



Australian Capital Territory

Planning and Development (Lease Variation Charges) Amendment Act 2011

A2011-19

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Australian Capital Territory

Planning and Development (Lease Variation Charges) Amendment Act 2011

A2011-19

An Act to amend the *Planning and Development Act 2007*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2010-705

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Planning and Development (Lease Variation Charges) Amendment Act 2011*.

2 Commencement

This Act commences on 1 July 2011.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008*.

Note This Act also amends the following legislation (see sch 1):

- *Taxation Administration Act 1999*
- *Unit Titles Act 2001*.

Part 2 Planning and Development Act 2007

4 Contents of public register New section 28 (1) (ba) and (bb)

insert

- (ba) for each lease variation charge for a s 277 chargeable variation of a nominal rent lease—the amounts represented by V_1 and V_2 in section 277 for the charge;
- (bb) for each remission of an amount of a lease variation charge for a chargeable variation of a nominal rent lease under section 278 to section 278E—
 - (i) a description of the chargeable variation; and
 - (ii) the lease variation charge; and
 - (iii) the amount of the lease variation charge remitted;

5 Consideration of development proposals New section 138 (4) (da)

insert

- (da) if the development proposal relates to a variation of a nominal rent lease—
 - (i) whether a lease variation charge is payable under division 9.6.3 (Variation of nominal rent leases) in relation to the variation; and
 - (ii) if asked by the proponent—what the charge is likely to be and how the authority has worked out the charge;

6 New section 138 (6) (ba)

insert

- (ba) for subsection (4) (da)—the development proposal that is approved is different from the proposal in relation to which the advice was given; or

**7 Form of development applications
Section 139 (2) (g)**

substitute

- (g) if the application is for approval of a s 277 chargeable variation of a nominal rent lease—be accompanied by a valuation by an accredited valuer that works out the amounts represented by V_1 and V_2 in section 277; and

8 Section 139 (4), new definition of s 277 chargeable variation

insert

s 277 chargeable variation—see section 276.

9 **Definitions—ch 9**
Section 234, definition of *residential lease*

substitute

residential lease means a lease that authorises only residential use of the land comprised in the lease.

10 **Working out amount payable to discharge concessional leases**
Section 263 (2), note

substitute

Note If the variation of the lease is not solely for the purpose of removing the lease's concessional status, a person may also be required to pay a lease variation charge under div 9.6.3.

11 **Division 9.6.3**

substitute

Division 9.6.3 Variation of nominal rent leases

Note 1 This division is a tax law under the *Taxation Administration Act 1999*. As a tax law, this division is subject to provisions of the *Taxation Administration Act 1999* about the administration and enforcement of tax laws generally.

Note 2 The commissioner for revenue may delegate the commissioner's functions under this division to the planning and land authority (see *Taxation Administration Act 1999*, s 78).

276 **Definitions—div 9.6.3**

In this division:

chargeable variation, of a nominal rent lease, means a variation of the lease other than—

- (a) a variation, if—
 - (i) the only effect of the variation is to alter a common boundary between 2 or more adjoining leases; and
 - (ii) the authorised use of the land comprised in each adjoining lease (however described) is the same; and
 - (iii) none of the adjoining leases is a rural lease; or
- (b) a variation if the only effect of the variation is to remove the lease's concessional status; or
- (c) a variation prescribed by regulation.

Note **Variation**, of a lease—see the dictionary.

gross floor area—see the territory plan (13 Definitions).

LVC determination means a determination made under section 276E (Lease variation charges—LVC determination).

original decision—see section 277B (1) (b) (Lease variation charge under s 277—working out statement).

reconsideration application—see section 277C (5) (Lease variation charge under s 277—application for reconsideration).

s 276E chargeable variation—see section 276A.

s 277 chargeable variation—see section 276A.

working out statement—see section 277B (2) (Lease variation charge under s 277—working out statement).

