

**2011**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**Planning and Development (Lease Variation Charges)  
Amendment Bill 2011**

**EXPLANATORY STATEMENT**

**Presented by  
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Treasurer**

## Terms used in this Explanatory Statement

- “the Act” means the *Planning and Development Act 2007*;
- “the Regulation” means the *Planning and Development Regulation 2008*;
- “the bill” means the Planning and Development (Lease Variation Charges) Amendment Bill 2011 that is the subject of this explanatory statement and which amends both the Act and the Regulation;
- “the amendment Act” is a reference to the amendment Act which this Bill will become if passed. If passed this bill will become the *Planning and Development (Lease Variation Charges) Amendment Act 2011*;
- “Administration Act” means the *Taxation Administration Act 1999*
- “Commissioner” means the Commissioner for Australian Capital Territory Revenue appointed by the Minister under section 73 of the *Taxation Administration Act 1999* (Administration Act);
- “clause ...” or similar is a reference to a section of the bill;
- “section ...” or “existing section ...” or similar is a reference to an existing section in the Act (or Regulation) unless otherwise indicated;
- “new section ...” or similar is a reference to a new section inserted into the Act (or Regulation) by the bill whether as an entirely new section or as a substitution of a new section in the place of an existing section;
- “Final Report” means the *Final Report on the Review of the Change of Use Charges System in the ACT - 29 November 2010* completed by Professor Des Nicholls of the Australian National University for Macroeconomics;
- “LVC” means “lease variation charge” ie the charge that must be paid before a proposed lease variation can be made (ie executed and registered in the Land Titles Register). This term is defined in a new definition in the Dictionary (clause 15); The term lease variation charge replaces the term “change of use charge” in the existing Act (clauses 14, 15).
- “LVC determination” means the LVC determination (or code) made by the Treasurer under new section 276C (clause 10). The LVC determination sets out the required fee for prescribed lease variations. The LVC for these can be worked out by reference to the LVC determination only. There is no need to do any valuations of the relevant land and lease variation. New section 276 (clause 10) defines “LVC determination”;
- “prescribed chargeable variation” means lease variations identified in the Regulation whose LVC is as set out in the LVC determination. This term is defined in new section 276 (clause 10);
- “s277 chargeable variation” means a lease variation the LVC of which is not set by the LVC determination. For these lease variations, the LVC is worked out according to the formula in new s277. In summary, the s277 formula requires the LVC to be worked out through a valuation of the current value of the relevant land and a valuation that the land would gain should the proposed lease variation proceed. Section 277 chargeable variations include all variations other than those listed in the Regulation as being covered by the LVC determination;
- “ACTPLA” means the ACT Planning and Land Authority; and
- “ACAT” means the ACT Civil and Administrative Tribunal<sup>002E</sup>

## **Lease variation process and development applications**

1. It is useful to note some of the key features of the lease variation process.
2. The variation of a lease is “development” that requires development approval (s7).
3. A lease variation, even if approved by a development approval cannot be made (executed by ACTPLA and then registered on the Register of Land Titles) until the required lease variation charge is paid (existing s276(1), new s276A(1)).
4. The existing process is as follows. A development application for development approval of a proposed lease variation is lodged with ACTPLA (s139). Once the application is approved, the amount of the LVC is decided and a notice of this decision is sent to the lessee. The lessee pays the amount and the lease variation can then be executed by ACTPLA.
5. The Bill makes a number of changes to this process as outlined below.

## **Final Report on the Review of the Change of Use Charges System in the ACT - 29 November 2010**

6. The chief aim of this bill is to make the process for determining lease variation charges more transparent and efficient. The bill does this by making a large number of lease variation charges determinable by reference to a code or matrix (ie a black and white process of looking up a table without any need for valuation estimates). The bill refers to this code as the “LVC Determination”. The bill also makes the lease variation charges a tax law under the Taxation Administration Act 1999. The Taxation Administration Act provides the administration and enforcement of the Territory’s tax laws including the ability to determine a tax liability ignoring any tax avoidance schemes. The bill removes ACAT merit review from decisions as to the amount of LVC where those decisions are based on the LVC Determination.
7. As part of the 2009-10 Budget, the Government agreed to the codification of the Change of Use Charge (CUC) in the Territory, in response to industry concerns surrounding the degree of uncertainty in charge determinations, and to avoid unnecessary delays in development approvals.
8. Macroeconomics.com.au (the consultants) was engaged to review the CUC and develop the framework for its codification. The review was headed by Professor Des Nicholls of the Australian National University for Macroeconomics. The project was overseen by a Steering Committee comprising senior officials from Treasury (Chair), ACT Planning and Land Authority (ACTPLA) and the Department of Land and Property Services (LAPS).
9. In November 2009, the consultants developed a discussion paper on the framework for the codification of Change of Use Charge system to provide a basis for consultation. The consultants released a draft report for a second round of consultation in March 2010. In total, consultation ran for 14 weeks, with 25 submissions received from a wide range of stakeholders.
10. The consultants completed the report *Final Report on the Review of the Change of Use Charges System in the ACT - 29 November 2010* (the Final Report). A copy of the Final

Report is available at the ACT Treasury website, as well as copies of the consultation submissions: <http://www.treasury.act.gov.au/Change%20of%20Use%20Charge/Home.shtml>

11. The report addresses the issues raised in the community consultation process, as well as including a cost-benefit analysis and a regulatory impact statement. The Government remains committed to codification of the CUC to improve efficiency and transparency in the planning system.

### **Implementation of the Final Report on the Review of the Change of Use Charges System in the ACT (Final Report)**

12. The key elements of the Macroeconomics.com.au Final Report and how they are addressed in this bill are summarised below.

#### Terminology

13. The existing legislation refers to “Change of Use Charge” or “CUC”. Consistent with the Final Report the Bill deletes this term and substitutes the new term “Lease Variation Charge” or “LVC”. The new term is more descriptive and accurate. The new term recognises the fact that not all relevant lease variations involve a change of use.

#### Codification of LVC

14. The Final Report recommended that the Government adopt a codification system or schedule of fees based on a market value of land (Section 4.1-4.4). Specifically the Final Report recommended that the codified values be in a public register and based on market values applying in specified geographic locations.

“When the codification schedule applies, no longer will the CUC [LVC] assessment be based on the valuation of the specific property referred to in the DA, but will refer to codified fees in a given area. The schedule of codified fees will be underpinned by current land value indexes (market rate index values) calculated from the market value of property sales in the same area for similar property uses, or classes of uses. To overcome market fluctuations, the index values are based on a rolling three year average of market values of land in each suburb for specific (Territory Plan) zones and identified localities within those zones, where appropriate. In a rising market which is generally the case, the average value is less than the current market valuation. In a falling market the Government could introduce other policy measures. It is important to recognise that the schedules of values relate to the added values attached to the leases as a result of a lease variation. Consequently if a commercial lease is to be varied to allow for residential redevelopment then the added value would be the difference between the added value relating to the commercial lease and the appropriate added value relating to the appropriate residential development. The LVC would be determined from the difference.” (Final Report p27).

15. The Bill facilitates the proposed codification model as follows.

16. The Bill creates two main categories of lease variations for the purpose of assessing lease variation charges (LVCs). The proposed codified LVCs are to apply to *prescribed chargeable variations*, ie lease variations identified in the Regulation. In summary, this group includes variations to increase the permitted number of dwellings on residential leases and

variations to increase the maximum amount of gross floor area permitted for a non-residential purpose. This category can be expanded by adding to the list in the Regulation.

17. The intention is to implement the proposed code by setting up a broad legislative framework with the detailed code and code requirements to be implemented in subordinate legislation.

18. New s276C (clause 10) gives the Treasurer the power to create the code that is to apply to prescribed chargeable variations. The Bill refers to this code as a “LVC determination”. The LVC determination will be a disallowable instrument and as such publicly available on the Legislation Register. The intention is also to incorporate the LVC Determination into an interactive format on the ACTPLA website, that is, to make it a part of ACTMAPi.

19. The intention is for the LVC Determination (LVC code) to have the characteristics identified in the Final Report for the proposed code. The LVC Determination is to consist of a schedule of clear, unambiguous values to apply to specified lease variations in specified Territory Plan zones or sublocations within a zone. A lessee should be able to determine the required LVC for a proposed lease variation by looking at the dollar value the LVC Determination applies to the proposed variation at the block section location of the relevant lease. This inquiry should yield but one number. For example, Jane Citizen owns a property in Bruce. The lease restricts the number of dwellings on the land to two. Jane wishes to vary the lease to increase this maximum to four. Jane checks the Regulation and ascertains that a lease variation of this type is covered by the code (LVC determination). Jane uses the lease variation type (addition of two dwellings) and the location (block section number of the lease) to look up the required LVC for the proposed variation. Jane can either read the code directly from the Legislation Register or use the proposed interactive facility on the ACTPLA website known as ACTMAPi.

20. The Final Report contains several examples of how the proposed code will work (refer to section 4.8, pp 36-39). One of the examples is as follows (p 37).

Proposed Amaroo development - four units [lease currently permits only one unit]

Total development size = 4 units

Codified schedule for 4 units = \$45,000/unit

Therefore 3 additional units X \$45,000 = \$135,000

LVC before remission charge \$135,000

With 25 per cent remission, LVC = \$101,250

21. New s276E gives the Treasurer the power to create guidelines for the making of the LVC Determination. The guidelines may contain requirements as to the process for making the code and its content. The above features of the code and other matters are to be required through these guidelines. The guidelines will also be a disallowable instrument and so publicly available on the legislation register.

#### Cost benefit analysis behind the proposed code

22. The Government supports the cost benefit analysis of the proposed code provided in the Final Report (pp 47-61).

23. In section 4.1 p26, the Final Report notes the core principles to be applied to the lease variation charge system. The core principles are as follows.

