

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2022-092

Information to be published	Status
Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	Waived
6. Processing time (in working days)	38
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

From:
To: CMTEDD FOI

Cc:

Subject: 2022-092 FOI Request | Advise from ABS RE: Lease Variation Charge Deferrals

Date: Monday, 21 March 2022 9:41:29 AM

Good Morning,

I write to request under the *Freedom of Information Act 2016* a copy of any correspondence or advice between the ABS (Australian Bureau of Statistics) and the ACT Government on the Lease Variation Charge Deferrals requested on the 26^{th} of November 2018 and received on the 30^{th} of November 2018.

Should you require any further information or clarification about my request, pl office on	ease contact my
Best,	



Our ref: CMTEDDFOI 2022-092



FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 21 March 2022, in which you sought access to:

Any correspondence or advice between the ABS (Australian Bureau of Statistics) and the ACT Government on the Lease Variation Charge Deferrals requested on the 26th of November 2018 and received on the 30th of November 2018.

Authority

As an appointed Information Officer under section 18 of the Act, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 20 April 2022 however, following an extension and third-party consultations, the due date is now 26 May 2022.

Decision on access

Searches were completed for relevant documents and two documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of the documents that fall within the scope of your request and the access decision for each document.

I have decided to grant access in full to one document and partial access to one document as I consider it to contain information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as **Attachment B** to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

Statement of Reasons

In reaching my access decisions, I have taken the following into account:

- the Act,
- the content of the documents that fall within the scope of your request,
- the Human Rights Act 2004.

Exemption claimed

My reasons for deciding not to grant full access to the identified document are as follows:

<u>Information that would, on balance, be contrary to the public interest to disclose under</u> the test set out in section 17 of the Act

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interest lies. As part of this process, I must consider factors favouring disclosure and non-disclosure.

In Hogan v Hinch (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it appears'. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within the documents is within the 'public interest'.

Factors favouring disclosure in the public interest under Schedule 2.1:

(a) disclosure of the information could reasonably be expected to do any of the following:(i) promote open discussion of public affairs and enhance the government's accountability

Disclosure of briefs taken into Annual Report hearings help to promote discussion of government business and enhance the government's accountability and continued commitment to open and transparent government.

The FOI Act has an express pro-disclosure bias which reflects the importance of public access to government information for the proper working of a representative democracy. This concept is promoted through the objects of the FOI Act, and I consider that giving access to the information sought would support this intention of the FOI Act.

Factors favouring nondisclosure in the public interest under Schedule 2.2:

(a) disclosure of the information could reasonably be expected to do any of the following:
(ii) prejudice the protection of an individual's right to privacy or any other right under

the Human Rights Act 2004

I consider that the protection of an individual's right to privacy, especially during dealings with the ACT Government is a significant factor as the parties involved have provided their contact information for the purposes of working with the ACT Government.

The Australian Public Service (APS) has a policy of redacting the names of non-Senior Executive Service (SES). I have considered the in-scope information relevant to your request and following third-party consultation in addition to weighing the benefit of releasing the names of non-SES APS staff, I am of the opinion the protection of these individuals' personal details (such as name and contact details) outweighs the benefit which may be derived from releasing them.

I consider that these individuals are entitled to expect that their personal information supplied while informing the ACT Government of current requirements will be dealt with in a manner that protects their privacy. As such, I afford the above factor favouring nondisclosure significant weight.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Charges

Processing charges are not applicable for this request because the number of pages to be released to you is below the charging threshold of 50 pages.

Online publishing - Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published on the CMTEDD disclosure log 3 days after the date of my decision. Your personal contact details will not be published.