276A Meaning of s 276E chargeable variation and s 277 chargeable variation—div 9.6.3

- (1) In this division:

s 276E chargeable variation, of a nominal rent lease, means a chargeable variation that is 1 of the following:

- (a) if a development application relates to the chargeable variation of only 1 residential lease—a variation to increase the number of dwellings permitted on the land under the lease;

Example

a variation of a nominal rent lease to increase the maximum number of 20 residential units permitted on the land under the lease to 40 units

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) if a development application relates to the chargeable variation of only 1 residential lease—a variation to limit the number of dwellings permitted on the land under the lease;

Example

A lease permits land to be used for residential purposes but does not state any limit on the number of permitted residences on the land. The lessee proposes to subdivide the land under the *Unit Titles Act 2001*. That Act, s 20 (2A) does not allow the lease to be subdivided unless the lease provides for the number of dwellings on the land. The lessee must vary the lease to limit the number of dwellings permitted on the land before subdividing the land.

- (c) if a development application relates to the chargeable variation of only 1 non-residential lease—a chargeable variation of the lease that—
- (i) 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 under the lease; or

- (ii) increases or limits the number of dwellings permitted on the land under the lease;
- (d) the consolidation of 2 or more nominal rent leases;
- (e) the subdivision of 1 or more nominal rent leases;
- (f) if 2 or more nominal rent leases are consolidated—a variation that—
 - (i) increases the number of dwellings permitted on the land under the consolidated lease; or
 - (ii) 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 under the consolidated lease;
- (g) if 1 or more nominal rent leases are subdivided—a variation that—
 - (i) increases the number of dwellings permitted on the land under the subdivided lease; or
 - (ii) 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 under the subdivided lease;
- (h) a chargeable variation prescribed by regulation.

Note If a chargeable variation is not a s 276E chargeable variation the lease variation charge is worked out under s 277 (see s 276C).

s 277 chargeable variation means—

- (a) a chargeable variation that is not a s 276E chargeable variation; or
- (b) a s 276E chargeable variation if no lease variation charge is determined in an LVC determination for the variation.

- (2) In this section:

consolidated lease means a lease granted during a consolidation involving the surrender of 1 or more nominal rent leases.

non-residential lease means a lease other than a residential lease under section 234.

subdivided lease means a lease granted during a subdivision involving the surrender of 1 or more nominal rent leases.

276B Chargeable variation of nominal rent lease—lease variation charge

- (1) The planning and land authority must not execute a chargeable variation of a nominal rent lease unless the lessee has paid the Territory the lease variation charge for the variation, less any remission under section 278A to section 278F, plus any increase under section 279.

Note If the planning and land authority has executed a variation of a nominal rent lease, the authority must lodge a copy of the variation with the registrar-general for registration. A lease variation takes effect on registration (see *Land Titles Act 1925*, s 72A).

- (2) A lease variation charge is taken to be paid to the Territory if—
- (a) the amount of the charge is waived by the Treasurer under the *Financial Management Act 1996*, section 131 (Waiver of debts etc); or
 - (b) part of the amount is waived and the rest of the amount is paid.
- (3) Payment of the lease variation charge does not affect any right a person may have to apply for reconsideration under section 277D (Lease variation charge under s 277—requirements for reconsideration application).

276C Lease variation charges—amount payable

- (1) The lease variation charge for a chargeable variation of a nominal rent lease is—
 - (a) for a s 276E chargeable variation—the determined charge for the variation; or
 - (b) for a s 277 chargeable variation—the charge (if any) worked out under section 277 for the variation.
- (2) If a development approval of a development application relates to more than 1 chargeable variation of a nominal rent lease, the lease variation charge is worked out as follows:
 - (a) if all the chargeable variations are s 276E chargeable variations for which a charge is determined in an LVC determination—in accordance with the LVC determination;
 - (b) if all the chargeable variations are s 277 chargeable variations—in accordance with section 277;
 - (c) if 1 or more are a kind of variation mentioned in paragraph (a) and 1 or more are a kind of variation mentioned in paragraph (b)—as prescribed by regulation.