1. Effectiveness – the system should return an appropriate proportion of economic benefits to the community from the grant of development rights.
2. Simplicity – the system should be simple to administer and easy to update regularly.
3. Transparency – the system should be open and accountable for all parties concerned.
4. Fairness – the system should be fair to all parties involved.
5. Growth – the system should promote property development activity in the ACT.
6. Timeliness – the system should permit accurate assessments to be generated quickly.
7. Certainty – the system should generate predictable outcomes which accord with the planning system.
8. Exclusivity – the system should only assess land values and not improvements, onsite or offsite costs.
9. Stability – the system should assess general property value trends in order to smooth market volatility.
10. Universality – the system should apply these principles in all cases.

24. It is considered that the bill is consistent with these principles. In summary, the Report considers codification will be beneficial because it will:

- continue significant recent gains to the ACT community through increased LVC payments as a result of dropping certain practices and assumptions that routinely undervalued LVCs (these recent gains are often referred to in the Report as “rectification”) (section 6.2.1.1)
- reduce administrative costs because the Government will no longer need to refer lease variations to the Australian Valuation Office or other body for independent advice on property valuations (s6.2.1.2)
- reduce holding costs for the property development industry because LVCs will be able to be determined more quickly (in many cases the calculation of the LVC will be able to be performed in minutes (s6.2.1.3)
- reduce administrative costs for applicants for development approval of lease variations – applicants will not need to produce a valuation report from an accredited valuer when the lease variation is covered by the code (s6.2.1.4)
- increase certainty, predictability “All applicants for a lease variation are better off under codification to the extent that they can accurately anticipate the CUC [LVC] they will incur under codification compared to current arrangements. Predictability allows for certainty in planning which reduces overall project risk.” (s6.2.1.5, p51)

25. It is anticipated the LVC Determination process will result in the above benefits. The LVC Determination will also realise the following benefits by making the process for calculating the LVC for lease variations covered by the code more:

- straightforward, simple (no valuations required, only one unambiguous value for each variation)
- certain (no valuations required, no disputes as to estimates behind valuations)
- transparent (values set out in a public code)
- accountable (values set out in public code, code results not open to different interpretations, the process for preparing and reviewing the code set out in public guidelines).
- have exclusivity (the proposed system will be based on land values only and will not take account of improvements as recommended in the Final Report (ss 2.5.4, 4.2.5))

26. These benefits are consistent with the underlying principles behind the reforms proposed in the Final Report at p26.

27. The Final Report notes a number of possible negative or cost impacts of implementation of the proposed code (s6.2.2 pp52 – 53). In summary the Final Report recognises the cost:

- to Government of implementation including development of the code
- of annual review of the code, including consultation with stakeholders
- to some lessees due to the removal of the right to seek merit review of an LVC decision based on the code
- to the valuation industry due to reduced number of valuations required
- to some lessees whose LVC might be higher under the code than under the current model based on valuation estimates (equally some lessees will have lower LVC charges).

28. In summary, the Final Report concludes that codification (including the continuance of rectification) will result in a continued, significant net revenue gain to the Government and by extension the ACT Community. The Final Report found that the gain in revenue would be partially offset by some of the Government related costs noted above (s6.4, pp60,61).

#### Updating the code

29. The Final Report recommends the values in the proposed code be updated each financial year to ensure that the values are consistent with benchmark property values for the three preceding years. Specifically the Report recommended that the legislation (Regulation) require the annual updating consistent with the three year average and also prescribe that the annually updated scheduled and fixed values be reviewed by a small committee of experts of which one will be the ACT Regional Manager of the Australian Valuation Office (AVO) (or his/her nominee) and another appointed by the President of the ACT Division of the Australian Property Institute (API) (Final Report pp75, 128, 129).

30. The Bill does not include specific requirements of the type indicated in the Final Report for the LVC Determination. These specific matters are to be covered through the proposed guidelines as appropriate. Some matters will be implemented through administrative practices adopted by the office of the Treasurer, at the discretion of the Treasurer. This more flexible approach will permit the implementation of a transparent process for the annual updating of the LVC Determination without setting in stone particular practices that might themselves need to be improved/updated in the future.

#### Some LVCs are not codified

31. The LVC determination will not apply to all lease variations for which a LVC is payable. The determination will only apply to *prescribed chargeable variations* (new s276B(1)(a), clause 10) these variations are identified in the Regulation (new s172 of the Regulation, clause 20). In summary, at this stage this group includes variations to increase the permitted number of dwellings on residential leases and variations to increase the maximum amount of gross floor area permitted for a non-residential purpose (as well as variations to subdivide or consolidate leases).

32. This group does not include lease variations for which it is not practical to set a codified charge, for example, lease variations to change the uses authorised under a lease. Work in this area is, however, continuing. The group of *prescribed chargeable variations* is likely to be expanded in the future as relevant charging policies are further developed.

ACT Civil and Administrative Tribunal (ACAT) merit review

*No ACAT merit review for LVC based on LVC Determination*

33. Currently lessees are able to apply to ACAT for merit review of a decision on the amount of a LVC for a lease variation (item 27 of schedule 1 to the Act).

34. Under the Bill, there is no right of merit review for LVCs for *prescribed chargeable variations* that are set by the LVC determination. This is appropriate and necessary because the LVC determination will consist of unambiguous, black and white rules which impose just one value for each and every lease variation covered. In this form, the LVC Determination will leave no room for the exercise of discretion and therefore there is no necessity for or scope for merit review. ACAT merit review in this circumstance would be an additional procedure, delay and cost to the parties and Government to no real purpose. This exclusion of ACAT merit review is consistent with the recommendations of the Final Report (s4.11). The decisions will still be subject to appeal on matters of law under the *Administrative Decisions (Judicial Review) Act 1989*.

*ACAT merit review for LVC determined under s277*

35. The Bill does, however, retain a right to apply to ACAT for merit review of decisions as to the amount of LVC worked out under the formula in new s277. This is appropriate because such decisions must involve the exercise of some discretion in relation to the estimates of the current value of the relevant lease and its likely value were the proposed lease variation to proceed. This is consistent with the Final Report (s4.11).

36. The Final Report notes at p41 that while few such s277 matters have gone to ACAT (ten matters in the period 2004-05 to 2008-09) the process can result in significant delay. The report suggests that this is an area that could benefit from a compulsory mediation or expert determination process prior to any ACAT hearing. This is appropriate because such matters essentially involve disputes as to estimates of land values, disputes which are able to be addressed quite readily by an expert determination process.

37. The Final Report (s4.11, pp40, 41) notes that over the five year period from 2004-05 to 2008-09 there were few LVC disputes that went to a merit review process in ACAT. Specifically seven mediation proceedings and three full hearings. The Final Report concludes that the system appears to work well in that only a small number proceed to ACAT but suggests that significant expense and delay can occur when the matters do proceed to a tribunal application. The Bill incorporates a measure designed to reduce the time and complexity in dealing with those disputes that do arise, as recommended in the Final Report (s4.11, p41).

38. Specifically, the bill introduces a compulsory step prior to any ACAT merit review of the amount of a LVC. Before a lessee can seek merit review, the lessee must first apply to the Commissioner for a reconsideration of the original decision as to the amount of the LVC. The application for reconsideration must include valuations of relevant property values by an independent valuer. The identity of the independent valuer must be agreed by the lessee and the Commissioner or if there is no agreement be determined by the President of the ACT Division of the Australian Property Institute Incorporated. This reconsideration process does not set out detailed, formal rules and procedures as might be applied to a formal arbitration or expert determination process. The mandated process is instead a simplified procedure as already in use elsewhere in the Act in relation to development approvals (Division 7.3.10).



This procedure delivers a similar result – an independent valuation for consideration prior to any ACAT hearing – as might be achieved under a more formal, structured process.

Exclusion of off-site and on-site costs.

39. The Final Report recommended that calculations of the LVC not include any on-site physical improvements on the relevant land such as new or modified housing, demolition and remediation (ss 2.5.4, 4.2.5). The Final Report also recommended that the LVC not take account of any off-site improvements, for example, completion of infrastructure works (roads etc) adjacent or near the land. This is because the LVC is intended to be a charge for obtaining additional rights under the lease to which these costs are not relevant. The Final Report (pp 16, 17) noted that:

“Under the current system all these user [on-site, off-site] costs, as well as improvements, are taken into consideration in the determination of the CUC. Developers are able to offset (a proportion of) the increase in land value from a successful lease variation application against onsite and offsite user costs. However, the original concept of the payment of a betterment was to charge for additional developmental rights; it was not intended to compensate developers for expenditure, both onsite and offsite, required to undertake the redevelopment. Over time, however, these offsets have become a component of the current CUC system. It is important to recognise that a CUC is not an infrastructure or development charge, but a payment for a lease variation which results in increased rights to be associated with the lease. The CUC and user charge are fundamentally different and as such should be separated in their determination and charging. Under the current system, as a result of developers being able to offset both onsite and offsite costs against CUC, the actual revenue from the betterment component is significantly reduced. ”

40. Consistent with the recommendations of the Final Report, the Bill makes it clear that improvements (on-site, off-site improvements) must not be taken into account in calculating the LVC.

41. This is achieved in relation to LVCs that are set by the LVC Determination because the intention is that the Determination itself will not permit the LVC to take account of improvements. This principle will be set along with other relevant principles in the proposed Guidelines for the making of the LVC Determination made under new s276E (clause 10).

42. Some LVCs will not be set by the LVC Determination. These will still be determined under the existing formula of s277 which involves estimating the current value of the relevant lease and the likely value the lease would gain should the proposed lease variation proceed. For such LVCs, new ss277A (clause 10) makes it explicitly clear that building, modifications, demolition, remediation, earthworks done on the relevant land cannot be taken into account in assessing the LVC.

Taxation Administration Act 1999

43. The bill amends section 4 of the *Taxation Administration Act 1999* (Administration Act). This amendment makes the Planning and Development Act provisions on the assessment and payment of the lease variation charge a tax law for the purposes of the Administration Act.

44. As a result of this amendment, the Bill states that it is the Commissioner who assesses the amount of the LVC for a proposed lease variation and who is involved in any reconsideration

or ACAT merit review process. In practice, it is anticipated that the Commissioner will delegate this function to ACTPLA. The delegation would be made under s78 of the *Taxation Administration Act 1999*.

