

# Planning and Development (Remission of Lease Variation Charges) Determination 2018 (No 1)

Disallowable instrument DI2018–94

made under the

*Planning and Development Act 2007, s 278 (Remission of lease variation charges)*

## EXPLANATORY STATEMENT

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### 1. TERMS

In this explanatory statement:

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

“the regulation” means the Planning and Development Regulation 2008.

“LVC” means lease variation charge.

“s 276E chargeable variation” is defined in s 276 of the Act as meaning a chargeable variation prescribed by regulation. These are the chargeable lease variations that are able to be codified under the LVC Determination, DI2017-208 Planning and Development (Lease Variation Charges) Determination 2017 (No 2). A chargeable lease variation that is not a s 276E chargeable variation or is not covered by the LVC Determination is a s 277 chargeable variation.

### 2. BACKGROUND

The LVC is charged when the lessee seeks to vary their lease and this is approved. A variation of a lease is a “development” for the purposes of the Act (s 7 (1) (f)) meaning a development application (DA) for development approval is required unless exempt from requiring approval under s 133 of the Act (and s 20 of the regulation).

Section 278 of the Act permits the required LVC to be remitted (or reduced) in whole or in part by a disallowable instrument. It provides that the Minister for Planning and Land Management may determine circumstances in which an amount of the charge must be remitted. If the Minister makes a determination, the Treasurer must determine an amount to be remitted for each LVC to which the determined circumstances apply. The Commissioner for Revenue must then remit the amount determined.

Only the amount remaining after the remission needs to be paid (or deferred) before the lease variation can take effect and be registered (see s276B (1) of the Act). The amount of the

remission must be expressed as a percentage of the LVC (s 278 (3)), and appears as a line item in the notice of assessment given under s 276D.

### **3. REGULATORY IMPACT STATEMENT**

The *Legislation Act 2001* section 36 states:

36. (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 determination does not adversely affect any rights and does not impose liabilities.

Instead, the instrument operates to a lessee's advantage by reducing the LVC in specified circumstances. In addition, the disallowable instrument has the end effect of amending a charge consistent with government policy.

### **4. SECTIONS OF THE DETERMINATION IN MORE DETAIL**

#### **Section 1 Name of Instrument**

Section 1 names the determination as the Planning and Development (Remission of Lease Variation Charges) Determination 2018 (No 1). The section also makes reference to terms used in the instrument and provides that the terms have the same meaning as they have in the Act.

#### **Section 2 Commencement**

Section 2 provides that the instrument commences on the day after its notification day.

#### **Section 3 Remission of lease variation charges—s 276E chargeable variation to increase number of dwellings—s 278 (1) and (2)**

The section sets out remission amounts for certain lease variations to increase the number of dwellings permitted on the land.

It applies only to a section 276E chargeable variation that is prescribed in regulation at s 170A(1)(a); s 170A(1)(c)(i); s 170A(1)(f)(i); or s 170A(1)(g)(i) where the lease variation charge has been codified. These sections are lease variation types that increase the number of dwellings on lease, or a newly consolidated or subdivided lease.

Sub-section (2) provides that the percentage amount to be remitted from the codified fee is 25% of the fee. The remission amount remains unchanged from previous amounts.

#### **Section 4 Remission of lease variation charges—s 276E chargeable variation to increase maximum gross floor area of any non-residential building or structure—s 278 (1) and (2)**

This section sets out remission amounts for certain lease variations to increase the maximum gross floor area of any non-residential building or structure. It applies only to a s 276E chargeable variation that is prescribed in regulation at s 170A(1)(c)(ii); s 170A(1)(f)(ii); or s 170A(1)(g)(ii) where the lease variation charge has been codified.

These sections are lease variation types that increase or have the effect of increasing, the maximum gross floor area of any building or structure permitted for non-residential use on the land under the lease.

Sub-section (2) provides that the percentage amount to be remitted from the codified fee is 25% of the fee. The remission amount remains unchanged from previous amounts.

The remission also applies to items 9 and 10 in Schedule 1 of the codified LVC amounts (variations to increase maximum gross floor area of a club holding a club licence under the Liquor Act 2010 and to increase the maximum number of self-care units in a retirement complex).

#### **Section 5 Remission of lease variation charges – all other chargeable variations—s 278 (1) and (2)**

Section 5 applies to a chargeable variation other than those mentioned in sections 3 and 4 of this instrument.

The codified schedule of LVC fees under DI2017-208 contains 3 schedules of codified fees. Remissions are not available on all types of codified fees.

Sub-section (2) provides that for all other chargeable variations, not mentioned in sections 3 and 4, the percentage amount to be remitted is zero. All other lease variations covered by DI2017-208, must pay the full amount of the charge for an approved lease variation.