276D Lease variation charges—notice of assessment

- (1) On approval of a development application for a chargeable variation, the commissioner for revenue must give—
 - (a) a notice of assessment of the lease variation charge to the lessee; and
 - (b) if the development application in relation to the chargeable variation is made by someone other than the lessee—a copy of the notice to the applicant.

Note 1 The notice of assessment is an assessment under the *Taxation Administration Act 1999* as if the lease variation charge were a tax payable by the lessee under that Act (see this Act, s 279B (1)).

However, no actual liability to pay the lease variation charge arises on the giving of the notice (see s 279B (2)). The planning and land authority must not execute a variation of the lease unless the lessee has paid the assessed lease variation charge (see s 276B (1)).

Note 2 The commissioner for revenue must give a notice of assessment as soon as possible after the development application for the chargeable variation has been approved (see Legislation Act, s 151B).

- (2) A lease variation charge is taken to be worked out—
 - (a) on the day the development approval of the chargeable variation is approved; or
 - (b) if another day is prescribed by regulation—on that day.
- (3) A notice of assessment lapses on the earlier of—
 - (a) the day the lease variation charge is paid; or
 - (b) the day the development approval of the chargeable variation lapses.

276E Lease variation charges—s 276E chargeable variations

- (1) The Treasurer may determine a lease variation charge for a s 276E chargeable variation.

Note 1 The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

Note 2 Power to make a statutory instrument (including a determination) includes the power to make different provision for different categories (see Legislation Act, s 48).

- (2) In considering whether to determine a lease variation charge for a s 276E chargeable variation, the Treasurer must, before the start of each financial year—
 - (a) obtain and have regard to advice from an accredited valuer; and
 - (b) comply with any other requirement prescribed by regulation.

- (3) A determination must—
- (a) as far as is practicable, represent the average market value in relation to the variation; and
 - (b) if a variation increases the number of dwellings permitted on the land under the lease—state an amount for each additional dwelling permitted on the land under the lease; and
 - (c) if a variation 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 under the lease—state an amount for each additional square metre of gross floor area permitted on the land under the lease; and
 - (d) otherwise be made in accordance with any guideline approved under section 276F.
- (4) The determination must state—
- (a) the reasons for determining the lease variation charge; and
 - (b) how the charge was determined.
- (5) A determination is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (6) In this section:
- average market value*** means the value worked out in accordance with a guideline approved under section 276F.
- (7) Subsection (3) (a) does not apply to a determination made within 1 year after the day this section commences.
- (8) This subsection and subsection (7) expire 1 year after the day this section commences.

276F Lease variation charges—guidelines for LVC determination

- (1) The Treasurer may approve guidelines for—
 - (a) how lease variation charges in the LVC determination must be determined; and
 - (b) how the LVC determination is prepared, including who the Treasurer may or must consult; and
 - (c) what must be included in the LVC determination.

Example—par (a)

valuation methods and assumptions

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified under the Legislation Act.

277 Lease variation charges—s 277 chargeable variations

- (1) The commissioner for revenue works out the lease variation charge for a s 277 chargeable variation of a nominal rent lease as follows:

$$\text{LVC} = (V_1 - V_2) \times 75\%$$

- (2) In this section:

LVC means the lease variation charge payable for the s 277 chargeable variation of the lease.

V_I—

- (a) for a variation other than a consolidation or subdivision, means the capital sum that the lease might be expected to realise if—
 - (i) the lease were varied as proposed; and

- (ii) the lease were genuinely offered for sale immediately after the variation on the reasonable terms and conditions that a genuine seller would require; and
 - (iii) the rent payable throughout the term of the lease or, for a variation that involves the surrender of a lease and issue of a new lease, the new lease, were a nominal rent; or
- (b) for a variation that is a consolidation or subdivision, means the capital sum that the new lease or leases to be granted under the consolidation or subdivision might be expected to realise if—
 - (i) the consolidation or subdivision were to take place as proposed; and
 - (ii) the new lease or leases were genuinely offered for sale immediately after the variation on the reasonable terms and conditions that a genuine seller would require; and
 - (iii) the rent payable throughout the term of the new lease or leases were a nominal rent.