45. The Bill makes several consequential amendments to the Planning and Development Act as a result of the tax law provisions. In particular the amendments make it clear that the lessee ordinarily incurs no additional liability as a result of the tax law provisions. However, the lessee may become liable to pay an amount additional to the original LVC as a result of a re-assessment made by the Commissioner for Revenue. In this case there is the potential for interest rates and punitive taxation rates under the Taxation Administration Act to apply but only from the date that the relevant lease variation was executed by ACTPLA. Further details are set out below.

#### *Taxation Administration Act 1999 - new obligations and potential new liabilities*

46. The application of the Administration Act results in the imposition of new obligations and responsibilities, for example, as follows.

- (a) A person who seeks approval of a lease variation must provide full and true information relevant to the assessment of the amount of the LVC (s10 of the Administration Act). Note also new s139(2)(g) (clause 6) that applies to applications for development approval of a lease variation. New s139(2)(g) applies to lease variations where the relevant LVC is assessable under s277 and not the LVC determination. New s139(2)(g) requires the applicant for development approval to provide valuations by an accredited valuer.
- (b) The amount of the LVC will be assessed by the Commissioner or delegate (eg ACTPLA).
- (c) In making the assessment, the Commissioner can set aside any arrangements the Commissioner considers to amount to a tax avoidance scheme (s8 of the Administration Act) and can make use of information from any source available at the relevant time (s11 of the Administration Act).
- (d) The Commissioner can make a re-assessment of the amount of LVC that must be paid (s9 of the Taxation Administration Act). The power to make a re-assessment of the LVC will only be exercisable after the original LVC amount has been paid and the lease variation has been executed by ACTPLA (s279B of the Bill).
- (e) If the Commissioner makes a re-assessment and the re-assessment results in an increase in the LVC then the additional LVC amount is payable as a tax. For this purpose the liability to pay the additional LVC is deemed to arise when ACTPLA executes the relevant lease variation following payment of the original LVC amount (new s279B(2), clause 10; s51(a) of the Administration Act). If the re-assessment results in a decrease the Commissioner for revenue is required to refund the overpayment (s19 of the Administration Act).
- (f) Unpaid tax (ie additional LVC required to be paid as a result of a re-assessment) is a debt due to the Commissioner and recoverable in court (s48(1) of the Administration Act). If unpaid tax is owed by a corporation, the Commissioner for Revenue can take action to obtain payment from the Directors of the Corporation (s56B of the Administration Act).
- (g) Interest rate payments and punitive tax rates may apply to unpaid tax (ss25, 30 of the Administration Act)
- (h) Lessees who pay an LVC must keep appropriate records (s57 of the Administration Act)

47. The above new requirements are considered to be a minimal impost on lessees paying LVC because the new arrangements do not:

- (a) increase the amount of LVC payable by the lessee – this amount is still as determined under the Planning and Development Act;
- (b) impose a new tax;
- (c) require the assessed LVC to be paid, the lessee will continue to be able to elect to not pay the LVC and not proceed with the proposed lease variation;
- (d) there is no requirement to pay any tax or other sum on top of the required LVC. The only new potential liability arises in relation to those rare cases where the Commissioner undertakes a re-assessment process and concludes that the original figure for the LVC was wrong ie too low. This is not a new financial liability but rather a new process for adjusting an original assessment;
- (e) the reconsideration and ACAT merit review rights in the Bill will continue to apply to LVC for s277 lease variations (s279B(4) (clause 10) new items 27, 28 of Schedule 1, (clause 12)). The Commissioner for ACT Revenue internal review and ACAT merit review provisions in Part 10 of the Administration Act will apply to re-assessment decisions only (s279B(4) clause 10).

48. In summary, the application of the Administration Act is likely to have no impact on the vast majority of transactions. The re-assessment provisions will be relevant in rare cases where the Commissioner decides to step in to investigate a suspected tax avoidance arrangement.

49. To the extent that the application of the Administration Act could be said to impose new burdens, it is considered that they are justified given the benefits of this measure. In summary, the measure will:

- (a) make it transparently clear that the LVC is a Government statutory impost ie a tax and not a contractual or quasi contractual matter
- (b) make the laws underpinning the LVC consistent with the laws underpinning other revenue measures already governed by the Administration Act
- (c) help safeguard ACT revenues by
  - permitting the Commissioner for ACT Revenue to re-assess the LVC. This will be particularly useful for suspected tax avoidance schemes, especially complex matters and matters involving an unusually high monetary value
  - permitting the Commissioner for ACT Revenue to conduct a re-assessment of a lease variation charge sometime after the lease variation is made if the Commissioner suspects arrangements have been made to reduce the payment of the relevant lease variation charges
  - permitting increased interest rates and punitive tax rates to apply to any amount required to be paid as a result of a re-assessment
  - incorporating other investigative and compliance powers of the Administration Act

50. The above benefits are consistent with the overall aims of the Bill to make the LVC process more transparent, efficient and effective.

#### Transitional arrangements

51. The Government retains the power to make regulations that require specified LVCs to be remitted to the extent specified in the Regulation (s278). To the extent considered

appropriate, this power could be used to reduce LVCs under the new system for a specified period as a transitional measure.

52. New s471 (clause 11) specifies transitional arrangements for development applications for lease variations that straddle the proposed commencement date of 1 July 2011.

### **Different categories of lease variations**

53. A proposed lease variation of a nominal rent lease cannot proceed (be executed) until any relevant lease variation charge (LVC) is paid (new s276A(1), clause 10). In summary, the Bill creates three categories of lease variations with different implications for LVCs as explained below.

#### **Prescribed chargeable variations**

54. This group includes prescribed chargeable variations (new s276 definition of *prescribed chargeable variation* (clause 10)). Prescribed chargeable variations are listed in the Regulation (new s172 of the Regulation, clause 21). In summary, this group includes variations to increase the permitted number of dwellings on residential leases and variations to increase the maximum amount of gross floor area permitted for a non-residential purpose.

55. These variations cannot be made until the required LVC is paid. The LVC is worked out by applying the *LVC determination* (new s276B(1)(a), clause 10). The *LVC determination* is made by the Treasurer under new s276C (clause 10). Valuations of the relevant property are not required and s277 does not apply.

56. There is no right to apply for reconsideration of the LVC for prescribed chargeable variations. The reconsideration process is only available for decisions on s277 chargeable variations (new ss277B(1)(b) and 277C(1) (clause 10), new Dictionary definition of original decision (clause 16)). . There is also no right to seek ACAT merit review of the LVC (new schedule 1 items 27, 28 clause 12)

#### **Section 277 chargeable variation**

57. This group includes *s277 chargeable variations* (new s276 (clause 10) definition of *s277 chargeable variation* (clause 10)). This includes all lease variations for which LVC is payable (ie all chargeable variations) other than *prescribed chargeable variations*. These variations cannot be made until the required LVC is paid.

58. The LVC is worked out by applying the formula set out in new s277 (clause 10). In summary, this involves making a valuation of the land under the current lease and a valuation of the land that would apply were the proposed lease variation to proceed. The LVC determination by the Treasurer is not relevant to these variations.

59. There is a right to apply for reconsideration of the LVC (new ss277B(1)(b) and 277C(1) (clause 10), new Dictionary definition of original decision (clause 16)). There is a right to seek ACAT merit review of the LVC but only after completing the reconsideration process (new schedule 1 items 27, 28, clause 12).

#### **Lease variations for which no LVC is payable**

60. New s276 (clause 10) definition of *chargeable variation* lists types of lease variation for which no LVC is payable.

61. This group includes alterations of boundaries between adjoining leases, variations to remove the concessional status of a lease and variations prescribed in the Regulation.

62. Note also that no LVC is required for lease variations of a lease for which rent is payable (ie no LVC required for leases that are not nominal rent leases – refer new s276A(1), clause 10). These lease variations, once approved by a development approval, can be made without any payment of a LVC. The LVC processes in division 9.6.3 Variation of nominal rent leases do not apply.

## **Part 1 Preliminary**

### **Clause 1      Name of Act**

63. Clause 1 indicates the name of the amendment Act. This Bill, if passed, will become the *Planning and Development (Lease Variation Charges) Amendment Act 2011*.

### **Clause 2      Commencement**

64. Clause 2 indicates the time of commencement of the amendment Act.

### **Clause 3      Legislation amended**

65. Clause 3 notes that the Bill amends both the Act and the Regulation. The amendments to the Act are in “Part 2 - Planning and Development Act 2007”. The amendments to the Regulation are in “Part 3 – Planning and Development Regulation 2008”. The Bill also amends the *Taxation Administration Act 1999* (Administration Act). This amendment is in Schedule 1 to the Bill.

## **Part 2 Planning and Development Act 2007**

### **Clause 4      Consideration of development proposals New section 138(4) (da)**

66. Clause 4 inserts new section 138(4)(da).

67. Section 138 applies before any development application for development approval is lodged with ACTPLA. The section permits the proponent of a development proposal to request advice from ACTPLA about the likely requirements for a proposed development application. ACTPLA must provide the information listed in s138(4) including information about the likely assessment track, whether agency referral and public notification will be required and whether the proposal is consistent with the relevant existing lease. The information is intended to guide the preparation and making of the development application (s138(5)). ACTPLA is not obliged to provide the information if insufficient background information is provided with the request (s138(2)). ACTPLA must act consistently with the advice unless one of the factors listed in s138(6) applies (eg the development application differs from the development proposal described in the s138 application for information). Any advice given persists for 6 months (s138(7)).

68. New section 138(4)(da) adds to the list of information that must be provided if a request is made under s138(1). Specifically, ACTPLA must indicate whether a lease variation charge is payable (new s138(4)(da)(i)) and if so the likely amount and methodology for working the charge out (new s138(4)(da)(ii)).

### **Clause 5      New section 138(6) (ba)**

69. New s138(6)(ba) states that ACTPLA is not bound by advice given on lease variation charges under new s138(4)(da) if the relevant development approval as granted differs from the development proposal described in the s138 request for advice. This exception recognises the fact that the final development approval for the relevant lease variation may differ from the original proposal (eg as a result of development approval conditions imposed).

