



Australian Capital Territory

Duties Act 1999 No 7

Republication No 10A

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Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Duties Act 1999* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 30 September 2016. It also includes any amendment, repeal or expiry affecting the republished law to 22 December 2003.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

Duties Act 1999

An Act to create and charge various duties

Chapter 1 Preliminary

1 Name of Act

This Act is the *Duties Act 1999*.

2A Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or other legislation.

For example, the signpost definition '*related body corporate*—see the Corporations Act, section 9.' means that the expression 'related body corporate' is defined in that section and that the definition applies to this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

2B Notes

A note included in this Act is explanatory and is not part of this Act.

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

3 Incorporation of Taxation Administration Act 1999

The *Taxation Administration Act 1999* is incorporated and shall be read as one with this Act.

4 Liability for payment of duty by Territory etc

- (1) The Territory is not liable to pay duty under this Act.
- (2) However, a Territory authority, or an agent of the Territory, determined, in writing, by the Minister is liable to pay duty under this Act if the authority or agent can sue and be sued in the authority's or agent's own name.
- (3) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

4A Payment of duty equivalents by Territory departments

- (1) This section applies to a department determined, in writing, by the Minister (by a *duty equivalent determination*) that carries out any activity, or any activity stated in the determination, for which the department would be liable to pay an amount of duty under this Act (the *duty equivalent*) if the department were a Territory company.
- (2) The amount of the duty equivalent must be transferred from the departmental banking account stated in the duty equivalent determination to the Territory banking account subject to any conditions required by the duty equivalent determination (for example, a condition about when the transfer must take place).
- (3) A duty equivalent determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (4) In this section:

department, in relation to a duty equivalent determination, means—

- (a) an administrative unit stated in the determination; or
- (b) a part of an administrative unit, if the part of the unit is stated in the determination; or
- (c) a group of 2 or more administrative units stated in the determination.

departmental banking account means a departmental banking account mentioned in the *Financial Management Act 1996*, section 34 (1).

Territory banking account means the banking account mentioned in the *Financial Management Act 1996*, section 33.

5 Duty a debt payable to the Territory

A duty charged by this Act is, when a liability to pay the duty is created, a debt due to the Territory.

Chapter 2 Transactions concerning dutiable property

Part 2.1 Introduction and overview

6 Definitions for ch 2

In this chapter:

declaration of trust means any declaration (other than by a will or testamentary instrument) that any identified property vested or to be vested in the person making the declaration is or is to be held in trust for the person or persons, or the purpose or purposes, mentioned in the declaration although the beneficial owner of the property, or the person entitled to appoint the property, may not have joined in or assented to the declaration.

transfer includes an assignment, an exchange and a buyback of shares in accordance with the Corporations Act, part 2J.1, division 2.

7 Imposition of duty on certain transactions concerning dutiable property

- (1) This chapter charges duty on—
 - (a) a transfer of dutiable property; and
 - (b) the following transactions:
 - (i) an agreement for the sale or transfer of dutiable property;
 - (ii) a declaration of trust over dutiable property;
 - (iii) a grant of a Crown lease;
- (2) A transfer or transaction referred to in subsection (1) is a *dutiable transaction* for this Act.

(3) In this section:

grant, of a Crown lease over land, includes the grant of a new lease following the surrender or determination of a Crown lease over land that includes part or all of the land over which the new lease is granted.

transfer does not include a transaction treated as a transfer by chapter 3.

Note Ch 3 treats certain transactions as transfers (for example, acquiring an interest in a landholding private corporation—see s 85 and s 86). Duty may be charged under ch 3 on those transfers. These may involve the vesting of property under a court order, which would otherwise be a transfer for par (a) or (b) (i) here (see dict, def of *transfer*, par (d)).

8 Imposition of duty on dutiable transactions that are not transfers

- (1) The duty charged by this chapter on a dutiable transaction referred to in section 7 (1) (b) is to be charged as if each such dutiable transaction were a transfer of dutiable property.
- (2) For the purpose of charging duty under this chapter, in relation to a dutiable transaction specified in the following table, column 1:
 - (a) the property specified opposite the dutiable transaction in column 2 is taken to be the property transferred (and a reference in this Act to *property transferred* includes a reference to such property);
 - (b) a person specified opposite the dutiable transaction in column 3 is taken to be the transferee of the dutiable property (and a reference in this Act to a *transferee* includes a reference to such a person);
 - (c) the transfer of the dutiable property is taken to have occurred at the time specified opposite the dutiable transaction in column 4 (and a reference in this Act to the *time* when a transfer occurs includes a reference to such a time).

Table

column 1 dutiable transaction	column 2 property transferred	column 3 transferee	column 4 when transfer occurs
agreement for sale or transfer	the property agreed to be sold or transferred	the purchaser or transferee	when the agreement is entered into
declaration of trust	the property vested or to be vested in the declarant	the person declaring the trust	when the declaration is made
grant of a Crown lease	the leasehold interest	the lessee	when the lease is granted

9 Form of a dutiable transaction

It is immaterial whether or not a dutiable transaction is effected by a written instrument or by any other means, including electronic means.

10 Dutiable property

(1) *Dutiable property* is any of the following:

- (a) land in the ACT;
- (b) a Crown lease;
- (c) a land use entitlement;
- (d) shares—
 - (i) in a Territory company; or
 - (ii) in a corporation incorporated outside Australia, if the shares are kept on the Australian register kept in the ACT;

Note Shares quoted on a stock exchange (and related rights and interests) are not dutiable property (see s 10 (2)).

- (e) units in a unit trust scheme, being units—
- (i) registered on a register kept in the ACT; or
 - (ii) that are not registered on a register kept in Australia, but in respect of which the manager (or, if there is no manager, the trustee) of the unit trust scheme is a Territory company or is an individual resident in the ACT;
- Note* Units quoted on a stock exchange (and related rights and interests) are not dutiable property (see s 10 (2)).
- (g) a business asset, being, at any relevant time—
- (i) the goodwill of a business if, during the previous 12 months, a sale of goods or services, or goods and services, has been made to a Territory customer of the business; or
 - (ii) intellectual property that has been used or exploited in the ACT during the previous 12 months, but only if the intellectual property is the subject of a dutiable transaction that is, or forms part of, a sale of a business; or
 - (iii) a statutory licence or permission under a Commonwealth law, if the rights under the licence or permission have been exercised, during the previous 12 months, in respect of the ACT or in an area that includes the ACT or a part of the ACT;
- (h) a statutory licence or permission under a Territory law;
- (i) a partnership interest, being an interest in a partnership that has partnership property that is dutiable property elsewhere referred to in this section;
- (j) goods in the ACT, if the subject of an arrangement that includes a dutiable transaction over any dutiable property (other than intellectual property) elsewhere referred to in this section, not including the following:

- (i) goods that are stock-in-trade;
 - (ii) material held for use in manufacture;
 - (iii) goods under manufacture;
 - (iv) goods held or used in connection with land used for primary production;
 - (v) livestock;
 - (vi) a registered motor vehicle;
 - (vii) a ship or vessel;
- (k) an option to purchase land in the ACT or a Crown lease over land in the ACT;
- (l) an interest in any dutiable property referred to in paragraphs (a) to (k), except to the extent that—
- (i) it arises as a consequence of the ownership of a unit in a unit trust scheme and is not a land use entitlement; or
 - (ii) it is, or is attributable to, an option over dutiable property; or
 - (iii) it is an interest in a marketable security, if the interest is traded on the Sydney Futures Exchange.
- (2) Despite subsection (1), the following marketable securities are not dutiable property:
- (a) shares, or units in a unit trust scheme, that are quoted on a stock exchange;
 - (b) an interest in shares, or an interest in units in a unit trust scheme, if—
 - (i) the shares or units are quoted on a stock exchange; or
 - (ii) the interest is quoted on a stock exchange.

Note **Marketable securities** are shares and units mentioned in s (1) (d) and (e), and related rights and interests (see dict, defs of **marketable securities**, **shares**, and **units**).

11 When does a liability for duty arise

- (1) A liability for duty charged by this chapter arises when a transfer of dutiable property occurs.
- (2) However, if a transfer of dutiable property is effected by a written instrument, liability for duty charged by this chapter arises when the instrument is first executed.

12 Who is liable to pay the duty

Duty charged by this chapter is payable by the transferee, unless this chapter requires another person to pay the duty.

13 The liability of joint tenants

For the purpose of assessing duty charged by this chapter, joint tenants of dutiable property are taken to hold the dutiable property as tenants in common in equal shares.

14 Necessity for written instrument or written statement

- (1) If a dutiable transaction that is liable to ad valorem duty under this chapter is not effected by a written instrument, the transferee shall make a written statement.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for a statement, the form must be used.

- (2) The written statement shall be made within 90 days after the liability arises.
- (3) If a dutiable transaction is completed or evidenced by a written instrument within 90 days after the day when the dutiable transaction happens, the requirement to lodge a statement and pay duty in respect of the statement may be satisfied by the lodgment of and payment of duty on the written instrument within 90 days after the day when the dutiable transaction happens.

15 Lodging written instrument or written statement with commissioner

A transferee who is liable to pay duty in respect of a dutiable transaction shall, within 90 days after the liability arises, lodge with the commissioner—

- (a) the written instrument that effects the dutiable transaction or, if there is more than 1 such written instrument, each of them; or
- (b) the written statement made in accordance with section 14.

16 When must duty be paid?

A tax default does not occur for the Taxation Administration Act if duty is paid within 90 days after the liability to pay it arises.

16A Payment of duty—‘off the plan’ purchase agreements

- (1) For section 16 (1), liability for duty on an ‘off the plan’ purchase agreement is taken to arise if at least 1 of the following events happens:
 - (a) the agreement is completed;
 - (b) the whole, or any part, of the purchaser’s interest under the agreement is assigned;
 - (c) the period of 12 months, beginning on the date of the agreement, expires;
 - (d) a certificate of occupancy for the building to which the agreement relates has been issued under the *Building Act 1972*, section 53.
- (2) The duty payable on an ‘off the plan’ purchase agreement—
 - (a) is payable within 14 days after 1 of those events happens; and
 - (b) may be paid before any of those events happens.
- (3) Despite section 16 (1), a tax default occurs for the Taxation Administration Act if the duty payable on an ‘off the plan’ purchase agreement is not paid within the period of 14 days that applies under subsection (2) (a).

(4) In this section:

‘off the plan’ purchase agreement means an agreement for the sale or transfer of dutiable property that is, or includes, land where a residence is to be erected or developed before completion of the sale or transfer.

17 No double duty

- (1) If a dutiable transaction is effected by more than 1 instrument, 1 instrument is to be stamped with the duty payable on the transaction and in respect of the other instruments—
 - (a) no duty is chargeable on an instrument that is lodged with the commissioner for stamping at the same time as the instrument to be stamped with the duty payable on the transaction; and
 - (b) duty of \$20 is chargeable on an instrument lodged with the commissioner for stamping at any other time.
- (2) If a transfer of dutiable property is made in conformity with an agreement for the sale or transfer of the property—
 - (a) no duty is chargeable in respect of the transfer if it is lodged with the commissioner for stamping at the same time as the agreement for sale or transfer; and
 - (b) duty of \$20 is chargeable in respect of the transfer if it is lodged for stamping at any other time.
- (3) The duty chargeable in respect of a transfer of dutiable property that is not made in conformity with an agreement for the sale or transfer of the dutiable property is \$20 if—
 - (a) the duty chargeable in respect of the agreement has been paid; and
 - (b) the transfer would be in conformity with the agreement if the transferee was the purchaser under the agreement; and
 - (c) the purchaser under the agreement and the transferee under the transfer were related persons at the time the agreement was entered into.

- (4) The duty chargeable on a transfer to a trustee of dutiable property subject to a declaration of trust is \$20 if ad valorem duty has been paid on the declaration of trust in respect of the same dutiable property.
- (5) The duty chargeable on a declaration of trust that declares the same trusts as those on and subject to which the same dutiable property was transferred to the person declaring the trust is \$20 if ad valorem duty has been paid on the transfer.
- (6) A dutiable transaction in respect of marketable securities that confer a land use entitlement is taken to be a dutiable transaction in respect of the land use entitlement only and, if duty has been paid on the dutiable transaction in accordance with a law of another Australian jurisdiction, the duty charged by this chapter on the dutiable transaction is to be reduced by the amount of the duty so paid.
- (7) This section does not apply to a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, 90C or 90D that is binding on the parties under that Act, or to a domestic relationship agreement or termination agreement under the *Domestic Relationships Act 1994*, if—
 - (a) the agreement provides for a transfer of dutiable property; and
 - (b) the transfer is not exempt from duty under section 74B (Transfers relating to certain personal relationships).

18 Rate of duty

Duty is charged on the dutiable value of the dutiable property subject to the dutiable transaction at the relevant rate set out in part 2.3.

19 Concessions and exemptions from duty

Concessions and exemptions from duty charged by this chapter are dealt with in parts 2.5 and 2.6.

Part 2.2 Dutiable value

20 What is the *dutiable value* of dutiable property?

- (1) The *dutiable value* of dutiable property that is subject to a dutiable transaction is the greater of—
 - (a) the consideration (if any) for the dutiable transaction (being the amount of a monetary consideration or the value of a non-monetary consideration); and
 - (b) the unencumbered value of the dutiable property.
- (2) The dutiable value of a business asset to which section 27 applies is to be determined in accordance with that section.
- (3) The dutiable value of a partnership interest referred to in section 28 is to be determined in accordance with that section.

21 What is the consideration for the transfer of dutiable property?

- (1) The consideration for the transfer of dutiable property is taken to include the amount or value of all encumbrances, whether certain or contingent, subject to which the dutiable property is transferred.
- (2) The consideration for the transfer of the interest of a transferee under an uncompleted agreement for the sale or transfer of dutiable property is taken to include the balance of the amount or value of the consideration that would be required from the transferee under the agreement to complete it in accordance with its terms.
- (3) The consideration for the transfer of the goodwill of a business is taken to include the amount or value of the consideration for any restraint of trade arrangement entered into in connection with the transfer of the goodwill.
- (4) If a Crown lease is granted subject to a requirement that the lessee carry out, or cause to be carried out, works on land other than the land the subject of the lease, the cost of carrying out those works shall be taken to form part of the consideration for the lease.

- (5) If a Crown lease is granted—
- (a) for an initial term; and
 - (b) subject to a right provided by the lease for the lessee to be granted a further term (whether or not the exercise of that right is subject to conditions);

the lease shall be taken to be granted for a term equal to the aggregate of the initial term and the further term, up to a maximum of 99 years, and the consideration for the lease shall be taken to be the aggregate of—

- (c) any lump sum paid for the grant of the lease; and
- (d) any lump sum payable for renewal of the lease; and
- (e) the rent payable under the lease during the term for which it is to be taken to have been granted; and
- (f) any costs that are to be taken to form part of the consideration under subsection (4).

22 What is the *unencumbered value* of dutiable property?

- (1) The *unencumbered value* of dutiable property is the value of the property determined without regard to any encumbrance to which the property is subject.
- (2) The *unencumbered value* of the goodwill of a business is taken to include the value of any restraint of trade arrangement entered into by the vendor to protect the value of the goodwill.
- (3) If, before land is transferred to a transferee, the transferee has made improvements to the land, the *unencumbered value* of the land is to be determined as if those improvements had not been made.
- (4) The *unencumbered value* of a Crown lease at the time it is granted is, for this chapter, taken to be the amount determined by the granting body to be that value.

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- (5) However, if the commissioner is not satisfied with the amount determined by the granting body of a Crown lease to be the unencumbered value of the lease, the commissioner may—
- (a) have the Crown lease valued as at the time it was granted; and
 - (b) determine the *unencumbered value* of the lease in accordance with the valuation.
- (6) If the granting body of a Crown lease did not determine the value of the lease at the time it was granted, the commissioner may—
- (a) have the Crown lease valued as at the time it was granted; and
 - (b) determine the *unencumbered value* of the lease in accordance with the valuation.
- (7) In determining the unencumbered value of a Crown lease at the time it is or was granted, the granting body or a person making a valuation of the lease under subsection (5) (a) or (6) (a) must assume—
- (a) that the consideration for the lease is or was to be paid as a lump sum; and
 - (b) that the lessee is not obliged by the lease to carry out any works, or to cause any works to be carried out, on the land leased or elsewhere.
- (8) The commissioner may recover from the lessee under a Crown lease—
- (a) the cost of getting a valuation under subsection (5) if the value of the Crown lease shown by the valuation was more than the value of the lease determined by the granting authority; or
 - (b) the cost of getting a valuation under subsection (6).
- (9) In this section:
grant, of a Crown lease over a parcel of land, includes the grant of a second or subsequent lease over the same parcel.

granting body, in relation to a Crown lease, means the administrative unit or other entity responsible for arranging the grant.

23 Arrangements that reduce the dutiable value

If any arrangement affecting the dutiable value of dutiable property that was entered into within 12 months before a dutiable transaction was brought about by any person with the intention of reducing the dutiable value of the dutiable property, the commissioner may—

- (a) cause a valuation of the dutiable property to be made; and
- (b) direct the valuer to disregard the arrangement for the purposes of the valuation; and
- (c) assess duty on the basis of the valuation carried out in accordance with the direction.

24 Aggregation of dutiable transactions

- (1) Dutiable transactions relating to separate items of dutiable property, or separate parts of, or interests in, dutiable property are to be aggregated and treated as a single dutiable transaction if—
 - (a) they occur within 12 months; and
 - (b) the transferee is the same or the transferees are associated persons; and
 - (c) the dutiable transactions together form, evidence, give effect to or arise from what is, substantially, 1 arrangement relating to all of the items or parts of, or interests in, the dutiable property.
- (2) Dutiable transactions are not to be aggregated under this section if the commissioner is satisfied—
 - (a) that the transactions are for the purpose of acquiring 2 or more blocks of land in the same subdivision for the purpose of developing the blocks for resale; or

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- (b) that the transactions are for the purpose of purchasing 2 or more units in the same units plan under the *Unit Titles Act 2001* for the purpose of investment; or
 - (c) that the transactions are for the purpose of acquiring 2 or more parcels of shares in a company or 2 or more parcels of units in a units trust scheme which parcels either alone or together with a lease or licence give an entitlement to occupy 2 or more areas that are on a single parcel of land; or
 - (d) that it would not be just and reasonable for the transactions to be so aggregated.
- (3) The dutiable value of aggregated dutiable property is the sum of the dutiable values of the items or parts of, or the interests in, the dutiable property as at the time when each dutiable transaction occurs.
- (4) The amount of duty payable in accordance with this section is to be reduced by the amount of any ad valorem duty paid on a prior dutiable transaction that is, or prior dutiable transactions that are, aggregated in accordance with this section.
- (5) Duty may be apportioned to the instruments effecting or evidencing the dutiable transactions, or may be charged in accordance with section 17 (1), as determined by the commissioner.
- (6) A transferee to whom this section applies shall disclose to the commissioner, in writing, at or before the time when an instrument or statement relating to the dutiable transactions is lodged for stamping, details known to the transferee of—
- (a) all of the items or parts of, or interests in, the dutiable property included or to be included in the arrangement referred to in subsection (1); and
 - (b) the consideration for each item or part of, or interest in, that dutiable property.

Maximum penalty: 50 penalty units.

- (7) A reference in this section to *dutiable property* does not include a reference to marketable securities.

25 Value of goods in certain transactions also involving other property

The commissioner, if satisfied that it would not be just and reasonable in the circumstances to charge duty on the dutiable value of all the dutiable property in a dutiable transaction involving goods and other property, may disregard the value of the goods, or any of them, in determining the dutiable value of the property involved.

26 Apportionment—dutiable property and other property

- (1) If a dutiable transaction relates to dutiable property and property that is not dutiable property, it is chargeable with duty under this chapter only to the extent that it relates to dutiable property.
- (2) If a dutiable transaction relates to different types of dutiable property for which different rates of duty are chargeable under this chapter, the dutiable transaction is chargeable with duty under this chapter as if a separate dutiable transaction had occurred in relation to each such type of dutiable property.

27 Apportionment—business assets in this and other jurisdictions

- (1) This section applies to a business asset referred to in section 10 (1) (g), being—
- (a) the goodwill of a business if sales of goods or services, or goods and services, have also been made to a non-Territory customer of the business during the previous 12 months; or
- (b) intellectual property that has also been used or exploited in 1 or more other Australian jurisdictions during the previous 12 months; or

- (c) a statutory licence or permission under a Commonwealth law if the rights under the licence or permission have been exercised during the previous 12 months in respect of 1 or more other Australian jurisdictions.
- (2) The dutiable value (*DV*) of a business asset to which this section applies is to be determined in accordance with the following formula:

$$DV = A \times \frac{X}{Y}$$

where:

A means the unencumbered value of the business asset, or so much of the consideration for the dutiable transaction as relates to the business asset, whichever is the greater.

X means the gross amount of the sales of goods and services (expressed in Australian dollars) made to Territory customers of the business during the last 3 completed financial years before the dutiable transaction.

Y means the gross amount of the sales of goods and services (expressed in Australian dollars) made to both Territory customers and non-Territory customers of the business during the last 3 completed financial years before the dutiable transaction.

- (3) If the dutiable property included in a dutiable transaction includes—
- (a) goodwill referred to in subsection (1) (a); and
 - (b) intellectual property referred to in subsection (1) (b);
- subsection (2) applies in respect of the goodwill and the intellectual property as if they comprised a single business asset.
- (4) If an apportionment cannot be made under subsection (2), the commissioner may make an apportionment on such basis as the commissioner considers appropriate in the circumstances.

- (5) For this chapter, a sale of goods or services is taken to be made to—
- (a) a Territory customer of a business if the goods are delivered, or the services are provided, in the ACT to the customer; and
 - (b) a non-Territory customer of a business if the goods are delivered, or the services are provided, outside the ACT to the customer.

28 Partnership interests

The dutiable value of a partnership interest (*DV*) is to be determined in accordance with the following formula:

$$DV = A \times \frac{X}{Y}$$

where:

A means the value of the partnership interest, or so much of the consideration for the dutiable transaction as relates to the partnership interest, whichever is the greater.

X means the unencumbered value of all dutiable property of the partnership.

Y means the unencumbered value of all assets of the partnership.

29 Partitions

- (1) For this section, a partition occurs when property (some or all of which is dutiable property) that is held by persons jointly (as joint tenants or tenants in common) and beneficially is transferred or agreed to be transferred to 1 or more of those persons.
- (2) For this section and sections 15 and 17, a partition is taken to be a single dutiable transaction.
- (3) The dutiable value of a partition (*DV*) is to be determined in accordance with the following formula:

$$DV = A \times \frac{X}{Y}$$

where:

A means the sum of the amounts by which the unencumbered value of the property transferred or agreed to be transferred to a person exceeds the unencumbered value of the interest held by the person in that property immediately before the partition, or the sum of any consideration for the partition paid by any of the parties, whichever is the greater.

X means the unencumbered value of all dutiable property the subject of the partition.

Y means the unencumbered value of all property the subject of the partition.

- (4) The minimum duty chargeable on a transaction that effects a partition is \$20.
- (5) Duty charged by this section is payable by the persons making the partition or any 1 or more of them.

30 Effect of alteration in purchase price

- (1) If after an agreement for the sale or transfer of dutiable property is entered into and before the property is transferred—
 - (a) the consideration under the agreement is reduced and the reduced consideration is not less than the unencumbered value of the dutiable property when the consideration was reduced; or
 - (b) the consideration under the agreement is reduced because the parties have agreed not to transfer some of the dutiable property previously agreed to be transferred and the reduced consideration is not less than the unencumbered value of the dutiable property that remained to be transferred when the consideration was reduced; or

- (c) the consideration under the agreement is increased and the dutiable value when the consideration was increased is greater than the dutiable value when the agreement was entered into; the commissioner shall assess or reassess the liability to duty of the agreement in accordance with the change in the consideration.
- (2) The liability to pay additional duty arising from an increase in the consideration occurs on the day when the consideration is agreed to be increased.

Part 2.3 Rates of duty

31 General rate

Except as provided by this chapter, duty at the determined rate is chargeable on a dutiable transaction.