You may view CMTEDD disclosure log at https://www.cmtedd.act.gov.au/functions/foi.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form *Applying for an Ombudsman Review* to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman GPO Box 442 CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal Level 4, 1 Moore St GPO Box 370 Canberra City ACT 2601

Telephone: (02) 6207 1740 http://www.acat.act.gov.au/

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,

Katharine Stuart
Information Officer

12) Junt

Chief Minister, Treasury and Economic Development Directorate

16 May 2022



FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
Any correspondence or advice between the ABS (Australian Bureau of Statistics) and the ACT Government on the Lease Variation Charge Deferrals requested on the 26th of November 2018 and received on the 30th of November 2018.	CMTEDDFOI 2022-092

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-3	Email chain	30 Nov 2018	Partial release	Sch 2 s2.2 (a)(ii)	Yes
2	4-10	Lease Variation Charge Deferred Payment Scheme Terms of Payment	Undated	Full release	N/A	Yes
Total No						
of Docs						
2						

From: "Anderson, Michael" < Michael. Anderson@act.gov.au>

Sent: 30/11/2018 4:11 PM

To: "Goth, Kathy" <Kathy.Goth@act.gov.au>;"Brown, Nathanl"

<NathanL.Brown@act.gov.au>;"Das, Sean" <Sean.Das@act.gov.au>;"Jia, Bessie" <Bessie.Jia@act.gov.au>;"Asmus,

Conrad" < Conrad. Asmus@act.gov.au>

Cc: "#CMTEDD, Macroeconomic" < #CMTEDDMacroeconomic@act.gov.au>

Subject: Lease Variation Charge Deferral - Accounting treatment - ACT [SEC=UNCLASSIFIED]

Hi,

fyi.

Michael

Michael Anderson | Senior Macroeconomic Advisor

Phone: +61 2 6207 0243 | Email: michael.anderson@act.gov.au

Macroeconomic Branch | Chief Minister, Treasury and Economic Development Directorate | ACT Government

Level 1 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: DalCin, Catherine

Sent: Friday, 30 November 2018 2:11 PM

To: Morgan, David <David.Morgan@act.gov.au>; Briggs, Liza <Liza.Briggs@act.gov.au>; Gannon, Jason

<Jason.Gannon@act.gov.au>; Jain, Shafali <Shafali.Jain@act.gov.au>

Cc: Chan, Belina < Belina. Chan@act.gov.au>

Subject: FW: Lease Variation Charge Deferral - Accounting treatment - ACT [SEC=UNCLASSIFIED]

Hi All,

Please note below that the ABS has confirmed that the Deferred LVC should be accounted for as a Receivable.

Catherine Dal Cin

Finance and Budget Division | Chief Minister, Treasury and Economic Development Directorate

Phone: +61 2 6205 4603

Email: catherine.dalcin@act.gov.au

Level 1 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: Schedule 2.2(a)(ii) @abs.gov.au]

Sent: Friday, 30 November 2018 1:25 PM
To: Chu, Andy Andy.Chu@act.gov.au

Cc: Schedule 2.2(a)(ii) @abs.gov.au>; Schedule 2.2(a)(ii) @abs.gov.au>

Subject: Re: Lease Variation Charge Deferral - Accounting treatment - ACT [SEC=UNCLASSIFIED]

Hi Andy

Further to our phone conversation here is the suggested treatment of the Lease Variation Charge (LVC) deferrals.

They result in an increase in financial assets for the government that are recorded as ETF 8452 Accounts receivable.

The LVC itself is accrued in the usual way at the lime it is charged, as revenue in the Operating Statement. When deferred instead of cash coming onto the Balance Sheet an Accounts receivable asset is recorded.

Similarly if interest accrues on the LVC debt it is either acquitted with cash at the time or gives rise to an increase in the Accounts receivable asset.

The Accounts receivable asset is acquitted when the LVC applicant eventually pays cash. On the Balance Sheet Accounts receivable decreases and cash increases; ie no change to Net Worth.

"Chu, Andy"

Schedule 2.2(a)(ii)

"Chu, Andy"---30/11/2018 11:01:59 AM---Hi """, Just wanted to follow up with my below email on the accounting treatment of LVC deferred p

Lease Variation Charge Deferral - Accounting treatment - ACT

EAD Public Finance WDB "Chu, Andy" 30/11/2018 11:01 AM

30/11/2018 11:01 AM

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Basics

Andy.Chu@act.gov.au	30/11/2016 11:01 AM	
Send	Schedule 2.2(a)(ii) @abs.gov.au > Schedule 2.2(a)(ii) @abs.gov.au >, "Chan, Belina" < Belina.Chan@act.gov.au >, "DalCin, Catherine" < Catherine.DalCin@act.gov.au >	
Subject	Lease Variation Charge Deferral - Accounting treatment - ACT	
Protective Mark	UNCLASSIFIED	
Categories	03 GFS Classification Queries\Classification Queries: 3. Stocks and flows	
Visibility	Public	
Editors	"Chu, Andy" < <u>Andy.Chu@act.gov.au</u> >, [Wkgroup]	
Document Usage	Statistical Development & Support - determines recordkeeping action	
Document Id	DCOO-B6Z4SA	



Just wanted to follow up with my below email on the accounting treatment of LVC deferred payment. We are thinking to treat it as account receivable instead of loan. Please advise on this and we expect to apply to our November financial statements.