V₂—

- (a) for a variation other than a consolidation or subdivision, means the capital sum that the lease might be expected to realise if—
 - (i) the lease were not varied during the remainder of its term; and
 - (ii) the lease were genuinely offered for sale immediately before the variation on the reasonable terms and conditions that a genuine seller would require; and
 - (iii) the rent payable throughout the term of the lease, or lease to be surrendered, were a nominal rent; or

- (b) for a variation that is a consolidation or subdivision, means the capital sum that the lease or leases to be surrendered under the consolidation or subdivision might be expected to realise if—
- (i) no consolidation or subdivision were to take place during the remainder of the term of the surrendered lease or leases; and
 - (ii) the lease or leases were genuinely offered for sale immediately before the consolidation or subdivision on the reasonable terms and conditions that a genuine seller would require; and
 - (iii) the rent payable throughout the term of the lease or leases to be surrendered were a nominal rent.
- (3) If the amount worked out as V_1 is equal to or less than the amount worked out as V_2 , no lease variation charge is payable.
- (4) If the development approval for the relevant development application relates to 2 or more s 277 chargeable variations, V_1 and LVC are worked out as if the s 277 chargeable variations were a single s 277 chargeable variation of the lease.

277A Lease variation charge under s 277—improvements

- (1) In working out V_1 and V_2 under section 277, an improvement in relation to the land comprised in the lease must not be taken into account.
- Note* Power to make a regulation in relation to a matter includes power to make provision in relation to a class of a matter (see Legislation Act, s 48 (2)).
- (2) However, an existing improvement by way of clearing, filling, grading, draining, levelling or excavating the land may be taken into account.

(3) In this section:

improvement, in relation to land, means an existing or proposed improvement and includes any of the following:

- (a) a building or structure on or under the land;
- (b) an alteration or demolition of an existing building or structure on or under the land;
- (c) the remediation of the land;
- (d) earthworks, planting or other work that affects the landscape of the land;
- (e) anything mentioned in paragraphs (a) to (d) that is required—
 - (i) as a condition of a development approval; or
 - (ii) by a statutory approval obtained or required for a development proposal; or
 - (iii) under an agreement between the Territory or a territory entity and—
 - (A) the lessee; or
 - (B) if the lessee is not the applicant for the development approval—the applicant.
- (f) anything mentioned in paragraphs (a) to (d) proposed in a development application in relation to a chargeable variation of a nominal rent lease to be carried out on land outside of the land under the lease.

remediation—see the *Environment Protection Act 1997*, dictionary.

277B Lease variation charge under s 277—working out statement

- (1) This section applies if—
 - (a) a development application in relation to a s 277 chargeable variation of a nominal rent lease is approved; and
 - (b) the lease variation charge in relation to the s 277 chargeable variation has been worked out (the *original decision*); and
 - (c) the commissioner for revenue gives a notice of assessment of a lease variation charge under section 276D (1); and
 - (d) an application has not previously been made under section 277C for reconsideration of the original decision.

- (2) The applicant may ask the commissioner for revenue for a statement (a *working out statement*) explaining the commissioner's working out of the original decision.

Note If a form is approved under s 425 for this provision, the form must be used.

- (3) The commissioner for revenue must give the applicant a working out statement within 20 working days after the day the applicant asks for the statement unless—
 - (a) the notice of assessment contains the matters that the working out statement would contain; or
 - (b) a document that contains the matters that a working out statement would contain has already been given to the applicant.

277C Lease variation charge under s 277—application for reconsideration

- (1) The applicant for the development application may apply for reconsideration of the original decision on the earlier of—
 - (a) the day the applicant receives a working out statement; and
 - (b) the end of the 20-working day period mentioned in section 277B (3).

- (2) If a development approval of a development application relates to more than 1 chargeable variation of a nominal rent lease, this section only applies to the part of the lease variation charge that is worked out for a s 277 chargeable variation.

Note The total lease variation charge for a development application that relates to more than 1 chargeable variation is worked out in accordance with s 276C (2).