32 Shares, units and interests (marketable securities)

- (1) Duty is chargeable on a dutiable transaction in respect of marketable securities at the determined rate.
- (3) A minimum rate of duty of \$20 is chargeable under this section on dutiable transactions in respect of marketable securities.
- (4) A rate of duty chargeable under this section does not apply to a dutiable transaction that confers a land use entitlement.

Note No duty is chargeable on transactions relating to marketable securities that are shares or units quoted on a stock exchange, or related rights or interests (see s 10 (2)).

33 Certain business assets

- (1) Duty is chargeable at the determined rate on a dutiable transaction so far as it is in respect of—
 - (a) a business asset referred to in section 10 (1) (g); or
 - (b) a statutory licence or permission referred to in section 10 (1) (h); or
 - (c) a partnership interest referred to in section 10 (1) (i) so far as it is not constituted by—
 - (i) an interest in property referred to in section 10 (1) (a), (b) or (c); or
 - (ii) an interest in property referred to in section 10 (1), being dutiable property referred to in section 10 (1) (a), (b) or (c); or
 - (d) goods referred to in section 10 (1) (j) that are used solely for business purposes; or

- (e) an interest in property referred to in section 10 (l), other than—
 - (i) an interest in dutiable property referred to in section 10 (1) (a), (b), or (c); or
 - (ii) an interest in dutiable property that is used for purposes other than business purposes.
- (2) The proportion of the dutiable value of a partnership interest that is chargeable with duty under subsection (1) (c) is—
 - (a) if no interest in property of a kind referred to in subsection (1) (c) (i) or (ii) is transferred as a result of the transfer of the partnership interest—the whole of the value of the partnership interest; or
 - (b) if an interest in property of a kind referred to in either of those subparagraphs is transferred as a result of the transfer of the partnership interest—the proportion of the value of the partnership interest that is equal to the proportion of so much of the unencumbered value of all the dutiable assets of the partnership as is not constituted by the unencumbered value of the dutiable assets of the partnership that are property of a kind referred to in either of those subparagraphs.

Part 2.4 Special provisions

49 Interim payment of duty

- (1) If the full dutiable value of dutiable property subject to an agreement for sale or transfer cannot, in the commissioner's opinion, be immediately ascertained, the commissioner may make an assessment by way of estimate under the Taxation Administration Act, section 11 (2).
- (2) The written instrument or the written statement required by section 14 may be stamped 'Interim stamp only'.
- (3) When the full dutiable value has been ascertained, the commissioner shall reassess the duty payable on the agreement.
- (4) If no further duty is payable, the interim stamp is to be cancelled and any amount paid in excess of the amount assessed is to be refunded.
- (5) If further duty is payable, liability for the further duty arises when the notice of assessment issues, notwithstanding section 11.
- (6) On payment of the balance of the duty (and any interest or penalty tax), the written instrument or the written statement required by section 14 is to be stamped with the amount of the balance and marked to indicate that duty has been duly paid.

50 Cancelled agreements

- (1) An agreement for the sale or transfer of dutiable property that is rescinded or annulled is not liable to duty under this chapter if the commissioner is satisfied—
 - (a) that the agreement was not rescinded or annulled to give effect to a subsale; or
 - (b) that the purchaser or transferee under the agreement is a promoter of a named company proposed to be incorporated and that the company is the purchaser or transferee of the dutiable property under a subsequent agreement; or

- (c) that the purchaser or transferee under the agreement and the purchaser or transferee under a subsequent agreement relating to the same dutiable property were related persons when the agreement that is rescinded or annulled was entered into.
- (2) If duty has been paid on an agreement that is not liable to duty under this chapter because of this section, the commissioner shall reassess and refund the duty if an application for a refund is made within—
 - (a) 5 years of the initial assessment; or
 - (b) 12 months after the agreement is rescinded or annulled;whichever is the later.

51 Grant of certain Crown leases on surrender of development leases

- (1) Duty of \$20 is chargeable on the grant of a Crown lease (the *new lease*) on the surrender of a development lease if—
 - (a) the new lease is granted to the person who was the lessee under the development lease at the time of its surrender; and
 - (b) the whole of the land comprised in the new lease is land that was comprised in the development lease.
- (2) If—
 - (a) a Crown lease (the *new lease*) is granted on the surrender of a development lease; and
 - (b) the new lease is granted to the person who was the lessee under the development lease at the time of its surrender; and

- (c) only part of the land comprised in the new lease is land that was comprised in the development lease;

the duty chargeable on the new lease is the amount by which the duty that would, apart from this subsection, have been chargeable on the new lease under part 2.3 exceeds the duty that would have been chargeable under that part on a grant of a Crown lease over so much of the land comprised in the new lease as was comprised in the development lease, being a Crown lease granted on the same terms as the new lease.

- (3) In this section:

development lease means a Crown lease that is expressed to be granted for the purpose of developing the land comprised in the lease for subdivision and resale.

52 Refund if Crown lease surrendered

- (1) If—

- (a) an amount of duty has been paid on a grant of a Crown lease; and
(b) the lease is surrendered or determined; and
(c) part or all of the amount paid in respect of the grant of the lease is refunded under the *Land (Planning and Environment) Act 1991*, section 178;

there shall be refunded to the person who paid the duty an amount calculated in accordance with the formula—

$$\frac{D \times R}{P}$$

where:

D means the amount of duty.

R means the amount that would be refundable under that section if no deduction were made for administrative expenses.

P means the amount paid in respect of the grant of the lease.

- (2) A refund of duty is not payable unless the person lodges with the commissioner, within 12 months after the refund referred to in subsection (1) (c) was made, a written application, with such information as the commissioner requires to enable the amount of the refund to be calculated.

53 Transfers arising from mortgages of land

- (1) The mortgagor and the mortgagee are jointly and severally liable to pay the duty chargeable on a transfer by way of mortgage of dutiable property that is Territory land.
- (2) If the commissioner is satisfied that—
- (a) duty has been paid in accordance with this section on a transfer of dutiable property to which this section applies; and
 - (b) the dutiable property has been re-transferred to the mortgagor (or a person to whom the land has been transmitted by death or bankruptcy) and the mortgagor (or person) is the registered proprietor of the land;

the commissioner shall refund the ad valorem duty paid on the transfer less an amount of \$20.

Part 2.5 Concessional rates of duty

Division 2.5.1 Trusts

54 Change in trustees

- (1) In this section:

new trustee means a trustee appointed in substitution for a trustee or a trustee appointed in addition to a trustee or trustees.

- (2) Duty of \$20 is chargeable in respect of a transfer of dutiable property to a person as a consequence of the retirement of a trustee or the appointment of a new trustee, if the commissioner is satisfied that, as the case may be—
- (a) except for a responsible entity of a managed investment scheme—none of the continuing trustees remaining after the retirement of a trustee is or can become a beneficiary under the trust; and
 - (b) except for a responsible entity of a managed investment scheme—none of the trustees of the trust after the appointment of a new trustee is or can become a beneficiary under the trust; and
 - (c) except if a responsible entity of a managed investment scheme acquires a beneficial interest in the managed investment scheme solely as a consequence of its appointment as the responsible entity—the transfer is not part of a scheme for conferring an interest, in relation to the trust property, on a new trustee or any other person, whether as a beneficiary or otherwise, to the detriment of the beneficial interest or potential beneficial interest of any person; and

(d) the transfer is not made in connection with a tax avoidance scheme;

and, if the commissioner is not so satisfied, the transfer is chargeable with the same duty as a transfer to a beneficiary under and in conformity with the trusts subject to which the property is held.

- (3) Duty of \$20 is chargeable in respect of a transfer of dutiable property to a responsible entity if the commissioner is satisfied that the transfer is necessary to enable an undertaking that existed before 1 July 1998 to become a registered scheme.

55 Transfer to custodian of managed investment scheme

Duty of \$20 is chargeable in respect of a transfer of dutiable property from a responsible entity of a managed investment scheme or a trustee of such a responsible entity to a custodian or agent of the responsible entity.

55A Transfers in relation to managed investment schemes

Duty of \$20 is chargeable for the transfer of dutiable property—

- (a) from the responsible entity of a managed investment scheme to a custodian or agent of the responsible entity as custodian or agent of the scheme; or
- (b) from a custodian or agent of the responsible entity of a managed investment scheme as custodian or agent of the scheme to the responsible entity.

55B Transfers in relation to registered schemes

- (1) Duty of \$20 is chargeable for the transfer of dutiable property by a trustee of a registered scheme to a custodian or agent of the responsible entity of the scheme as custodian or agent of the scheme.
- (2) However, subsection (1) only applies if—
 - (a) before 1 July 1998 the scheme was a prescribed interest scheme; and
 - (b) when the scheme became a registered scheme the trustee held the dutiable property as a trustee of the scheme.

56 Property vested in an apparent purchaser

- (1) Duty of \$20 is chargeable in respect of—
 - (a) a declaration of trust made by an apparent purchaser in respect of identified dutiable property—
 - (i) vested in the apparent purchaser on trust for the real purchaser who provided the money for the purchase of the dutiable property; or
 - (ii) to be vested in the apparent purchaser on trust for the real purchaser, if the commissioner is satisfied that the money for the purchase of the dutiable property has been or will be provided by the real purchaser; or
 - (b) a transfer of dutiable property from an apparent purchaser to the real purchaser if dutiable property is vested in an apparent purchaser on trust for the real purchaser who provided the money for the purchase of the dutiable property.
- (2) In this section:
purchase includes an allotment.

57 Transfers back from a nominee

- (1) If—
- (a) dutiable property (other than marketable securities) that was transferred to a person to be held by that person as trustee for the transferor is transferred back to the transferor by the trustee for no consideration; and
 - (b) no person other than the transferor has had a beneficial interest in the dutiable property (other than the trustee's right of indemnity) between its transfer to the trustee and its transfer back to the transferor;
- the duty chargeable on the transfer of the dutiable property back to the transferor is \$20.
- (2) If duty of \$20 has been paid on a transfer under subsection (1), the initial transfer to the trustee is also chargeable with duty of \$20 and the commissioner shall reassess the initial transfer and refund any duty paid in excess of \$20 if an application for a refund is made within—
- (a) 5 years after the initial assessment; or
 - (b) 12 months after the transfer back to the original transferor;
- whichever is the later.
- (3) In this section:
- trustee* includes a trustee appointed in substitution for a trustee or a trustee appointed in addition to a trustee or trustees.

58 Property passing to beneficiaries

- (1) Subject to subsections (2) and (3), duty of \$20 is chargeable in respect of a transfer for no consideration of dutiable property to a beneficiary made under and in conformity with the trusts contained in a declaration of trust.
- (2) Subsection (1) applies only to the extent that the property being transferred is property that the commissioner is satisfied is—
 - (a) wholly or substantially the same as the dutiable property the subject of the declaration of trust and that—
 - (i) duty charged by this Act has been paid in respect of the declaration of trust over that property; or
 - (ii) the declaration of trust is exempt from duty; or
 - (b) dutiable property representing the proceeds of reinvestment of property referred to in paragraph (a); or
 - (c) property to which both paragraphs (a) and (b) apply.
- (3) Subsection (1) applies only if the transferee was a beneficiary at the time at which duty became chargeable in respect of the declaration of trust.

59 Establishment of a trust relating to unidentified property and non-dutiable property

- (1) Duty of \$200 is chargeable in respect of an instrument executed in the ACT that declares a trust over property none of which is dutiable property.
- (2) Despite subsection (1), duty of \$20 only is chargeable in respect of an instrument mentioned in that subsection that is executed by a hospital, school or charitable organisation, or by trustees in trust for a hospital, school or charitable organisation.

- (3) Duty of \$200 is chargeable in respect of an instrument executed in the Territory that declares that property, although not identified in the instrument, when vested in the person executing the instrument is to be held in trust for a person or persons or a purpose or purposes mentioned in the instrument.
- (4) Despite subsection (3), duty of \$20 only is chargeable in respect of an instrument mentioned in that subsection that is executed by a hospital, school or charitable organisation, or by trustees in trust for a hospital, school or charitable organisation.
- (5) It is immaterial whether or not the beneficial owner or person entitled to appoint the property has joined in or assented to the instrument.
- (6) A liability for duty charged by this section arises when the instrument is first executed.
- (7) Duty charged by this section is payable by the person declaring the trust.

60 Instrument relating to managed investment scheme

- (1) Duty of \$20 is chargeable in respect of an instrument that—
 - (a) amends, varies or replaces an instrument that establishes or governs a managed investment scheme; and
 - (b) does not transfer, or have the effect of transferring, any dutiable property to a person who does not hold units in the scheme; and
 - (c) does not have the effect of reducing the number of persons who hold units in the scheme.
- (2) Duty of \$20 is chargeable in respect of a declaration of trust—
 - (a) that is made by a trustee in respect of dutiable property that, immediately before the trust is declared, is held by the trustee as trustee of the responsible entity of a managed investment scheme; and

- (b) that is made for the purpose of holding the dutiable property on trust for the responsible entity of the managed investment scheme.

60A Nominee transactions—unquoted marketable securities

- (1) Duty of \$20 is chargeable for a transfer of marketable securities, other than marketable securities that are not dutiable property, between any of the following persons:
 - (a) the beneficial owner;
 - (b) a trustee or nominee of the beneficial owner;
 - (c) a custodian of a trustee or nominee of the beneficial owner;
 - (d) a subcustodian of a custodian of a trustee or nominee of the beneficial owner.
- (2) However, subsection (1) only applies if—
 - (a) there is no change in the beneficial ownership of the marketable securities; and
 - (b) if the transferee is a person mentioned in subsection (1) (b), (c) or (d)—
 - (i) the transferee is to hold the marketable securities solely for another person mentioned in subsection (1) (a), (b) or (c); and
 - (ii) there is no contemplation of the marketable securities being held for any other person; and
 - (c) if the transferor is a person mentioned in subsection (1) (b), (c) or (d)—
 - (i) the marketable securities were held by the person solely for another person mentioned in subsection (1) (a), (b) or (c); and

- (ii) since the time when the marketable securities were first transferred or issued to the transferor, no person has held the marketable securities other than solely for a person mentioned in subsection (1) (a), (b) or (c).

Division 2.5.2 Superannuation

61 Instruments relating to superannuation

- (1) The following instruments are liable to duty of \$20:
 - (a) an instrument that establishes, or that amends provisions governing, a superannuation fund, an approved deposit fund, a pooled superannuation trust or an eligible rollover fund, being a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund within 12 months after the instrument or amending instrument takes effect;
 - (b) an instrument under which an employer agrees to participate in or contribute to a complying superannuation fund or a superannuation fund that, in the opinion of the trustees, will become a complying superannuation fund within 12 months after the employer agrees to participate in or contribute to the fund;
 - (c) an instrument that is executed to set out or vary the terms of custodial arrangements concerning a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund (whether or not the instrument contains any other terms) or concerning a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund within 12 months after the instrument takes effect.

- (2) A liability for duty charged by this section arises when the instrument is first executed.
- (3) The persons liable to pay the duty are the parties to the instrument.
- (4) Notwithstanding subsection (1), an instrument to which this section applies is not liable to duty if—
 - (a) it is exempt from duty under a corresponding Act; or
 - (b) the duty for which it is liable under a corresponding Act has been paid.

62 Transfer of property from one superannuation fund to another

- (1) This section applies to the transfer of dutiable property from one superannuation fund to another for no consideration if—
 - (a) the transfer is made from a complying superannuation fund or from a fund that was a complying superannuation fund within the period of 12 months before the transfer was made; and
 - (b) the transfer is made to a complying superannuation fund or to a superannuation fund that, in the opinion of the trustees, will be a complying superannuation fund within 12 months after the transfer is made; and
 - (c) the transfer occurs in connection with a person's ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, the fund from which the dutiable property is transferred and the person's becoming a member of, or otherwise becoming entitled to benefits in respect of, the fund to which the dutiable property is transferred.
- (2) Subject to subsections (3) and (4), the duty chargeable on a transfer to which this section applies is ad valorem duty in accordance with this chapter or \$200, whichever is the lesser.
- (3) A minimum rate of duty of \$20 is chargeable on a transfer to which this section applies.

- (4) Duty of \$20 only is chargeable on a transfer to which this section applies from 1 superannuation fund established for the benefit of the employees of a hospital, school or charitable organisation to another superannuation fund established for the benefit of the employees of the same hospital, school or charitable organisation.
- (5) An application for an assessment of duty in accordance with this section is to be accompanied by the following:
 - (a) a brief explanation of the background to the transfer and the entitlements to be extinguished and created;
 - (b) copies of the governing rules of the complying superannuation funds concerned;
 - (c) a statement of the property to be transferred;
 - (d) a copy of each instrument relating to the transfer;
 - (e) a statutory declaration from a trustee (or a director of a corporate trustee) of each of the superannuation funds concerned stating that, in the opinion of the trustee (or director), the fund will be a complying superannuation fund within 12 months after the transfer occurs.
- (6) The commissioner may require further information.
- (7) In this section:
complying superannuation fund includes a complying approved deposit fund and an eligible rollover fund.

63 Transfers between trustees and custodians of superannuation funds or trusts

- (1) This section applies to the following dutiable transactions:
 - (a) a transfer of, or an agreement to transfer, dutiable property from a trustee of a relevant fund or trust to a custodian of the trustee of the fund or trust, if there is no change in the beneficial ownership of the property;

- (b) a transfer of, or an agreement to transfer, dutiable property from a custodian of a trustee of a relevant fund or trust to a trustee of the fund or trust, if there is no change in the beneficial ownership of the property;
 - (c) a transfer of, or an agreement to transfer, dutiable property from a custodian of a trustee of a relevant fund or trust to another custodian of the trustee of the fund or trust, if there is no change in the beneficial ownership of the property.
- (2) The duty chargeable on a dutiable transaction is—
- (a) unless paragraph (b) applies, the lesser of—
 - (i) ad valorem duty in accordance with this chapter; and
 - (ii) \$200; or
 - (b) if the dutiable property transferred, or agreed to be transferred, is marketable securities—\$20.
- (3) Despite subsection (2), duty of \$20 only is chargeable on a dutiable transaction to which this section applies if the relevant fund or trust is established for the benefit of the employees of a hospital, school or charitable organisation.
- (4) In this section:
- complying superannuation fund*** includes a complying approved deposit fund and an eligible rollover fund.
- relevant fund or trust***, in relation to the transfer of dutiable property, means—
- (a) a complying superannuation fund; or
 - (b) a pooled superannuation trust; or
 - (c) a fund or trust that, in the trustees' opinion, will be a complying superannuation fund or a pooled superannuation trust within 12 months after the day the transfer takes effect.

Division 2.5.3 Miscellaneous

64 Transfer of land to certain authorities and other bodies

- (1) Duty of \$20 is chargeable in respect of a grant of a Crown lease to—
- (a) the commissioner for housing; or
 - (b) a non-commercial Commonwealth authority.
- (2) Duty of \$20 is chargeable in respect of a grant or transfer of land to a hospital, school or charitable organisation or to trustees in trust for a hospital, school or charitable organisation.

65 Transfer of land in accordance with Industrial Relations Act, s 253Y

Duty of \$20 is chargeable in respect of a transfer of land made in accordance with the *Industrial Relations Act 1988* (Cwlth), section 253Y.

66 Conveyances to prescribed persons

Duty of \$20 is chargeable in respect of a grant or transfer of land to a prescribed person.

67 Conversion of property to unit title

The duty chargeable on the transfer of a unit within the meaning of the *Unit Titles Act 2001* is \$20 if the commissioner is satisfied that—

- (a) the transferee, immediately before registration of the units plan, held a land use entitlement in respect of the land or part of the land the subject of the units plan; and
- (b) the transfer is part of an arrangement under which the transferee will take an interest in the unit similar in effect to and in substitution for the interest the transferee had under the land use entitlement immediately before registration of the units plan.

68 Surrender and regrant of Crown lease

- (1) Duty of \$20 is chargeable for the grant of a new Crown lease to the lessee under a previous Crown lease because of the surrender of the previous lease if the surrender was only for 1 or more of the following purposes:
 - (a) changing the purpose for which the land comprised in the lease may be used;
 - (b) granting the lessee a longer leasehold interest in the land comprised in the lease;
 - (c) reducing rent to not more than 5 cents a year;
 - (d) correcting errors or omissions.
- (2) Duty of \$20 is chargeable for the grant of new Crown leases to a lessee under a previous Crown lease because of the surrender of the previous lease if the surrender was only for—
 - (a) subdividing the land comprised in the surrendered lease; or
 - (b) that purpose and 1 or more of the purposes mentioned in subsection (1) (a) to (d).
- (3) Duty of \$20 is chargeable for the grant of a new Crown lease to a lessee under 2 or more previous Crown leases because of the surrender of the previous leases if the surrender was only for—
 - (a) consolidating the land comprised in the surrendered leases; or
 - (b) that purpose and 1 or more of the purposes mentioned in subsection (1) (a) to (d).

68A Regrant of lease with additional land

If—

- (a) a Crown lease is granted to a lessee under a previous Crown lease because of the surrender of the previous lease; and

- (b) the land comprised in the new lease is all or part of the land comprised in the surrendered lease and additional land;

duty is chargeable only on the transfer of the interest in the additional land.

69 Deceased estates

Duty of \$20 is chargeable in respect of—

- (a) a transfer of dutiable property not made for valuable consideration by the legal personal representative of a deceased person to a beneficiary, being—
- (i) a transfer made under and in conformity with the trusts contained in the will of the deceased person or arising on an intestacy; or
 - (ii) a transfer of property the subject of a trust for sale contained in the will of the deceased person; and
- (b) a consent by a legal personal representative of a deceased person to a transmission application by a beneficiary; and
- (c) a transmission application to a devisee who is also the sole legal personal representative.

70 Certain transfers of marketable securities

Duty of \$20 is chargeable in respect of a transfer of marketable securities—

- (a) issued by a municipal council or other local government body or by a public authority constituted by or under a law of the Territory or of the Commonwealth, a State or another Territory; or
- (b) made to a hospital, school or charitable organisation or to trustees in trust for a hospital, school or charitable organisation; or

- (c) made solely for the purpose of—
 - (i) qualifying the transferee as the director of a company (the *subsidiary company*) to act and vote, as directed, on behalf of another company; or
 - (ii) re-transferring the marketable security from the director so qualified to the other company;
being another company that—
 - (iii) controls the appointment or removal of all or a majority of the board of directors of the subsidiary company; or
 - (iv) controls more than $\frac{1}{2}$ of the voting power in the subsidiary company; or
 - (v) beneficially owns more than $\frac{1}{2}$ of the paid-up capital of the subsidiary company; or
- (d) made solely for the purpose of rectifying a clerical error in an instrument of transfer; or
- (e) made in accordance with the *Industrial Relations Act 1988* (Cwlth), section 253ZA.

70A Corporate reconstructions—concessional duty for dutiable transactions

- (1) This section applies to a dutiable transaction if—
 - (a) by the transaction, property is—
 - (i) transferred (or agreed to be transferred) by a member of a group of corporations to another member of the same group; or
 - (ii) vested in a member of the group, if the property was owned immediately before the vesting by another member of the same group; and
 - (b) the transaction is approved by the commissioner in accordance with any guidelines determined under subsection (4).

- (2) Duty for the transaction is payable at 5% of the amount that would, apart from this section, be payable for the transaction.
- (3) An approval for subsection (1) (b) may be given subject to conditions.
- (4) The Minister may, in writing, determine guidelines for approvals.
- (5) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (6) In this section:

corporation includes a unit trust scheme.

71 Bankruptcy or insolvency

Duty of \$20 is chargeable in respect of a dutiable transaction if—

- (a) it occurs as a consequence of the appointment of a receiver or trustee in bankruptcy; or
- (b) it occurs as a consequence of the appointment of a liquidator; or
- (c) it is a transfer of dutiable property for no consideration to a former bankrupt from the estate of the former bankrupt.

72 Transfer to spouse of interest in principal place of residence

Duty of \$20 is payable in respect of a transfer by a person to his or her spouse of dutiable property consisting of an interest in property that is, at the date of the transfer of the interest, used as their principal place of residence, if the transfer results in the property being held by the spouses as—

- (a) joint tenants; or
- (b) tenants in common in equal shares; or

- (c) tenants in common in shares that are proportionate to the contributions of the spouses towards the purchase and improvement of the property or in such proportions as are prescribed.