### **Clause 6      Form of development applications Section 139(2)(g)**

70. Clause 5 deletes s139(2)(g) and substitutes new section 139(2)(g).

71. Existing section 139(2)(g) applies to all development applications for approval of lease variations for which an LVC is payable. The existing section requires all such applications to include valuations prepared by an accredited valuer for the relevant land. The supplied valuation is used to assist with the assessment of the LVC under s277.

72. This requirement will no longer be relevant to all of these lease variations. The requirement is not relevant to *prescribed chargeable variations* because for these the LVC is worked out by applying the LVC determination and land valuations are not required. The requirement will remain relevant for *s277 chargeable variations* because for these the LVC will still be worked out under s277 and land valuations will still be required. New s139(2)(g) recognises this by requiring valuations for *s277 chargeable variations* only.

**Clause 7      Section 139(4), new definition of s277 chargeable variation**

73. Clause 7 inserts a new reference to the definition of *s277 chargeable variation* as a consequence of clause 5.

**Clause 8      Definitions – ch 9  
Section 234, definition of residential lease**

74. Clause 8 substitutes a new definition of residential lease for clarification purposes. The new definition is the same in substance.

**Clause 9      Working out amount payable to discharge concessional leases  
Section 263(2) note**

75. Clause 9 substitutes the term “lease variation” for “change of use”.

**Clause 10     Division 9.6.3**

76. Clause 10 deletes *Division 9.6.3 Variation of nominal rent leases* and substitutes a new division with the same heading. New Division 9.6.3 includes new notes 1, 2 below the heading and new ss276, 276A, 276B, 276C, 276D, 276E, 277, 277A, 277B, 277C, 277D, 277E, 277F, 277G, 278, 279, 279A, 279B, 279C.

Division 9.6.3 Variation of nominal rent leases – notes 1 and 2 below the heading

77. New note 1 below the heading *Division 9.6.3 Variation of nominal rent leases* underlines the fact new Division 9.6.3 is a tax law under the Administration Act and is therefore subject to the enforcement and administration provisions of that Act. .

78. New note 2 below the heading *Division 9.6.3 Variation of nominal rent leases* notes that the commissioner for revenue has the power to delegate functions under the Administration Act to the planning and land authority.

276     Definitions – div 9.6.3

79. New section 276 defines the following new terms.

80. The term *chargeable variation* means any variation of a nominal rent lease other than the lease variations listed in new ss276(a), (b), (c). The aim is to exclude lease variations that make no significant change to the matters authorised by the lease and so have little or no implications for the value of the lease. New s276(c) permits the Regulation to add to this list.

81. New s276(a) reflects existing s276(3). New s276(a) permits the boundaries between similar adjoining leases to be altered without payment of LVC.

82. New s276(b) is to make it immediately clear that LVC does not apply to variations that only remove a lease’s concessional status. For example, no LVC is payable for a lease variation that only removes the concessional status of a lease (de-concessionalisation) because such a lease variation is not a chargeable variation (new s276(b), clause 10). In this case, a payment is still required for the de-concessionalisation. The processes, including payment,



required for de-concessionalisation is set out in *Division 9.4.2 Varying concessional leases to remove concessional status*.

83. The following is also relevant to this definition of *chargeable variation*. In some cases a proposed lease variation (a composite variation) might consist of multiple elements. In some such cases the composite variation might have elements that are chargeable variations and elements which are not. For example, a composite lease variation might consist of:

- variation (a) to alter a common boundary between 2 or more leases (as excluded under new s276(a), *chargeable variation*) and another variation (b) to increase the maximum number of residential dwellings authorised under one of the adjoining leases (a chargeable variation). In this case, there is no LVC payable for variation (a) but there is an LVC payable for variation (b). Putting it another way, the overall LVC for the composite lease variation consists solely of the LVC payable for variation (b).
- variation (a) to remove the concessional lease status of the lease (as excluded under new s276(b), *chargeable variation*) and another variation (b) to change the uses authorised by the lease (a chargeable variation). In this case, there is no LVC payable for variation (a) but there is an LVC payable for variation (b). Putting it another way, the overall LVC for the composite lease variation consists solely of the LVC payable for variation (b).

84. The term *LVC determination* means a determination (ie code) made by the Commissioner for ACT Revenue under new s276D (clause 10). New section 276D(1) permits the Commissioner to produce an LVC Determination which sets out the relevant LVC for specified lease variations. The Determination must be consistent with the guidelines made under new s276E (clause 10)).

85. The term *original decision* means the original (ie first) determination of the LVC made by the Commissioner prior to any application for reconsideration. This decision is defined in new s277B(1)(b) (clause 10). The reconsideration process is set out in new ss277B to 277G (clause 10). The lessee may apply to ACAT for a merit review of the Commissioner's decision on the reconsideration application (new items 27, 28 in Schedule 1, clause 12). There is no right to seek merit review of an original decision on the LVC amount. In other words, the reconsideration process is a prerequisite to any application for ACAT merit review on decisions about the LVC amount.

86. The term *prescribed chargeable variation* means a chargeable variation identified in the Regulation (new s172 of the Regulation (clause 21)). This list can be added to (or subtracted from) by amending the Regulation. The LVC for prescribed chargeable variations is determined under new s276B(1)(a) in accordance with the LVC Determination under new s276D. This category excludes lease variations whose LVC is worked out solely under new s277 (clause 10).

87. The term *reconsideration application* means the process set out in new ss277B to 277G (clause 10). This process permits a lessee to apply to the Commissioner for a reconsideration of the original decision on the amount of the relevant LVC. The lessee may apply to ACAT for a merit review of the Commissioner's decision on the reconsideration application (new items 27, 28 in Schedule 1, clause 12). There is no right to seek merit review of an original decision on the LVC amount. In other words, the reconsideration process is a prerequisite to any application for ACAT merit review on decisions about the LVC amount.

88. The term *s 277 chargeable variation* means a lease variation that is subject to a LVC calculated under new s277 (clause 10). This category includes:

- chargeable lease variations that are not *prescribed* chargeable variations (the LVC for prescribed chargeable variations is determined under the LVC Determination)
- prescribed chargeable lease variations for which no LVC is set under the LVC Determination. In other words, if the LVC Determination omits to set a LVC for one of the lease variations listed in new s172 of the Regulation (clause 21), then the LVC for the variation is determined under this s277.

89. The term *working out statement* means the working out statement in new s277B(2). Section 277C permits a lessee to apply for a (internal) reconsideration of a decision on the amount of LVC for a s277 chargeable variation. The reconsideration process is set out in ss277B to 277G (clause 10). Before an applicant can apply for a reconsideration, a working out statement must be sought from the Commissioner. The working out statement is a summary of the methodology used by the Commissioner in working out the required LVC. The working out statement is for consideration in the preparation of an independent valuation report which report must be supplied with the reconsideration application (new s277D(2)(b) clause 10).

#### 276A Chargeable variation of nominal rent lease – lease variation charge

90. New s276A(1) prohibits ACTPLA from executing a chargeable lease variation of a nominal rent lease before the required LVC is paid to the Territory. The wording of the section is consistent with existing s276(1) except the reference to *change of use charge* is replaced with a reference to the new term *lease variation charge* (new s276, clause 10).

91. New s276A(1), like the existing section, applies only to nominal rent leases and not to rental leases. This is because the LVC requirements are not relevant to variations to rental leases (ie leases for which substantive rent, more than nominal rent is payable). Variations to rental leases are covered by section 271. Under section 271, the rent is adjusted to reflect any changes in the value of the lease as a result of a lease variation.

92. It should also be noted that no LVC is payable for lease variations that are excluded from the category of *chargeable variations* under the definition of chargeable variation in new s276 (clause 10).

93. New s276A(1) requires payment to be made to “the Territory” “Territory” is defined in the Dictionary in the Legislation Act as “... the body politic established by the Self-Government Act [*Australian Capital Territory (Self-Government) Act 1988 (Cth)*], section 7”.

94. New sections 276A(1) and 276A(2) set out the circumstances in which the full amount of the required LVC need not be paid. The LVC is reduced by any remission required by any Regulation made under s278 (new s276A(1), 278 clause 10). New s278 is the same as the existing s278 except the terminology has been updated. The Treasurer also retains the ability to waive an LVC ( or part of an LVC) required to be paid under existing s131 of the *Financial Management Act 1996*. Any amount waived under s131 is taken to have been paid to the Territory (new s276A(2), clause 10). New s276A(1) also notes that the required LVC can be increased if this is required by a provision of the Regulation made under new s279 (clause 10). New s279 is the same as the existing s279 except the terminology has been updated.

95. New section 276A(3) applies in the following scenario. In some cases, the lessee may conclude that the amount of the LVC indicated in the notice of assessment from the Commissioner issued under new s276C (clause 10) is too high and may wish to dispute the figure. The lessee can dispute the figure through the Commissioner reconsideration process set out in ss277B to 277G. If the lessee disagrees with the outcome of the reconsideration process the lessee can apply to ACAT for merit review of the reconsideration outcome (new items 27, 28 of Schedule 1 (clause 12)). At the same time the lessee may wish to proceed with the lease variation immediately ie before the dispute procedures are completed in order to minimise costs resulting from delays. However, the lease variation cannot be made until the LVC is paid (new s276A(1)). In this circumstance, the lessee may elect to pay the LVC amount in the Commissioner's notice of assessment before the dispute procedures are started or completed. Such a payment is in effect made on a "without prejudice" basis, ie on the basis that it does not detract from the ability of the lessee to dispute the LVC amount through the reconsideration and ACAT proceedings. In this case, if the reconsideration or ACAT process results in a revised LVC amount that is less than the original, the difference is refunded to the lessee. New s276A(3) confirms that payment of the LVC amount indicated in the original notice from the Commissioner does not affect rights to seek a reconsideration of the amount (and consequently does not affect rights to seek ACAT merit review of the reconsideration outcome).