- (3) This section does not apply to a reassessment of a lease variation charge under section 279A.
- (4) If the applicant for the development application is not the lessee, the lessee may apply for reconsideration under this section instead of the applicant.
- (5) An application for reconsideration of the original decision (the ***reconsideration application***) must be made not later than—
 - (a) the later of—
 - (i) 80 working days after the day the notice of assessment under section 276D (1) is given; and
 - (ii) if a later day is prescribed by regulation—that day; or
 - (b) any longer period allowed by the commissioner for revenue.

Note The commissioner for revenue may extend the period after the end of the period being extended (see Legislation Act, s 151C (3)).

277D Lease variation charge under s 277—requirements for reconsideration application

- (1) The reconsideration application must be in writing and signed by—
 - (a) the lessee; and
 - (b) if the application is made by the applicant for the development application who is not the lessee—the applicant.
- (2) Also, the reconsideration application must—
 - (a) set out the grounds on which reconsideration of the original decision is sought; and
 - (b) in relation to the original decision—include an independent valuation that works out the amounts represented by V_1 and V_2 in section 277; and
 - (c) if the commissioner for revenue gives the applicant a working out statement before the end of the 20-working day period mentioned in section 277B (3)—include the statement.
- (3) If subsection (2) (c) applies, the applicant for the reconsideration must give the valuer for the independent valuation the commissioner for revenue's working out statement.
- (4) The independent valuation must be prepared by an accredited valuer who—
 - (a) was not involved in working out or advising on the original decision; and
 - (b) is—
 - (i) agreed to by the applicant for the reconsideration and the commissioner for revenue; or
 - (ii) if the applicant and the commissioner cannot agree—appointed in writing by a person prescribed by regulation; and

- (c) satisfies any requirement prescribed by regulation.
- (5) The applicant for the reconsideration is responsible for the cost of the independent valuation.

277E Lease variation charge under s 277—reconsideration

- (1) Within 20 working days after receiving a reconsideration application, the commissioner for revenue must—
 - (a) reconsider the original decision; and
 - (b) either—
 - (i) make a decision in substitution for the original decision that the commissioner could have made; or
 - (ii) confirm the original decision.
- (2) The 20-working day period mentioned in subsection (1) may be extended for a stated period by agreement between the commissioner for revenue and the applicant for the reconsideration.
- (3) In reconsidering the original decision, the commissioner for revenue—
 - (a) must consider the independent valuation required under section 277D (2) (b) and any other information given in the reconsideration application; and
 - (b) may consider any other relevant information.
- (4) The commissioner for revenue must ensure that, if the original decision is made by the commissioner or a person on the commissioner's behalf (the *original decision-maker*), someone other than the original decision-maker reconsiders the decision.

277F Lease variation charge under s 277—no action by commissioner within time

If the commissioner for revenue does not make a substitute decision, or confirm the original decision, by the end of the 20-working day period mentioned in section 277E (1), or the period as extended by agreement under section 277E (2), the commissioner is taken to have confirmed the original decision.

277G Lease variation charge under s 277—notice of decisions on reconsideration

The commissioner for revenue must give written notice of the decision on the reconsideration to—

- (a) the lessee; and
- (b) if the application is made by the applicant for the development application who is not the lessee—the applicant.

Note The notice must be a reviewable decision notice (see s 408 (2)).

278 When commissioner must remit lease variation charge—sustainability

- (1) This section applies if—
 - (a) a development application for a chargeable variation of a nominal rent lease is approved; and
 - (b) the approval also relates to the development of a building on the land under the lease; and
 - (c) the building complies with a requirement for energy efficiency determined by the Minister.
- (2) The Minister may determine a requirement for energy efficiency under subsection (1) (c).

- (3) The Treasurer may determine—
- (a) an amount to be remitted for a lease variation charge for the chargeable variation; and
 - (b) when the amount must be remitted.
- (4) A determination is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (5) The commissioner for revenue must remit the amount determined under subsection (3) (a) for the lease variation charge for the chargeable variation when the amount is determined to be remitted under subsection (3) (b).