72A Reduction of duty—payment in non-Australian jurisdiction

- (1) The amount of duty chargeable under this chapter on a transfer of marketable securities is to be reduced by the amount of duty of a similar kind paid in relation to the transfer in accordance with the law of a place outside Australia.
- (2) In this section:
transfer of marketable securities includes a dealing or arrangement affecting marketable securities by way of a dutiable transaction other than a transfer.

Part 2.6 Exemptions

73 Transfers to a State, another Territory or a prescribed authority

- (1) A transfer of dutiable property to a State or another Territory is exempt from duty under this chapter.
- (2) A transfer of dutiable property to a prescribed authority of the Commonwealth, a State or another Territory is exempt from duty under this chapter.

74 Transfers relating to mortgages

- (1) A dutiable transaction is exempt from duty under this chapter if it is—
 - (a) a dutiable transaction over dutiable property arising from the discharge or transfer of a mortgage or declaration of trust over a mortgage; or
 - (b) a dutiable transaction comprising—
 - (i) a transfer by way of discharge of mortgage; or
 - (ii) a transfer by way of mortgage (other than a transfer by way of mortgage of land, or an estate or interest in land, under the *Land Titles Act 1925*).
- (2) In this section:

mortgage means any charge on dutiable property created merely for securing a debt.

74A Financial and other agreements

No duty is chargeable under this chapter on—

- (a) a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, 90C or 90D that is binding on the parties under that Act; or

- (b) a domestic relationship agreement, or a termination agreement, under the *Domestic Relationships Act 1994*.

74B Transfers relating to certain personal relationships

- (1) No duty is chargeable under this chapter on a transfer of dutiable property under—
 - (a) an order of a court under the *Family Law Act 1975* (Cwlth) or the *Married Persons' Property Act 1986*; or
 - (b) any other order of a court for the distribution of property consequent on the end of the relationship between spouses.
- (2) No duty is chargeable under this chapter on a transfer of dutiable property under a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, 90C or 90D that is binding on the parties under that Act, if—
 - (a) the commissioner is satisfied that the transfer is consequent on the dissolution, annulment or irretrievable breakdown of a marriage; and
 - (b) the property is matrimonial property; and
 - (c) the transfer is—
 - (i) to the parties to the marriage, or to either of them; or
 - (ii) to a child or children of either of them, or to a person in trust for the child or children.
- (3) No duty is chargeable under this chapter on a transfer of dutiable property under a domestic relationship agreement, or a termination agreement, under the *Domestic Relationships Act 1994*, if—
 - (a) the agreement is in writing and signed by each party; and
 - (b) the agreement is endorsed with, or accompanied by, the certificates mentioned in that Act, section 33 (1) (d) for each party; and

Note The certificates relate to independent legal advice about the agreement.

- (c) the commissioner is satisfied that the transfer is consequent on the end of the domestic relationship between the parties; and
 - (d) the property is relationship property; and
 - (e) the transfer is—
 - (i) to the parties to the relationship, or to either of them; or
 - (ii) to a child or children of either of them, or to a person in trust for the child or children.
- (4) For subsection (2) (a), in deciding whether a transfer is consequent on the irrevocable breakdown of a marriage, the commissioner must have regard to any statutory declaration made by a party to the marriage to the effect that—
- (a) the party intends to apply for dissolution or annulment of the marriage; or
 - (b) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed.
- (5) For subsection (3) (c), in deciding whether a transfer under a domestic relationship agreement is consequent on the end of a relationship, the commissioner must have regard to any statutory declaration made by a party to the relationship to the effect that the relationship has ended.
- (6) Subsections (4) and (5) do not limit the commissioner's powers under the *Taxation Administration Act 1999*, section 82 (Power to require information, instruments or records or attendance for examination).
- (7) For this section:
- child*** means a person under 18 years old.

75 Marketable securities

- (1) No duty is chargeable under this chapter on the transfer to a person of rights to shares if an earlier transfer of the shares to the person included a right to shares and duty in respect of the rights was paid in connection with that earlier transfer or the earlier transfer was exempt from duty.
- (2) No duty is chargeable under this chapter on the transfer of shares to a person (the *transferee*) if—
 - (a) as a consequence of the transfer of shares in a company—
 - (i) in respect of which ad valorem duty under this Act or a corresponding Act has been paid or that is exempt from duty; and
 - (ii) that is not registered in the share register of the company; the transferee is, on a bonus issue or the issue of a right to shares subsequent to the transfer, entitled to other shares registered in the name of the transferor; and
 - (b) the transferee pays the amount (if any) necessary to take up the other shares.
- (3) No duty is chargeable under this chapter on a transfer, or an agreement for the sale or transfer, of an ADR if—
 - (a) the ADR relates to rights to shares that on issue, on exercise of those rights, will be quoted on a stock exchange; and
 - (b) the transfer, or the sale or transfer that is agreed, is to—
 - (i) a foreign resident on the foreign resident's own behalf; or
 - (ii) a foreign resident acting on behalf of a trustee for another foreign resident; and

- (c) the ADR is to be registered on an overseas register of legal or beneficial title.

Note No duty is chargeable on transactions relating to marketable securities that are shares or units quoted on a stock exchange, or related rights or interests (see s 10 (2)).

Chapter 3 **Certain transactions treated as transfers**

Part 3.1 **Preliminary**

76 **Definitions for ch 3**

In this chapter:

acquisition statement means a statement under section 87.

chapter 3 transaction means a transaction that is treated as a transfer under this chapter.

77 **Imposition of duty**

This chapter charges duty on certain transactions that are not dutiable transactions to which chapter 2 applies.

Part 3.2 Acquisition of interests in certain landholders

Division 3.2.1 Landholding private corporations

78 Meaning of *private corporation*

In this part:

private corporation means a private company or a private unit trust scheme.

79 When is a private corporation a landholder?

For this part, a private corporation is a landholder if it holds land in the Territory.

80 Landholdings of private corporations

- (1) A reference in this part to a *landholding* is a reference to any interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor or a *profit à prendre* but shall not be read as including—
 - (a) such an interest in land of a private company unless the interest of the company in the land is a beneficial interest; or
 - (b) such an interest in land of a unit trust scheme unless the interest is held by the trustees in their capacity as trustees of the scheme.
- (2) This section is in aid of, but does not limit, the operation of any provision of this part providing for constructive ownership of interests.
- (3) For this part, the vendor and the purchaser under an uncompleted agreement for the sale of land shall be taken to be separately entitled to the whole of the land.

81 Constructive ownership of landholdings and other property—subsidiaries

- (1) In addition to any interest in land or other property that it may hold in its own right, a private corporation shall be taken, for this part, to hold an interest in land or other property held by a subsidiary of the private corporation.
- (2) The value, for duty purposes, of the interest in land or other property that a private corporation is to be taken, in accordance with subsection (1), to hold by virtue of a holding of a subsidiary (the *actual landholder*) is that portion of the interest's unencumbered value to which the private corporation would be entitled on a winding-up of—
 - (a) the actual landholder; and
 - (b) every subsidiary of the private corporation that stands between the private corporation and the actual landholder in the ownership chain.
- (3) For this part, a private company is a *subsidiary* of another private company if it is a subsidiary of the other private company within the meaning of the Corporations Act, section 9.
- (4) For this part, a private company is the *subsidiary* of a unit trust scheme if the trustees of the scheme, in their capacities as trustees of the scheme, have a majority interest in the private company.
- (5) For this part, a unit trust scheme is the *subsidiary* of a private corporation if the corporation has a majority interest in the scheme.

82 Constructive ownership of landholdings and other property—discretionary trusts

- (1) A person or a member of a class of persons in whose favour, by the terms of a discretionary trust, capital the subject of the trust may be applied—
 - (a) in the event of the exercise of a power or discretion in favour of the person or class; or

- (b) in the event that a discretion conferred under the trust is not exercised;
- is, for this section, a beneficiary of the trust.
- (2) A beneficiary of a discretionary trust shall be taken to own or to be otherwise entitled to the property the subject of the trust, unless the commissioner, being satisfied that the application of this subsection in the particular case would be inequitable, determines otherwise.
- (3) For this part, any property that is the subject of a discretionary trust is taken to be the subject of any other discretionary trust—
- (a) that is; or
- (b) any trustee of which (in the capacity of trustee) is;
a beneficiary of it, unless the commissioner, being satisfied that the application of this subsection in the particular case would be inequitable, determines otherwise.
- (4) Subsection (3) extends to apply to property that is the subject of a discretionary trust only by the operation of that subsection.
- (5) In this section:
person includes a private corporation.

Division 3.2.2 Acquisitions of interests in private corporations

83 What are *interests* and *majority interests* in private corporations?

- (1) For this part, a person shall be taken to have an *interest* in a private corporation if the person has an entitlement (otherwise than as a creditor or other person to whom the corporation is liable) to a distribution of property from the corporation on a winding up of the corporation or otherwise.

- (2) A person who, under subsection (1), is to be taken to have an interest in a private corporation shall be taken to have a *majority interest* in the corporation if the person, in the event of a distribution of all the property of the corporation immediately after the interest was acquired, would be entitled to more than 50% of the property distributed.
- (3) In this section:
person includes a private corporation.

84 How may an interest be acquired?

For this part, an interest in a landholding private corporation may be *acquired* by means of—

- (a) the purchase, gift, allotment or transfer of any share or unit in a private corporation; or
 - (b) the variation, abrogation or alteration of a right attaching to any such share or unit; or
 - (c) the redemption, surrender or cancellation of any such share or unit; or
 - (d) the variation or alteration of a right of a holder of any such share or unit; or
 - (e) payment of a call on such a share that is partially paid-up;
- or by any combination of the means referred to in paragraphs (a), (b), (c), (d) and (e).

Division 3.2.3 Charging of duty

85 When does a liability for duty arise?

A liability for duty charged by this part arises when a relevant acquisition is made.

86 What is a *relevant acquisition*?

For this division, a person who—

- (a) acquires an interest in a landholding private corporation—
 - (i) that is of itself a majority interest in the corporation; or
 - (ii) that, when aggregated with other interests in the corporation held by the person or an associated person, results in an aggregation that amounts to a majority interest in the corporation; or
- (b) having a majority interest, or an interest described in paragraph (a) (ii), in a landholding private corporation, acquires a further interest in the corporation;

shall be taken to have made a *relevant acquisition*.

87 Acquisition statements

- (1) A person who has made a relevant acquisition shall prepare a statement and lodge it with the commissioner.
- (2) The acquisition statement must contain the following information:
 - (a) the name and address of the person who has acquired the interest;
 - (b) the date of the relevant acquisition;
 - (c) particulars of the interest acquired;
 - (d) particulars of the total interest of the person and any associated person in the private corporation at that date;
 - (e) the unencumbered value of all landholdings in the ACT of the private corporation as at the date of the relevant acquisition and as at the date of acquisition of each interest acquired in the corporation during the 3 years prior to the date of the relevant acquisition;
 - (f) the unencumbered value of the property of the private corporation at the date of the relevant acquisition;

- (g) the amount of duty paid under this Act or under a law of another Australian jurisdiction in respect of each earlier acquisition of an interest referred to in paragraph (e);
- (h) such other information as the commissioner may require.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for an acquisition statement, the form must be used.

88 When must duty be paid?

A tax default does not occur for the Taxation Administration Act if duty is paid within 90 days after the liability to pay it arises.

89 Who is liable to pay the duty?

- (1) Subject to subsection (2), duty chargeable under this part is payable by the person who makes the relevant acquisition.
- (2) If a relevant acquisition results from an aggregation of the interests of associated persons, the person who made the relevant acquisition and the associated person or persons are jointly and severally liable for payment of the duty.

90 How duty is charged on relevant acquisitions

- (1) If an acquisition statement does not disclose any acquisitions during the 3 years before the relevant acquisition, duty is chargeable, at the rate specified under this Act for a transfer of dutiable property, on the amount calculated by multiplying the unencumbered value of all land holdings of the private corporation in the ACT (calculated at the date of acquisition of the interest acquired) by the proportion of that value represented by the interest acquired in the relevant acquisition.

- (2) If an acquisition statement discloses 1 or more acquisitions during the 3 years before the relevant acquisition, duty is chargeable, at the rate specified under this Act for a transfer of dutiable property, on the aggregate of amounts severally calculated, in the manner provided by subsection (1), in respect of each interest required to be disclosed in the statement.
- (3) Duty payable under this section is to be reduced by the sum of the duty paid or payable under this Act in respect of the acquisition, during the 3 years before the relevant acquisition, by the person or any associated person of an interest in the same private corporation, but only in proportion to the extent to which the duty paid or payable is attributable to the amount of the duty payable under this section.
- (4) Duty payable under this section is to be reduced by an amount (if any) calculated in accordance with the following formula:

$$\frac{A}{B} \times C$$

where:

A means the unencumbered value of the landholdings in the ACT of the private corporation at the time the dutiable acquisition was made.

B means the unencumbered value of all property of the private corporation at that time.

C means the sum of—

- (a) the duty under this Act paid or payable in respect of—
- (i) a dutiable transaction in relation to the shares or units; or
 - (ii) a capital reduction or a rights alteration under part 3.3 by which an interest in the private corporation was acquired;
- or

- (iii) an allotment under part 3.5 by which an interest in the private corporation was acquired; and
 - (b) any duty of a like nature so paid or payable under a law of another Australian jurisdiction.
- (5) If a relevant acquisition is made owing to the aggregation of the interests of associated persons, but the commissioner is satisfied that the associated persons acquired their respective interests independently and for no common purpose, the commissioner may assess and charge duty on the relevant acquisition without aggregating the interests of the person who made it with the interests of associated persons.
- (6) This section is subject to division 3.2.4.

Division 3.2.4 General and supplemental

91 Ch 3 transactions—concessional duty

- (1) Duty of \$20 is chargeable in respect of a chapter 3 transaction—
 - (a) in which the transferee is a hospital, school or charitable organisation or a trustee who is to hold the property transferred in trust for a hospital, school or charitable organisation; or
 - (b) made consequent on the death of a person if the transferor is the executor of the will of the deceased person, the administrator of the estate of the deceased person or a beneficiary of the will or estate of the deceased person; or
 - (c) made by operation of law on the bankruptcy of a person or the winding-up of a company.
- (2) Duty of \$20 is chargeable in respect of a chapter 3 transaction if the land that is the subject of the interest concerned could have been acquired by the person in a way that results in a liability to pay \$20 duty under any of the following provisions:
 - (a) section 54 (Change in trustees);

- (b) section 55 (Transfer to custodian of managed investment scheme);
 - (c) section 55A (Transfers in relation to managed investment schemes);
 - (d) section 55B (Transfers in relation to registered schemes);
 - (e) section 56 (Property vested in an apparent purchaser);
 - (f) section 57 (1) (Transfers back from a nominee), if the initial transfer from the transferor to the trustee was a chapter 3 transaction;
Note The initial transfer is also chargeable with \$20 duty (see s (3)).
 - (g) section 58 (Property passing to beneficiaries);
 - (h) section 60A (Nomineeing transactions—unquoted marketable securities);
 - (i) section 62 (Transfer of property from one superannuation fund to another);
 - (j) section 63 (3) (b) (Transfers to trustees or custodians of superannuation funds or trusts);
 - (k) section 63 (4).
- (3) If duty of \$20 has been paid under subsection (2) (f) for a chapter 3 transaction consisting of a transfer back from a trustee to a transferor—
- (a) the initial transfer from the transferor to the trustee is chargeable with a duty of \$20; and
 - (b) the commissioner must reassess the initial transfer and refund any duty paid in excess of \$20 on application for a refund made within 5 years after the initial assessment, or 12 months after the transfer back to the transferor, whichever is later.
- (4) Maximum duty of \$200 is chargeable in respect of a chapter 3 transaction if the land that is the subject of the interest concerned could have been acquired by the person in a way that results in a liability to pay a maximum of \$200 duty under section 63 (3) (a).

91A Corporate reconstructions—concessional duty for relevant acquisitions

- (1) This section applies to the making of a relevant acquisition (the *transaction*) if—
- (a) by the transaction, property is—
 - (i) transferred (or agreed to be transferred) by a member of a group of corporations to another member of the same group; or
 - (ii) vested in a member of the group, if the property was owned immediately before the vesting by another member of the same group; and
 - (b) the transaction is approved by the commissioner in accordance with any guidelines determined under subsection (4).
- (2) Duty for the transaction is payable at 5% of the amount that would, apart from this section, be payable for the transaction.
- (3) An approval for subsection (1) (b) may be given subject to conditions.
- (4) The Minister may, in writing, determine guidelines for approvals.
- (5) A determination is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (6) In this section:
corporation includes a unit trust scheme.
relevant acquisition—see section 86.

92 Maximisation of entitlements on distribution of property

- (1) This section applies to any calculation, for this part, of the entitlement of a person (the *interested person*) to participate in a distribution of the property of a private corporation, whether on a winding-up of the private corporation or otherwise.
- (2) A calculation is to be made based, firstly, on a distribution carried out in accordance with the constitution of the private corporation, and with any law relevant to the distribution, as in force at the time of distribution, and the entitlement of the interested person is to be evaluated accordingly.
- (3) Next, a calculation is to be made based on a distribution carried out after the interested person, and any other person whom the interested person has power to direct with respect to such a distribution or who is, in relation to the interested person, an associated person, had exercised all powers and discretions exercisable by them because of having acquired an interest in the private corporation concerned—
 - (a) to effect or compel an alteration to the constitution of the private corporation; and
 - (b) to vary the rights conferred by shares or units in the private corporation; and
 - (c) to effect or compel the substitution or replacement of shares or units in the private corporation with other shares or units in it;in such a manner as would maximise the value of the entitlement, and the entitlement of the interested person is to be evaluated accordingly.
- (4) The results obtained by an evaluation of the interested person's entitlement in accordance with subsections (2) and (3) are then to be compared, and whichever evaluation results in a greater entitlement is the correct evaluation, for this part, of the entitlement, unless the commissioner, being satisfied that the application of this subsection in the particular case would be inequitable, determines otherwise.

93 Valuation of property

- (1) The provisions of this Act that apply to the ascertainment of the value of transfers chargeable with ad valorem duty apply in the same way to an acquisition statement under this part and the value of land holdings mentioned in it.
- (2) If any arrangement affecting the dutiable value of dutiable land holdings that was entered into within 12 months before a relevant acquisition was brought about by any person with the intention of reducing the dutiable value of the land holdings, the commissioner may—
 - (a) cause a valuation of the landholding to be made; and
 - (b) direct the valuer to disregard the arrangement for the purposes of the valuation; and
 - (c) assess duty on the basis of the valuation carried out in accordance with the direction.

94 Agreements for sale or conveyance of land

- (1) If—
 - (a) at the time of acquisition of an interest by any person in a landholding private corporation that necessitates the lodgment of an acquisition statement under division 3.2.3, the corporation was the vendor under an uncompleted agreement for the sale or conveyance of land; and
 - (b) the agreement is subsequently completed;the commissioner shall assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a landholding of the corporation.

- (2) If—
- (a) at the time of acquisition of an interest by any person in a landholding private corporation that requires the lodgment by any person of an acquisition statement under division 3.2.3, the private corporation was the purchaser under an uncompleted agreement for the sale or conveyance of land; and
 - (b) the agreement is subsequently rescinded, annulled or otherwise terminated without completion;
- the commissioner shall assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a landholding of the corporation.
- (3) In this section, a reference to a *landholding private corporation* includes a reference to a subsidiary of the corporation.

95 Duty concession—acquisitions securing financial accommodation

- (1) If the person lodging an acquisition statement under this part in relation to the acquisition of an interest in a landholding private corporation—
- (a) informs the commissioner at the time the statement is lodged that the acquisition is effected for the purpose of securing financial accommodation; and
 - (b) the commissioner is satisfied that the acquisition is effected for that purpose;
- the statement, so far as it relates to that acquisition, is not chargeable with duty, except as provided by subsection (2).
- (2) The statement is chargeable with duty at the end of the period of 5 years after the date of the acquisition (or the longer period that may be determined by the commissioner in the particular case) if the interest concerned is not—
- (a) reacquired by the person from whom it was acquired; or

- (b) for an acquisition by way of mortgage—conveyed by the mortgagee to a third person in exercise of the mortgagee’s power of sale;
within that period (or that longer period).
- (3) Section 86 does not apply to the reacquisition by a person of the interest concerned.

Part 3.3 Entitlements arising from capital reductions or alterations of rights

96 Interpretation for pt 3.3

(1) In this part:

capital reduction means—

- (a) the redemption, surrender or cancellation of a share (including cancellation as part of a buyback of shares in accordance with the Corporations Act, part 2J.1, division 2); or
- (b) a reduction in the paid-up value of a share.

company means a company incorporated (or taken to be incorporated) under the Corporations Act that is—

- (a) taken to be registered in the ACT; and
- (b) not listed on the stock exchange.

dutiable entitlement means a voting share entitlement in respect of whose acquisition a statement is required to be lodged under section 100.

person includes persons who are associated persons.

rights alteration, in relation to voting shares, means a variation, abrogation or alteration of rights relating to the shares.

voting shares—see the Corporations Act, section 9.

(2) For this part, if voting shares acquired by associated persons severally do not, but taken in the aggregate would, give an entitlement to which this part applies, the voting shares acquired by the associated persons are taken to be aggregated and are taken to give the entitlement on the associated person who last acquired any of those voting shares.

- (3) If, under subsection (2), an entitlement to voting shares is taken to exist as the aggregate of voting shares of associated persons, the associated persons are jointly and severally liable for payment of the duty chargeable on the statement required to be lodged under this part.
- (4) Voting shares are not to be aggregated in accordance with subsection (2) if the commissioner is satisfied that the associated persons concerned acquired their several shares independently and for no common purpose.

97 When does a liability for duty arise?

A liability for duty charged by this part arises when a dutiable entitlement is acquired.

98 When must duty be paid?

A tax default does not occur for the Taxation Administration Act if duty is paid within 90 days after the liability to pay it arises.

99 Who is liable to pay the duty?

- (1) Duty chargeable under this part is payable by the person who acquires a dutiable entitlement.
- (2) If the dutiable entitlement results from an aggregation of the voting share entitlements of associated persons, the associated persons are jointly and severally liable for payment of the duty.

100 Entitlement to voting shares arising from capital reduction or rights alteration

- (1) If—
 - (a) a person becomes entitled to at least 50% of the voting shares of a company by means of capital reduction or rights alteration, or both; or

- (b) a person who is entitled to at least 50% of the voting shares of a company becomes entitled to at least 10% more of the voting shares over a period of not more than 12 months by means of capital reduction or rights alteration, or both;

the person shall lodge a statement with the commissioner in respect of the entitlement.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for a statement, the form must be used.

- (2) The statement shall be lodged within 90 days after the entitlement arises.
- (3) However, the person is not required to lodge a statement under this section in relation to an entitlement to an interest mentioned in section 86 (What is a *relevant acquisition*?).

Note **Relevant acquisitions** within the meaning of s 86 are acquisitions of certain interests in landholding private corporations. A person entitled to such an interest is required to lodge a statement about the acquisition with the commissioner under s 87 (Acquisition statements).

101 What statement under s 100 must contain

A statement under section 100 must contain the following information:

- (a) the name and address of the person;
- (b) the name of the company;
- (c) the date when each relevant capital reduction or rights alteration, or both, occurred;
- (d) if the person's entitlement has arisen—
- (i) from capital reduction—the total of the unencumbered value, immediately prior to each relevant capital reduction, of the shares the subject of the capital reduction; or
 - (ii) from rights alteration—the total of the unencumbered value, immediately prior to each relevant rights

- alteration, of the shares the subject of the rights alteration; or
- (iii) from capital reduction and rights alteration—the aggregate of the totals under subparagraphs (i) and (ii);
- (e) the total consideration paid to the person in relation to all relevant capital reductions or rights alterations, or both;
- (f) the other information that may be required by the commissioner.

102 Assessment of duty

A statement required to be lodged by a person under section 100 is chargeable with duty at the rate of 60c for every \$100, or part, of the higher of the following:

- (a) the total or aggregate obtained under section 101 (d);
- (b) the total obtained under section 101 (e).

