Australian Capital Territory

Planning and Development (Land Rent Payout) Policy Direction 2015 (No 1)

Disallowable instrument DI2015–308

made under the

Planning and Development Act 2007, section 272C(1) (Policy directions for paying out rent)

EXPLANATORY STATEMENT

Under section 272A(2) of the *Planning and Development Act 2007* (the Act), land rent lessees can apply to the planning and land authority for a variation of their lease to reduce their rent payable to a nominal rent. Essentially this allows a lessee to 'convert' a land rent lease to a 'standard' lease. Section 272B(2)(d) of the Act allows the planning and land authority to determine a 'pay out' amount that the lessee must pay to the Territory before being granted such a variation. Under section 272B(2)(d), the planning and land authority must refer to any policy direction of the Minister about this 'pay out' amount. The Minister can make such a policy direction under section 272C(1) of the Act.

This instrument is a Ministerial policy direction made under section 272C(1) of the *Planning and Development Act 2007*. It repeals the former policy direction in disallowable instrument DI2009-162, *Planning and Development (Land Rent Payout Policy) Direction 2009 (No 1).*

This new instrument makes a policy direction for the two classes of leases previously covered by DI2009-162, in clauses 5 and 6, and includes a policy direction for a new class of lease in clause 4.

For the two classes of land rent lease covered by clauses 5 and 6, the former approach in DI2009-162 continues to apply. That is the 'pay out' amount to convert a land rent lease is:

- for a lease prescribed under regulation 160 of the *Planning and Development Regulation 2008* – current market value. Currently, regulation 160 prescribes the applicable leases as:
  (a) rental leases granted for the full market rental value of the lease; and
  (b) concessional leases – provided the lease is not a recently commenced lease within the meaning of regulation 180 or a lease to a community organisation under section 163 of the *Land (Planning and Environment) Act 1991*.

- for all other leases (except the new clause 4 leases) – an amount equal to the unimproved value (UV) of the lease or the current market value, whichever the lessee specifies. The proviso in clause 5 is that where the UV has not been determined for the year the lessee applies to convert their lease – current market applies. The ability for the lessee to elect to pay out either UV or current market value allows them to choose the most advantageous option at the time. This scheme is targeted at greenfields sites where lessees are encouraged to, and typically 'convert', their leases in the short to medium term, to take advantage of the increase in UV over time. At time these leases are converted, there is usually little difference between UV and current market value.

The new class of land rent lease covered in clause 4 of this instrument is not a class covered by the repealed instrument DI2009-162. These are land rent leases granted to former 'Mr Fluffy' home owners (affected residential premises) and those who have owned properties impacted by a 'Mr Fluffy' home (eligible impacted properties).

Under the Loose-fill Asbestos Insulation Eradication Scheme, and facilitated by recent amendments to the *Land Rent Act 2008,* these categories of former owners are now able to take up a land rent lease where they opt to utilise the Government's Land Rent Scheme to return to their remediated property (provided they meet the Land Rent Scheme eligibility criteria). New section 7A(4) of the *Land Rent Act 2008* establishes the definition of a 'former owner' for the purposes of clause 4.

The Government has determined that for this class of land rent leases, they will only be able to be 'converted' to 'standard' leases at current market value. This approach has been adopted as it aligns with the Government's policy to sell remediated former affected residential premises and eligible impacted properties at current market value.

It differs from the treatment of other land rent leases in clause 6, and as set out in the repealed DI2009-162. The difference in treatment is because the leases offered to former 'Mr Fluffy' owners are being granted in older, established suburbs – where the current market value will usually significantly exceed the UV. If the former owners could elect to pay only UV, there is the potential for significant foregone revenue for the Government (which does not generally occur for greenfields sites). The Government's policy is to ensure there is a compassionate response to former owners of affected residential premises and eligible impacted properties, which is why it has extended the land rent scheme to these former owners, and has effectively agreed to defer its revenue from such properties. However, against this, it must also balance the public interest in maximising the revenue return for remediated blocks in order to ensure the Scheme is financially sustainable. This instrument strikes a balance between fairness and financial sustainability, by requiring this category of lessee to pay current market value to 'convert' their land rent lease, when they eventually chose to do so.

A regulatory impact statement (RIS) has not been prepared for this instrument as it is considered that the instrument:

(a) will not impose appreciable costs on the community, or a part of the community, (refer s34(1) of the *Legislation Act 2001*).

This instrument does not impose an appreciable cost on the community or part of the community, because it is a component of a Government program to remove the long term social and economic cost of loose-fill asbestos insulation from the community. This disallowable instrument arises from the Government's extension of the Land Rent Scheme to former owners of affected residential premises and eligible impacted properties – by allowing them to take up land rent leases on their former blocks. While this instrument may not allow them the option to convert their land rent lease to a standard lease at AUV (which is currently offered to other lessees in DI2009-162), this is not an *appreciable cost* on these lessees. Rather, this simply 'lessens the benefit' these lessees might have received from the pay out options offered under DI2009-162. The effect of this instrument is not a *cost imposition* on existing lessees, rather, it establishes a certain level of pay out for a future class of land rent lessee, and arises in light of the public interest in limiting the foregone revenue for these non-greenfield sites. In effect, all that has occurred for this future class of lessee is that the 'fee' to convert their particular lease has been set at current market value and 'amended' from what they might have paid under DI2009-162.

(b) does not operate to the disadvantage of anyone (refer s36(1)(b) of the *Legislation Act 2001*).

This instrument does not operate to the disadvantage of anyone by adversely affecting rights or imposing liabilities. This is because the instrument does not affect existing rights, but as described above, establishes a certain level of pay out for a future class of lessees. Also, the fact that these lessees may have to pay current market value to convert their lease, rather than having another option of AUV, does not mean the right to convert their lease is extinguished or adversely affected, or a new liability is imposed on them. It just means a different fee is payable to convert this class of lease.

(c) is an amendment of a fee, charge or tax consistent with an announced government policy and as such a RIS is not required (refer s36(1)(k) of the *Legislation Act*). As explained in paragraphs (a) and (b) above, the practical effect of this instrument is to 'amend' the fee payable for this future class of lease from that that might have otherwise have applied in DI2009-162. This 'amendment' to the existing policy approach has been announced by the Government as part of the presentation and debate on the *Building (Loose-fill Asbestos Eradication) Legislation Amendment Act 2015*.