**278A When commissioner must remit lease variation charge—
certain zones**

- (1) This section applies to a chargeable variation of a nominal rent lease if—
- (a) the variation—
 - (i) increases the number of dwellings permitted on the land under the lease; or
 - (ii) increases, or has the effect of increasing, the maximum gross floor area of any building or structure on the land under the lease; and
 - (b) the land is in a zone determined by the Minister; and
 - (c) any circumstances determined by the Minister apply to the variation.

- (2) The Minister may determine—
 - (a) a zone for subsection (1) (b); and
 - (b) circumstances for subsection (1) (c).
- (3) The Treasurer may determine an amount to be remitted for a lease variation charge for the chargeable variation.
- (4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (5) The commissioner for revenue must remit the amount determined under subsection (3) for the lease variation charge for the chargeable variation.

278B When commissioner must remit lease variation charge—community purpose

- (1) This section applies to a chargeable variation of a nominal rent lease that authorises development in relation to a community purpose determined by the Minister.
- (2) The Minister may determine a community purpose for subsection (1).
- (3) The Treasurer may determine an amount to be remitted for a lease variation charge for the chargeable variation.
- (4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (5) The commissioner for revenue must remit the amount determined under subsection (3) for the lease variation charge for the chargeable variation.

**278C When commissioner must remit lease variation charge—
heritage significance**

- (1) This section applies if—
 - (a) a development application for a chargeable variation of a nominal rent lease is approved; and
 - (b) a place or object on the land under the lease is registered under the *Heritage Act 2004*; and
 - (c) any circumstances determined by the Minister apply to the variation.
- (2) The Minister may determine—
 - (a) circumstances for subsection (1) (c); and
 - (b) criteria for working out the cost to the lessee of complying with the *Heritage Act 2004* in relation to the place or object.
- (3) The Treasurer may determine an amount to be remitted for a lease variation charge, having regard to any criteria determined under subsection (2) (b).
- (4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (5) The commissioner for revenue must remit the amount determined under subsection (3) for the lease variation charge for the chargeable variation.

**278D When commissioner must remit lease variation charge—
environmental remediation**

- (1) This section applies if—
 - (a) a development application for a chargeable variation of a nominal rent lease is approved; and
 - (b) it is a condition of the approval that the lessee carry out remediation of the land under the lease; and
 - (c) any circumstances determined by the Minister apply to the variation.
- (2) The Minister may determine—
 - (a) circumstances for subsection (1) (c); and
 - (b) criteria for working out the cost to the lessee of the remediation of the land.
- (3) The Treasurer may determine an amount to be remitted for a lease variation charge, having regard to any criteria determined under subsection (2) (b).
- (4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (5) The commissioner for revenue must remit the amount determined under subsection (3) for the lease variation charge for the chargeable variation.
- (6) In this section:

remediation—see the *Environment Protection Act 1997*, dictionary.

278E When commissioner must remit lease variation charges—other

- (1) The Minister may determine circumstances in addition to section 278 to section 278D in which an amount of a lease variation charge for a chargeable variation of a nominal rent lease must be remitted.
- (2) The Treasurer may determine an amount to be remitted for a lease variation charge for a chargeable variation in a circumstance determined by the Minister.
- (3) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (4) The commissioner for revenue must remit the amount determined under subsection (2) for the lease variation charge for the chargeable variation.

278F When commissioner must remit lease variation charges—chargeable variations generally

- (1) The Treasurer may determine, for a financial year, an amount to be remitted for each lease variation charge for a chargeable variation for which a notice of assessment has been given under section 276D in the financial year.
- (2) The amount must be expressed as a percentage of the lease variation charge for a chargeable variation.
- (3) The determination must be made not less than 1 year before the beginning of the financial year for which the determination will apply.
- (4) The commissioner for revenue must remit the amount determined under subsection (1) for a chargeable variation to which the determination applies.

- (5) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (6) Subsection (3) does not apply to a determination made within 1 year after the day this section commences.
- (7) This subsection and subsection (6) expire 1 year after the day this section commences.