Part 3.4 Acquisition of land use entitlements by allotment of shares or issue of units

103 When does a liability for duty arise?

A liability for duty charged by this part arises when a land use entitlement is acquired by an allotment of shares or an issue of units to any person otherwise than in circumstances to which part 3.5 applies.

104 When must duty be paid?

A tax default does not occur for the Taxation Administration Act if duty is paid within 90 days after the liability to pay it arises.

105 Who is liable to pay the duty?

Duty chargeable under this part is payable by the person who acquires the land use entitlement.

106 Acquisition of land use entitlement

- (1) A person who acquires a land use entitlement by an allotment of shares or an issue of units shall lodge with the commissioner a statement of the entitlement.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for a statement, the form must be used.

- (2) The statement shall be lodged within 90 days after the entitlement is so acquired.

107 What statement under s 106 must contain

A statement under section 106 must contain the following information:

- (a) the name and address of the person;
- (b) the name of the relevant company or unit trust;

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- (c) the date when the land use entitlement was acquired;
- (d) the consideration paid by the person for the relevant shares or units;
- (e) the other information that may be required by the commissioner.

108 Assessment of duty

The share allotment or unit issue by which a person acquires a land use entitlement is chargeable with duty at the general rate of duty determined for section 31 on the dutiable value of the land use entitlement.

Part 3.5 Allotment of shares by direction

109 Application of pt 3.5

This part applies to an allotment of shares to any person by a Territory company that is not listed on a stock exchange at another person's direction, in discharge of an obligation to that other person, whether that obligation arises as consideration for the purchase of property by the company or otherwise.

110 When does a liability for duty arise?

A liability for duty charged by this part arises when the relevant shares are allotted.

111 When must duty be paid?

A tax default does not occur for the Taxation Administration Act if duty is paid within 90 days after the liability to pay it arises.

112 Who is liable to pay the duty?

Duty chargeable under this part is payable by the person to whom the relevant shares are allocated.

113 Acquisition of shares by allotment

- (1) A person to whom any shares are allotted in an allotment to which this part applies shall lodge with the commissioner a statement in respect of the allotment.
- (2) The statement shall be lodged within 90 days after the shares are allotted.

114 What allotment statement must contain

A statement under section 113 must contain the following information:

- (a) the name and address of the person;

- (b) the name of the relevant company;
- (c) the date when the shares were allotted to the person;
- (d) the other information that may be required by the commissioner.

115 Assessment of duty

An allotment to which this part applies is chargeable with duty at the rate of duty determined for section 32 in respect of a transfer of marketable securities on the dutiable value of the shares.

Part 3.6 Voluntary transfers under the Financial Sector (Transfers of Business) Act 1999 (Cwlth)

115A Definitions for pt 3.6

In this part:

asset—see the FS (TB) Act, section 4 (1).

business—see the FS (TB) Act, section 4 (1).

FS (TB) Act means the *Financial Sector (Transfers of Business) Act 1999* (Cwlth).

receiving body—see the FS (TB) Act, section 4 (1).

voluntary transfer means a transfer under the FS (TB) Act, part 3.

115B Declaration required if business transferred

- (1) This section applies to the voluntary transfer of a business if the transfer of the assets of the business would be dutiable under this Act.

Note The effect of the FS (TB) Act, s 22 is that a voluntary transfer of business, in itself, is not dutiable under this Act.

- (2) The receiving body must, within 14 days after the voluntary transfer, give the commissioner a declaration about the transfer in the approved form.

Note If a form is approved under the Taxation Administration Act, s 139C (Approved forms) for a declaration, the form must be used.

- (3) The declaration must state—
- (a) the names, addresses and capacities of the parties to the transfer; and
 - (b) the reason for the transfer; and
 - (c) a description of the dutiable property transferred; and

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- (d) the market value of the property (including the unencumbered value of any land transferred) on the date when the applicable certificate under the FS (TB) Act, section 18 comes into force under that section; and
 - (e) any other information about the transfer required by the approved form.
- (4) The commissioner may require a receiving body that gives a declaration under subsection (2), or that the commissioner believes is liable to give a declaration under that subsection, to give to the commissioner, within 14 days or any longer period allowed by the commissioner, a statement giving specified information about the transfer.

Note It is an offence to give false or misleading information to the commissioner, or to fail to give a declaration or statement required under this section (see Taxation Administration Act, s 66 and s 67).

115C When does a liability for duty arise?

A liability for duty charged by this part arises when a voluntary transfer of a business is made to a receiving body.

115D When must duty be paid?

There is no tax default for the Taxation Administration Act if duty is paid within 90 days after the liability to pay it arises.

115E Who is liable to pay the duty?

Duty chargeable under this part is payable by the receiving body.

115F Assessment of duty

- (1) A declaration to the commissioner under section 115B (2) is chargeable with duty at the determined rate on the value of the transferred property stated in the declaration.

- (2) For this section, the commissioner may—
- (a) treat a declaration as having been varied or supplemented by a statement to the commissioner for section 115B (4) in relation to the declaration; or
 - (b) if a declaration has not been given to the commissioner under section 115B (2)—treat a statement to the commissioner for section 115B (4) as a declaration.

115G Exemptions from duty

- (1) The Minister may, in writing, determine guidelines for exempting from the assessment of duty under this part property that is the subject of a voluntary transfer.
- (2) Section 115F does not apply to property transferred to a receiving body if, under the guidelines, the transfer is to be exempt from duty under this part.
- (3) Section 115F does not apply to property transferred to a receiving body unless the transfer would have given rise to a liability to duty under this Act if it had not been a voluntary transfer.
- (4) A determination under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Part 3.7 Exemptions—chapter 3 transactions

115H Exempt transactions relating to certain personal relationships

- (1) No duty is chargeable on a chapter 3 transaction made under—
 - (a) an order of a court under the *Family Law Act 1975* (Cwlth) or the *Married Persons' Property Act 1986*; or
 - (b) any other order of a court for the distribution of property consequent on the end of the relationship between spouses.
- (2) No duty is chargeable on a chapter 3 transaction made under a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, 90C or 90D that is binding on the parties under that Act, if—
 - (a) the commissioner is satisfied that the transaction is consequent on the dissolution, annulment or irretrievable breakdown of a marriage; and
 - (b) the property that is the subject of the transaction is matrimonial property; and
 - (c) the parties to the transaction are—
 - (i) the parties to the marriage, or either of them; or
 - (ii) a child or children of either of them, or a trustee for the child or children.
- (3) No duty is chargeable on a chapter 3 transaction made under a domestic relationship agreement, or a termination agreement, under the *Domestic Relationships Act 1994*, if—
 - (a) the agreement is in writing and signed by each party; and

- (b) the agreement is endorsed with, or accompanied by, the certificates mentioned in that Act, section 33 (1) (d) for each party; and

Note The certificates relate to independent legal advice about the agreement.

- (c) the commissioner is satisfied that the transaction is consequent on the end of the domestic relationship between the parties; and
- (d) the property that is the subject of the transaction is relationship property; and
- (e) the parties to the transaction are—
- (i) the parties to the relationship, or either of them; or
 - (ii) a child or children of either of them, or a trustee for the child or children.
- (4) For subsection (2) (a), in deciding whether a transaction is consequent on the irretrievable breakdown of a marriage, the commissioner must have regard to any statutory declaration made by a party to the marriage to the effect that—
- (a) the party intends to apply for dissolution or annulment of the marriage; or
 - (b) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed.
- (5) For subsection (3) (c), in deciding whether a transaction under a domestic relationship agreement is consequent on the end of a relationship, the commissioner must have regard to any statutory declaration made by a party to the relationship to the effect that the relationship has ended.
- (6) Subsections (4) and (5) do not limit the commissioner's powers under the *Taxation Administration Act 1999*, section 82 (Power to require information, instruments or records or attendance for examination).

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Part 3.7 Exemptions—chapter 3 transactions

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(7) For this section:

child means a person under 18 years old.

Note For exemptions under pt 3.6, see s 115G.

Chapter 5 Lease instruments

Part 5.1 Preliminary

133 Definitions for ch 5

In this chapter:

lease means—

- (a) a lease of land in the ACT or an agreement for a lease of land in the ACT; or
- (b) an agreement (such as a licence) by which a right to use land in the ACT at any time and for any purpose is conferred on or acquired by a person; or
- (c) a franchise arrangement that is held in respect of a place or area located in the ACT;

but does not include a Crown lease.

lease instrument means an instrument that evidences or effects a lease.

lessee includes—

- (a) for a franchise arrangement—the franchisee; and
- (b) any assignee for the time being of the rights of the lessee under a lease and the assignee of a franchisee; and
- (c) a person who has a right to use land of the kind referred to in the definition of *lease*, paragraph (b).

lessor includes a person who grants a right of the kind referred to in the definition of *lease*, paragraph (b).

Part 5.2 Liability for duty

134 Imposition of duty

This chapter charges duty on a lease instrument.

135 How duty is charged on a lease instrument

Duty is chargeable on a lease instrument on the cost or value of the lease, or the unencumbered value of the Crown lease of the relevant land, as determined under this chapter.

136 What is the *cost* of a lease?

- (1) For this chapter, the *cost* of a lease (other than a franchise arrangement) is the aggregate of the following:
 - (a) the rent payable during the term of the lease or in advance of the lease and any amount paid or payable for the right to use land under the lease;
 - (b) any premium payable for the lease;
 - (c) any rates and taxes paid or payable on behalf of the lessor in connection with the lease;
 - (d) the value of improvements and additions to the leased premises made or undertaken to be made by or on behalf of, or at the expense of, the lessee under an agreement or covenant by the lessee (other than fit-out costs), to the extent provided by section 146;
 - (e) any royalties payable under the lease, including royalties for the right to enter onto and remove something from the land.
- (2) A reference in subsection (1) to *rent* includes a reference to any payment under the lease expressed to be rent.

- (3) For this chapter, the *cost* of a franchise arrangement is the aggregate of all amounts payable for the grant of the franchise (including any renewal fees if the franchise arrangement is entered into by way of renewal of a previous franchise arrangement) and the exercise of the franchisee's rights during the term of the arrangement, to the extent that any of those amounts are referable to the ACT and the cost includes any amounts so payable under the arrangement for—
- (a) the right to use the goodwill of the business (including payments by way of royalty or as a percentage of turnover); or
 - (b) the right to use systems and processes, instruction manuals and operation manuals, business names, logos, trademarks, patents and copyright material in connection with the business; or
 - (c) the use of goods;
- but does not include any amounts payable under the arrangement for goods that are stock-in-trade or materials provided for use in manufacture.
- (4) If a franchise arrangement applies to an area that comprises the whole or part of the ACT and a place outside the ACT, duty is not payable on that proportion of the cost of the franchise arrangement that represents the extent to which the franchise has been granted in respect of the place that is outside the ACT.

137 Splitting or redirection of cost of franchise arrangement

The commissioner may include, as part of the amount payable as the cost of a franchise arrangement, any of the following:

- (a) any payments under the arrangement that the commissioner is satisfied have been increased for the purpose of minimising duty under this chapter;
- (b) any payments that would be included in the cost of a franchise arrangement except for the fact that they are paid to a person other than the person who grants the franchise arrangement.

138 Who is liable to pay the duty?

The person liable to pay the duty is—

- (a) for a franchise agreement—the franchisee; or
- (b) in any other case—the lessor.

139 When must the duty be paid?

- (1) A lease instrument becomes liable to duty on the day of first execution.
- (2) A lease instrument also becomes liable to duty on the making of a variation to the lease that increases the cost of the lease and, if such a variation is made, duty is chargeable on the amount of additional cost resulting from the variation.
- (3) Duty shall be paid to the commissioner within 90 days after the lease instrument becomes liable to duty, except as otherwise provided by this chapter.

Part 5.3 Rates of duty

140 General rate—short-term leases

- (1) Duty for a lease is payable at the determined rate on the higher of the following amounts:
- (a) the cost of the lease;
 - (b) the capital sum (the *value of the lease*) that might be expected to be offered for the lease subject to the terms on which it is held.

Note Under s 251, the commissioner may require the person liable to pay duty to obtain a valuation of the lease for this paragraph, and may obtain a second valuation if not satisfied with the initial valuation. If the commissioner obtains a second valuation, the commissioner may recover the cost from the person liable to pay duty.

- (2) This section does not apply in relation to—
- (a) a long-term lease (see section 141); or
 - (b) a lease that is a franchise arrangement (see section 141A); or
 - (c) a lease instrument mentioned in section 142 (Related instruments—exemptions and concessions); or
 - (d) a lease instrument mentioned in section 150 (Exemptions—lease instruments).

141 General rate—long-term leases

- (1) This section applies to a lease (a *long-term lease*)—
- (a) granted for a term longer than 30 years; or
 - (b) granted for an initial term of 30 years or less, but with an option for renewal for 1 or more terms that would, taken together with the initial term, result in a term of longer than 30 years.

- (2) Duty is payable for a long-term lease at the determined rate on the higher of the following amounts:
- (a) the cost of the lease;
 - (b) the unencumbered value of the Crown lease of the land over which the long-term lease is granted.
- (3) This section does not apply in relation to—
- (a) a lease that is a franchise arrangement (see section 141A); or
 - (b) a lease instrument mentioned in section 142 (Related instruments—exemptions and concessions); or
 - (c) a lease instrument mentioned in section 150 (Exemptions—lease instruments).

141A General rate—franchise arrangements

- (1) Duty for a lease that is a franchise arrangement is payable on the cost of the arrangement at the determined rate (see section 136 (3) and (4) (What is the *cost* of a lease?)).
- (2) Different rates may be determined under subsection (1) for franchise arrangements of the following types:
- (a) franchise arrangements granted for—
 - (i) a term longer than 30 years; or
 - (ii) an initial term of 30 years or less, but with an option for renewal for 1 or more terms that would, taken together with the initial term, result in a term of longer than 30 years;
 - (b) any other franchise arrangements.

142 Related instruments—exemptions and concessions

- (1) If a lease instrument is made subsequently to and in conformity with an agreement for a lease—
 - (a) no duty is payable on the lease instrument if it is lodged with the commissioner for stamping at the same time as the agreement for the lease; and
 - (b) duty of \$20 is payable on the lease instrument if it is lodged for stamping at any other time.
- (2) Duty of \$20 is payable on an instrument that evidences a variation of a lease.

Part 5.4 Unascertainable lease costs

143 Operation of pt 5.4

- (1) The object of this part is to enable an unascertainable component of the cost of a lease to be determined as a definite sum for duty assessment purposes.
- (2) For this part, an amount of a cost component of a lease is unascertainable if it cannot, at the time duty is liable to be paid in respect of it, be ascertained as a definite sum with the consequence that the cost of the lease over its whole term cannot at that time be so ascertained.
- (3) Cost of components whose amounts are partly unascertainable are to be dealt with under section 144 or 145 and cost components whose amounts are wholly unascertainable are to be dealt with under section 147 (2).
- (4) Section 146 applies to the quantification of the value of lessees' improvements.

144 Estimate and subsequent adjustment

- (1) This section applies to determine as a definite sum any unascertainable cost components of a lease, except if the commissioner and the lessor agree that section 145 should apply instead.
- (2) The commissioner shall make an initial estimate of the cost of the lease.
- (3) The initial estimate shall be the sum of—
 - (a) the amount of each cost component payable in the course of the lease, so far as it is ascertainable; and

- (b) in respect of any interval in the term of the lease in which the amount of a cost component, although unascertainable, is subject to a certain minimum rate—the amount of the cost component that would be paid if it were payable at that minimum rate; and
 - (c) in respect of any interval in the term of the lease in which the amount of a cost component is unascertainable and to which paragraph (b) cannot be applied—the amount of the cost component that would be paid during the interval if it were payable at the highest certain rate prevailing immediately before the commencement of the interval.
- (4) Following the initial estimate, duty is to be paid to the commissioner on the cost of the lease determined on the basis of an estimate under this section of the relevant unascertainable cost components.
 - (5) Periodic estimates shall be made, at the dates (*estimate dates*) that the commissioner, having regard to the provisions of the lease, determines, of the amount of any cost components dealt with under this section payable during the term of the lease, and periodic adjustments of duty are to be made accordingly.
 - (6) A periodic estimate and a periodic assessment of duty may be made more than 5 years after the initial estimate.
 - (7) Within 1 month after each estimate date, the lessor shall produce to the commissioner a duly stamped part of the lease instrument and a statutory declaration stating—
 - (a) the amount of each cost component dealt with under this section that was paid between the initial estimate date or the last previous estimate, as the case may be, and the date of the current estimate; and
 - (b) the rate at which that cost component is payable as at the date of the current estimate.

Maximum penalty: 50 penalty units.

- (8) If the amount of a cost component actually paid during a period between estimation dates is higher than the estimated amount so payable for that period, the commissioner may make a reassessment of duty in respect of the lease for that period and the balance of the term of the lease, and the lessor shall, within 90 days after the date of issue of the notice of assessment, pay any additional duty assessed.
- (9) If the amount of a cost component actually paid during a period between estimation dates is lower than the estimated amount so payable for that period, the commissioner shall, after the lessor has complied with subsection (7), make a refund to the lessor of duty overpaid.

145 CPI method

- (1) This section applies, if the commissioner and the lessor agree to apply it, to determine as a definite sum any unascertainable amounts of any particular cost component of a lease.
- (2) The amount of the relevant cost component payable during any interval of the term of the lease for which it cannot be ascertained shall be taken to be payable at an annual rate ascertained by compounding the rate at which it is payable during the first year of the lease by the annual percentage increase in the CPI number last published before the commencement of the lease.
- (3) If the rate at which the cost component is payable is unascertainable for a part of the first year, the rate for that year shall be calculated in accordance with section 144 (3) (b) and (c).
- (4) In the application of subsection (2) in relation to a cost component of a lease, if there was an annual percentage decrease in the CPI number last published before the commencement of the lease, that decrease shall be disregarded and the subsection shall be applied as if there had been no annual percentage increase in the CPI number..
- (5) The commissioner may assess and levy duty on the cost of a lease based on a determination under this section of the value of the relevant cost component.

(6) Duty assessed in accordance with this section may not be varied merely because the actual amount of the cost component paid under the lease is different from the value of the cost component determined under this section.

(7) In this section:

CPI number means the number appearing for Canberra in the Consumer Price Index (All Groups Index) published by the Australian Statistician.

146 Quantification of lessee's improvements

The value of so much of the cost of a lease as comprises—

- (a) an undertaking by the lessee to make or pay for additions or improvements to the land the subject of the lease; or
- (b) the making of, or payment for, such additions or improvements by the lessee;

is taken to be the percentage, determined by the following table, of the value of the additions or improvements.

Table

column 1 item	column 2 term of lease	column 3 percentage of value of additions or improvements
1	10 years or less	100
2	more than 10 years but not more than 20 years	75
3	more than 20 years but not more than 30 years	50
4	more than 30 years but not more than 40 years	25

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column 1 item	column 2 term of lease	column 3 percentage of value of additions or improvements
5	more than 40 years	nil
6	periodic lease or lease for a term that cannot be ascertained when the lease is made	100

Part 5.5 **Miscellaneous**

147 Interim stamping of lease instrument

- (1) A lease instrument on which duty is assessed under section 144 is to be marked 'Interim stamp only'.
- (2) A lease instrument on which no part of the duty under this chapter is immediately ascertainable is, on payment of a duty of \$20, to be stamped accordingly and marked 'Interim stamp only'.
- (3) Section 49 applies to a lease instrument marked 'Interim stamp only' in the same way as it applies to a written instrument or written statement referred to in that section marked 'Interim stamp only'.

148 Reassessment of duty—early termination

- (1) A lessor may apply in writing to the commissioner for a reassessment of duty paid on a lease instrument if the lease is terminated before the end of its term.
- (2) Subsection (1) applies in relation to a lease instrument irrespective of how the lease is terminated.
- (3) The application shall be made within 5 years after the initial assessment or 12 months after the termination, whichever is the later, and shall be supported by the documents and information that the commissioner specifies.
- (4) The commissioner—
 - (a) if satisfied that the lease has been terminated before the commencement of the term—shall refund the whole of the duty paid; or

- (b) if satisfied that the lease has been terminated early—shall refund the difference between the duty actually paid and the duty that would have been payable if the lease had been granted for a term equal to the period for which the lease actually remained in force before termination.
- (5) In this section, a reference to the *termination* of a lease includes a reference to a lease coming to an end.

149 Reassessment of duty—reduction of cost

- (1) A lessor may apply in writing to the commissioner for a reassessment of duty paid on a lease instrument if the lease is subsequently varied so as to reduce the cost of the lease.
- (2) The application shall be made within 5 years after the initial assessment or 12 months after the variation, whichever is the later, and shall be supported by the documents and information that the commissioner specifies.
- (3) The commissioner, if satisfied that the lease has been varied so as to reduce the cost of the lease, shall refund the difference between the duty actually paid and the duty that would have been payable if the lease had been granted on the terms as so varied.

150 Exemptions—lease instruments

- (1) A lease instrument for any of the following leases is not chargeable with duty under this chapter:
 - (a) a lease (other than a franchise arrangement) the yearly cost of which is no more than \$10 000, and the yearly value of which is also no more than \$10 000;
 - (b) a lease that is a franchise arrangement the yearly cost of which is no more than \$3 000;
 - (c) a lease for residential purposes;
 - (d) a lease to a hospital, school or charitable organisation or to a trustee for a hospital, school or charitable organisation in that capacity;

- (e) a lease to a prescribed person.
- (2) In this section:
- yearly cost**, of a lease, means—
- (a) if the lease is for a term of 1 year or shorter—the cost of the lease; or
 - (b) if the lease is for a term of longer than 1 year—the cost of the lease divided by the number of years and any excess part of a year for which the lease is granted.

Example for par (b)

The *cost* of a lease under s 136 is \$20 000. The lease is granted for a term of 2 years and 6 months. The **yearly cost** of the lease is its *cost* under s 136 divided by $2\frac{1}{2}$ (the number of years and an excess of $\frac{1}{2}$ a year for which it is granted). The **yearly cost** of the lease is therefore \$8 000 (\$20 000 divided by $2\frac{1}{2}$).

yearly value, of a lease, means—

- (a) if the lease is for a term of 1 year or shorter—the value of the lease; or
- (b) if the lease is for a term of longer than 1 year—the value of the lease divided by the number of years and any excess part of a year for which the lease is granted.

Example for par (b)

The *value of a lease* under s 140 (1) (b) is \$20 000. The lease is granted for a term of 2 years and 6 months. The **yearly value** of the lease is its *value* under s 140 (1) (b) divided by $2\frac{1}{2}$ (the number of years and an excess of $\frac{1}{2}$ a year for which it is granted). The **yearly value** of the lease is therefore \$8 000 (\$20 000 divided by $2\frac{1}{2}$).

Chapter 6 Hire of goods

Part 6.1 Preliminary

151 Definitions for ch 6

In this chapter:

equipment financing arrangement means a hire of goods that consists of—

- (a) a hire-purchase agreement; or
- (b) some other agreement for a term of not less than 9 months and under which the final payment is payable not earlier than 8 months after the agreement is entered into.

goods includes all chattels personal and fixtures severable from realty but does not include money, livestock or things in action.

152 What is a *hire of goods*?

- (1) A reference in this chapter to a *hire of goods* is a reference to an arrangement under which goods are or may be used at any time by a person other than the person hiring out the goods, unless the arrangement is excluded under section 153.
- (2) For this chapter, there are 2 kinds of hire of goods, namely—
 - (a) an equipment financing arrangement; and
 - (b) an ordinary (that is, any other) hire of goods.