It would be much appreciated if we could receive early advice from ABS.

Thank you Kind regards,

Andy

From: Chu, Andy

Sent: Monday, 26 November 2018 4:51 PM

To: Schedule 2.2(a)(ii) @abs.gov.au>

Cc: Schedule 2.2(a)(ii) @abs.gov.au>; Chan, Belina <Belina.Chan@act.gov.au>; DalCin, Catherine

<Catherine.DalCin@act.gov.au>

Subject: Lease Variation Charge Deferral - Accounting treatment [SEC=UNCLASSIFIED]

Hi Schedule 2.

We are seeking advice from ABS for the treatment of Lease Variation Charge (LVC) deferral. Attached is the detailed information on LVC Deferred Payment Scheme.

In a brief form LVC is a charge that is payable by a lessee under the Planning and Development Act on a variation of a nominal rent lease. The lessee has the option to pay the LVC upfront before a lease variation is executed, or to apply for approval for a deferred payment of LVC under the LVC Deferred Payment Scheme. The lessee is also liable for the interest calculated on the deferred amount. Maximum time for the deferral is 4 years.

Could you please advise a suitable accounting treatment for the deferred payment and its interest?

Thank you very much

Kind regards,

Andy Chu

Financial Analyst

Finance and Budget Division | Chief Minister, Treasury and Economic Development Directorate

Phone: +61 2 6205 3163 Email: andy.chu@act.gov.au

Level 1 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

LEASE VARIATION CHARGE DEFERRED PAYMENT SCHEME TERMS OF PAYMENT

Preamble

- A. The LVC is a charge that is payable by a lessee under Division 9.6.3 of the Planning and Development Act on a variation of a nominal rent lease. Division 9.6.3 is a tax law for the purposes of the Taxation Administration Act and that Act applies as if the LVC is a tax payable by the lessee.
- B. Section 27B(1) of the Planning and Development Act provides that the planning and land authority must not execute a chargeable variation of a nominal rent lease unless the LVC for the variation has been paid to the Territory, or a deferral arrangement in relation to the charge has been entered into.
- C. A lessee has the option to pay the LVC upfront before a lease variation is executed, or to apply for approval for a deferred payment of LVC under the LVC Deferred Payment Scheme.
- D. Pursuant to section 279AB(1) of the Planning and Development Act, the Commissioner must approve an application to defer the payment of LVC if satisfied that:
 - (a) the applicant for a development application for a chargeable variation of nominal rent lease is given a notice of assessment of LVC;
 - (b) the amount of the LVC to be deferred is at least \$100,000, or an amount that is determined by the Treasurer; and
 - (c) the applicant satisfies any other criteria that is determined by the Treasurer in the Deferred Payment Scheme Determination.
- E. An approval of the Commissioner of an application to defer the payment of LVC under section 279AB(1) of the Planning and Development Act is subject to the applicant entering into an arrangement under section 52 of the Taxation Administration Act with the Commissioner for the payment of the amount of the deferred lease variation charge.
- F. The LVC and other amounts payable under Division 9.6.3 of the Planning and Development Act are debts owing to the Territory and under section 56H of the Taxation Administration Act gives rise to a charge on land the subject of the lease variation that takes priority over other interests such as a sale, conveyance, transfer, mortgage, charge, lien or encumbrance.
- G. For lease variations where a remission in lease variation charge is claimed for energy efficient buildings, it is a requirement of the Environmental Sustainability Determination 2018 that an applicant must enter into a deferral arrangement with the Commissioner.
- H. This arrangement sets out the conditions of payment for the deferral arrangement under section 279AC of the Planning and Development Act and includes conditions for the re-payment of LVC if the requirements of the Environmental Sustainability Determination for energy efficient buildings are not met.