279 When commissioner must increase lease variation charge

- (1) The commissioner for revenue must increase a lease variation charge for a chargeable variation of a nominal rent lease as prescribed by regulation.
- (2) A regulation may prescribe the amount of the increase under subsection (1).
- (3) Subject to any disallowance or amendment under the Legislation Act, chapter 7, the regulation commences—
- (a) if there is a motion to disallow the regulation and the motion is negated by the Legislative Assembly—the day after the day the disallowance motion is negated; or
 - (b) the day after the 6th sitting day after the day it is presented to the Legislative Assembly under that chapter; or
 - (c) if the declaration provides for a later date or time of commencement—on that date or at that time.

279A Lease variation charge—reassessment

- (1) This section applies if—
- (a) a development application for approval of a chargeable variation of a nominal rent lease is approved; and

- (b) the commissioner for revenue gives a notice of assessment of a lease variation charge under section 276D (1); and
 - (c) the planning and land authority executes a variation of the lease to which the lease variation charge relates.
- (2) The commissioner for revenue may reassess the lease variation charge under the *Taxation Administration Act 1999*, section 9 (Reassessment).
- (3) The commissioner for revenue must give—
- (a) a notice of assessment of the lease variation charge to the lessee; and
 - (b) if the development application in relation to the chargeable variation is made by someone other than the lessee—a copy of the notice to the applicant.

Note The assessment notice must show the amount of the reassessment and the amount by which the assessment has been increased or decreased (see *Taxation Administration Act 1999*, s 14 (3)).

- (4) For this division, the *Taxation Administration Act 1999*, part 10 (Objections and reviews) applies only to a reassessment of a lease variation charge under this section.

Note 1 Either the lessee or, if the lessee is not the applicant for the development approval, the applicant for the development approval, may apply under this Act for reconsideration of a notice of an assessment of a lease variation charge worked out under s 277 (see s 277D).

Note 2 A notice of a reassessed lease variation charge is an internally reviewable decision (see *Taxation Administration Act 1999*, s 107, def *internally reviewable decision*), and the notice of assessment must be an internal review notice (see that Act, s 107B).

279B Application of Taxation Administration Act

- (1) The *Taxation Administration Act 1999* applies to this division as if a lease variation charge for a chargeable variation were a tax payable from the day the development application in relation to the chargeable variation is approved.
- (2) For this division, a tax liability in relation to a chargeable variation only arises if the planning and land authority executes a variation of the lease to which the chargeable variation relates.

Note The planning and land authority must not execute a variation of a nominal rent lease unless the lessee has paid the lease variation charge worked out under s 276B, less any remission under s 278, plus any increase under s 279 (see s 276B (1)).

279C Taxation Administration Act—disclosure of information

For the *Taxation Administration Act 1999*, division 9.4 (Secrecy), a tax officer under that Act may disclose information obtained under or in relation to the administration of this division to the planning and land authority or a person authorised by the authority to receive the information.

12 New chapter 17

insert

Chapter 17 Transitional—Planning and Development (Lease Variation Charges) Amendment Act 2011**471 Transitional—application for development approval of variation of nominal rent lease**

- (1) This section applies in relation to a development application if—
 - (a) the application is made before 1 July 2011; and

- (b) the application includes an application to vary a nominal rent lease; and
- (c) immediately before 1 July 2011—
 - (i) division 9.6.3 (Variation of nominal rent leases) applied to the variation; and
 - (ii) the planning and land authority had not worked out the change of use charge for the variation.
- (2) Division 9.6.3 continues to apply to the variation as if the *Planning and Development (Lease Variation Charges) Amendment Act 2011* had not commenced.
- (3) However, if before 1 October 2011, the applicant gives the commissioner for revenue notice in writing that it wishes to have the variation dealt with as if the development application had been made after 1 July 2011, the development application is taken to have been made after 1 July 2011.

Note If a form is approved under s 425 for this provision, the form must be used.

472 Expiry—ch 17

This part expires 1 July 2012.