153 Exclusions from the definition of *hire of goods*

- (1) A *hire of goods* does not include any of the following:
- (a) an arrangement that gives a person a right to use goods that is conferred incidentally with a lease of, or a licence to occupy or use, land if—
 - (i) there is no apportionment of consideration between the right to use the goods and the right to occupy or use the land; and
 - (ii) duty is chargeable under chapter 5 in respect of the lease or licence;
 - (b) a franchise arrangement that is chargeable with duty under chapter 5;
 - (c) an arrangement for the hire of an aircraft, a ship or vessel, or for the hire of an engine or other component part of an aircraft, ship or vessel;
 - (d) an arrangement for the provision of goods to a trader for the purpose of displaying or demonstrating the goods pending their sale or hire to a third party;
 - (e) an arrangement comprising a ‘wet hire’ (that is, an arrangement under which an operator is provided by or at the direction of the person hiring out the goods to operate the goods for the hirer);
 - (f) an arrangement for the use of goods the provision of which is incidental and ancillary to the provision of a service if the provision of the goods is solely to enable the contractual provision of the service;
 - (g) an arrangement made between related bodies corporate;
 - (h) an arrangement under which a motor vehicle is subleased by an employee to an employer in connection with the employee’s remuneration or other employment benefits;

- (i) an arrangement for the use, by a person who is partially or totally incapacitated, of an invalid aid or prosthetic device or of any similar aid, device or appliance;
 - (j) an arrangement for the use of goods by a hospital, school or charitable organisation;
 - (k) a credit contract within the meaning of the Consumer Credit (Australian Capital Territory) Code;
 - (l) an arrangement relating to the use of—
 - (i) a book; or
 - (ii) an electricity, gas or water meter; or
 - (iii) a caravan that is to remain on site.
- (2) Duty is not chargeable under this chapter on a hire of goods if the person who hires out the goods acquired them at the request of the hirer and has paid duty under chapter 2 on their transfer to that person.

154 What form may a hire of goods take?

For this chapter, a hire of goods may take any form and it is immaterial whether or not a hire of goods is effected or evidenced by an instrument in writing.

155 What are *hiring charges*?

- (1) A reference in this chapter to *hiring charges* is a reference to payments made to the person who hires out the goods by or on behalf of the hirer, for—
- (a) the hire of the goods; or
 - (b) a liability that arises as an incident of the hire of the goods; and includes a reference to charges made for—
 - (c) payments for damage waiver or for damage excess; and
 - (d) late return fees.

- (2) For a hire of goods to which part 6.4 applies, any residual payment payable by the hirer as an indemnity for the agreed value of the goods at the end of the hire is to be taken to be included in the hiring charges.

156 Payments exempted from *hiring charges*

- (1) A reference in this chapter to *hiring charges* does not include a reference to—
- (a) payments for delivery, repositioning, erection, installation, maintenance or cleaning of the goods hired; or
 - (b) refundable cash deposits or bonds (unless appropriated as hiring charges); or
 - (c) insurance premiums payable by the hirer; or
 - (d) duty paid or payable under this Act or a corresponding Act; or
 - (e) payments for the sale of goods (such as fuel, replacement parts or theft replacement); or
 - (f) any prescribed payment.
- (2) Duty is not chargeable under this chapter on a payment by the hirer under a hire of goods if title to the goods passes to the hirer as a consequence of the payment.
- (3) Duty is not payable under this chapter for that part of a hiring charge that represents the amount of GST (if any) payable to the Commonwealth in relation to the charge.
- (4) In this section:
GST—see the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), dictionary.

157 Hire of goods to which ch 6 applies—jurisdictional nexus

- (1) This chapter applies to the hire of goods and to a person who hires out goods only if the goods are used solely or predominantly in the ACT during any period for which a liability to duty is required to be determined.
- (2) A motor vehicle, however, that is registered under the law of an Australian jurisdiction and that is the subject of an equipment financing arrangement is to be taken to be used, at all times in the course of that arrangement, in the jurisdiction under whose law it is registered.
- (3) If goods hired under a hire of goods are not used solely or predominantly in any particular Australian jurisdiction, the goods are to be taken to be predominantly used in the ACT if, under the hire of goods, the goods are initially delivered in the ACT.
- (4) For this section, goods are predominantly used in the ACT if they are used more in the ACT than in any other single Australian jurisdiction.

Part 6.2 Imposition and rates of duty

158 Imposition of duty

This chapter charges duty on the hire of goods.

159 Rates of duty

- (1) Duty is chargeable at the determined rate on the total amount of the hiring charges of an equipment financing arrangement.
- (2) Duty is chargeable at the determined rate on the total amount of the hiring charges of an ordinary hire of goods.
- (3) The maximum amount of duty chargeable in respect of a special hiring agreement is \$10 000.

160 Credit for duty paid in another Australian jurisdiction

- (1) The duty chargeable under this chapter on a hire of goods is to be reduced by the amount of duty paid on the hire under a corresponding Act.
- (2) Notwithstanding subsection (1), the duty on a special hiring agreement that is chargeable with the maximum amount of duty of \$10 000 cannot be reduced below \$6 000.

161 Splitting or redirection of hiring charges

The commissioner may include, as part of the amount received as hiring charges, either or both of the following:

- (a) any payments under the arrangement that are not hiring charges, including charges referred to in section 156, that the commissioner is satisfied have been increased for the purpose of minimising duty under this chapter;
- (b) any payments that would be hiring charges except for the fact that they are paid to a person other than the person who hires out the goods.

162 Ascertainment and disclosure of place of use of goods

- (1) A person who hires out goods may, in determining the person's liability to duty, rely on a statement of the hirer as to where the goods will be solely or predominantly used in the course of the hire or, for an unregistered motor vehicle, where the motor vehicle will be registered during the course of the hire, unless the person knows that the statement is false.
- (2) A person who hires out goods is not bound to inquire as to any change in the place of use of the goods or, for a motor vehicle, the place of its registration.
- (3) If goods are solely or predominantly used or, for a motor vehicle, are registered in a place other than the place advised by the hirer in a statement referred to in subsection (1), the commissioner may assess or reassess the duty payable according to the actual place of sole or predominant use of the goods or, for a motor vehicle, the place of its registration.
- (4) A failure to pay duty on the hire of goods by a person who hires out the goods in due reliance on a statement referred to in subsection (1), is not a tax default for the Taxation Administration Act if the duty is paid within 90 days after the issue of a notice of assessment of the duty.
- (5) A hirer who knowingly falsely represents to the person who hires out goods (or to any person acting for that person) that the goods will be used solely or predominantly outside the ACT commits an offence.

Maximum penalty (subsection (5)): 50 penalty units, imprisonment for 6 months or both.

Part 6.3 Arrangements applicable to persons engaged in the business of hiring out goods

163 Meaning of *commercial hire business*

In this part:

commercial hire business means persons who hire out goods as a business whether or not the hiring out of goods is the principal business or is ancillary to some other form of business and whether or not any such principal or ancillary business is carried on wholly or partly outside the ACT.

164 Application of pt 6.3

This part applies to persons who are a commercial hire business.

165 Commercial hire businesses to be registered

- (1) A commercial hire business shall be registered under this part if, in any month, the total amount of the hiring charges received in the month exceeds \$6 000.
- (2) An application for registration shall be made within 21 days after the end of the month in which the amount received in hiring charges first exceeds \$6 000.

Maximum penalty: 50 penalty units.

166 Registration of commercial hire businesses

- (1) The commissioner shall register a commercial hire business that applies for registration under this part.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for an application, the form must be used.

- (2) The commissioner may register a commercial hire business that has not applied for registration.

- (3) The commissioner shall give written notice to the commercial hire business of its registration.

167 Cancellation of registration of commercial hire business

- (1) A registered commercial hire business that ceases to hire out goods as a business shall—
- (a) give written notice of that fact to the commissioner; and
 - (b) lodge the return required to be lodged under this part; and
 - (c) pay the duty payable in connection with the return on or before the 21st day of the month after which the notice is given.

Maximum penalty: 50 penalty units.

- (2) The commissioner shall cancel the registration of a commercial hire business on receipt of a notice under subsection (1).
- (3) The commissioner may cancel the registration of a commercial hire business if the commissioner has reason to believe that registration is no longer required by the business.
- (4) The commissioner shall not cancel the registration of a commercial hire business under subsection (3) unless he or she has given the business not less than 30 days written notice of his or her intention to do so.
- (5) A cancellation of registration has effect from the day specified for the purpose by the commissioner in a written notice of cancellation given to the commercial hire business.

168 Duty base

- (1) Duty under this part is to be assessed on the total amount of the hiring charges received in a month by the commercial hire business.
- (2) The commissioner may, however, by written notice approve a different basis of calculation of hiring charges if it appears to the commissioner that duty payable on that basis will, over a period of time, approximate the duty payable in accordance with subsection (1) and an amount calculated under any method so approved is to be taken for duty purposes, while the approval remains in force, to be the amount of hiring charges received.
- (3) An approval under subsection (2) may be revoked by the commissioner at any time by written notice to the commercial hire business concerned.
- (4) A registered commercial hire business may, with the commissioner's written consent, change the basis (as between a receipts basis and an approved basis) from month to month but it cannot change the basis within a month.
- (5) If consent is given under subsection (4), the commissioner may assess or reassess the duty payable in any period prior to the change of basis to include any hiring charges that would not be accounted for, or to exclude any hiring charges that would be accounted for twice, because of the change of basis.

169 Lodgment of returns and payment of duty

- (1) A commercial hire business shall, on or before the 21st day of each month—
 - (a) lodge with the commissioner a return; and

Section 170

(b) pay to the commissioner the appropriate amount of duty calculated in accordance with section 159 in respect of the previous month, subject to the amount of the duty-free hiring charges referred to in subsection (2).

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for a return, the form must be used.

- (2) Duty is payable only in respect of so much of hiring charges received by a commercial hire business during a month from ordinary hires that are not special hiring arrangements as exceeds \$6 000.
- (3) A commercial hire business is not required to lodge a return in respect of any month in which all hiring charges received by the commercial hire business were from ordinary hires and the hiring charges so received did not exceed \$6 000.
- (4) The commissioner may, by written notice, approve of the lodgment by a commercial hire business of returns in respect of a period of more than 1 month, and in such a case—
- (a) the return shall be lodged, and the duty paid, on or before the 21st day of the month following the last month to which the return relates; and
- (b) the duty payable on the return is the sum of the duties payable on a monthly basis in accordance with this section for each month to which the return relates.
- (5) A commercial hire business may elect to pay the duty payable on a special hiring agreement by lodging a statement under section 172 and, if it does so, returns under this section in respect of the agreement are not necessary.
- (6) If, in relation to a special hiring agreement—
- (a) a commercial hire business makes an election under subsection (5); and

- (b) the special hiring agreement is terminated before the expiry of the term expressed in the agreement;

the commercial hire business may request a reassessment of duty as if the duty had been paid on a return under this section.

170 Returns of related bodies corporate

- (1) A single return may be lodged on behalf of 2 or more commercial hire businesses that are related bodies corporate.
- (2) The duty-free amount of hire charges referred to in section 169 (2) applies to the aggregated hiring charges required to be included in such a single return and it does not apply individually to the hiring charges of each commercial hire business included in the return.
- (3) If 2 or more commercial hire businesses that are related bodies corporate lodge individual returns for the same month, the duty-free amount of hiring charges referred to in section 169 (2) applies to the hiring charges of only 1 of them and those commercial hire businesses may nominate to the commissioner the one that is to have the benefit of the duty-free amount.

Part 6.4 Arrangements applicable to persons other than those engaged in the business of hiring out goods

171 Statement of transaction

- (1) If a hire of goods is effected otherwise than by a commercial hire business and the total amount of hiring charges paid or payable for the hire of the goods is not less than \$1 000, the person hiring out the goods shall prepare a written statement that sets out—
 - (a) the name and address of each party; and
 - (b) a description of the goods; and
 - (c) the commencement date and the term of the hire; and
 - (d) the total of the hiring charges (including any residual payment referred to in section 155 (2)) paid or payable over the term of the hire; and
 - (e) the intervals at which the hiring charges are paid or payable.
- (2) The written statement shall be prepared not later than—
 - (a) the time when the person hiring out the goods receives the first or only payment of hiring charges; or
 - (b) the time when the hiring charges become payable;whichever first occurs.
- (3) This section does not require a separate written statement to be prepared if the hire is already evidenced by another document that otherwise complies with this section and, in such a case, the other document is to be taken to be the written statement.

172 Lodgment of statement and payment of duty

- (1) Within 90 days after the written statement is required to be prepared, the person hiring out the goods shall—
 - (a) lodge the statement with the commissioner; and
 - (b) pay to the commissioner the appropriate rate of duty calculated under section 159 in respect of hiring charges for the whole period of the hire.
- (2) If the person hiring out the goods has not complied with subsection (1) within the 90 day period, the commissioner may, at any time thereafter, issue a notice of assessment under the Taxation Administration Act of the duty that would be payable if a statement had been lodged.
- (3) For the purposes of the assessment, both the person hiring out the goods and the hirer are jointly and severally liable to pay duty in accordance with this section.
- (4) The hirer may, at any time, make out and lodge a statement and pay duty in accordance with this section.

173 Method of calculating total hiring charges if they are not readily ascertainable

- (1) The commissioner, if satisfied at the time a written statement is lodged that it is not reasonably practicable to calculate the total of the hiring charges payable over the term of the hire, may require the person hiring out the goods to make out 1 or more further written statements at the time or times that the commissioner specifies in a written notice given to the person.
- (2) A further written statement shall include the same information as is specified in section 171.

Chapter 6
Part 6.4

Hire of goods
Arrangements applicable to persons other than those engaged in the
business of hiring out goods

Section 173

- (3) Within 90 days after a further written statement is required to be made out, the person hiring out the goods shall—
 - (a) lodge the statement with the commissioner; and
 - (b) pay duty calculated in accordance with section 159 to the extent that the total hiring charges are ascertainable.
- (4) The amount of duty paid on a prior statement relating to the same hire of goods shall be deducted from the duty payable on the further written statement.

Chapter 7 Mortgages

174 Liability for duty

Duty is charged on a mortgage instrument only if it is liable to duty under another chapter.

Chapter 8 Insurance

Part 8.1 Preliminary

175 Definitions for ch 8

In this chapter:

general insurance means any kind of insurance that is applicable to—

- (a) property in the ACT; or
- (b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, the ACT;

or both, but does not include life insurance, a life insurance rider or insurance that is exempt from duty under section 201.

general insurer means a person—

- (a) who writes general insurance otherwise than as an insurance intermediary; and
- (b) who is registered under the *Insurance Act 1973* (Cwlth).

insurer means a life company that writes life insurance or a general insurer.

life insurance means insurance described in the *Life Insurance Act 1995* (Cwlth), sections 9 (1) (a) to (g) and 9A in respect of—

- (a) a life or lives; or
- (b) any event or contingency relating to or depending on a life or lives;

of a person whose principal place of residence is, or persons whose principal places of residence are, in the ACT at the time the policy that effects the insurance is issued.

life insurance rider means insurance that—

- (a) is attached to a policy of life insurance; and
- (b) adds specified events and contingencies to those insured under the policy; and
- (c) is subject to the terms and conditions of the policy.

premium, in relation to general insurance, means the total consideration given to an insurer by or on behalf of the insured person to effect insurance without deductions for any amounts paid or payable, or allowed or allowable, by way of commission or discount to an insurance intermediary but does not include—

- (a) an amount paid to an insurance intermediary by the insured person as a fee, provided that the amount can be clearly identified as a fee; or
- (b) an amount of duty under this or a corresponding Act.

third-party insurance means insurance effected for the purpose of, and in accordance with the requirements of, a law of the Territory or a State or another Territory relating to the compulsory insurance of owners and drivers of motor vehicles, as defined by that law, against liability in respect of the death of, or bodily injury to, persons caused by or arising out of the use of motor vehicles.

176 When is a premium paid?

- (1) For this chapter, a premium, or an instalment of a premium, is to be taken to be *paid* when the first of the following events occurs:
 - (a) the premium or instalment is received by the insurer;
 - (b) an account of the insurer is credited with the amount of the premium or instalment.
- (2) A premium or instalment of a premium (apart from the case where the premium or instalment is received directly by an insurer) is to be taken to have been received by an insurer if it is received by another person on the insurer's behalf.

Part 8.2 General insurance

177 Imposition of duty

- (1) This part charges duty on the amount of the premium paid in relation to a contract of insurance that effects general insurance (whether or not it also effects other kinds of insurance).
- (2) The amount of duty is required to be paid each time a premium is paid in relation to a contract of insurance that effects general insurance.

178 Rate of duty

Duty is chargeable on the premium paid in relation to a contract of general insurance at the determined rate.

179 Who is liable to pay the duty?

Subject to section 180, the general insurer is liable to pay the duty.

180 Circumstances in which duty is payable by the insured person

- (1) This section applies to a person who obtains, effects, or renews any general insurance as an insured person with a person who is not a registered insurer.
- (2) A person to whom this section applies shall, within 21 days after the end of the month in which the premium relating to the insurance is paid to an insurer (other than a registered insurer) or an insurance intermediary—
 - (a) lodge with the commissioner a return containing the particulars and information as to the premium and the insurance that the commissioner may require; and
 - (b) pay to the commissioner as duty the amount calculated in accordance with section 178.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for a return, the form must be used.

- (3) A person to whom this section applies is taken to have complied with this section if the person's duty under this section is discharged by another person acting on the person's behalf.
- (4) The payment of a periodic premium in respect of disability income insurance that is continued, but not renewed, on the payment of the premium shall be taken to effect the insurance for this section.

181 Records to be kept

A person to whom section 180 applies shall maintain records that contain particulars of—

- (a) the nature and location of the property insured; and
- (b) the nature and location of each risk, contingency or event insured; and
- (c) the amount of the premiums paid in relation to each contract of insurance.

182 Refunds where premiums are returned

- (1) A general insurer or a person to whom section 180 applies is entitled to a refund of duty if the general insurer refunds, or there is refunded to the person, the whole or a part of a dutiable premium in respect of the contract of insurance for which duty has been paid.
- (2) The refund shall be the duty paid on the amount of the premium refunded.
- (3) A general insurer to whom duty is refunded may apply the amount of the refund to offset any other payment required to be made under this Act by the general insurer.

Part 8.3 Life insurance

183 Imposition of duty

This part charges duty on—

- (a) a policy of life insurance; and
- (b) a life insurance rider.

184 Obligation to make out and execute a policy of life insurance

A life company shall, on or before the 21st day of each month—

- (a) prepare and execute a policy of life insurance for each contract or agreement for life insurance effected by or on behalf of the life company in the previous month; and
- (b) endorse the policy in the manner approved by the commissioner.

185 Rates of duty

- (1) The determined amount of duty is chargeable in respect of a policy of life insurance, other than a temporary or term insurance policy, or a policy of disability income insurance.
- (2) Duty is chargeable at the determined rate on the first year's premium for a policy of temporary or term insurance.
- (3) Duty is chargeable at the determined rate on the first year's premium for a life insurance rider.
- (4) Duty is chargeable at the determined rate on the premium paid to effect disability income insurance, being insurance under which an amount is payable in the event of the disablement of the insured by accident or sickness.

186 Who is liable to pay the duty?

Subject to section 187, the life company or the person issuing the policy or life insurance rider is liable to pay the duty.

187 Circumstances in which duty is payable by the insured person

- (1) This section applies to a person (other than a registered insurer) who effects a policy of life insurance or life insurance rider as an insured person with a person who is not a registered insurer.
- (2) A person to whom this section applies shall, within 21 days after the end of the month in which the policy of life insurance or life insurance rider was effected—
 - (a) lodge with the commissioner a return containing the particulars and information that the commissioner may require; and
 - (b) pay to the commissioner as duty the amount calculated in accordance with section 185.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for a return, the form must be used.

- (3) A person to whom this section applies is to be taken to have complied with this section if the person's duty under this section is discharged by another person acting on the person's behalf.

188 Refund on cancellation of policy of life insurance

If a premium is refunded to a person because the person cancels a policy of life insurance within 30 days after receiving the policy, a person who has paid duty in respect of the policy is entitled to a refund of the duty.

Part 8.4 Payment of duty by insurers

189 Insurers to be registered

An insurer shall be registered under this part.

Maximum penalty: 250 penalty units.

190 Registration of insurers

The commissioner must register an insurer who applies for registration under this part.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for an application, the form must be used.

191 Cancellation of registration by the commissioner

- (1) The commissioner may, by written notice, cancel an insurer's registration under this part—
 - (a) if the insurer's registration under the *Insurance Act 1973* (Cwlth) is terminated; or
 - (b) if the insurer is made bankrupt or, being a company, is wound up; or
 - (c) if the insurer is convicted of an offence against an Act imposing duty; or
 - (d) if the insurer's registration was made in error or as a consequence of a false or misleading statement made in relation to the application for registration; or
 - (e) for any other reason the commissioner thinks sufficient.
- (2) A cancellation of registration has effect from the date specified for the purpose by the commissioner in the notice of cancellation.

192 Cessation of business and cancellation of registration by an insurer

- (1) A registered insurer who ceases to write insurance business in the ACT shall—
 - (a) give written notice of that fact to the commissioner; and
 - (b) lodge the return required to be lodged under this part; and
 - (c) pay the duty payable in connection with the return on or before the 21st day of the month after which the notice is given.

Maximum penalty: 250 penalty units.

- (2) The notice cancels the insurer's registration under this part on the day when it is received by the commissioner.

193 Register of insurers

- (1) The commissioner shall keep a register of the insurers who are registered under this part.
- (2) Anyone may inspect the register without charge at the commissioner's principal office during the hours that the office is open to the public.

194 Monthly returns and payment of duty

A registered insurer shall, on or before the 21st day of each month—

- (a) lodge with the commissioner a return showing—
 - (i) the total amount of all premiums for general insurance paid to the registered insurer in the previous month; and
 - (ii) the total duty payable on policies of life insurance other than temporary or term insurance effected in the previous month; and
 - (iii) the total amount of all first year's premiums for temporary or term life insurance received by or on behalf of the registered insurer in the previous month; and

- (iv) the total amount of all first year's premiums for life insurance riders received by or on behalf of the registered insurer in the previous month; and
- (b) pay to the commissioner as duty the amounts determined in accordance with sections 178 and 185.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for a return, the form must be used.

195 Recovery of duty by registered insurer

- (1) A registered insurer may require a person to whom insurance is written to pay the insurer an amount equal to the duty chargeable.
- (2) The requirement is duly made if it is contained in a written request that is given to the person and that specifies the amount of the duty.
- (3) If the amount is not paid, the insurer may recover it as a debt.

Part 8.5 Apportionment

Division 8.5.1 Apportionment of premiums and other amounts between Australian jurisdictions

196 Application of div 8.5.1

This division applies to a contract of insurance—

- (a) that insures—
 - (i) property in the ACT as well as property in another place;
or
 - (ii) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, the ACT as well as within, or partly within, another place;or both; or
- (b) that insures—
 - (i) lives; or
 - (ii) any event or contingency relating to or depending on lives;or both, of persons whose principal places of residence are variously in the ACT or another place at the time the policy is issued.

197 Object of div 8.5.1

The object of this division is to—

- (a) provide the means for apportioning premiums paid and other amounts in relation to a contract of insurance having regard to the principles in section 175, definitions of *general insurance* and *life insurance*; and
- (b) avoid multiple duty as between Australian jurisdictions; and

- (c) give Australian jurisdictions their appropriate share of duty by means of the apportionment.

198 Schedule of apportionment

- (1) The commissioner may, from time to time, adopt a schedule of apportionment for the purpose of apportioning premiums, or premiums paid for specific classes of insurance, and other amounts in relation to insurance in accordance with this division.
- (2) The schedule of apportionment may be developed in consultation with any person the commissioner considers suitable.

199 Apportionment in practice

- (1) Subject to subsections (3) and (4) a premium or an amount is to be apportioned in accordance with the schedule of apportionment adopted for the time being.
- (2) An insurer or an insured person may apply in writing to the commissioner to apportion a premium or an amount on a basis other than that provided by the schedule of apportionment.
- (3) On receiving an application under subsection (2) in relation to a premium or amount, the commissioner may apportion the premium or amount on the basis specified in the application.
- (4) If the commissioner is not satisfied that a premium paid or another amount in relation to a contract of insurance has been properly apportioned for each risk insured, he or she may determine the apportionment, reassess the liability to duty and charge duty accordingly.

Division 8.5.2 Apportionment of premiums and other amounts as between different types of insurance

200 Apportionment between different types of insurance

- (1) This section applies to apportionment between different types of insurance that are relevant to determining liability for duty but not to the apportionment of a premium or another amount between the ACT and another place.
- (2) If the commissioner is not satisfied that a premium paid or another amount in relation to a contract of insurance that effects different types or classes of insurance has been properly apportioned, he or she may determine the apportionment, reassess the liability to duty and charge duty accordingly.

