

# Planning (Reduction of Lease Variation Charges for the Housing Commissioner) Determination 2023

Disallowable instrument DI2023–277

made under the

*Planning Act 2023*, s 338 (Reduction of lease variation charges)

## EXPLANATORY STATEMENT

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The lease variation charge (LVC) is charged when the lessee seeks to vary their lease and this development is approved. A variation of a lease is a “development” for the purposes of the *Planning Act 2023* (the Act), (section 14 (1) (f)) meaning a development application (DA) for development approval is required unless exempt from requiring approval under section 145 of the Act.

The LVC provisions under the *Planning Act 2023* (the Act) replicate those from the repealed *Planning and Development Act 2007*.

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 section 327 ‘chargeable variation’ of the Act.
  - a. For example, variations of two adjoining leases whose only effect is to alter the boundary between them under paragraph (a) (i).
2. nominal rent leases where the variation is a section 331 standard chargeable variation; and
3. nominal rent leases where the variation is a section 332 non-standard chargeable variation.

Section 338 of the Act provides that the Minister for Planning and Land Management may determine, by way of disallowable instrument, circumstances in which an amount of the charge must be reduced. If the Minister makes a determination, the Treasurer must determine an amount to be reduced for each LVC to which the determined circumstances apply. The amount of the remission must be expressed as a percentage of the LVC (section 338 (3) of the Act). The Commissioner for ACT Revenue must then reduce the LVC by the amount determined.

Only the amount remaining after the reduction needs to be paid (or deferred) before the lease variation can be executed (see section 328 of the Act).

The *Planning (Reduction of Lease Variation Charges for the Housing Commissioner) Determination 2023* (the determination) continues the prior reduction/remission of LVC under the *Planning and Development (Remission of Lease Variation Charges for the Housing Commissioner) Determination 2018*, DI2018-93. The determination incorporates updates for the commencement of the new Act provisions and minor technical drafting.

## **Details of the instrument**

### **Section 1 Name of Instrument**

Section 1 names the determination as the *Planning (Reduction of Lease Variation Charges for the Housing Commissioner) Determination 2023*.

### **Section 2 Commencement**

This section provides that the instrument commences with the new LVC provisions under the Act.

### **Section 3 Definitions**

This section now provides direct references to terms used in the instrument.

### **Section 4 Determination of circumstances which apply to the variation—s 338 (1)**

Section 4 (1) provides that the Minister determines 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 reduction does not apply. Similarly, if the housing commissioner was granted a lease on or after 17 December 1987 and is still the lessee the reduction does not apply.

### **Section 5 Determination of the amount to be reduced—s 338 (2)**

Section 5 provides that the Treasurer determines the reduction amounts set out in subsections (1) and (2).

Subsection (1) applies to standard chargeable variations. If another determination applies to the variation reducing the amount by less than 50% of the LVC, then through this determination the LVC can be further reduced until the combined reduction equals 50% of the LVC – subsection (1) (a).

If one or more other determinations already apply to the variation and through those determinations the LVC is already being reduced by an amount greater than 50% then no further reduction is available through this determination – subsection (1) (b).

If the only reduction determination applying to the variation is this determination, then the reduction amount is 50% of the LVC – subsection (1) (c).

Subsection (2) applies to non-standard chargeable variations. In this case, the LVC is reduced by 25% of the added value. This is additional to the 25% reduction provided under section 332 and section 338 of the Act and means that the total being reduced is 50%. This means that a non-standard lease variation attracts the same reduction as a standard chargeable variation determined by subsections (1) (a) and (1) (b) above.