#### 276B Lease variation charges-amount payable

96. New s276B sets out what the LVC is for prescribed chargeable variations and also for s277 lease variations. New s276B points to the relevant provisions and instruments that set out how the LVC amount for these chargeable variations is to be worked out.

97. New s276B(1)(a) states that the LVC for a prescribed chargeable variation is the LVC required by the *LVC determination*. These chargeable variations are identified in the Regulation provisions made under new s276 (new s172 of the Regulation (clause 21)). The LVC determination is a schedule or code prepared by the Treasurer. The intention is for the LVC determination to set out in black and white terms the required LVC for all prescribed chargeable variations. The LVC determination is made under new s276D (clause 10).

98. Special provisions apply if the LVC determination omits to set out the required LVC for a prescribed chargeable variation. In this circumstance, the relevant lease variation becomes a s277 chargeable variation and the LVC for it is worked out in the same way as for other s277 chargeable variations (new s276 definition of s277 chargeable variation subsection (b) and new s276B(1)(a)). In other words, s277 applies by default in the case of any omission in the LVC determination.

99. New s276B(1)(b) states that the LVC for a s277 chargeable variation is worked out by applying new s277 (clause 10). In summary, new s277 requires the LVC to be worked out by reference to the likely value of the relevant land were the proposed lease variation to proceed and subtracting from this value the existing value of the relevant land. The LVC is 75 per cent of the result of the subtraction. If the result is zero or negative then no LVC is payable. Subject to some exceptions, the value of "improvements" to the land cannot be taken into account working out these values or the final result (new s277A, clause 10).

100. New s276B(2) sets out how the LVC is worked out if the proposed lease variation is an aggregate or composite (composite variation) of two or more lease variations (component

variations). Note this section applies to the working out of the aggregate LVC amount for the composite variation only and does not otherwise impact on the application of other sections in Division 9.6.3 to the component chargeable variations.

101. New s276B(2)(a) applies to a composite lease variation that consists of multiple prescribed chargeable variations (variations governed by the LVC Determination) and no s277 chargeable variations. In this case, the total or aggregate LVC for the composite variation is to be worked out in accordance with the LVC Determination. For example, the LVC Determination might indicate that the total LVC amount is worked out simply by adding up the LVC amount for each of the component variations.

102. New s276B(2)(b) applies to a composite lease variation that consists of multiple s277 chargeable variations and no prescribed chargeable variations. In this case, the total or aggregate LVC amount for the composite variation is worked out by treating the composite variation as a single, indivisible variation. In other words, section 277 must be applied by treating the composite variation as a single indivisible variation for the purposes of calculating the  $V_1$  and  $V_2$  values in new s277.

103. New s276B(2)(c) applies to a composite lease variation that consists of multiple component variations some of which are prescribed chargeable variations and some of which are s277 chargeable variations. In this case, the total or aggregate LVC amount for the composite variation is worked out under the Regulation. It is important to note that in this situation the reconsideration process and any consequent ACAT merit review is available for the component variation that is based on new s277 (new s277C(2) clause 10).

#### 276C Lease variation charges-notice of assessment

104. New s276C requires the Commissioner to give the lessee a written notice of assessment of the required LVC for the lease variation approved by the granting of a development approval. If the applicant for the development approval that approved the proposed lease variation is not the lessee, then a copy of the notice must also be given to the applicant for the development approval.

105. The *Note 1* under new s276C(1) makes it clear that the notice of assessment is an assessment under the Administration Act as if the LVC were a tax. However, importantly no liability arises to pay the LVC (new s279B(2), clause 10). The lessee could elect to not proceed with the lease variation in which case there is no requirement to proceed any further and no liability to pay the LVC. The *Note 2* confirms that the notice of assessment under new s276C(1) must be issued as soon as possible (s151B of the Legislation Act).

106. New s276C(2) states that the relevant date for calculating the amount of the LVC is the day on which the development approval is approved under s162. The Regulation can prescribe a different date for this purpose.

107. New s276C(3) states that the notice of assessment of the LVC amount expires on the day the lease variation is paid or the day the development approval that approved the variation lapses. The circumstances in which a development approval for a lease variation ends and the different end dates are set out in section 185.

### 276D Determination of lease variation charges

108. New s276D gives the Treasurer the power to make an *LVC Determination*. The LVC determination is to set out the LVC required for *prescribed chargeable variations*.

109. The LVC Determination must be made in accordance with the guidelines made under new s276E (clause 10) (new s276D(2)). The LVC Determination must also meet the applicable requirements as to content and other matters in Part 6.3 of the Legislation Act (note 1 under new s276D(1)).

110. The Treasurer may make the initial LVC determination (new s276D(1)) and also replace this with new LVC determinations from time to time (new s276D(3)). The LVC determination is a disallowable instrument (new s276D(4)). *LVC determination* is defined in new s276 (clause 10) as the determination made under this section. An *LVC determination* could be made to apply to a single specified lease variation or to categories of variations (note 2 below new s276D(1)).

111. The intention is for the LVC determination to set out in black and white terms the required LVC for specified categories of prescribed chargeable variations. The LVC Determination is anticipated to consist of a schedule of clear, unambiguous values to apply to specified lease variations in specified Territory Plan zones or sublocations within a zone. A lessee should be able to determine the required LVC for a proposed lease variation by looking at the dollar value the code applies to the proposed variation at the block section location of the relevant lease. This inquiry should yield but one number.

112. For example, Jane Citizen owns a property in Bruce. The lease restricts the number of dwellings on the land to two. Jane wishes to vary the lease to increase this maximum to four. Jane checks the Regulation and ascertains that a lease variation of this type is covered by the LVC determination. Jane uses the lease variation type (addition of two dwellings) and the location (block section number of the lease) to look up the required LVC for the proposed variation. Jane can either read the code directly from the Legislation Register or use the proposed interactive facility on the ACTPLA website known as ACTMAPi.

### 276E Lease variation charges-guidelines for LVC determination

113. New s276E gives the Treasurer the power to make guidelines to apply to the making of LVC Determinations under new s276D (clause 10). Any new determination must comply with the guidelines (new s276D(2)). The guidelines can include requirements for the process for making a determination (new s276E(1)(b)) as well as its content (new s276E(1)(c)). For example, the guidelines could require the Treasurer to consult with specified organisations when making a determination. The guidelines are a disallowable instrument (new ss276E(2)).

### 277 Lease variation charges-s277 chargeable variations

114. New s277 sets out the method or formula for working out the LVC for *s277 chargeable variations*. Section 277 chargeable variations include all chargeable variations other than prescribed chargeable variations covered by an LVC determination (new s276 definition of a *s277 chargeable variation* (clause 10)).

115. The LVC charge for a s277 chargeable variation is to be worked out as follows:

- step one – estimate the likely value the relevant land would have if the proposed lease variation were to proceed (this is  $V_1$ )

- step two – estimate the current value of the land (ie without the proposed lease variation) (this is  $V_2$ )
- step three calculate  $(V_1 - V_2) \times 75$  per cent

If  $V_1 - V_2$  is zero or negative the LVC is zero (new s277(3)).

116. Importantly, the operation of new s277 is modified by new s277A (clause 10) which, subject to some exceptions, requires the calculations in s277 to not take account of any “improvements” to the land.

117. Apart from the matter of “improvements”, new s277 is in substantially the same form as existing s277 except new s277 omits references to *change of use charge* and instead refers to the new term *lease variation charge*. The new wording is consistent with the deletion of the term *change of use charge* from the Dictionary (clause 14) and the addition of the new term *lease variation charge* (clause 15).

#### 277A Lease variation charge under s277 - improvements

118. New s277A modifies the operation of new s277 (clause 10). New s277A makes it clear that, subject to some exceptions, the relevant valuations in s277 must be made without taking into account *improvements* to the land. New s277A also makes it clear that if the calculations in s277 produce a negative number or zero then no LVC is payable.

119. For the purposes of new s277A *improvements* include, but are not limited to, the items listed in new s277A(4). These items include new buildings, alterations of buildings, demolition, remediation of the land (eg removal of pollutants), earthworks and other landscaping.

120. New s277A(1) refers to the  $V_1$  and  $V_2$  valuations in new s277.  $V_1$  is the likely value the relevant land would have if the proposed lease variation were to proceed.  $V_2$  is the current value of the existing land ie without the proposed lease variation.

121. New s277A(1) states that the working out of  $V_2$  (the value of existing land without the proposed lease variation) must not take account of improvements other than:

- the clearing, filling, grading, draining, levelling, or excavating of the land; and
- other improvements as might be specified in the Regulation.

117. New s277A(2) states that the working out of  $V_1$  (the value the land would have were the proposed lease variation to proceed) must not take account of improvements other than improvements as might be specified in the Regulation. In particular in this case, in contrast to  $V_2$ , the calculation of  $V_1$  must not take account of any improvements by way of proposed clearing, filling, grading, draining, levelling, or excavating of the land (unless such improvements are listed in the Regulation as matters that the calculation can take account of). In other words the intention is for improvements such as clearing, filling etc to be relevant where they have already been completed and are a part of the circumstances of the existing land.

122. New s277A(3) allows the Regulation to limit the percentage value of an improvement that may be taken into account in the s277 calculation under new s277A(2).

123. New section 277(4) states that for the purposes of this section *improvements* includes but is not limited to:

- building, structure on or under the land
- alteration or demolition of an existing building or structure on or under the land
- remediation of the land
- earthworks, planting or other work that affects the landscape of the land
- other things as might be prescribed in the Regulation

124. For the purposes of working out what constitutes an improvement, it is immaterial if the possible improvement was completed or is proposed to be completed as a condition of a development approval or other statutory approval or agreement between a Territory entity and the lessee (new s277A(4)(b)).

125. *Remediation* is defined in the Dictionary to the *Environment Protection Act 1997* and includes:

- (a) preparing a long-term management plan (if any) for the land; and
- (b) removing, dispersing, destroying, reducing, mitigating or containing the contamination of the land; and
- (c) eliminating or reducing any hazard arising from the contamination of the land (including by preventing the entry of people or animals on the land).