Part 8.6 Exempt insurance

201 Insurance exempt from duty generally

- (1) The following insurances are exempt from duty under this chapter:
 - (a) third-party insurance;
 - (b) insurance under a Territory law insuring an employer against liability to persons under contract of employment or apprenticeship with the employer;
 - (c) general insurance for the provision of benefits by a friendly society or trade union for its members or their dependants;
 - (d) medical benefits insurance, being insurance effected by a contract of insurance that is issued by an organisation registered under the *National Health Act 1953* (Cwlth), part 6 and that provides hospital benefits or medical benefits (or both), whether or not other benefits are also provided;
 - (e) insurance by, or on property of, a prescribed authority of the Commonwealth or of a State or Territory;
 - (f) insurance on property of, or property held in trust for, a hospital, school or charitable organisation, or other general insurance taken out by a hospital, school or charitable organisation;
 - (g) international trade insurance;
 - (h) an annuity issued, created or sold by a life company or purchased by someone from a life company; or
 - (i) reinsurance.
- (2) For subsection (1) (h), a contract is an annuity if it satisfies the following requirements:
 - (a) the contract provides for the periodic payment of money to the annuitant in fee for life or for a specified term of years as an annual or more frequent entitlement;

- (b) the periodic payment is a sum certain expressed as a dollar amount, but may be varied according to a predetermined formula;
 - (c) the periodic payments are not derived from the money paid for the contract but are derived solely from the contract and comprise income and not the repayment of capital.
- (3) For this section:

reinsurance means a contract or contracts between 2 parties by which one party indemnifies the other against liability or payment under a contract or contracts of insurance or reinsurance.

201A Insurance exempt from duty in certain circumstances

- (1) The Minister may, in writing, determine guidelines for exempting from duty under part 8.2 a premium, or part of a premium, paid for a contract for—
- (a) public liability insurance; or
 - (b) any other general insurance prescribed by the guidelines for this paragraph.
- (2) The guidelines may—
- (a) state circumstances in which a premium, or part of a premium, paid for a contract of insurance mentioned in subsection (1) is exempt from duty under part 8.2; or
 - (b) state the extent to which a premium paid for a contract of insurance mentioned in subsection (1) is exempt from duty under part 8.2; or
 - (c) state procedures to be followed to get an exemption from the duty payable under part 8.2 on the premium, or part of the premium, paid for a contract of insurance mentioned in subsection (1).

Section 201A

- (3) Part 8.2 (other than sections 180 and 181) does not apply in relation to a premium, or part of a premium, paid for a contract of insurance that effects general insurance if, under the guidelines, the premium or the part of the premium is exempt from duty under the section.
- (4) A determination under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Part 8.7 **Miscellaneous**

202 **Effect on contract of insurance of failure to comply with ch 8**

A failure to comply with this chapter does not render a contract of insurance illegal or invalid.

Chapter 9 Motor vehicle registration

Part 9.1 Imposition and rates of duty

203 Meaning of *dutiable value* for pt 9.1

In this part:

dutiable value, of a motor vehicle, means the greater of the following amounts, less any premium paid for extended warranty insurance:

- (a) the consideration in money (or money's worth) given for the acquisition of the vehicle;
- (b) the market value of the vehicle at the time duty is payable.

203A Registration of vehicles in the name of 2 or more people

- (1) This section applies if a motor vehicle was, is or is to be registered in the names of 2 or more people.
- (2) In this chapter, a reference to a person in whose name the vehicle was, is or is to be registered includes a reference to all or any of the people in whose names the vehicle was, is or is to be registered.

204 Imposition of duty

This chapter charges duty on an application to register a motor vehicle under the Vehicle Registration Act if—

- (a) the vehicle has not previously been registered under that Act or any other Territory law; or
- (b) the person in whose name the vehicle is to be registered is not the person in whose name the vehicle was last registered.

205 Lodgment of statement of dutiable value

A person who is required by law to make an application to register a motor vehicle under the Vehicle Registration Act shall lodge with the application for registration a statement of the dutiable value of the vehicle, unless the application is not chargeable with duty under this chapter.

206 Who is liable to pay the duty?

Duty is payable by the applicant for registration of the motor vehicle.

207 When does duty become payable?

Duty becomes payable when the motor vehicle is registered under the relevant application.

208 Rate of duty

- (1) Subject to subsection (2) and section 208AA, duty in respect of an application to register a motor vehicle is payable on the dutiable value of the motor vehicle at the determined rate.
- (2) Duty in respect of an application to register a passenger motor vehicle, being a motor vehicle that has a dutiable value of not less than \$45 000 and that is constructed primarily for the carriage of not more than 9 occupants, including a sedan, station wagon, coupe, convertible, four-wheel drive vehicle with seats for more than 3 persons, two-wheel drive panel van with seats for more than 3 persons, three-wheel car, forward-control passenger vehicle, small bus (seating not more than 9 persons, including the driver), motor home, and snow vehicle, but not including a motorcycle (with or without a sidecar), large bus (seating more than 9 persons, including the driver), hearse or invalid conveyance, is payable on the dutiable value of the vehicle at the determined rate.

208AA Corporate reconstructions—concessional duty for motor vehicle registration applications

- (1) This section applies to an application to register a motor vehicle if—
 - (a) the application is made by a member of a group of corporations; and
 - (b) immediately before the application was made, the vehicle was registered in the name of another member of the same group; and
 - (c) the application is approved by the commissioner in accordance with any guidelines determined under subsection (4).
- (2) Duty for the application is payable at 5% of the amount that would, apart from this section, be payable for the application.
- (3) An approval for subsection (1) (c) may be given subject to conditions.
- (4) The Minister may, in writing, determine guidelines for approvals.
- (5) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (6) In this section:

corporation includes a unit trust scheme.

Part 9.2 Exemptions

208A Definitions for pt 9.2

In this part:

demonstrator means a new motor vehicle used solely for the sale of another motor vehicle of the same kind.

licensed vehicle dealer means a licensed dealer under the *Sale of Motor Vehicles Act 1977*.

trading stock means a motor vehicle offered or exposed for sale by a licensed vehicle dealer in the course of the dealer's business, other than a motor vehicle used—

- (a) personally by the dealer or a member of the dealer's staff or family; or
- (b) for the general purposes of the dealer's business.

209 Government vehicles

Duty under this chapter is not chargeable on an application to register a motor vehicle if the applicant is—

- (a) the Territory; or
- (b) the Commonwealth; or
- (c) a State or another Territory; or
- (d) an authority established by or under a law of the Commonwealth that is, under that law, not liable to pay tax under a law of the Commonwealth, the Territory, a State or another Territory; or
- (e) a prescribed Territory authority; or
- (f) a prescribed authority of a State or another Territory.

209A Foreign countries

Duty under this chapter is not chargeable on an application to register a motor vehicle if—

- (a) the applicant is a foreign country; and
- (b) the vehicle is for the official use of a diplomatic mission of the foreign country based in the ACT.

210 Hospitals, schools and charitable organisations

Duty under this chapter is not chargeable on an application to register a motor vehicle if the applicant is—

- (a) a hospital, school or charitable organisation; or
- (b) a person who is to hold the vehicle on behalf of, or as a trustee for, a hospital, school or charitable organisation.

211 Certain disabled persons

Duty under this chapter is not chargeable on an application to register a motor vehicle if—

- (a) the applicant is a person who has served in the Defence Force or in any other armed forces of Her Majesty and who, as a result of that service—
 - (i) has lost a leg or both arms or has had a leg, or both arms, rendered permanently and wholly useless; or
 - (ii) is in receipt of a pension under the *Veterans' Entitlements Act 1986* (Cwlth), part 2 and is a veteran (within the meaning of that part) to whom that Act, section 24 applies;

and the vehicle is for use for the person's own transportation;
or

- (b) the applicant is a person in respect of whom the Secretary to the Department of Social Security of the Commonwealth, or an officer appointed by the secretary for the purpose, has certified that the person has lost the use of a leg or both legs to such an extent that he or she is permanently unable to use public transport and the vehicle is for use in transporting the person to and from gainful employment.

212 Successors of deceased persons

- (1) Duty under this chapter is not chargeable on an application to register a motor vehicle made by—
 - (a) a person in whom an interest in the vehicle has vested as a personal representative of a deceased person in whose name the vehicle was registered in the ACT; or
 - (b) a person who has become beneficially entitled to the vehicle following the death of a person in whose name the vehicle was registered in the ACT.
- (2) Duty under this chapter is not chargeable on an application to register a motor vehicle made by a person who has become beneficially entitled to the vehicle by a right of survivorship following the death of a former joint owner if, at the time of the death of the deceased, the vehicle was registered in the ACT.
- (3) In this section:
interest means a proprietary interest and includes an entitlement to such an interest under the will, or on the intestacy, of a deceased person.

213 Vehicle registration transfers relating to certain personal relationships

- (1) No duty is chargeable under this chapter on an application to transfer the registration of a motor vehicle following a transfer of property in the vehicle to the applicant under—
 - (a) an order of a court under the *Family Law Act 1975* (Cwlth) or the *Married Persons' Property Act 1986*; or
 - (b) any other order of a court for the distribution of property consequent on the end of the relationship between spouses.
- (2) No duty is chargeable under this chapter on an application to transfer the registration of a motor vehicle following a transfer of property in the vehicle to the applicant under a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, 90C or 90D that is binding on the parties under that Act, if—
 - (a) the commissioner is satisfied that the transfer is consequent on the dissolution, annulment or irretrievable breakdown of a marriage; and
 - (b) the vehicle is matrimonial property; and
 - (c) the transfer is—
 - (i) to the parties to the marriage, or to either of them; or
 - (ii) to a child or children of either of them, or to a person in trust for the child or children.
- (3) No duty is chargeable under this chapter on an application to transfer the registration of a motor vehicle following a transfer of property in the vehicle to the applicant under a domestic relationship agreement, or a termination agreement, under the *Domestic Relationships Act 1994*, if—
 - (a) the agreement is in writing and signed by each party; and

- (b) the agreement is endorsed with, or accompanied by, the certificates mentioned in that Act, section 33 (1) (d) for each party; and

Note The certificates relate to independent legal advice about the agreement.

- (c) the commissioner is satisfied that the transfer is consequent on the end of the relationship between the parties; and
- (d) the vehicle is relationship property; and
- (e) the transfer is—
- (i) to the parties to the relationship, or to either of them; or
 - (ii) to a child or children of either of them, or to a person in trust for the child or children.
- (4) For subsection (2) (a), in deciding whether a transfer is consequent on the irrevocable breakdown of a marriage, the commissioner must have regard to any statutory declaration made by a party to the marriage to the effect that—
- (a) the party intends to apply for dissolution or annulment of the marriage; or
 - (b) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed.
- (5) For subsection (3) (c), in deciding whether a transfer under a domestic relationship agreement is consequent on the end of a relationship, the commissioner must have regard to any statutory declaration made by a party to the relationship to the effect that the relationship has ended.
- (6) Subsections (4) and (5) do not limit the commissioner's powers under the *Taxation Administration Act 1999*, section 82 (Power to require information, instruments or records or attendance for examination).
- (7) For this section:
- child*** means a person under 18 years old.

214 Vehicle dealers—registration of demonstrators and trading stock

- (1) Duty under this chapter is not chargeable on an application by a licensed vehicle dealer to register a motor vehicle in the dealer's name if—
 - (a) the vehicle is a demonstrator or trading stock; and
 - (b) the vehicle is not registered in the name of the dealer at the time of the application.
- (2) However, if the dealer has not—
 - (a) disposed of the vehicle; or
 - (b) had the registration of the vehicle renewed under section 214A; within 12 months after its registration under this section, the dealer becomes liable to pay the duty on the application for registration that would have been payable if the exemption under this section had not applied.

214A Renewal of registration of demonstrators and trading stock

- (1) The commissioner may, in accordance with guidelines determined by the Minister, authorise a licensed vehicle dealer to maintain the registration of a motor vehicle mentioned in section 214 (1) for more than 12 months without becoming liable for the payment of duty on the application to register the vehicle in his or her name.
- (2) An authorisation under subsection (1) (a *dealer's authorisation*) may be given subject to conditions.
- (3) A licensed vehicle dealer who renews the registration of a motor vehicle under a dealer's authorisation becomes liable to pay the duty on the application to register the vehicle in his or her name if—

- (a) the dealer has not disposed of the vehicle within the time for which its registration may be renewed under the authorisation; or
 - (b) the authorisation is revoked.
- (4) If a licensed vehicle dealer who has been given a dealer's authorisation does not comply with a condition of the authorisation, the commissioner may revoke the authorisation.
- (5) The Minister may, in writing, determine guidelines for subsection (1).
- (6) Guidelines determined under subsection (5) may provide for payment of an amount by a licensed vehicle dealer for or in relation to obtaining an authorisation under subsection (1).
- (7) A determination under subsection (5) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

215 Organisations registered under Industrial Relations Act

Duty under this chapter is not chargeable on an application to register a motor vehicle made by an organisation registered under the *Industrial Relations Act 1988* (Cwlth) if the registration is to occur in accordance with section 253ZB of that Act.

216 Repossessed motor vehicles

Duty under this chapter is not chargeable on an application to register a motor vehicle if—

- (a) the applicant is in the business of financing the purchase or use of motor vehicles; and
- (b) the vehicle was repossessed by, or voluntarily surrendered to, the applicant; and

- (c) the applicant, in the course of that business, does not dispose of a repossessed or surrendered vehicle except by public tender or public auction or through a person who is a licensed dealer under the *Sale of Motor Vehicles Act 1977*.

217 Veteran, vintage and historic vehicles

- (1) Duty under this chapter is not chargeable on an application to register a veteran, vintage or historic vehicle if—
 - (a) the vehicle had not been registered under the Vehicle Registration Act or a corresponding law during the 2 years immediately before the application for registration; and
 - (b) the registration would be the first registration of the vehicle after its restoration; and
 - (c) on registration the vehicle would be allocated numberplates that carry the words ‘veteran car’, ‘vintage car’ or ‘historic car’.
- (2) If—
 - (a) within the period of 3 years immediately following a registration in relation to which no duty is chargeable under subsection (1) a further application is made for registration of the relevant vehicle under the Vehicle Registration Act; and
 - (b) the vehicle is owned by the person who owned it at the time of the registration referred to in subsection (1); and
 - (c) on the further registration the vehicle would not be allocated numberplates that carry the words ‘veteran car’, ‘vintage car’ or ‘historic car’;

there is payable, on the first such further application for registration, an amount of tax equal to the tax that would have been payable on the first application for registration of the vehicle after its restoration if subsection (1) had not been applicable.

- (3) For this section, a vehicle is a veteran, vintage or historic vehicle if it is such a vehicle within the meaning of the regulations under the Vehicle Registration Act.

218 Avoidance of double duty—duty paid in a corresponding Australian jurisdiction

Duty is not chargeable in respect of an application to register a motor vehicle in the ACT if—

- (a) at the time the application was made, the applicant was recorded as the registered operator of the vehicle in the register of an Australian jurisdiction corresponding to the registrable vehicles register within the meaning of the *Road Transport (Vehicle Registration) Act 1999*; and
- (b) duty was paid in that jurisdiction in respect of the registration.

219 Reassessment of duty—repossession of stolen motor vehicle

- (1) Duty is not chargeable on an application for registration of a motor vehicle that has been repossessed from a person because, before the person acquired it, it had been stolen.
- (2) If requested by a person who has paid duty on an application for registration to which subsection (1) applies, the commissioner shall assess or reassess the duty accordingly.

Part 9.3 Miscellaneous

220 Meaning of *licensed vehicle dealer* in pt 9.3

In this part:

licensed vehicle dealer means a licensed dealer within the meaning of the *Sale of Motor Vehicles Act 1977*.

221 Prerequisites for registration

- (1) Despite anything in the Vehicle Registration Act, the road transport authority may register a motor vehicle under that Act only if—
 - (a) the vehicle had previously been registered under the Vehicle Registration Act, the *Motor Traffic Act 1936* or a corresponding law and the last previous registration was solely in the name of the person who is applying for registration; or
 - (b) the application for registration is accompanied by a certificate issued under section 222 in respect of the vehicle to the person in whose name the vehicle is to be registered, and the registration is not made in the name of any other person; or
 - (c) for an application for registration that is claimed to be exempt from duty under section 214—the application is solely in the name of a person who certifies in writing that—
 - (i) he or she is carrying on a business in respect of which he or she is a licensed dealer under the *Sale of Motor Vehicles Act 1977* or a corresponding law; and
 - (ii) the vehicle is held by him or her as a demonstrator vehicle or trading stock; or
 - (d) for an application for registration that is claimed to be exempt from duty under section 217—the application is accompanied by a certificate by the owner that states—
 - (i) whether the registration is the first registration of the vehicle after its restoration; and

- (ii) whether the vehicle has been registered under the Vehicle Registration Act or a corresponding law during the period of 2 years immediately before the date of the application and, if it has been, the date when the last registration expired; or
- (e) the applicant for the registration (other than registration referred to in subsection (2)) pays the amount of the duty chargeable in respect of the application for registration, and the application is accompanied by a statement by the applicant, in writing, of—
 - (i) the amount that, to the best of his or her knowledge and belief, is or will be the market value of the vehicle at the time the application is made; and
 - (ii) the purchase price paid for the vehicle by the applicant; and
 - (iii) if the stated market price differs from the purchase price—the reason for the difference.
- (2) The road transport authority shall not—
 - (a) register a vehicle sold by a person who is a licensed vehicle dealer if the registration would be the first registration of the vehicle after the sale; or
 - (b) transfer the registration of a vehicle sold by a licensed vehicle dealer if the transfer would be the first transfer of the registration of the vehicle after the sale;unless the dealer's licence code is endorsed on the application for, or for transfer of, registration.
- (3) A person claiming exemption of an application for the registration of a vehicle from duty because of section 217 must give the road transport authority any relevant information the authority requires.

222 Certificates of exemption

If, on considering an application for the registration of a motor vehicle, the commissioner is satisfied that the application is exempt from duty—

- (a) under section 209A, 210, 211, 212, 213, 215 or 216; or
- (b) under the *International Organisations (Privileges and Immunities) Act 1963* (Cwlth) or the *Diplomatic Privileges and Immunities Act 1967* (Cwlth);

the commissioner may issue a certificate to that effect.

223 Returns by road transport authority

As soon as practicable after the end of each month, the road transport authority must give the commissioner particulars of all certificates, statements and other information given for section 221 during the month.

224 Rectification of errors in registration

- (1) Duty of \$20 is chargeable on an application to register a motor vehicle if the application is made solely to rectify an error or omission in a previous registration of the vehicle in the ACT.

225 Refund of duty on cancellation of sale

If a person satisfies the commissioner—

- (a) that duty has been paid on an application to register a motor vehicle purchased by him or her; and
- (b) that, after the purchase—
 - (i) the transaction by which the purchase was made was cancelled;
 - (ii) the motor vehicle has been returned to the person from whom it was purchased; and

- (iii) all money refundable on the cancellation (other than on account of duty) has been refunded to the person who purchased the vehicle;

the commissioner shall refund the duty paid on the application.

226 Certificates as evidence

A certificate of the road transport authority to the effect that a specified vehicle was or was not registered in the name of a specified person on a specified date is evidence of those matters and the facts on which they are based.

Chapter 10 Miscellaneous duties

227 Duplicates and counterparts

- (1) Duty is not chargeable on a duplicate or counterpart of—
 - (a) an instrument that effects a dutiable transaction; or
 - (b) an instrument chargeable with duty;if the duplicate or counterpart is lodged with the commissioner for stamping at the same time as the original instrument.
- (2) Duty of \$20 is chargeable on a duplicate or counterpart of an instrument referred to in subsection (1) (a) or (b) if the duplicate or counterpart is not lodged with the commissioner for stamping at the same time as the original instrument.
- (3) The person liable to pay the duty chargeable under subsection (2) is the person liable to pay the duty on the original instrument.
- (4) The duplicate or counterpart referred to in subsection (2) is not to be stamped as a duplicate or counterpart unless it is proved to the commissioner's satisfaction that the proper duty has been paid on the original instrument of which it is the duplicate or counterpart.

228 Replicas

- (1) Duty of \$20 is chargeable on a replica.
- (2) The persons liable to pay the duty are the parties to the replica or any 1 or more of them.
- (3) A replica that is duly stamped is to be marked in the way the commissioner thinks fit to denote that it is a replica.

(4) In this section:

replica means an instrument that—

- (a) is executed to replace; and
- (b) contains the same terms as, but no other terms than, those contained in;

a previously executed instrument that—

- (c) had been duly stamped; and
- (d) has been lost, spoiled or destroyed.

229 Minimum amount of duty

(1) Subject to subsection (2) and section 229A, notwithstanding any other provision of this Act, if the amount of duty chargeable under this Act in respect of a transaction or an instrument would, but for this section, be less than \$20, the amount of duty chargeable is \$20.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

(2) This section does not apply to transactions and instruments in respect of which duty is imposed by chapter 8 (Insurance).

229A Approved agents and taxpayers—exemption from \$20 concessional duty and s 229 minimum duty

(1) No duty is payable by a taxpayer under this Act for a transaction if—

- (a) apart from this section, the taxpayer would be charged \$20 duty for the transaction under a provision of this Act; and
- (b) an approval has been given in relation to the taxpayer under the Taxation Administration Act, section 42 (Special arrangements for classes of persons) or section 43 (Special arrangements for individual applicants); and
- (c) the approval states the provision; and

- (d) the transaction is recorded in a return lodged, or record kept, in accordance with the approval.
- (2) Section 229 (Minimum amount of duty) does not apply in relation to a taxpayer for a transaction if—
 - (a) an approval has been given in relation to the taxpayer under the Taxation Administration Act, section 42 (Special arrangements for classes of persons) or section 43 (Special arrangements for individual applicants); and
 - (b) the transaction is recorded in a return lodged, or record kept, in accordance with the approval.

Chapter 11 General exemptions from duty

230 Inter-generational rural transfers

- (1) Duty under this Act is not chargeable in respect of a transfer or agreement for the sale or transfer of land, a lease of land, or a transfer or assignment of a lease or permit in respect of land, used for primary production together with any other property that is an integral part of the business of primary production, if the commissioner is satisfied that—
 - (a) the land was land used for primary production by the transferor, lessor or assignor immediately before the transaction or the date of first execution of the instrument; and
 - (b) the land will continue to be land used for primary production by the transferee, lessee or assignee; and
 - (c) the parties are persons of a class identified in guidelines determined by the Minister; and
 - (d) the transaction satisfies the other requirements that may be contained in those guidelines.
- (2) The Minister may, in writing, determine guidelines for subsection (1) (c) or (d).
- (3) A guideline is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

231 Specialised agencies

Duty under this Act is not chargeable on any instrument executed by or on behalf of a Specialised Agency within the meaning of the Convention on the Privileges and Immunities of the Specialised Agencies that was approved by the General Assembly of the United Nations on 21 November 1947 in respect of which instrument the Specialised Agency is the person described in this Act as the person liable to pay the duty.

Chapter 12 Miscellaneous

Part 12.1 Stamping instruments

233 Impressed stamps

The commissioner shall arrange for dies or other devices for making impressed stamps denoting—

- (a) the payment of amounts of duty; or
- (b) that duty is not payable;

to be made and used as the commissioner directs.

234 Stamping of instruments

The commissioner shall stamp an instrument in respect of which duty is chargeable under this Act, or that effects or evidences a dutiable transaction, and that has been lodged for stamping with the commissioner if the duty, and any interest or penalty tax under the Taxation Administration Act, part 5 is paid in full.

235 Duly stamped instruments

An instrument shall be taken to have been duly stamped if—

- (a) if the instrument effects a dutiable transaction or is chargeable with duty—a stamp indicating the amount of duty paid, being an amount not less than the amount of duty chargeable, has been impressed on the instrument by the commissioner; or
- (b) if no duty is chargeable in relation to the transaction effected by the instrument and the instrument is not chargeable with duty—the instrument has been stamped under section 237; or
- (c) for a duplicate or counterpart of an instrument that is exempt from duty under section 227 (1)—the duplicate or counterpart has been stamped under section 236.

236 Stamping duplicates or counterparts of instruments

If an instrument is duly stamped and a duplicate or counterpart of the instrument has been lodged with the commissioner in accordance with section 227 (1), the commissioner shall put an impressed stamp in an approved style on the duplicate or counterpart of the instrument.

