable variation* and *s 277 chargeable variation*

This clause omits the references to section 276A from the Dictionary meanings of *s 276E chargeable variation* and *s 277 chargeable variation* and replaces them with a reference to section 276.

Schedule 1 Other amendments

Part 1.1 Building Act 2004

Clause [1.1] Section 69 (4), except note

This clause substitutes section 69 (4) with a section that provides for the prescription by regulation of matters that must be considered by the construction occupations registrar in deciding whether a building is fit for occupation and use, and requirements that must be

satisfied before a certificate of occupancy may be issued. This is to provide for a power to refuse the issue of a certificate of occupancy if there is an outstanding LVC debt in relation to the parcel of land.

Part 1.2 Building (General) Regulation 2008

Clause [1.2] Section 35A

This clause omits the references to section 69 (4) in section 35A and replaces it with references to section 69 (4) (a).

Clause [1.3] New section 35B

This clause inserts new section 35B that relates to section 69 (4) (b) of the *Building Act 2004*, requirements that must be satisfied before a certificate of occupancy may be issued. The new section 35B provides that if a deferral arrangement under section 279AB of the Planning Act applies in relation to land where building work (the subject of a lease variation charge) was carried out, the amounts payable in respect of the deferral arrangement must be paid to the Commissioner for Revenue before a certificate of occupancy is issued.

Part 1.3 Planning and Development Regulation 2008

Clause [1.4] Section 170A

This clause substitutes in the place of section 170A another section that incorporates the definition of *s 276E chargeable variation* from the Planning Act. In this way, the definition of *s 276E chargeable variation* is prescribed in the one place under the Planning and Development Regulation 2008.

Part 1.4 Taxation Administration Act 1999

Clause [1.5] New section 56F (ba)

This clause inserts a new section 56F (ba) so that division 7.3 of the Tax Administration Act (for tax in arrears - sale of land) applies to the chargeable variation of nominal rent leases under division 9.6.3 of the Planning Act.

An unpaid amount of lease variation charge under a deferral arrangement or an amount unpaid due to a reconsideration, reassessment or review, is a tax payable to the Territory. Under section 56H a tax payable in relation to a parcel of land is a charge on the interest held by the owner of that parcel of land and has priority over any other interests in relation to that parcel.

Clause [1.6] New section 56H (3) (a) (iv)

This clause inserts new section 56H (3) (a) (iv) and provides that the charge does not have effect against an honest purchaser of the parcel of land if the purchaser had obtained a

certificate under new section 279AE of the Planning Act before the purchase, and at the time of purchase, the purchaser did not have notice of liability under the charge.

Clause [1.7] Schedule 1, new section 1.2 (l), (m) and (n)

This clause inserts new clauses under schedule 1 of the Tax Administration Act which provide objection and review rights to persons dissatisfied with a decision made by the Commissioner of Revenue under new sections 279AB (1), 279 AB (2) and 279AD (3) of the Planning Act that relate to deferral arrangements and the approval of deferral arrangements for payment of the lease variation charge.