

2002

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**DUTIES (PERSONAL RELATIONSHIP AGREEMENTS)
AMENDMENT BILL 2002**

EXPLANATORY MEMORANDUM

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Duties (Personal Relationship Agreements) Amendment Bill 2002

On the termination of certain personal relationships, the *Duties Act 1999* (the Duties Act) currently imposes no duty on the transfer of the registration of a motor vehicle, and \$20 concessional duty on transfers of dutiable property and Chapter 3 transactions (such as the acquisition of an interest in a private corporation) if they are pursuant to:

- a court order under the *Family Law Act 1975* (Cwlth) (the Family Law Act) or the *Married Persons' Property Act 1986*; or
- a different court order for the distribution of property consequent on termination of a relationship between spouses; or
- an agreement within the meaning of the *Domestic Relationships Act 1994* (the Domestic Relationships Act).

The ***Duties (Personal Relationship Agreements) Amendment Bill 2002*** (the Bill) amends the Duties Act to create equitable duty exemptions for similar transactions relating to the termination of personal relationships. On the breakdown or termination of marriage or domestic or de facto relationships, where matrimonial/relationship property is transferred to the parties to a marriage/relationship, or the children (under 18 years) of either party, the Duties Act will impose no duty. There will be uniform duty exemption provisions for financial agreements under the Family Law Act and domestic relationship agreements and termination agreements under the Domestic Relationships Act.

The Bill has provisions to extend duty exemption to all binding financial agreements made under sections 90B, 90C and 90D of the Family Law Act, and domestic relationship agreements and termination agreements within the meaning of the Domestic Relationships Act.

The Bill also provides for the transfer of dutiable property, Chapter 3 transactions and the transfer of registration of motor vehicles to be exempt from duty where they are pursuant to:

- court orders (under the Family Law Act or otherwise);
- binding financial agreements under the Family Law Act; or
- agreements within the meaning of the Domestic Relationships Act;

but only where:

- they occur on the dissolution, annulment or irretrievable breakdown of a marriage, or the termination of a domestic relationship, as evidenced by a means acceptable to the Commissioner for ACT Revenue; and
- matrimonial/relationship property is transferred to the parties to a marriage/domestic relationship, or the child/children (under 18 years) of either party.

Objection may be made by a taxpayer under the *Taxation Administration Act 1999* to a decision of the commissioner that a transfer or transaction is not consequent on the dissolution, annulment or irretrievable breakdown of a marriage, or the end of a domestic relationship. The right to apply to the administrative review tribunal to review the decision is also provided.

Revenue/Cost Implications

The extension of duty exemptions to binding financial agreements restores the situation that existed before the Family Law Act amendments and has no impact on revenue. The removal of concessional duty on pursuant transactions has a low impact on revenue. If all the transactions in 2000-2001 relating to personal relationships had been exempt, revenue forgone would have been approximately \$4,000.

Details of the Bill are attached.



Details of the Duties (Personal Relationship Agreements) Amendment Bill

2002

Clauses 1, 2 & 3 are formal requirements

This Act is the *Duties (Personal Relationship Agreements) Amendment Act 2002*. It commences on the day after its notification day and it amends the *Duties Act 1999*.

Clause 4 A new subsection (7) is inserted into section 17 so that this section does not apply to any agreements made before, during or after the end of a marriage or a relationship under the *Family Law Act 1975* or the *Domestic Relationships Act 1994* **if** the agreement provides for a transfer of dutiable property and the transfer is not exempt under section 74B. This provision ensures that transfers made pursuant to a financial or domestic relationship agreement at any time before or during a marriage or domestic relationship are liable to full ad valorem duty even though the agreements themselves are exempt from duty.

Clause 5, substitutes a new heading for **Section 72: Transfer to spouse of interest in principal place of residence**. This reflects the more limited application of the amended section.

Clause 6, section 72 (1) is omitted as the existing concessions in this subsection are to become exemptions. (See new section 74B).

Clause 7, section 72 (2) – the (2) is omitted as section 72 now has only one paragraph.

Clause 8, new sections 74A and 74B are inserted.

74A Financial and other agreements

No duty is chargeable under this chapter on binding financial agreements made under section 90B, 90C or 90D of the *Family Law Act 1975* (Cwlth), or on a domestic relationship agreement or a termination agreement under the *Domestic Relationships Act 1994*. This exemption applies to all binding agreements whether they are made before, during or after the termination of a marriage or relationship.