237 Stamping instruments if no duty chargeable

If the commissioner is satisfied that no duty is chargeable in relation to an instrument, the commissioner may put an impressed stamp in an approved style on the instrument or a duplicate or counterpart of the instrument.

238 Stamps defaced or removed

If an instrument has been duly stamped, the instrument shall be regarded as having been duly stamped notwithstanding that the stamp has been defaced or removed from the instrument.

239 Fraudulent use of stamps

A person shall not, with intent to defraud, impress on an instrument a stamp that is or resembles an impressed stamp.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

240 Possession of counterfeiting equipment

- (1) A person shall not, without lawful authority, make, sell, use or have in his or her possession a die or other device for making impressed stamps.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A stamp, die, plate or device made, sold, used or had in possession in contravention of subsection (1) is forfeited to the Territory.

241 Illegal stamping

A person shall not—

- (a) impress a stamp in an approved style on an instrument without lawful authority; or
- (b) impress a stamp on an instrument in a style that resembles or purports to be an approved style.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

242 Instruments to be separately charged with duty in certain cases

If an instrument relates to several distinct matters in respect of which duty is chargeable, for this Act, each matter shall be treated as if it were dealt with in a separate instrument.

243 Execution of instruments

- (1) For this Act, an instrument shall be taken to be first executed the first time that it is signed and sealed, or signed (as the case may be) by any party to it.
- (2) However, a contract made by acceptance of an offer contained in an instrument shall be taken to be first executed when the offer is accepted.
- (3) If an instrument is ineffective because of a failure of the necessary parties to execute it, a refund may be made of any money paid for stamping.

244 Stamping of instruments after execution

- (1) Except where otherwise expressly provided by this or another Act, a person liable with respect to any instrument chargeable with duty or any dutiable transaction shall cause the instrument, or an instrument that effects or evidences the transaction, to be duly stamped or, in accordance with the provisions of this Act, marked 'Interim stamp only' within 6 months after it was first executed.

Maximum penalty: 50 penalty units.

- (2) For this section, a written statement that is required to be stamped is taken to be first executed when the transaction to which the statement relates occurs.

245 Stamping taken to constitute an assessment

For this Act, the stamping of an instrument (excluding a return) by the commissioner shall be taken to be evidence of an assessment of the duty payable under this Act in respect of the instrument.

246 Deferred payments for certain stamped instruments

- (1) The Minister may—
 - (a) in circumstances in which (in the course of an industrial dispute involving persons engaged in the administration of this Act) an instrument liable to duty is not stamped because of the refusal of those persons to exercise functions relating to the administration of this Act or of any other law; and
 - (b) in any other circumstances that are prescribed;

authorise the stamping of instruments on which duty is payable, even though the duty has not yet been paid, if a written undertaking, has been given by a prescribed person, or a person belonging to a prescribed class of persons, as to the payment of duty in respect of the instrument.

Note If a form is approved under the *Taxation Administration Act 1999*, s 139C (Approved forms) for an undertaking, the form must be used.

- (2) The Minister's authorisation shall provide for the way in which, and the time within which, unpaid duty is to be paid in respect of instruments stamped under the authorisation.
- (3) An instrument that has been stamped under the Minister's authorisation is, except for the purposes of the recovery of any unpaid duty (including any interest or penalty with which the instrument is charged under the Taxation Administration Act) in respect of the instrument, taken to be duly stamped.
- (4) If the duty payable in respect of an instrument that has been stamped under the Minister's authorisation is not paid in accordance with the terms of the authorisation, the Taxation Administration Act applies to the payment of that duty in the same way as if the instrument had not been so stamped.
- (5) For subsection (1), the following persons are prescribed persons:
 - (a) a person who is liable to pay duty in respect of an instrument;
 - (b) a person who is authorised (whether by a person who is liable to pay duty in respect of an instrument or by another person) to arrange for the stamping of the instrument on behalf of a person who is liable.

Part 12.2 Enforcement

247 Registration of instruments

A person shall not register in a register of legal or beneficial interests in dutiable property a dutiable transaction, an instrument that effects a dutiable transaction or an instrument chargeable with duty unless—

- (a) it is duly stamped; or
- (b) it is marked by the commissioner or in a way approved by the commissioner; or
- (c) it bears an endorsement, or is otherwise effected, in accordance with an approval under the *Taxation Administration Act 1999*, section 42 (Special arrangements for classes of persons) or section 43 (Special arrangements for individual applicants).

Maximum penalty: 50 penalty units.

248 Registration of transfers of shares

- (1) A corporation, company or society shall not enter in its records a transfer of shares on which duty is charged under this Act or a transfer made as a consequence of a sale or purchase of shares in respect of which duty is charged under this Act unless—

- (a) a transfer has been delivered to the corporation, company or society; and
- (b) the transfer is duly stamped.

Maximum penalty: 250 penalty units.

- (2) For this section, a corporation, company or society is entitled to assume that an instrument is duly stamped if—

- (a) it bears any of the following:
 - (i) an impressed stamp;
 - (iv) an endorsement in accordance with an approval under the *Taxation Administration Act*, division 6.2;

- (v) an exempt stamp;
- (vi) a current foreign resident declaration; or
- (b) it is accompanied by a current exemption certificate.

249 Registration of transfers of units

- (1) The trustee or manager of a unit trust scheme shall not enter in its records a transfer of units on which duty is charged under this Act or a transfer made as a consequence of a sale or purchase of units in respect of which duty is charged under this Act unless—
 - (a) a proper instrument of transfer has been delivered to the trustee or manager; and
 - (b) the instrument is duly stamped.Maximum penalty: 50 penalty units.
- (2) For this section, the trustee or manager of a unit trust scheme is entitled to assume that an instrument is duly stamped if—
 - (a) it bears any of the following:
 - (i) an impressed stamp;
 - (iv) an endorsement in accordance with an approval under the Taxation Administration Act, division 6.2;
 - (v) an exempt stamp;
 - (vi) a current foreign resident declaration; or
 - (b) it is accompanied by a current exemption certificate.

250 Receipt of instruments in evidence

- (1) An instrument that effects a dutiable transaction or is chargeable with duty under this Act is not available for use in law or equity for any purpose and may not be presented in evidence in a court or tribunal exercising civil jurisdiction unless—
 - (a) it is duly stamped; or
 - (b) it is marked by the commissioner or in a manner approved by the commissioner.

- (2) A court or tribunal may admit in evidence an instrument that effects a dutiable transaction, or is chargeable with duty in accordance with the provisions of this Act, and that does not comply with subsection (1)—
 - (a) if the instrument is, after its admission, transmitted to the commissioner in accordance with arrangements approved by the court or tribunal; or
 - (b) if (where the person who produces the instrument is not the person liable to pay the duty) the name and address of the person so liable is forwarded, together with the instrument, to the commissioner in accordance with arrangements approved by the court or tribunal.
- (3) A court or tribunal may admit in evidence an unexecuted copy of an instrument that effects a dutiable transaction, or is chargeable with duty in accordance with the provisions of this Act, if the court or tribunal is satisfied that the instrument of which it is a copy is duly stamped, or is marked in a manner approved by the commissioner.

251 Valuation of property

- (1) The commissioner may require a person who is liable to pay duty determined by reference to the value of property to provide a declaration by a competent valuer of the value (unencumbered or otherwise) of the property or to provide the other evidence of that value that the commissioner thinks fit.
- (2) The commissioner may assess duty in accordance with the value so declared.
- (3) The commissioner may have property valued if he or she is not satisfied with the value so declared and may assess duty on the basis of the valuation.
- (4) The commissioner may recover the cost of obtaining a valuation under this section.

Part 12.3 Miscellaneous

252 Objections and review of decisions

- (1) Objection may be made by a taxpayer under the Taxation Administration Act, division 10.1 to a decision of the commissioner—
- (a) under section 23 assessing duty on the basis of a valuation of dutiable property made under the section; or
 - (b) under section 24 (2) refusing to exempt a transaction from aggregation under that section; or
 - (c) under section 25 refusing to disregard the value of goods involved in a dutiable transaction in determining the dutiable value of dutiable property involved in that transaction; or
 - (d) under section 74B (2) (a) that a transfer is not consequent on the dissolution, annulment or irretrievable breakdown of a marriage; or
 - (e) under section 74B (3) (c) that a transfer is not consequent on the end of a domestic relationship; or
 - (f) under section 70A (3) imposing a condition on an approval under section 70A (1) (b); or
 - (g) under section 91A (3) imposing a condition on an approval under section 91A (1) (b); or
 - (h) under section 115H (2) (a) that a transaction is not consequent on the dissolution, annulment or irretrievable breakdown of a marriage; or
 - (i) under section 115H (3) (c) that a transaction is not consequent on the end of a domestic relationship; or
 - (j) under section 82 (2) refusing to determine that a beneficiary of a discretionary trust is not to be taken to own or to be otherwise entitled to the property the subject of the trust; or

- (k) under section 82 (3) refusing to determine that property that is the subject of a discretionary trust is not to be taken to be the subject of another discretionary trust; or
- (l) under section 90 (5) refusing to assess and charge duty on a relevant acquisition without aggregating the interests of the person who made it with the interests of associated persons; or
- (m) under section 92 (4) refusing to determine that a person's entitlement to participate in a distribution of the property of a private corporation is to be evaluated otherwise than in accordance with whichever of section 92 (2) or (3) results in a greater entitlement; or
- (n) under section 137 including, as part of the amount payable as a cost of a franchise arrangement, a payment referred to in paragraph (a) or (b) of that section; or
- (o) under section 161 including, as part of the amount received as hiring charges, a payment referred to in paragraph (a) or (b) of that section; or
- (p) under section 167 (3) cancelling the registration of a commercial hire business; or
- (q) under section 168 (3) revoking an approval under section 168 (2); or
- (r) under section 191 (1) cancelling an insurer's registration; or
- (s) under section 199 (3) refusing to apportion a premium or amount on the basis specified in an application under section 199 (2); or
- (t) under section 199 (4) reassessing liability to duty; or
- (u) under section 200 (2) reassessing liability to duty; or
- (v) under section 208AA (3) imposing a condition on an approval under section 208AA (1) (c); or

- (w) under section 213 (2) (a) that a transfer is not consequent on the dissolution, annulment or irretrievable breakdown of a marriage; or
 - (x) under section 213 (3) (c) that a transfer is not consequent on the end of a domestic relationship; or
 - (y) under section 214A (1) refusing to give an authorisation to a licensed vehicle dealer; or
 - (z) under section 214A (2) imposing conditions on an authorisation; or
 - (za) under section 214A (4) revoking an authorisation; or
 - (zb) under section 230 (1) refusing to treat a transfer or agreement for the sale or transfer of land, a lease of land, or a transfer or assignment of a lease or permit in respect of land, used for primary production together with any other property that is an integral part of a business of primary production as exempt from duty.
- (2) Subject to the Taxation Administration Act, division 10.2, application may be made to the administrative appeals tribunal under that division for a review of a determination by the commissioner of an objection by a taxpayer to a decision referred to in subsection (1).
- (3) In this section:
taxpayer—see the Taxation Administration Act.

252A Declaration of recognised stock exchanges

- (1) The Minister may, in writing, declare that a stock exchange is a recognised stock exchange for this Act.
- (2) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

253 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

Dictionary

(see s 2A)

Act imposing duty means—

- (a) a corresponding Act; or
- (b) an Act to which the Taxation Administration Act applies.

ADR means a negotiable certificated receipt issued by a depositary resident outside Australia acknowledging the interest of the registered holder of the receipt in shares in a Territory company held by the depositary, or deposited with a depositary to hold, as trustee for the holder.

application to register a motor vehicle means—

- (a) an application under the Vehicle Registration Act to register a motor vehicle; or
- (b) an application under the Vehicle Registration Act to transfer the registration of a motor vehicle.

approved means approved by the commissioner.

associated person means a person who is associated with another person in accordance with any of the following provisions:

- (a) persons are associated persons if they are related persons;
- (b) individuals are associated persons if they are partners in a partnership to which the *Partnership Act 1963* applies;
- (c) private companies are associated persons if common shareholders have a majority interest in each private company;
- (d) trustees are associated persons if any person is a beneficiary common to the trusts (not including a public unit trust scheme) of which they are trustees;

(e) a private company and a trustee are associated persons if a related body corporate of the company is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee;

and, for part 3.2, a public company and a subsidiary of a public company are taken to be associated persons.

Australian register—see the Corporations Act, section 9.

bankrupt includes applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with creditors or making an assignment of remuneration for their benefit.

charge includes impose.

charitable organisation means an association, society, institution or body carried on for a religious, educational, benevolent or charitable purpose, other than one carried on for the purpose of securing pecuniary benefits to its members.

commercial hire business—section 163.

commissioner means the commissioner for revenue.

company title dwelling means a separate dwelling in a building containing more than 1 separate dwelling situated on land in the ACT owned or leased by a company in which shares issued by the company are owned by persons who, because of the ownership of their shares, have an exclusive right to occupy a part of the building.

complying approved deposit fund means an entity that is a complying approved deposit fund in accordance with the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 43.

complying superannuation fund means an entity that is—

- (a) a complying superannuation fund in accordance with the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 42 or 42A; or
- (b) an exempt public sector superannuation scheme within the meaning of that Act.

corporation means a body corporate, whether incorporated in this jurisdiction or elsewhere.

Corporations Act means the *Corporations Act 2001* (Cwlth).

Note A reference to a Cwlth Act includes a reference to the Act as originally made and as amended (see *Legislation Act 2001*, s 102).

corresponding Act means an Act of another Australian jurisdiction that corresponds to this Act.

corresponding law, in relation to a Territory law, means a law of a State or another Territory that is similar, or has a similar effect, to that Territory law.

cost, in relation to a lease—see section 136.

Crown lease includes a lease of land granted by or in the name of the Commonwealth or by the Federal Capital Commission appointed under the *Seat of Government (Administration) Act 1924* (Cwlth).

determined amount, in relation to duty, means an amount—

- (a) determined by the Minister; or
 - (b) calculated in a manner determined by the Minister;
- under the Taxation Administration Act, section 139 for the provision where the expression occurs.

determined rate, in relation to duty, means a rate determined by the Minister under the Taxation Administration Act, section 139 for the provision where the expression occurs.

disabled person means a person who is 16 years of age or older and who is—

- (a) permanently blind; or
- (b) permanently incapacitated for work.

discretionary trust means a trust under which the vesting of the whole or any part of the capital of the trust estate, or the whole or any part of the income from that capital, or both—

- (a) is required to be determined by a person either in respect of the identity of the beneficiaries, or the quantum of interest to be taken, or both; or
- (b) will occur if a discretion conferred under the trust is not exercised; or
- (c) has occurred but under which the whole or any part of that capital or the whole or any part of that income, or both, will be divested from the person or persons in whom it is vested if a discretion conferred under the trust is exercised.

domestic partner means a person who is a party to a domestic relationship, and includes a person who was a party to a domestic relationship that has ceased, whether the cessation took effect in Australia or elsewhere.

domestic relationship—see the *Domestic Relationships Act 1994*.

duly stamped, in relation to an instrument, means duly stamped as mentioned in section 235.

dutiable property—see section 10.

dutiable transaction—see section 7 (2).

dutiable value, in relation to a motor vehicle—see section 203.

dutiable value, in relation to dutiable property other than a motor vehicle—see section 20.

eligible rollover fund means an entity that is an eligible rollover fund in accordance with the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 242, and includes an entity the trustee of which is satisfied will be an eligible rollover fund within 12 months after the date when a liability to duty arises (or would otherwise arise).

error transaction means a sale or purchase of shares made to reverse a sale or purchase of shares made mistakenly not more than 7 days earlier, and the sale or purchase so reversed.

fit-out costs in relation to a lease, means improvements made by or on behalf of, or at the expense of, the lessee and that remain the property of the lessee.

foreign resident means a person who at the relevant time—

- (a) for a person, other than a person referred to in paragraph (b) or (c)—is not resident or domiciled in Australia; or
- (b) for a body corporate—is not incorporated under a law of an Australian jurisdiction and—
 - (i) does not have its central management and control in Australia; and
 - (ii) does not have its voting power controlled by shareholders who are residents of Australia; or
- (c) for a partnership or other unincorporated association or body of persons—does not have a member who is resident in Australia; or
- (d) for a trust estate—
 - (i) does not have a trustee who is resident in Australia; and
 - (ii) does not have its central management and control in Australia.

franchise means the package of rights held by a franchisee under a franchise arrangement.

franchise arrangement means an agreement or other arrangement between 2 or more persons by which 1 of them (the ***franchisor***) authorises or permits another (the ***franchisee***)—

- (a) to engage in the business of offering, selling or distributing goods and services within or partly within the ACT, and the franchisee is required to do so—
 - (i) in accordance with a specified marketing, business or technical plan or system; and
 - (ii) under a common format or procedure (or format and procedure); and
- (b) to use a mark or common trade name, in such a way that the business carried on by the franchisee is, or is capable of being, identified by the public as being substantially associated with the mark or name identifying, commonly connected with or controlled by the franchisor or a related person.

franchisee—see the definition of ***franchise arrangement***.

franchisor—see the definition of ***franchise arrangement***.

general insurance—see section 175.

hire of goods—see section 152.

hire-purchase agreement means a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise), but does not include any agreement—

- (a) by which the property in the goods the subject of the agreement passes at the time of the agreement or on or at any time before the delivery of the goods; or
- (b) for the letting of goods, or for the purchase of goods, together with a letting or purchase of—
 - (i) real property or an estate or interest in real property; or
 - (ii) a business or an interest in a business.

hiring charges—see section 155.

hospital means a recognised hospital within the meaning of the *Health Insurance Act 1973* (Cwlth).

impressed stamp means a stamp impressed by means of a die or other device made under section 233.

instrument includes a written document and a written statement.

insurance includes assurance.

insurance intermediary—see the *Insurance (Agents and Brokers) Act 1984* (Cwlth).

insurer—see section 175.

intellectual property means—

- (a) a business name, trading name, trade mark, industrial design, patent, registered design or copyright; or
- (b) a right, whether or not under a franchise arrangement, to use or exploit—
 - (i) a business name, trading name, trade mark or industrial design; or
 - (ii) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process).

interest includes an estate, an interest under a lease or a sublease, a proprietary right and a beneficial interest.

interest, in relation to a land-rich corporation—see section 83 (1).

international trade insurance means—

- (a) insurance of freight against loss or damage in the course of, or incidental to, international transport of the freight; or

- (b) insurance of an aircraft or ship against loss or damage during a particular period when the aircraft or ship is under construction or undergoing refitting, maintenance or repairs if, at the time the insurance was effected, the aircraft or ship was intended by the owner to be used wholly or principally for the international transport of freight for an indefinitely continuing period commencing immediately after the completion of the construction, refitting, maintenance or repairs, as the case may be; or
- (c) insurance of an aircraft or ship against loss or damage in the course of, or incidental to, a particular journey or journeys if, at the time the insurance was effected, it was intended by the owner that the journey or journeys would be wholly or principally for the international transport of freight; or
- (d) insurance of an aircraft or ship against loss or damage during a particular period if, at the time the insurance was effected, the aircraft or ship was intended by the owner to be used during that period wholly or principally for the international transport of freight.

international transport, in relation to freight, means the transport, in connection with trade or commerce, of the freight between—

- (a) a place in a foreign country; and
- (b) a place in—
 - (i) another foreign country; or
 - (ii) Australia; or
 - (iii) an external Territory.

land includes a stratum.

land used for primary production means land used primarily for—

- (a) the cultivation of the land for the purpose of selling the produce of the cultivation; or

- (b) the maintenance of animals or poultry on the land for the purpose of selling them or their natural increase or bodily produce; or
- (c) the keeping of bees on the land for the purpose of selling their honey; or
- (d) a plant nursery; or
- (e) the propagation for sale of mushrooms, orchids or flowers; or
- (f) aquaculture.

land use entitlement means an entitlement to occupy land within the ACT conferred through an ownership of shares in a company or an ownership of units in a unit trust scheme, or a combination of a shareholding or ownership of units together with a lease or licence.

lease—see section 133.

life company—see the *Life Insurance Act 1995* (Cwlth).

life insurance—see section 175.

majority shareholder, in relation to a private company, means—

- (a) for a company the voting shares in which are not divided into classes—a person entitled to not less than 50% of those shares, and
- (b) for a company the voting shares in which are divided into classes—a person entitled to not less than 50% of the shares in one of those classes.

managed investment scheme means a managed investment scheme within the meaning of the Corporations Act, section 9 that complies with that Act, chapter 5C, and includes a public unit trust scheme.

marketable securities means—

- (a) shares mentioned in section 10 (1) (d); or
- (b) units mentioned in section 10 (1) (e); or
- (c) an interest in shares, or units, mentioned in section (a) or (b).

market value, in relation to a motor vehicle, means the amount for which the motor vehicle might reasonably be sold, free of encumbrances, on the open market.

marriage includes a void marriage.

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

mortgage means any charge on land created merely for securing a debt.

motor vehicle means—

- (a) a motor vehicle or trailer within the meaning of the Vehicle Registration Act; or
- (b) a caravan.

new motor vehicle means a motor vehicle that has not previously been registered under—

- (a) the Vehicle Registration Act or another Territory law; or
- (b) a law of the Commonwealth, a State or another Territory.

non-commercial Commonwealth authority means a body corporate (not being an incorporated company, society or association) that—

- (a) is incorporated for a public purpose by or under a law of the Territory or the Commonwealth; and
- (b) does not have as its sole or principal function the carrying on of an activity in the nature of a business, whether or not for profit.

partnership interest—see section 10 (1) (i).

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

pooled superannuation trust means an entity that is a pooled superannuation trust in accordance with the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 44.

private company means a company that is not limited by shares, or whose shares are not quoted on a stock exchange.

private corporation—see section 78.

private unit trust scheme means a unit trust scheme that is not a public unit trust scheme.

public unit trust scheme means a unit trust scheme—

- (a) any of the units of which are listed for quotation on a stock exchange; or
- (b) that was, immediately before 1 July 1998, the subject of an approved deed for the Corporations Law, part 7.12, division 5 (or a corresponding law), but only if—
 - (i) some or all of its units have been offered to the public; and
 - (ii) no fewer than 50 people hold units in it; or
- (c) that is a managed investment scheme within the meaning of the Corporations Act, section 9 that complies with that Act, chapter 5C and in respect of which—
 - (i) some or all of the units have been offered to the public; and
 - (ii) not less than 50 persons hold units in it; or
- (d) that was, immediately before 13 March 2000, exempted from the requirements of the Corporations Law, part 7.12, but only if—
 - (i) some or all of its units have been offered to the public; and
 - (ii) no fewer than 50 people hold units in it; or
- (e) that, in the opinion of the commissioner, will be a public unit trust scheme within 12 months after the commissioner gives written notification of that opinion to a person who has requested the commissioner to express that opinion in relation to the unit trust scheme.

registered insurer means an insurer registered under chapter 8.4.

registered scheme—see the Corporations Act, section 9.

Note A **registered scheme** under the Corporations Act is a managed investment scheme that is registered under that Act, ch 5C.

related body corporate—see the Corporations Act, section 9.

related person means a person who is related to another person in accordance with any of the following provisions:

- (a) individuals are related persons if—
 - (i) one is the spouse or domestic partner of the other; or
 - (ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister;
- (b) private companies are related persons if they are related bodies corporate;
- (c) an individual and a private company are related persons if the individual is a majority shareholder or director of the company or of another private company that is a related body corporate of the company;
- (d) an individual and a trustee are related persons if the individual is a beneficiary of the trust (other than a public unit trust scheme) of which the trustee is a trustee;
- (e) a private company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (other than a public unit trust scheme) of which the trustee is a trustee.