#### Reconsideration process – overview - ss277B to 277G

126. New ss277B to 277G (clause 10) establish a new internal reconsideration process to apply to original decisions as to the amount of LVC payable. The decision that is subject to the reconsideration process is the decision as to the amount of LVC for a proposed chargeable lease variation as stated in the notice of assessment issued by the Commissioner under new s276C (clause 10).

127. The reconsideration process only applies to s277 chargeable variations. In other words the reconsideration process is only available for LVCs worked out under s277. In the case of a development approval that approves a composite lease variation ie a variation consisting of multiple component variations, the reconsideration process applies to the component variations that are determined under s277 (new s277C(2)).

128. The main steps in the reconsideration process are as follows:

- a) the lessee (or other proponent) applies for development approval of a proposed lease variation. The lease variation is a s277 chargeable variation.
- b) the development approval is granted under s162
- c) the Commissioner sends a notice of assessment to the lessee indicating the required LVC that must be paid before the lease variation can be executed (new s276C, clause 10),
- d) the lessee concludes the LVC amount in the notice of assessment is too high and decides to challenge the decision
- e) if not already provided, the lessee obtains from the Commissioner a statement as to the methodology used to arrive at the original LVC amount, a *working out statement* (new s277B, clause 10)
- f) the lessee applies for a reconsideration and as required attaches an independent valuation of the relevant land value estimates prepared by an independent, accredited valuer (new s277D(2), (4)).

- g) the independent accredited valuer must:
- be an *accredited valuer* as defined in the Dictionary (clause 13). The Dictionary defines such as a valuer accredited by the Australian Property Institute Incorporated (clause 13),
  - have access to the Commissioner's working out statement (new s277D(3))
  - not have been involved in the process to date (new s277D(4)(a))
  - satisfy the requirements of the Regulation (new s277D(4)(c)). New s175 of the Regulation (clause 21) requires the valuer to be a current member of the Australian Property Institute Incorporated.
- h) the Commissioner considers the application for reconsideration and decides to confirm the original decision as to the LVC amount or modify it taking into account the application and the original decision (new s277E(1), clause 10). The Commissioner has 20 days to make this decision. Failure to make the decision results in a deemed confirmation of the original LVC amount (new s277F, clause 10).
- i) the decision on the reconsideration is notified in writing to the lessee (new s277G, clause 10)
- j) the lessee may apply to ACAT for merit review of the reconsideration decision. A merit review application to ACAT is only available for the reconsideration decision process. It is not available for the original decision as to the LVC amount. In other words, completion of the reconsideration process is a pre-requisite for any ACAT merit review of the LVC amount (new items 27, 28 of Schedule 1, clause 12)

129. In some circumstances, the applicant for development approval of the relevant lease variation might be someone other than the lessee. If this is the case, either the lessee or the applicant for development approval can apply for a reconsideration under this process (new s277C(4) (clause 10)). For readability, this explanatory statement assumes it is the lessee who makes the application for reconsideration.

#### 277B Lease variation charge under s277 – working out statement

130. New section 277B(2) permits a lessee to obtain a statement from the Commissioner explaining how the Commissioner worked out the LVC amount for the proposed lease variation, the *working out statement* (new s277B(2)).

131. The application may be made in relation to an original decision on the LVC amount on a proposed s277 chargeable variation (new s277B(1)(b)). The term *original decision* is defined in the Dictionary (clause 16) as the decision referred to in new s277B(1)(b) (clause 10). This is the original or initial decision as to the LVC amount worked out under new ss276B(1)(b), 277 (clause 10) and set out in the notice of assessment issued by the Commissioner under new s276C (clause 10). This is the decision to which the reconsideration process applies.

132. New s277B(1) states that this section only applies if:

- a development application for the relevant lease variation has been approved
- the LVC has been worked out under s277
- a notice of assessment has been issued as to the amount of the LVC under new s276C(1)
- an application for reconsideration under new s277C (clause 10) has not already been made



133. If the section applies, then a request can be made to the Commissioner for a working out statement under new s277B(2).

134. The Commissioner must provide the working out statement within 20 working days (new s277B(3)). There is no obligation to provide a fresh statement if the information has already been provided (new s277B(3)). For example, it is open to the Commissioner to provide this information with the original notice of assessment if this is practical.

277C Lease variation charge under s277 – application for reconsideration

135. New s277C sets out certain requirements for an application for reconsideration of the Commissioner's *original decision* as to the amount of the LVC.

136. The reconsideration is of the *original decision* on the LVC (new s277C(1)). The term *original decision* is defined in the Dictionary (clause 16) as the decision referred to in new s277B(1)(b) (clause 10). This is the original or initial decision as to the LVC amount worked out under new ss276B(1)(b), 277 (clause 10) and set out in the notice of assessment issued by the Commissioner under new s276C (clause 10). This is the decision to which the reconsideration process applies, and in particular the decision to which s277C applies (new s277C(1)).

137. New s277C(1) states that the applicant for a development application may apply for a reconsideration of the original decision only after the applicant applies for and receives a working out statement under new s277B (clause 10) or applies for a working out statement and does not receive one within the required 20 working day period in new s277B(3). In other words, the request for a working out statement is a prerequisite for a reconsideration application. After this has occurred, there is a limited time available for the making of the reconsideration application (new s277C(5)).

138. New s277C(5) states that the applicant may apply for a reconsideration within 80 working days after the day the original notice of assessment was issued under new s276C(1) (clause 10) or such later day as might be prescribed in the Regulation or such longer period as might be allowed by the Commissioner.

139. The proposed lease variation could be a composite variation consisting of two or more individual lease variations (constituent variations). In this case, the following provision is relevant. If the composite variation includes a constituent variation that is a s277 chargeable variation and another constituent variation that is a prescribed chargeable variation then the reconsideration process applies only to the constituent variation that is a s277 chargeable variation (new s277C(2)).

140. New s277C(3) states that this section does not apply to a reassessment of the lease variation under s279A (a re-assessment under the processes of the *Taxation Administration Act 1999* (Administration Act)). The review processes for such a re-assessment are under Part 10 of the Administration Act (objections and reviews) (new s279A(4), clause 10).

141. New s277C(4) states that if the applicant for the relevant development application is not the lessee then it is still open to the lessee to apply for reconsideration instead of the applicant for the development application.

277D Lease variation charge under s277 – requirements for reconsideration application

142. New s277D sets out certain specific requirements for making a reconsideration application, that is, as to the form and content of the application.

143. In summary, the reconsideration application must:

- set out the grounds on which reconsideration is sought (new s277D(2)(a)),
- include an independent valuation of the valuation estimates required in the s277 formula (ie of the  $V_1$  and  $V_2$  values) (new s277D(2)(b)). Note the independent valuation must be paid for by the lessee (or if different, the reconsideration applicant) (new s277D(5)),
- The above independent valuation must be prepared by an *accredited valuer* who:
  - has not been involved in the working out of or advising on the LVC decision to date (new s277D(4)(a))
  - is agreed by the Commissioner and the lessee and if not agreed is appointed in writing by a prescribed entity (new s277D(4)(b)). The prescribed entity is the President of the ACT Division of the Australian Property Institute Incorporated (new s174 of the Regulation, clause 21)
  - satisfies the requirements of the Regulation (new s277D(4)(c)). The Regulation will require the valuer to be a current member of the Australian Property Institute Incorporated (refer to new s175 of the Regulation (clause 21))
  - *accredited valuer* is defined in the Dictionary as a valuer accredited by the Australian Property Institute Incorporated (clause 13).
- the lessee must provide the independent valuer with the Commissioner's working out statement (ie statement setting out the reasons and methodology behind the Commissioner's original decision as to the required LVC) (new s277D(3)). This is to assist the independent valuer in making the required valuations. This specific requirement does not apply if no working out statement was provided by the Commissioner on the basis that the information had already been provided (new s277B(3), clause 10).

277E Lease variation charge under s277 - reconsideration

144. New s277E in conjunction with new ss277F and 277G sets out the process for deciding a reconsideration application.

145. New s277E gives the Commissioner 20 working days to decide a reconsideration application (new s277E(1)). This period can be extended by agreement between the Commissioner and the lessee (new s277E(2)). If the Commissioner fails to make a decision within the required 20 working days (or within an extended period) then the Commissioner is taken to have confirmed the original decision (new s277F).

146. In deciding the reconsideration application, the Commissioner must consider the independent valuation provided with the application (new s277E(3)(a)) as well as the original decision (s277E(1)(a)). The Commissioner is also able to consider other information that the Commissioner considers relevant (new s277E(3)(b)).

147. The person who decides the reconsideration application must not be the same physical person who made the original decision on the required LVC charge (s277E(4)).

148. After assessing the reconsideration application, the Commissioner can:
- make a new decision in substitution for the original decision on the LVC amount,
  - confirm the original decision.

149. Note *original decision* is defined in the Dictionary as the decision referred to in new s277B(1)(b) which refers to the original charge worked out under s277 (clause 16 new definition of original decision subsection (b)). This is the LVC amount set out in the notice of assessment issued by the Commissioner under new s276C(1) (clause 10).

277F Lease variation charge under s277 – no action by commissioner within time

150. New s277F states that if the Commissioner fails to make a decision within the required 20 working days (or within an extended period) then the Commissioner is taken to have confirmed the original decision.

277G Lease variation charge under s277 – notice of decisions on reconsideration

151. New s277G requires the Commissioner to give written notice of the reconsideration decision to the reconsideration applicant.

ACAT merit review of reconsideration decision

152. The reconsideration applicant may apply to ACAT for merit review of a reconsideration decision (new items 27, 28 of schedule 1, clause 12). As such, the written notice of reconsideration must be a reviewable decision notice consistent with the requirements of the *ACT Civil and Administrative Tribunal Act 2008* (s408 of the Planning and Development Act).