13 Schedule 1, items 27 to 29

substitute

27	decision under s 277E (1) (b) (i) on reconsideration about amount of lease variation charge for variation of lease	commissioner for revenue	applicant for the reconsideration	
28	decision under s 277E (1) (b) (ii) to confirm original decision on reconsideration about amount of lease variation charge for variation of lease	commissioner for revenue	applicant for the reconsideration	

14 Dictionary, new definition of *accredited valuer*

insert

accredited valuer means a valuer accredited by—

- (a) the Australian Property Institute Incorporated
ABN 49 007 505 866; or
- (b) if another entity is prescribed by regulation—that entity.

15 Dictionary, definition of *change of use charge*

omit

16 Dictionary, new definitions

insert

chargeable variation, of a nominal rent lease, for division 9.6.3 (Variation of nominal rent leases)—see section 276.

gross floor area, for division 9.6.3 (Variation of nominal rent leases)—see the territory plan (13 Definitions).

lease variation charge, for a variation of a nominal rent lease, means the lease variation charge applying under section 276C.

LVC determination, for division 9.6.3 (Variation of nominal rent leases)—see section 276.

17 Dictionary, definition of *original decision*

substitute

original decision—

- (a) for division 7.3.10 (Reconsideration of decisions on development applications)—see section 191 (1) (a); and
- (b) for division 9.6.3 (Variation of nominal rent leases)—see section 277B (1) (b).

18 Dictionary, definition of *reconsideration application*

substitute

reconsideration application—

- (a) for division 7.3.10 (Reconsideration of decisions on development applications)—see section 191 (3); and
- (b) for division 9.6.3 (Variation of nominal rent leases)—see section 277C (5).

19 Dictionary, new definitions

insert

s 276E chargeable variation, of a nominal rent lease, for division 9.6.3 (Variation of nominal rent leases)—see section 276A.

s 277 chargeable variation, of a nominal rent lease, for division 9.6.3 (Variation of nominal rent leases)—see section 276A.

working out statement, for division 9.6.3 (Variation of nominal rent leases)—see section 277B (2).

Part 3 Planning and Development Regulation 2008

20 Part 5.5 heading

substitute

Part 5.5 Lease variation charges

21 Division 5.5.2

substitute

Division 5.5.2 Independent valuation of s 277 lease variation charge

171 Appointment of independent valuer—Act, s 277D (4) (b) (ii)

The president of the ACT division of the Australian Property Institute Incorporated ABN 49 007 505 866 is prescribed.

172 Requirements for independent valuer—Act, s 277D (4) (c)

A valuer preparing an independent valuation must be a current member of the Australian Property Institute Incorporated ABN 49 007 505 866.

22 Division 5.5.3 heading

omit

change of use

substitute

lease variation

23 Sections 181 and 182

omit

change of use

substitute

lease variation

24 Dictionary, note 3

omit

- change of use charge

25 Dictionary, definition of *added value*

substitute

added value, for the variation of a nominal rent lease, for part 5.5 (Lease variation charges)—see section 170.

26 Dictionary, definition of *recently commenced lease*

omit

change of use

substitute

lease variation

Schedule 1 Other amendments

(see s 3)

Part 1.1 Taxation Administration Act 1999

[1.1] New section 4 (ia)

insert

- (ia) the *Planning and Development Act 2007*, division 9.6.3
(Variation of nominal rent leases);

Part 1.2 Unit Titles Act 2001

[1.2] New section 20 (2A)

insert

- (2A) Also, if a unit title application relates to a lease located within a prescribed zone, the planning and land authority may approve the application only if the lease states the number of units (however described) permitted on the land and the application is for not more than the permitted number of units.

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

insert

prescribed zone means a zone identified in the territory plan that is prescribed by regulation.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 5 May 2011.

2 Notification

Notified under the Legislation Act on 30 June 2011.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Planning and Development (Lease Variation Charges) Amendment Bill 2011, which was passed by the Legislative Assembly on 23 June 2011.

Clerk of the Legislative Assembly

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