

AUSTRALIAN CAPITAL TERRITORY

LAND (PLANNING AND ENVIRONMENT) ACT 1991

LAND (PLANNING AND ENVIRONMENT) LAND RENT POLICY
DIRECTION 2003

DISALLOWABLE INSTRUMENT DI2003-221

EXPLANATORY STATEMENT

This disallowable instrument is being redetermined as a result of the *Planning and Land (Consequential Amendments) Act 2002* which transfers certain powers from the Minister/Executive to the Planning and Land Authority .

The amendments to the *Land (Planning and Environment) Act 1991* (the Act) in response to the Stein Inquiry, include a provision for the pay out of land rent.

Section 186 provides for rental lessees to 'pay out' their rental commitment on their rental leases for an amount determined by the Planning and Land Authority with reference to any policy direction made by a disallowable instrument in exchange for a lease of nominal rent.

Section 186 states that a lessee shall not pay out their land rent unless their lease is in a prescribed clause of leases. Regulation 26 of the *Land (Planning and Environment) Regulations* (the Regulations) describes the applicable classes of leases as follows:

- (a) leases granted for full market value payable as rent;
- (b) leases granted, for rural purposes or purposes that include rural purposes, for a period of not less than 21 years but not more than 50 years;
- (c) leases granted for payment of an amount that is less than market value of the lease.

The instrument sets out the circumstances if which a lessee, (other than a concessional or community use lessee where specific requirements apply) can pay out their land rent. The criteria that determine the amount they would have to pay depending on whether they apply to payout their land rent prior to the date of the building completion covenant in their crown lease, or after that date.

The instrument also provides a mechanism where a lessee can approach the Planning and Land Authority and seek an extension of time to pay out his/her land rent on the grounds of personal hardship. This only applies to the case

where an applicant is intending to pay out their land rent prior to the date of the building completion covenant in their crown lease.

The general conditions to pay out of land rent as described in clauses 1-3 of the instrument do not apply to concessional and community leases.

A concessional lease is defined in regulation 22 of the Regulations as:

- (a) a lease granted for a consideration less than the full market value of the lease, whether any such consideration was paid as a lump sum for the grant or is payable under the lease as rent, and in relation to which neither of the following payments have been made in relation to the Territory;
- (i) a capital sum or sums on respect of its grant equal to the market value of the lease at the time of the payment, or at the time of the last such payment, as the case may be;
 - (ii) a capital sum or sums to reduce the rent payable under the lease to a nominal rent under section 186 of the Act.

Except a further lease, a consolidated lease, a subdivided lease, a regranted lease, or a lease over that land that, immediately prior to the grant of the lease, was owned, controlled by the Commissioner of Housing under the *Housing Assistance Act 1987*;

- (b) a consolidated or subdivided concessional lease;
- (c) a further concessional lease;
- (d) a regranted concessional lease.

A lessee of a concessional lease may only pay out their land rent by paying an amount equal to the current site value of the lease. The “current site value” is defined as the site value of the leased land set by the Planning and Land Authority at the time the lessee applies to pay out the land rent.

The other restriction placed a lessee of a concessional lease who wishes to pay out of land rent is that the lease cannot be a recently commenced lease within the meaning of regulation 23 of the Regulations.

Regulation 23 defines “a recently commenced lease” as:

- (a) a lease (other than a further lease, a consolidated lease, a subdivided lease or a regranted lease) the term of which commenced 5 years or less before the date of the application for variation;
- (b) a consolidated or subdivided recently commenced lease;
- (c) a further recently commenced lease;
- (d) a recently regranted lease.

Clause 5 of the instrument prohibits a lease granted to a community organisation from paying out their land rent. Even though a community use lease is not in the prescribed classes of lease that can pay out their land rent, the inclusion of this statement reinforces the current policy that community use leases are to be rental leases only.