278 When commissioner must remit lease variation charge

153. New s278 requires the Commissioner to remit all or part of a LVC for a chargeable variation as required by the Regulation. This section is the same as the existing s278 except for the deletion of *change of use charge* and substitution of the new term *lease variation charge*. The new wording is consistent with the deletion of the term *change of use charge* from the Dictionary (clause 14) and the addition of the new term *lease variation charge* (clause 15).

279 When commissioner must increase lease variation charge

154. New s279 requires the Commissioner to increase all a LVC for a chargeable variation as required by the Regulation. This section is the same as the existing s279 except for the deletion of *change of use charge* and substitution of the new term *lease variation charge*. The new wording is consistent with the deletion of the term *change of use charge* from the Dictionary (clause 14) and the addition of the new term *lease variation charge* (clause 15).

279A Lease variation charge - reassessment

155. New s279A specifies that the Commissioner for ACT Revenue may reassess a lease variation charge under section 9 (reassessment) of the Administration Act. The section applies if a development application for approval of a chargeable variation of a nominal lease is approved, the Commissioner gives a notice of assessment of a lease variation charge under

s276C(1) and ACTPLA executes a variation of the lease (new s279A(1)). Importantly, the Commissioner cannot conduct a re-assessment before the relevant lease variation is executed.

156. The notice of assessment resulting from the re-assessment must be given by the Commissioner to the lessee or if different, the applicant for the relevant development approval (s279A(3)).

157. Importantly, *Part 10 Objections and Reviews* of the Administration Act will not apply to the Commissioner's original decision as to the amount of LVC for a proposed lease variation. In addition Part 10 of the Administration Act will not apply to any reconsideration and ACAT merit review of this original decision. Part 10 will only apply to any re-assessment decision of the Commissioner under new s279A of the Planning and Development Act and s9 of the Administration Act. This is the effect of new s279A(4).

#### 279B Application of Taxation Administration Act

158. New s279B applies the Administration Act to the new *Division 9.6.3 Variation of nominal rent leases* of the Planning and Development Act (ie the division on lease variation charges amended in this Bill).

159. The Administration Act applies to division 9.6.3 as if a LVC for a chargeable lease variation were a tax payable from the day the development application in relation to the variation is approved (new s279B(1)).

160. The application of the Administration Act will not make the payment of the LVC compulsory. A lessee can still elect to not proceed with the proposed lease variation and so not pay the LVC. This is because under new s279B(2) a tax liability only arises if the proposed lease variation is executed by ACTPLA. If the lessee elects to not proceed with the variation no taxation liability arises. Alternatively the lessee may elect to proceed and pay the required LVC with the result that ACTPLA executes the lease variation. In this case, the LVC amount required by the Commissioner has been paid and so there is no liability to pay additional tax, subject to the following exception.

161. The one additional tax liability that could in practice arise as a result of new s279B is in relation to a re-assessment of the LVC by the Commissioner (new s279A (clause 10) and s9 of the Administration Act). If the Commissioner makes a re-assessment and the re-assessment indicates that the LVC should have been set higher than the amount originally set and paid then the difference between the amount paid and the re-assessment amount becomes a tax that must be paid. This liability is deemed to be incurred from the date that the lease variation was executed by ACTPLA (new s279B(2)). Any higher interest rates or punitive taxation rates would apply only to the tax liability arising from the re-assessment and only from the date of execution of the lease variation. It is anticipated that this scenario and the re-assessment process would occur but rarely.

#### 279C Taxation Administration Act – disclosure of information

162. New s279C inserts a disclosure of information (secrecy) provision for the purposes of the Administration Act. The provision permits tax officer to disclose information obtained under new *Division 9.6.3 Variation of nominal rent leases* of the Planning and Development Act to ACTPLA or a person authorised by ACTPLA to receive the information.

## **Clause 11     New chapter 17**

163. Clause 11 inserts new *Chapter 17 Transitional – Planning and Development (Lease Variation Charges) Amendment Act 2011*. The new chapter includes new ss471, 472.

### 471     Transitional – application for development approval of variation of nominal rent lease

164. The Bill, if passed, will become the *Planning and Development (Lease Variation Charges) Amendment Act 2011*. If passed, this Act will commence operation on 1 July 2011 (the commencement date, clause 2).

165. New s471 is a transitional provision to cover lease variation charging processes that straddle the commencement date. New s471 applies if:

- a development application for development approval of the proposed lease variation is made before the commencement date;
- the development application is for approval of a lease variation of a nominal rent lease; and
- immediately before the commencement date ACTPLA had not worked out the change of use charge under the existing Act (LVC).

166. Subject to the following, if new s471 applies, then the LVC is to be assessed and decided (including any ACAT merit review) under the existing Planning and Development Act as though the *Planning and Development (Lease Variation Charges) Amendment Act 2011* had not commenced operation (new s471(2)). However, the applicant can elect to have the LVC decided under the new amendment Act. This election must be made in writing before 1 October 2011 (new s471(3)).

### 472     Expiry – ch 17

167. New s472 provides that new chapter 17 expires on 1 July 2012.

## **Clause 12     Schedule 1, items 27 to 29**

168. Clause 12 deletes items 27, 28 and 29 from schedule 1 to the Act and substitutes new items 27, 28, 29, 29A. Schedule 1 lists those decisions that are open to application to ACAT for merit review and who might apply (ss407, 408, Schedule 1).

### Items 27, 28 of schedule 1

169. A lessee who wishes to challenge a decision on the amount of LVC required for a proposed lease variation can apply for a (internal) reconsideration of the decision. The process for reconsideration is set out in new ss277B to 277G (clause 10). The decision on reconsideration is made by the Commissioner under new s277E(1). The reconsideration process is only available for decisions as to the amount of LVC based on the formula in s277 (s277 chargeable variations) (new ss277B(1)(b) and 277C(1) (clause 10), new Dictionary definition of *original decision* (clause 16)).

170. New items 27 and 28 of Schedule 1 give the applicant for a reconsideration a right to apply to ACAT for merit review of the Commissioner's reconsideration decision.

171. This right to seek merit review only applies to a reconsideration decision on the amount of LVC required for a proposed lease variation. There is no right of merit review of the

original decision on the LVC amount, ie the original decision (new s277B(1)(b)) as notified under new s276C. In other words, the lessee must first go through the reconsideration process before applying to ACAT for merit review of the LVC amount.

172. Further, as noted above, the reconsideration process itself is only available for decisions as to the amount of LVC based on the formula in s277 (s277 chargeable variations) (new ss277B, 277C(1)). Therefore, this right of merit review is also only available for LVC decisions based on s277. Merit review is not available for LVC decisions on prescribed chargeable variations that are based on the LVC determination made by the Treasurer under new s276D.

#### Item 29 of schedule 1

173. New s278 requires the Commissioner to remit all or part of a LVC for a chargeable variation as required by the Regulation. New item 29 of schedule 1 establishes a right to apply to ACAT for merit review of decisions on the amount of remission of a lease variation charge decided by the Commissioner in accordance with s278 provisions of the Regulation. There are exceptions to this right of review as follows.

174. New item 29 permits the Regulation to exempt specified decisions from this right of merit review. This exemption power may need to be used if the relevant remission regulation under new s278 did not require the exercise of any judgement or discretion. For example, the remission regulation might require all LVCs to be reduced by a blanket 25 per cent. Such a black and white regulation would not permit the exercise of any judgement or discretion and as such a right of merit review would not be appropriate. In such cases the Regulation would specify that decisions applying the remission regulation are not subject to ACAT merit review. The rationale and impacts of any regulation to exempt the right of ACAT merit review would need to be fully set out in the relevant Regulatory Impact Statement as required by s34 of the Legislation Act.

#### Item 29A of schedule 1

175. New item 29A of schedule 1 is in similar terms to new item 29 of schedule 1 except it applies to decisions to increase the LVC in accordance with regulations made under new s279. As with new item 29, the right to apply to ACAT for merit review of a decision to increase the LVC can be exempted by the Regulation.

### **Clause 13     Dictionary, new definition of *accredited valuer***

176. Clause 13 inserts a new definition of *accredited valuer*.

177. The new term *accredited valuer* means a valuer accredited by the Australian Property Institute Incorporated or such other entity as prescribed in the Regulation. The term *accredited valuer* is used in new s139(2)(g) (clause 6) and new s277D(4) (clause 10).

### **Clause 14     Dictionary, definition of *change of use charge***

178. Clause 14 deletes from the dictionary the term *change of use charge*. This term is replaced by the more accurate and more descriptive term *lease variation charge* (clause 15).

## **Clause 15 Dictionary, new definitions**

179. Clause 15 inserts the following new terms and definitions into the Dictionary.

180. The new term *chargeable variation* means all lease variations of nominal rent leases other than those excluded by the definition of chargeable variation in new s276 (clause 10).

181. The new term *lease variation charge* (LVC) means the LVC set out in new s276B (clause 10). The LVC for chargeable variations is required to be paid under new s276A(1) (clause 10) before the proposed lease variation can proceed.

182. The new term *LVC determination* refers to LVC determinations made by the Treasurer under new s276D (new s276 definition of LVC determination (clause 10)). The LVC for prescribed chargeable variations must be calculated by reference to the LVC Determination (new s276B(1)(a), clause 10).

## **Clause 16 Dictionary, definition of *original decision***

183. Clause 16 deletes the existing definition of *original decision* and substitutes a new definition.

184. The new definition of *original decision* is in two sections (a) and (b).

185. New section (a) refers to an original decision by ACTPLA (or the Minister) to refuse to approve a development application or to approve the application subject to conditions. This definition of original decision is unchanged and is used in connection with the reconsideration process in *Division 7.3.10 Reconsideration on development applications* applying to decisions on development applications.

186. New section (b) refers to a new term. *Original decision* in this context is defined by reference to new s277B(1)(b) (clause 10). New s277B(1)(b) indicates that this term refers to the original or initial decision made by the Commissioner as to the amount of LVC for a s277 *chargeable variation*. This original decision is the one communicated to the lessee in the form of a notice of assessment under new s276C(1) (clause 10).

