

Planning and Development (Remission of Lease Variation Charges for the Housing Commissioner) Determination 2018

Disallowable instrument DI2018–93

made under the

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

EXPLANATORY STATEMENT

Terms

In this explanatory statement:

“Act” means the Planning and Development Act 2007.

“Regulation” means the Planning and Development Regulation 2008.

“LVC” means lease variation charge.

“nominal rent lease” means a lease for nominal rent as defined in the dictionary to the Act, that being a lease for which no significant rent is payable (as opposed to a rental lease).

“s 276E chargeable variation” is defined in s 276 of the Act as meaning a chargeable variation prescribed by regulation. These are the chargeable lease variations that are able to be codified under the LVC Determination, DI2017-208 Planning and Development (Lease Variation Charges) Determination 2017 (No 2). These lease variations are identified in s 170A of the Regulation.

“s 277 chargeable variation” is defined in s 276 of the Act. These are lease variations other than s 276E chargeable variations or s 276E chargeable variations whose LVC has not been set in the LVC Determination made under s 276E. The LVC for these variations is determined under s 277 of the Act.

Background

The LVC is charged when the lessee seeks to vary their lease and this is approved. The variation of a lease is a “development” for the purposes of the Act (s 7 (1)(f)) meaning a development application (DA) for development approval is required unless the variation is exempt from requiring approval under s133 of the Act (and s 20 of the Regulation).

There are three main categories of lease variations for the purposes of the LVC. These include variations of:

1. nominal rent leases for which no LVC is payable. Such leases are identified in the s 276 definition of “chargeable variation”. For example, variations of two adjoining leases whose only effect is to alter the boundary between them.
2. nominal rent leases where the variation is a s276E chargeable variation; and
3. nominal rent leases where the variation is a s277 chargeable variation.

A variation to a rental lease i.e. leases other than nominal rent lease, does not attract a lease variation charge. Rather an adjustment to rental payments is determined in accordance with Division 9.6.2 of the Act.

Section 278 of the Act permits the required LVC to be remitted (reduced) in whole or in part by a disallowable determination.

Only the amount remaining after the remission needs to be paid before the lease variation can take effect (s276B (1) of the Act). For example, if the LVC was \$100 and the amount to be remitted was 80% then only \$20 needs to be paid. When the amount is paid (or deferred) the lease variation, approved through the development application process, can be executed and registered on the Register of Land Titles.

Overview

The instrument is made under s 278 of the Act. Section 278 provides that a determination can do two things: firstly it can determine the circumstances in which an amount of LVC for a chargeable variation of a nominal rent lease must be remitted. In this instance the circumstances are that the lease must be granted to the housing commissioner for a term beginning before 17 December 1987, and the housing commissioner is the lessee. Secondly, it can determine an amount to be ‘remitted’ for a lease variation charge for the determined circumstances. The amount can be between zero and 100 percent.

The determination is made by two Ministers: the Minister for Planning and Land Management determines the circumstances that relate to the housing commissioner (s 278 (1)) and the Treasurer (s 278 (2)) determines the amount to be remitted.

The determination provides for remissions for two types of LVC made under s 276E or s 277 of the Act. The overall effect of the determination is to remit (or reduce) the LVC for certain lease variations where the purpose of the variation is for housing commissioner purposes.

The Commissioner for Revenue must remit the amount of the LVC that is required to be remitted by this determination (s 278 (4)).

Regulatory impact statement

The *Legislation Act 2001* section 36 states:

36. (1) A regulatory impact statement need not be prepared for a proposed subordinate law or disallowable instrument (the proposed law) if the proposed law only provides for, or to the extent it only provides for:

(b) a matter that does not operate to the disadvantage of anyone (other than the Territory or a territory authority or instrumentality) by—

(i) adversely affecting the person’s rights; or

- (ii) imposing liabilities on the person;
- (k) an amendment of a fee, charge or tax consistent with announced government policy.

In this case, a regulatory impact statement is not required. This is because the determination does not adversely affect any rights and does not impose liabilities. The instrument instead operates to a lessee's advantage by reducing the LVC in specified circumstances. In addition, the disallowable instrument has the end effect of amending a charge consistent with announced government policy.

Sections of the determination in more detail

Section 1 Name of Instrument

Section 1 names the determination as the Planning and Development (Remission of Lease Variation Charges for the Housing Commissioner) Determination 2018.

The section also makes reference to terms used in the instrument and provides that the terms have the same meaning as they have in the Act.

Section 2 Commencement

This section provides that the instrument commences on the day after its notification day.

Section 3 Determination of circumstances which apply to the variation—s 278 (1)

Section 3 (1) provides that the instrument applies if the lease was granted to the housing commissioner for a term beginning before 17 December 1987 and the housing commissioner is the lessee. This means that if the housing commissioner was granted the lease before 17 December 1987 but is not now the lessee the remission does not apply. Similarly if the housing commissioner was granted a lease on or after 17 December 1987 and is still the lessee the remission does not apply.

Section 4 Determination of the amount to be remitted—s 278 (2)

Section 4 states that it is the Treasurer who determines the remission amounts set out in subsections (1) and (2).

Sub-Section (1) applies to s276E chargeable variations. If another determination applies to the variation and the amount to be remitted is less than 50% then through this determination a further amount is remitted until the amount being remitted equals 50% of the LVC - subsection (1) (a).

If one or more other determinations already apply to the variation and through those determinations an amount greater than 50% of the LVC is already being remitted then no further remission is available through this determination - sub-section (1) (b).

If the only remission determination applying to the variation is this determination, then the remission amount is 50% of the LVC - sub-section (1) (c).

Sub-section (2) applies to s 277 chargeable variations. In this case, the LVC is remitted by 25% of the added value. This is additional to the 25% remission provided under s 277 of the Act and means that the total being remitted is 50%. This means that a section 277 lease variation attracts the same remission as a s276E chargeable variation determined by subsections (1) (a) and (1) (b) above.

Sub-section (3) provides that added value has the same meaning as defined at s 179 of the Regulation. Section 179 defines added value as the amount worked out by subtracting V2 from V1. “V” is defined in the Act at s 277.