Terms and conditions of payment

By entering into this arrangement, the applicant agrees to the following terms and conditions.

Deferred amount

- The deferred amount is made up of:
 - 1.1 The amount of the LVC payable described in the notice of assessment given to an applicant under section 276D of the Planning and Development Act;
 - 1.2 Any increase or decrease in the amount in clause 1.1 because of a reconsideration, reassessment or review under section 279AD of the Planning and Development Act or the Taxation Administration Act;
 - 1.3 Any applicable remission amount; and
 - 1.4 Any interest that accrues in respect of the amounts in clauses 1.1, 1.2 and 1.3, at the rate and in the manner described in the Deferred Payment Scheme Determination.

Interest

- 2. The interest rate applicable is comprised of the monthly average of the 3-month bank bill swap rate, as published by the Reserve Bank of Australia, plus 1.8 percentage points per annum. The bank bill swap rate is adjusted bi-annually in January and July each year.
- Interest will be calculated on the deferred amount at the determined rate and accrues on a
 monthly basis on the first day of the month. It is payable by the applicant from the date of the
 execution of the lease variation until the date payment of the deferred amount is made in full.

Payment terms

- 4. The applicant must pay the deferred amount to the Commissioner no later than the earlier of:
 - 4.1 The date a certificate of occupancy is issued for part of the building work for the development to which the lease variation relates, if stated in the Schedule; or
 - 4.2 The date a certificate of occupancy is issued for all of the building work for the development to which the lease variation relates; or
 - 4.3 Four (4) years from the date of the execution of the lease variation.
- 5. For the purposes of clauses 4.1 and 4.2, section 69(4) of the Building Act, read with Regulation 35B of the Building Regulation, makes it a requirement that the Constructions Occupations Registrar must first be satisfied that the deferred amount and any other outstanding amounts are paid to the Commissioner before a certificate of occupancy for building work is issued.
- 6. Payments of the deferred amount may be made in advance of the due date specified in clause 4, whichever date should apply. Advance payments may be made in part, or by instalment payment, as agreed with the Commissioner.
- 7. To facilitate the payment of the deferred amount, an applicant may request a statement of the deferred amount outstanding from the Commissioner.
- 8. Payments must be made electronically by Electronic Funds Transfer to the bank account nominated by the Commissioner from time to time.

Default in payment

- A default in the payment of the deferred amount is a tax default for the purposes of the Taxation Administration Act.
- If a tax default happens, the applicant is liable to pay additional interest on the deferred amount at the interest rate and calculated in the manner described in Division 5.1 of the Taxation Administration Act.
- 11. In addition, if a tax default happens the applicant may be liable under Division 5.2 of the Taxation Administration Act to pay penalty tax in respect of the amount unpaid under this deferral arrangement.

Charge on land

- 12. An amount payable under a deferral arrangement is a debt owing to the Territory and under section 56H of the Taxation Administration Act is a statutory charge on land that ranks ahead of other interests in the parcel of land including a mortgagee's interest.
- 13. The Commissioner may cause an instrument of charge to be registered against the title to the land the subject of the variation at any time after the deferral arrangement is entered into. The registration of an instrument of charge does not derogate from the Commissioner's rights in respect of the statutory charge under the Taxation Administration Act.

Review of decisions

- 14. A decision of the Commissioner to approve an application and impose conditions under a deferral arrangement is subject to internal review by the Commissioner and review by the ACAT under Schedule 1, Taxation Administration Act.
- 15. An applicant wishing to object to a decision of the Commissioner must apply in writing within 60 days after the date of service of the decision to the address set out in the Schedule.
- 16. The applicant bears the burden of showing that their objection should be upheld. The applicant must state in the objection, in full and in detail, the grounds upon which the applicant relies, and must include any supporting documentation the applicant wants considered at the time the objection is determined. The applicant agrees to provide any additional information the Commissioner may request in determining the objection.
- 17. The applicant is responsible for any expenses they incur in relation to the objection, such as the applicant's legal fees and or valuer's fees.
- 18. The applicant, if dissatisfied with the decision upon objection, may apply to the ACAT for review. Applications for review to the ACAT must usually be made within 28 days after the day the reviewable decision is made.