74B Transfers relating to certain personal relationships

(1) Transfers pursuant to court orders under the *Family Law Act 1975* (Cwlth), the *Married Person's Property Act 1986* or any other order of a court, were previously liable to \$20 concessional duty under this chapter. This was not equitable, as orders under the Family Law Act were exempt from duty under that Act. All court orders which distribute matrimonial or relationship property on the termination of a personal relationship are now exempt from duty.

(2) This provision extends the duty exemptions to include transfers pursuant to the new binding financial agreements but limits them to transfers of matrimonial property to the parties to the marriage, their child/children or to a person in trust for the child/children. The

commissioner must be satisfied that the transfer is consequent on the dissolution, annulment or irretrievable breakdown of a marriage.

(3) This provision extends the duty exemptions to include transfers pursuant to a written domestic relationship agreement, or a termination agreement under the Domestic Relationships Act which has been signed by both parties and for which independent legal advice has been received. It limits the transfers to relationship property to the parties to the relationship, their child/children, or to a person in trust for the child/children. The commissioner must be satisfied that the transfer is consequent on the end of the domestic relationship between the parties.

(4) For transfers consequent on the irretrievable breakdown of marriage evidence must be provided to the commissioner that the party intends to apply for dissolution or annulment or that the parties to the marriage have separated and there is no reasonable likelihood of cohabitation being resumed. The commissioner must have regard to a statutory declaration to this effect which will be accepted as evidence.

(5) For transfers consequent on the end of a relationship where there is a domestic relationship agreement evidence must be provided to the commissioner that the relationship has ended. The commissioner must have regard to a statutory declaration to this effect which will be accepted as evidence.

Note that the evidence for dissolution or annulment of marriage is the decree absolute issued under the Family Law Act. For a termination agreement under the Domestic Relationships Act, the termination agreement itself is accepted as evidence if the relationship ended within 3 months from the date it was made. If the relationship has not terminated within 3 months of making the termination agreement, under the Domestic Relationships Act, it reverts to a domestic relationship agreement and a statutory declaration is then required to evidence the end of the relationship.

(6) Subsections (4) and (5) do not limit the commissioner's powers under the *Taxation Administration Act 1999*, section 82, which gives the commissioner power to require information, instruments or records or attendance for examination, and the commissioner may seek further information in addition to that contained in the statutory declaration.

(7) For this section, child means a person under 18 years old.

Clause 9, Chapter 3 transactions – concessional duty

Section 91 (1) (c) becomes the last subsection and sections 91 (1) (d), (e) and (f) are omitted as the existing concessions in these subsections are to become exemptions. (See new section 115H)

Clause 10, a new pt 3.7 is inserted: Exemptions – Ch3 transactions.

115H Exempt transactions relating to certain personal relationships

The substance of the provisions under section 74B (1) to (7) that apply to “transfers of dutiable property” are repeated in section 115H (1) to (7) to apply to “Chapter 3 transactions”.

Clause 11, a new section 213 is substituted - Vehicle registration transfers relating to certain personal relationships

Exemption from duty for transfers of registration of motor vehicles was already provided for in the old section 213 for court orders and domestic relationship agreements. The amendments are to extend the exemptions to transfers pursuant to financial agreements under the Family Law Act and to ensure the conditions for exemptions are uniform with those for transfers of dutiable property (section 74B) and Chapter 3 transactions (section 115H).

The substance of the provisions under section 74B (1) to (7) that apply to “transfers of dutiable property” are repeated in section 213 (1) to (7) to apply to an “application to transfer the registration of a motor vehicle”.

Clauses 12 and 13, Objections and review of decisions

These new provisions in section 252 extend rights to a taxpayer to object, under the Taxation Administration Act, to a decision of the commissioner that:

- a transfer under section 74B (2) (a) or (3) (c); or
- a transaction under section 115H (2) (a) or (3) (c); or
- a transfer under section 213 (2) (a) or (3) (c)

is **not** consequent on the dissolution, annulment or irretrievable breakdown of a marriage, or the end of a domestic relationship.

A taxpayer also has the right to apply to the administrative appeals tribunal for a review of a determination by the commissioner of an objection is also available subject to the Taxation Administration Act.

Clauses 14, 15 and 16, Dictionary, new definitions inserted

marriage includes a void marriage.

matrimonial property, of a marriage, means property of the parties to the marriage or of either of them.

party, to a marriage, includes a person who was a party to a marriage that has been dissolved or annulled, in Australia or elsewhere.

relationship property, of a domestic relationship, means property of the parties to the relationship or of either of them.