

19 October 2018

Review Team  
Review of the Lease Variation Charge

via email: [LVCReview@act.gov.au](mailto:LVCReview@act.gov.au)

Dear Review Team,

Please find attached a brief submission prepared by the Property Law Committee of the ACT Law Society for your consideration.

Please do not hesitate to contact the Society should you require any further information.

Yours sincerely,



Dianne O'Hara  
Chief Executive Officer

## Review of the Lease Variation Charge

The ACT Law Society supports the ACT Government's review of the Lease Variation Charge (LVC) framework (LVC Review).

The ACT Law Society acknowledges the various questions that are contained in the ACT Government's consultation paper that has been issued in connection with the LVC Review.

The bulk of these questions are not a matter for the ACT Law Society to comment on, as they relate to more commercial aspects of the LVC framework.

The questions that are of relevance to the ACT Law Society are those relating to:

- Simplicity and consistency
- Providing an incentive for better outcomes.

In relation to both of these topics, the ACT Law Society has previously liaised with the ACT Government in relation to possible improvements to the LVC framework.

In this regard, the ACT Law Society wrote to the then Chief Minister, Treasury and Economic Development Directorate in November 2014, suggesting changes to the LVC framework for consideration by the ACT Government's Regulatory Reform Panel.

For ease of reference, these comments are reproduced below:

Issue	Why is it bad?	Solution
The lease variation charge (LVC) seems to be overly complex.  Remissions and exemptions remain mostly discretionary.	The LVC regime replaced the 'change of use charge' regime in the ACT, with some significant differences.  The LVC scheme with its code and non-code streams is clunky and very difficult to understand. It is only fully comprehended through a series of amendments to the <i>Planning and Development Act 2001</i> and various determinations.  It appears to rely heavily on a remission regime to provide incentive to carry out developments in very specific instances.	The LVC regime should be simplified.  Also, the remissions system should be streamlined and become less technical.
The assessment of the LVC is conducted after, and not concurrently, with the issue of an approval of a development application.	This becomes a two-step process for approval of a new development instead of one. This causes delays in developments.	The assessment of LVC should occur concurrently at the same time a notice of decision is issued for a development application.

In response to these suggestions, the ACT Government's Regulatory Reform Panel advised the ACT Law Society in December 2015 that "Longer term reforms of LVC are subject to ongoing development and government consideration".

The ACT Law Society takes this opportunity to repeat the comments that it provided in November 2014. In this regard, the ACT Law Society notes that the ACT Government's changes to LVC enacted via the passing of the *Planning and Development (Lease Variation Charge Deferred Payment Scheme) Amendment Act 2018* have not in the ACT Law Society's view adequately addressed the issues previously raised, and so the issues remain as relevant now as they were in November 2014.

In relation to the consultation question regarding the provision of incentives for better outcomes, the ACT Law Society also takes this opportunity to draw the ACT Government's attention to a particular practical issue that has arisen since the ACT Government's introduction earlier this year of the deferred payment scheme for LVC.

Under the *Planning and Development (Remission of Lease Variation Charges–Environmental Sustainability) Determination 2018 (No 2)*, an applicant can only obtain this remission if (amongst other requirements):

The applicant for the remission must have entered into a deferral arrangement with the Commissioner for Revenue under the *Planning and Development Act 2007*, Subdivision 9.6.3.3 in respect of any remission amount.

In the experience of some ACT Law Society members, some banks will not lend construction finance if the relevant borrower / land owner has deferred the LVC.

Compounding this situation, an applicant cannot enter into a deferral arrangement without an LVC determination. However, it is not possible to obtain an LVC determination - with the remission amount reflected in the determined amount - until the applicant has entered into a deferral arrangement with the Commissioner for Revenue. This is circular.

In the experience of some ACT Law Society members, this circular situation has seen practices emerge where the Environment, Planning and Sustainable Development Directorate will issue the LVC determination, including the remission, if the applicant has at least applied for the deferral, but this mechanism is clunky and does not appear to necessarily reflect the legislative framework.

Where the applicant is borrowing from a bank that has adopted the lending position described above, then once the applicant has obtained the LVC determination noting the remission amount, and has entered into the deferral arrangement (as required to get the remission), the applicant needs to immediately pay all of the assessed LVC, in order that the LVC is no longer deferred, thereby enabling the applicant to obtain the required construction finance.

In essence, to get the remission and to fund their development, applicants in this situation need to enter into a deferral arrangement, then pay the LVC immediately upon entering into the deferral arrangement.

While the ACT Law Society supports in principle the deferred payment scheme, the ACT Law Society encourages changes to the LVC framework that will address this specific issue.