Remission of applicable Environmental Sustainability remission amount

19. This condition applies only in respect of a deferred amount of a section 277 lease variation, for which an environmental sustainability remission under the Environmental Sustainability Determination may be applicable.

- 20. The remission amount is calculated at the time the notice of assessment of the chargeable lease variation is issued to the lessee under section 276D of the Planning and Development Act.
- 21. An amount of LVC is only remitted by the Commissioner if the energy efficiency requirements under the Environmental Sustainability Determination for the building or buildings constructed on the land have been satisfied.
- 22. An applicant must:
 - 22.1 obtain at the applicant's own cost evidence from a licensed building assessor of the building's compliance with the energy efficiency ratings of the Environmental Sustainability Determination; and
 - 22.2 provide that evidence to the Commissioner of Revenue.

Variation

- 23. Under section 279AD(3) Planning and Development Act, the applicant may apply to the Commissioner to vary this arrangement if the amount deferred increases as a result of a reconsideration, reassessment under the Planning and Development Act or the Taxation Administration Act.
- 24. The Commissioner may vary the date for the payment of the deferred amount for part building work, stated in this arrangement pursuant to clause 4.1, by giving the applicant seven (7) days' notice of the variation.

Definitions

25. In this deferral arrangement:

applicant means the lessee of land the subject of the lease variation described in the Schedule, and includes their legal representative, assigns and nominees.

Building Act means the Building Act 2004.

Building Regulation means the Building (General) Regulation 2008.

Certificate of occupancy means a certificate under section 69 of the Building Act 2004.

Commissioner means the Commissioner for Australian Capital Territory Revenue.

deferred amount means the amount described in clause 1.

Deferred Payment Scheme Determination means the <u>Planning and Development (Lease Variation Charge Deferred Payment Scheme) Determination 2018 – DI2018-88</u>, and includes any other disallowable instrument determined by the Treasurer in accordance with section 279AA(1)(b), section 279AA(1)(c), and section 279AC(2) of the Planning and Development Act.

Environmental Sustainability Determination means the <u>Planning and Development (Remission of Lease Variation Charges-Environmental Sustainability) Determination 2018 (No 2) - DI2018-89</u> determined by the Minister for Planning and Land Management and the Treasurer in accordance with section 278 of the Planning and Development Act.

Licensed building assessor means an assessor licensed under the <u>Construction Occupations</u> (<u>Licensing</u>) <u>Act 2004</u> for carrying out energy assessment work.

LVC means a lease variation charge within the meaning of Division 9.6.3 of the Planning and Development Act.

Planning and Development Act means the <u>Planning and Development Act 2007</u>.

remission amount means the amount calculated in accordance with the Environmental Sustainability Determination described in the notice of assessment issued to an applicant under section 276D of the Planning and Development Act.

Schedule means the Schedule to this deferral arrangement.

Taxation Administration Act means the Taxation Administration Act 1999.

tax default for the purposes of the Taxation Administration Act, means a failure by a taxpayer to pay, in accordance with a tax law, the whole or part of tax that the taxpayer is liable to pay.

Execution of agreement

Applicant/Lessee	
I agree to the terms and conditions of this deferral arrang	ement:
Name of Applicant/s:	
Signature Applicant/s	Date:
Witness:	
Name of Lessee/s:	
Signature Lessee/s	Date:
Witness:	
Commissioner for ACT Revenue	
Name of delegate:	
Signature of delegate	Date:

SCHEDULE

Applicant	Full name: Address: Contact details:
Lessee, if not the applicant	Full name: Address: Contact details:
Land, the subject of the lease variation	Suburb: Section: Block:
Development application	Development Application No.:
The amount of the LVC payable described in the notice of assessment (cl.1.1)	\$
Remission amount (cl.25)	\$
The date a certificate of occupancy is issued for part of the building work for the development to which the lease variation relates (cl 4.1)	
Bank account details (cl.8)	
Address for Objections (cl.15)	By post: The Commissioner for ACT Revenue PO Box 293 CIVIC SQUARE ACT 2608 By email: objections@act.gov.au