## **Clause 17 Dictionary, new definition of *prescribed chargeable variation***

187. Clause 17 inserts a new definition of *prescribed chargeable variation*. The new definition refers to the definition in new s276 (clause 10). A *prescribed chargeable variation* is a lease variation identified as such in the Regulation, (new s172 of the Regulation, clause 21). Under new s276B(1)(a) (clause 10), the LVC for prescribed chargeable variations is worked out by applying the LVC Determination made by the Treasurer under new s276D (clause 10).

## **Clause 18 Dictionary, definition of *reconsideration application***

188. Clause 18 deletes the existing definition of *reconsideration application* from the Dictionary and substitutes a new definition of *reconsideration application*.

189. The new definition of *reconsideration application* is in two parts, sections (a) and (b).

190. The new section (a) refers to applicants for reconsideration of a decision on a development application made under s191(3). This definition of original decision is unchanged and is used in connection with the reconsideration process in *Division 7.3.10 Reconsideration on development applications* applying to decisions on development applications.

191. The new section (b) refers to the new reconsideration process for certain LVC decisions in new Division 9.6.3. *Reconsideration application* in this context is defined by reference to new s277C(5). New s277C(5) permits applications to be made for reconsideration of an original decision on the amount of LVC for a s277 chargeable variation. This original decision is communicated to the lessee in the form of a notice of assessment under new s276C(1) (clause 10).

**Clause 19 Dictionary, new definitions of s 277 chargeable variation and working out statement**

192. Clause 19 inserts into the Dictionary definitions of the new terms *s277 chargeable variation* and *working out statement*.

193. The new definition of *s277 chargeable variation* refers to the definition in new s276 (clause 10). New s276 states that a s277 chargeable variation is any chargeable variation of a lease (nominal rent lease) other than a prescribed chargeable variation for which the relevant LVC is set out in the LVC determination. The LVC Determination is made by the Treasurer under new s276D (clause 10). Prescribed chargeable variations are identified in the Regulation (new s172 of the Regulation, clause 21). A section 277 chargeable variation also includes prescribed chargeable variations for which no LVC is set under the LVC Determination.

194. The new definition of *working out statement* refers to the working out statement in new s277B(2). Section 277C permits a lessee to apply for a (internal) reconsideration of a decision on the amount of LVC for a s277 chargeable variation. The reconsideration process is set out in ss277B to 277G (clause 10). Before an applicant can apply for a reconsideration, a working out statement must be sought from the Commissioner. The working out statement is a summary of the methodology used by the Commissioner in working out the required LVC. The working out statement is for consideration in the preparation of an independent valuation report which report must be supplied with the reconsideration application (new s277D(2)(b) clause 10).



## **Part 3 Planning and Development** **Regulation 2008**

### **Clause 20 Part 5.5 heading**

195. Clause 20 deletes the heading *Part 5.5 Change of use charges* to Part 5.5 of the Regulation and substitutes new heading *Part 5.5 Lease variation charges*. The new wording is consistent with the deletion of the term *change of use charge* from the Dictionary (clause 14) and the addition of the new term *lease variation charge* (clause 15). .

### **Clause 21 New divisions 5.5.1A and 5.5.1B**

196. Clause 21 inserts new *Division 5.5.1A Chargeable variations* and new *Division 5.5.1B Independent valuation of s277 lease variation charge*.

#### Division 5.5.1A Chargeable variations

197. New Division 5.5.1A includes new ss171, 172 of the Regulation.

#### 171 Exempt variations – Act, s276, def *chargeable variation*, par (c)

198. New s276(c) of the Act permits the Regulation to specify lease variations as being variations that are not chargeable variations. No LVC is required to be paid for lease variations that are not chargeable variations (new s276, 276A(1) of the Act (clause 10)). New s171 of the Regulation specifies that lease variations of “holding leases” are prescribed for the purpose of new s276(c). These variations are therefore not chargeable variations. “Holding lease” is defined in the Dictionary to the Regulation by reference to s7(7) of the *Districts Act 2002*.

#### 172 Prescribed chargeable variations – Act, s276, *prescribed chargeable variation*

199. New s172 prescribes the following chargeable variations:

- a variation to increase the number of dwellings permitted on the lease if the development application relates to a variation of only one residential lease;
- a variation to limit the number of dwellings permitted on the land if a development application relates to a variation of only one residential lease;
- a variation that relates to only one non residential lease that increases or has the effect of increasing the maximum gross floor area of any building or structure permitted for non residential use on the land or increases or limits the number of dwellings permitted on the land;
- the consolidation of 2 or more nominal rent leases; and
- the subdivision of 1 or more nominal rent leases.

#### Division 5.5.1B Independent valuation of s277 lease variation charge

200. New Division 5.5.1B includes new ss174, 175 of the Regulation.

175 Requirements for independent valuer – Act, s277D(4)(c)

201. New s175 is made under new s277D(4)(c) of the Act (clause 10). New section 277D sets out the requirements for making an application for reconsideration of an LVC amount. The reconsideration process is set out in new ss277B to 277G (clause 10). New s175 of the Regulation requires a valuer preparing an independent valuation for the purposes of new s277D to be a current member of the Australian property Institute Incorporated ABN 49 007 505 866.

**Clause 22 Division 5.5.2 heading**

202. Clause 22 deletes the phrase *change of use* from heading to Division 5.5.2 and substitutes the new term *lease variation*. The new wording is consistent with the deletion of the term *change of use charge* from the Dictionary (clause 14) and the addition of the new term *lease variation charge* (clause 15). .

**Clause 23 Section 175**

203. Clause 23 omits s175. Section 175 required the Minister to remit all or part of the LVC where this was considered to be necessary or desirable for one of the purposes set out in s175(1)(a), (b) and in accordance with any applicable policy direction made under s177 of the Regulation. This provision (and s177) is removed pending further review, taking into account the aims of this bill for decision making criteria that are as clear and transparent as possible.

**Clause 24 Section 176**

204. Clause 24 deletes the phrase *change of use* from section 176 and substitutes the new term *lease variation*. The new wording is consistent with the deletion of the term *change of use charge* from the Dictionary (clause 14) and the addition of the new term *lease variation charge* (clause 15). .

**Clause 25 Section 177**

205. Clause 25 omits s177. The deletion of s177 is made as a consequence of the deletion of s175.

**Clause 26 Division 5.5.3 heading**

206. Clause 26 deletes the phrase *change of use* from section 176 and substitutes the new term *lease variation*. The new wording is consistent with the deletion of the term *change of use charge* from the Dictionary (clause 14) and the addition of the new term *lease variation charge* (clause 15). .

**Clause 27 Sections 181 and 182**

207. Clause 27 deletes the phrase *change of use* from specified sections and substitutes the new term *lease variation*. The new wording is consistent with the deletion of the term *change of use charge* from the Dictionary (clause 14) and the addition of the new term *lease variation charge* (clause 15). .

**Clause 28 Dictionary, note 3**

208. Clause 28 omits the reference to *change of use charge* in note 3 at the front of the Dictionary. The deletion is consistent with the deletion of the term *change of use charge* from the Dictionary (clause 14) and the addition of the new term *lease variation charge* (clause 15).

**Clause 29 Dictionary, note 3**

209. Clause 29 inserts into note 3 at the front of the Dictionary references to the new terms *lease variation charge* (clause 15) and *LVC determination* (new s276 clause 10 and clause 15).

**Clause 30 Dictionary, definition of *added value***

210. Clause 30 deletes the definition of *added value* from the Dictionary and substitutes a new definition. The substitution is to update the wording. The updated wording is consistent with the deletion of the term *change of use charge* from the Dictionary (clause 14) and the addition of the new term *lease variation charge* (clause 15).

**Clause 31 Dictionary, definition of *recently commenced lease***

211. Clause 31 deletes the phrase *change of use* from the definition of recently commenced lease in the Dictionary and substitutes the new phrase *lease variation*. The new wording is consistent with the deletion of the term *change of use charge* from the Dictionary (clause 14) and the addition of the new term *lease variation charge* (clause 15).

## **Schedule 1 Other amendments**

Schedule 1 lists amendments made to other Acts as a consequence of the Bill. The amendments are referred to also in clause 3.

### **Part 1.1 Taxation Administration Act 1999**[1.1]      **New section 4 (ia)**

212. Item 1.1 of this Schedule 1 inserts new s4(ia) into the Administration Act.

213. New s4(ia) of the Administration Act provides that new *Division 9.6.3 Variation of nominal rent leases* (clause 10) is a tax law for the purposes of the Administration Act.

### **Part 1.2 Unit Titles Act 2001**

#### **[1.2] New section 20(2A)**

214. Item 1.2 inserts new section 20(2A) into the *Unit Titles Act 2001*.

215. New section 20(2A) of the Unit Titles Act sets a pre-condition for the approval of unit title applications. The new section prohibits ACTPLA from approving a unit title application relating to certain leases. Under this section ACTPLA cannot approve a unit titles application if the relevant lease does not include a provision to limit the number of units that can be built on the land. This requirement is met if the lease includes, for example, a provision that limits the number of units on the lease to three. The requirement is also met if the lease includes a provision to the same effect but expressed in terms other than “units”. For example, the requirement is met if the limit is expressed as applying to “dwellings” or “residences”. The provision in the lease limiting the number of units must permit the number of units proposed in the unit titles application.

216. This provision in conjunction with new section 20(8) of the Unit Titles Act (item 1.3 of Schedule 1) is intended to replace the existing restrictions in the same terms in the Territory Plan. For example, Rule R28 in Part B – General Development Controls of the Residential Zones – Multi Unit Housing Development Code in the Territory Plan 2008. The location of this rule in the Unit Titles Act is considered more appropriate as the rule is effectively a process requirement particular to the operation of the Unit Titles Act.

#### **[1.3] Section 20(8), new definition of *prescribed zone***

217. Item 1.3 inserts new section 20(8) into the *Unit Titles Act 2001*.

218. New section 20(8) defines the term *prescribed zone* as used in new section 20(2A) of the Unit Titles Act (item 1.2 of Schedule 1). A prescribed zone is a zone that is identified in the Territory Plan and prescribed for this purpose in the Unit Titles Regulation 2001.