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

replica—see section 228.

responsible entity—see the Corporations Act, section 9.

right, in relation to shares or units, means any right (whether actual, prospective or contingent) of a person to have shares or units issued by a company or trust to the person, whether or not on payment of money or for other consideration, but does not include a convertible note.

scheme includes—

- (a) an agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
- (b) a plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

shares includes rights to shares.

solicitor means a legal practitioner who practises as a solicitor, either on his or her own account or as a member of a partnership.

special hiring agreement means a written agreement for the hire of goods—

- (a) that describes the goods in such a way as to enable the nature or character of the goods to be clearly and readily identified, including the number of items; and
- (b) that does not include—
 - (i) provisions under which the goods may, at any time, be replaced in whole or in part by other goods, except to the extent that the agreement allows replacement if the goods—
 - (A) are lost, destroyed or stolen; or
 - (B) fail or malfunction in the normal course of operation or use; or
 - (C) are temporarily replaced during the servicing, maintenance or repair of the goods; or
 - (ii) provisions under which other goods, whether of the same or a different type, may be additionally provided.

spouse, in relation to a person, includes another person who is in a domestic relationship within the meaning of the *Domestic Relationships Act 1994* with the person.

stock exchange means—

- (a) the Australian Stock Exchange Limited; or
- (b) a stock exchange that is a member of the Fédération Internationale des Bourses de Valeurs; or
- (c) a stock exchange declared under section 252A (Declaration of recognised stock exchange) to be a recognised stock exchange for this Act.

subsidiary, of a private corporation—see section 81 (3) and (4).

Taxation Administration Act means the *Taxation Administration Act 1999*.

tax avoidance scheme means a scheme if the person who has, or 1 or more of the persons who have, entered into or carried out the scheme or a part of the scheme did so for the purpose of securing—

- (a) that an amount of duty would not be payable by a person, being an amount that would have been, or might reasonably be expected to have been, payable by the person; or
- (b) that an amount of duty payable by a person would be less than the amount that would have been, or might reasonably be expected to have been, payable by the person; or
- (c) that a refund of duty would be payable to a person, being a refund that would not have been or might reasonably be expected not to have been, payable to the person;

if the scheme had not been entered into or carried out, or for purposes of which that purpose was the dominant purpose.

tenement includes an office, room or apartment in a tenement.

Territory company means—

- (a) a company incorporated (or taken to be incorporated) under the Corporations Act that is taken to be registered in the ACT; or
- (b) a corporation that is incorporated under a Territory Act.

trading stock, in relation to a vehicle dealer licensed under the *Sale of Motor Vehicles Act 1977* or a corresponding law, means a vehicle offered or exposed for sale by the dealer in the course of the dealer's business, except a vehicle used—

- (a) personally by the dealer or a member of the dealer's staff; or
- (b) for the general purposes of the dealer's business.

transfer includes—

- (a) assignment; and
- (b) exchange; and
- (c) vesting of an interest in property under a law of the Territory, the Commonwealth, a State or another Territory, unless the interest did not exist before it is vested; and
- (d) vesting of an interest in property under a court order, unless the interest did not exist before it is vested.

trustee includes—

- (a) a person who is a trustee under an implied or constructive trust; and
- (b) in relation to a deceased person—an executor of the will, or an administrator of the estate, of the deceased person; and
- (c) a receiver, guardian, committee or manager of the property of a person under a legal or other disability; and
- (d) a receiver or manager of the property of a company, or a liquidator of a company for the purpose of its winding-up; and
- (f) a person who holds a marketable security for the benefit of another person; and
- (g) a person who may be required to exercise his or her voting power in relation to a marketable security at the direction of another person.

unencumbered value—see section 22.

unit, in relation to a unit trust scheme, means—

- (a) a right or interest (whether described as a unit or a sub-unit or otherwise) of a beneficiary under the scheme; or
- (b) a right to any such right or interest.

unit trust scheme means any arrangements made for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in any profits, income or distribution of assets arising from the acquisition, holding, management or disposal of any property whatever under the trust.

value of the lease—see section 140 (1) (b) (General rate—short-term leases).

variation, in relation to a lease, means a variation made for any reason or on any basis and includes a further variation.

Vehicle Registration Act means the *Road Transport (Vehicle Registration) Act 1999*.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Duties Act 1999 No 7

notified 1 March 1999

s 1, s 2 commenced 1 March 1999 (s 2 (1))

remainder commenced 1 March 1999 (s 2 (2) and Gaz 1999 No S8)

as amended by

Road Transport Legislation Amendment Act 1999 No 79

notified 23 December 1999

commenced 1 March 2000 (s 2 and Gaz 2000 No S5)

Duties (Transitional Provisions) Regulations 2000 SL No 15 (see 2000 No 46 s 25)

notified 28 February 2000

commenced 28 February 2000 (reg 2)

Duties Amendment Act 2000 No 5

notified 1 March 2000 (Gaz 2000 No S8)

commenced 1 March 2000 (s 2)

Duties Amendment Act 2000 (No 2) No 30

notified 6 July 2000 (Gaz 2000 No S33)

s 1, s 2 commenced 6 July 2000 (IA s 10B)

remainder commenced 1 July 2000 (s 2)

Financial Relations Agreement Consequential Amendments Act 2000 No 34

notified 6 July 2000

s 1, s 2 commenced 6 July 2000

ss 3, 18, 24, 25 and pt 4 commenced 1 July 2000 (see s 2 (1))

remainder commenced 1 July 2001 (see s 2 (2))

Duties Amendment Act 2000 (No 3) No 46 pt 2 (ss 3-23) (as am by 2001 No 55)

notified 28 September 2000 (Gaz 2000 No 39)

s 1, s 2 commenced 28 September 2000 (IA s 10B)

s 12 commences 1 July 2001 (s 2 (4))

ss 13, 18-22 taken to have commenced 28 February 2000 (s 2 (3))

s 23 taken to have commenced 1 March 1999 (s 2 (1))

pt 2 remainder commenced 28 September 2000 (s 2 (5))

Statute Law Amendment Act 2000 No 80 amdt 3.4

notified 21 December 2000 (Gaz 2000 No S69)
commenced 21 December 2000 (s 2)

Unit Titles Consequential Amendments Act 2001 No 17 sch 2

notified 5 April 2001 (Gaz 2001 No 14)
s 1, s 2 commenced 5 April 2001 (IA s 10B)
sch 2 commenced 5 October 2001 (s 2)

Insurance Levy Legislation Repeal Act 2001 No 22 sch 1 pt 1

notified 19 April 2001 (Gaz 2001 No 16)
s 1, s 2 commenced 19 April 2001 (IA s 10B) (s 2 (1))
sch 1 pt 1 commenced 1 September 2001 (s 2 (3))

Duties Amendment Act 2001 No 40

notified 29 June 2001 (Gaz 2001 No S36)
s 1, s 2 commence 29 June 2001 (IA s 10B)
remainder commenced 16 July 2001 (s 2)

Legislation (Consequential Amendments) Act 2001 No 44 pt 115 (as am by Duties Amendment Act 2001 No 55 sch 1 pt 4)

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 115 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Duties Amendment Act 2001 (No 2) No 55 pt 2, pt 3, sch 1 pt 1

notified 15 August 2001 (Gaz 2001 No S57)
s 1, s 2 commenced 15 August 2001 (IA s 10B)
amds 1.1-1.3 taken to have commenced immediately after the commencement of Act 2000 No 80 amdt 3.4 on 21 December 2000 (amds 1.1-1.3)
remainder commenced 15 August 2001 (s 2)

Duties Amendment Act 2002 No 6

notified LR 17 April 2002
s 1, s 2 commenced 17 April 2002 (LA s 75)
s 4 commenced 17 April 2002 (s 2 (1))
remainder taken to have commenced 1 March 1999 (s 2 (2))

Endnotes

4 Amendment history

Duties (Personal Relationship Agreements) Amendment Act 2002 No 14

notified LR 23 May 2002
s 1, s 2 commenced 23 May 2002 (LA s 75)
remainder commenced 24 May 2002 (s 2)

Duties (Insurance Exemptions) Amendment Act 2002 No 20

notified LR 13 June 2002
s 1, s 2 commenced 13 June 2002 (LA s 75)
remainder commenced 1 July 2002 (s 2 and see CN2002-6)

Duties Amendment Act 2003 A2003-1

notified LR 3 March 2003
s 1, s 2 commenced 3 March 2003 (LA s 75 (1))
remainder commenced 4 March 2003 (s 2)

Revenue Legislation Amendment Act 2003 (No 2) A2003-29 pt 2

notified LR 30 June 2003
s 1, s 2 commenced 30 June 2003 (LA s 75 (1))
pt 2 commenced 1 July 2003 (s 2)

Statute Law Amendment Act 2003 A2003-41 sch 3 pt 3.8

notified LR 11 September 2003
s 1, s 2 commenced 11 September 2003 (LA s 75 (1))
sch 3 pt 3.8 commenced 9 October 2003 (s 2 (1))

4 Amendment history

Name of Act

s 1 sub 2000 No 46 s 4

Commencement

s 2 om 2000 No 46 s 5

Dictionary

s 2A ins 2000 No 34 s 4

Notes

s 2B ins 2000 No 34 s 4

Liability for payment of duty by Territory etc

- s 4
- defs reloc to dict 2000 No 34 s 5
 - def **Australian Stock Exchange** om 2000 No 34 s 5
 - def **broker** om 2000 No 34 s 5
 - def **chess** om 2000 No 34 s 5
 - def **CUFS** om 2000 No 34 s 5
 - def **futures broker** om 2000 No 34 s 5
 - def **futures contract** om 2000 No 34 s 5
 - def **general insurer** am 2002 No 20 s 4
 - def **identification code** om 2000 No 34 s 5
 - def **index trust** om 2000 No 34 s 5
 - def **instalment warrant** om 2000 No 34 s 5
 - def **IR** om 2000 No 34 s 5
 - def **marketable securities** om 2000 No 34 s 5
 - def **Motor Traffic Act** om 1999 No 79 sch 3
 - def **private company** om 2000 No 34 s 5
 - def **proper SCH transfer** om 2000 No 34 s 5
 - def **recognised stock exchange** om 2000 No 34 s 5
 - def **registered independent options trader** om 2000 No 34 s 5
 - def **registered scheme** ins 2000 No 46 s 6
 - def **relevant interest** om 2000 No 34 s 5
 - def **relevant SCH participant** om 2000 No 34 s 5
 - def **SCH** om 2000 No 34 s 5
 - def **SCH business rules** om 2000 No 34 s 5
 - def **SCH participant** om 2000 No 34 s 5
 - def **SCH-regulated transfer** om 2000 No 34 s 5
 - def **SEATS** om 2000 No 34 s 5
 - def **transfer document** om 2000 No 34 s 5
 - def **transfer identifier for an SCH-regulated transfer** om 2000 No 34 s 5
 - def **transfer value of marketable securities** om 2000 No 34 s 5
 - def **warrant** om 2000 No 34 s 5
 - def **warrant-issuer** om 2000 No 34 s 5
 - om 2000 No 34 s 5
 - ins 2001 No 55 s 4

Payment of duty equivalents by Territory departments

- s 4A ins 2001 No 55 s 4

Introduction and overview

- pt 2.1 hdg (prev ch 2 pt 1 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Definitions for ch 2

- s 6 am 2001 No 40 s 4

Imposition of duty on certain transactions concerning dutiable property

- s 7 am 2001 No 55 s 5, s 6

Endnotes

4 Amendment history

Imposition of duty on dutiable transactions that are not transfers

s 8 am 2001 No 55 s 7

Dutiable property

s 10 am 2000 No 34 s 6; A2003-1 s 4

Necessity for written instrument or written statement

s 14 am 2000 No 34 s 7; 2001 No 44 amdt 1.1225, amdt 1.1226

Lodging written instrument or written statement with commissioner

s 15 am 2000 No 34 s 8

When must duty be paid?

s 16 am 2000 No 34 s 9

Payment of duty—‘off the plan’ purchase agreements

s 16A ins 2000 No 46 s 7

No double duty

s 17 am 2002 No 14 s 4

Dutiable value

pt 2.2 hdg (prev ch 2 pt 2 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

What is the *dutiable value* of dutiable property?

s 20 am 2001 No 55 amdt 1.5; A2003-1 s 5

What is the *unencumbered value* of dutiable property?

s 22 am 2001 No 55 s 8, s 9; A2003-1 s 6; ss renum R8 LA (see A2003-1 s 7)

Aggregation of dutiable transactions

s 24 am 2001 No 17 amdt 2.8

Apportionment—business assets in this and other jurisdictions

s 27 am 2001 No 55 amdt 1.5

Rates of duty

pt 2.3 hdg (prev ch 2 pt 3 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Shares, units and interests (marketable securities)

s 32 am 2000 No 34 s 10

Certain business assets

s 33 am 2000 No 46 s 8; 2001 No 55 amdt 1.5

Off-market transfers of marketable securities

pt 4 hdg om 2000 No 34 s 11

Application of division

s 34 om 2000 No 34 s 11

SCH participant liable to pay duty

s 35 om 2000 No 34 s 11

Record of SCH-regulated transfers	
s 36	om 2000 No 34 s 11
Particulars to be included by relevant SCH participant in transfer document	
s 37	om 2000 No 34 s 11
Relevant SCH participant's identification code equivalent to stamping	
s 38	om 2000 No 34 s 11
Returns to be lodged and duty paid	
s 39	om 2000 No 34 s 11
The securities clearing house	
div 2 hdg	om 2000 No 34 s 11
Registration as the securities clearing house	
s 40	om 2000 No 34 s 11
Monthly return	
s 41	om 2000 No 34 s 11
Returns to be kept by the SCH	
s 42	om 2000 No 34 s 11
Disclosure to the SCH of information	
s 43	om 2000 No 34 s 11
London Stock Exchange	
div 3 hdg	om 2000 No 34 s 11
Application of division 3	
s 44	om 2000 No 34 s 11
Payment of duty	
s 45	om 2000 No 34 s 11
Payment by periodic return	
div 4 hdg	om 2000 No 34 s 11
Application for approval to pay duty by periodic return	
s 46	om 2000 No 34 s 11
Miscellaneous	
div 5 hdg	om 2000 No 34 s 11
Reduction of duty—payment in non-Australian jurisdiction	
s 47	om 2000 No 34 s 11
Certain transfers not chargeable with duty	
s 48	om 2000 No 34 s 11
Special provisions	
pt 2.4 hdg	(prev ch 2 pt 5 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Endnotes

4 Amendment history

Concessional rates of duty

pt 2.5 hdg (prev ch 2 pt 6 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Trusts

div 2.5.1 hdg (prev ch 2 pt 6 div 1 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Change in trustees

s 54 am 2000 No 46 s 9; 2001 No 40 s 5, s 6

Transfer to custodian of managed investment scheme

s 55 am 2000 No 46 s 10

Transfers in relation to managed investment schemes

s 55A ins 2000 No 46 s 11

Transfers in relation to registered schemes

s 55B ins 2000 No 46 s 11

Establishment of a trust relating to unidentified property and non-dutiable property

s 59 am 2000 No 30 s 4; ss renum R4 LA

Nomineeing transactions—unquoted marketable securities

s 60A ins 2000 No 46 s 12

Superannuation

div 2.5.2 hdg (prev ch 2 pt 6 div 2 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Transfer of property from one superannuation fund to another

s 62 am 2000 No 30 s 5; ss renum R4 LA

Transfers to trustees or custodians of superannuation funds or trusts

s 63 hdg sub A2003-1 s 8

s 63 am 2000 No 30 s 6; A2003-1 ss 9-11; ss renum R8 LA (see A2003-1 s 12)

Miscellaneous

div 2.5.3 hdg (prev ch 2 pt 6 div 3 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Surrender and regrant of Crown lease

s 68 sub 2000 No 46 s 13

Regrant of lease with additional land

s 68A ins 2000 No 46 s 13
am A2003-1 s 13

Corporate reconstructions—concessional duty for dutiable transactions

s 70A ins A2003-29 s 4

Transfer to spouse of interest in principal place of residence

s 72 hdg sub 2002 No 14 s 5
s 72 am 2002 No 14 s 6, s 7

Reduction of duty—payment in non-Australian jurisdiction

s 72A ins 2000 No 34 s 12

Exemptions

pt 2.6 hdg (prev ch 2 pt 7 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Transfers relating to mortgages

s 74 am 2000 No 46 s 14

Financial and other agreements

s 74A ins 2002 No 14 s 8

Transfers relating to certain personal relationships

s 74B ins 2002 No 14 s 8

Marketable securities

s 75 am 2000 No 34 s 13; 2000 No 46 s 15; 2001 No 40 s 7
ss (4), (4A), (4B) exp 30 June 2001 (see s 75 (4B))
am A2003-1 s 14; ss renum R8 LA (see A2003-1 s 15)

Preliminary

pt 3.1 hdg (prev ch 3 pt 1 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Acquisition of interests in certain landholders

pt 3.2 hdg (prev ch 3 pt 2 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Landholding private corporations

div 3.2.1 hdg (prev ch 3 pt 2 div 1 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Constructive ownership of landholdings and other property—subsidiaries

s 81 am 2001 No 40 s 8

Acquisitions of interests in private corporations

div 3.2.2 hdg (prev ch 3 pt 2 div 2 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

How may an interest be *acquired*?

s 84 am 2000 No 46 s 16; 2001 No 55 s 10

Charging of duty

div 3.2.3 hdg (prev ch 3 pt 2 div 3 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Acquisition statements

s 87 am 2001 No 44 amdt 1.1227, amdt 1.1228

General and supplemental

div 3.2.4 hdg (prev ch 3 pt 2 div 4 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Endnotes

4 Amendment history

Ch 3 transactions—concessional duty

s 91 hdg sub 2001 No 55 s 11
s 91 am 2001 No 55 s 12, s 13; 2002 No 14 s 9

Corporate reconstructions—concessional duty for relevant acquisitions

s 91A ins A2003-29 s 5

Entitlements arising from capital reductions or alterations of rights

pt 3.3 hdg (prev ch 3 pt 3 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Interpretation for pt 3.3

s 96 am 2000 No 34 s 14; 2000 No 46 s 17; 2001 No 40 ss 9-11

Entitlement to voting shares arising from capital reduction or rights alteration

s 100 am 2001 No 44 amdt 1.1229; 2001 No 55 s 14

What statement under s 100 must contain

s 101 hdg sub 2001 No 44 amdt 1.1230
s 101 am 2001 No 44 amdt 1.1230

Assessment of duty

s 102 sub 2000 No 34 s 15

Acquisition of land use entitlements by allotment of shares or issue of units

pt 3.4 hdg (prev ch 3 pt 4 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Acquisition of land use entitlement

s 106 am 2001 No 44 amdt 1.1231

What statement under s 106 must contain

s 107 hdg sub 2001 No 44 amdt 1.232
s 107 am 2001 No 44 amdt 1.1232

Allotment of shares by direction

pt 3.5 hdg (prev ch 3 pt 5 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Application of pt 3.5

s 109 am 2000 No 34 s 16

What allotment statement must contain

s 114 hdg sub 2001 No 44 amdt 1.233
s 114 am 2001 No 44 amdt 1.1233

Voluntary transfers under the Financial Sector (Transfers of Business) Act 1999 (Cwlth)

pt 3.6 hdg (prev ch 3 pt 6 hdg) ins 2001 No 55 s 15
renum R1 LA (see 2001 No 55 amdt 1.6)

Definitions for pt 3.6

s 115A ins 2001 No 55 s 15

Declaration required if business transferred

s 115B ins 2001 No 55 s 15

When does a liability for duty arise?

s 115C ins 2001 No 55 s 15

When must duty be paid?

s 115D ins 2001 No 55 s 15

Who is liable to pay the duty?

s 115E ins 2001 No 55 s 15

Assessment of duty

s 115F ins 2001 No 55 s 15

Exemptions from duty

s 115G ins 2001 No 55 s 15

Exemptions—chapter 3 transactions

pt 3.7 hdg ins 2002 No 14 s 10

Exempt transactions relating to certain personal relationships

s 115H ins 2002 No 14 s 10

On-market transfers of marketable securities

ch 4 hdg om 2000 No 34 s 17

Interpretation

s 116 om 2000 No 34 s 17

Presumptions regarding broking

s 117 om 2000 No 34 s 17

Imposition of duty

s 118 om 2000 No 34 s 17

Exemptions

s 119 om 2000 No 34 s 17

Three rates

s 120 om 2000 No 34 s 17

Duty at general rate

s 121 om 2000 No 34 s 17

Marketable securities held on broker's own account

s 122 om 2000 No 34 s 17

Marketable securities held on account of options traders and futures brokers

s 123 om 2000 No 34 s 17

Marketable securities held on account of warrant-issuers

s 124 om 2000 No 34 s 17

Additional duty on marketable securities held otherwise than for short terms

s 125 om 2000 No 34 s 17

Endnotes

4 Amendment history

Low exercise price options

s 126 om 2000 No 34 s 17

Records of sales, purchases and transactions—generally

s 127 om 2000 No 34 s 17

Records of sales, purchases and transactions—options traders, futures brokers and warrant-issuers

s 128 om 2000 No 34 s 17

Lodgment of returns and payment of duty by brokers

s 129 om 2000 No 34 s 17

Lodging of returns—registered independent options traders, futures brokers and warrant-issuers

s 130 om 2000 No 34 s 17

Endorsement of transfer as to payment of duty

s 131 om 2000 No 34 s 17

Recovery of duty by broker from vendor or purchaser

s 132 om 2000 No 34 s 17

Preliminary

pt 5.1 hdg (prev ch 5 pt 1 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Liability for duty

pt 5.2 hdg (prev ch 5 pt 2 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

How duty is charged on a lease instrument

s 135 sub 2001 No 55 s 16

Rates of duty

pt 5.3 hdg (prev ch 5 pt 3 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

General rate—short-term leases

s 140 sub 2001 No 55 s 17

General rate—long-term leases

s 141 sub 2001 No 55 s 17

General rate—franchise arrangements

s 141A ins 2001 No 55 s 17

Related instruments—exemptions and concessions

s 142 hdg sub 2001 No 55 s 18

Unascertainable lease costs

pt 5.4 hdg (prev ch 5 pt 4 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Operation of pt 5.4

s 143 am 2001 No 55 s 19

CPI method

s 145 am A2003-41 amdts 3.210-3.213

Miscellaneous

pt 5.5 hdg (prev ch 5 pt 5 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Reassessment of duty—reduction of cost

s 149 am 2001 No 55 s 20

Exemptions—lease instruments

s 150 hdg sub 2001 No 55 s 21

s 150 am 2001 No 55 ss 22-24

Preliminary

pt 6.1 hdg (prev ch 6 pt 1 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Payments exempted from *hiring charges*

s 156 am 2000 No 34 s 18

Imposition and rates of duty

pt 6.2 hdg (prev ch 6 pt 2 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Arrangements applicable to persons engaged in the business of hiring out goods

pt 6.3 hdg (prev ch 6 pt 3 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Registration of commercial hire businesses

s 166 am 2001 No 44 amdt 1.1234, amdt 1.1235

Lodgment of returns and payment of duty

s 169 am 2001 No 44 amdt 1.1236, amdt 1.1237

Arrangements applicable to persons other than those engaged in the business of hiring out goods

pt 6.4 hdg (prev ch 6 pt 4 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Preliminary

pt 8.1 hdg (prev ch 8 pt 1 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Definitions for ch 8

s 175 def *general insurance* am 2002 No 6 s 4; 2002 No 20 s 4

def *premium* am 2001 No 22 amdt 1.1

General insurance

pt 8.2 hdg (prev ch 8 pt 2 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Circumstances in which duty is payable by the insured person

s 180 am 2001 No 44 amdt 1.1238, amdt 1.1239

Life insurance

pt 8.3 hdg (prev ch 8 pt 3 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Circumstances in which duty is payable by the insured person

s 187 am 2001 No 44 amdt 1.1240, amdt 1.1241

Endnotes

4 Amendment history

Payment of duty by insurers

pt 8.4 hdg (prev ch 8 pt 4 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Registration of insurers

s 190 sub 2001 No 44 amdt 1.1242

Monthly returns and payment of duty

s 194 am 2001 No 44 amdt 1.1243, amdt 1.1244

Apportionment

pt 8.5 hdg (prev ch 8 pt 5 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Apportionment of premiums and other amounts between Australian jurisdictions

div 8.5.1 hdg (prev ch 8 pt 5 div 1 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Apportionment of premiums and other amounts as between different types of insurance

div 8.5.2 hdg (prev ch 8 pt 5 div 2 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Exempt insurance

pt 8.6 hdg (prev ch 8 pt 6 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Miscellaneous

pt 8.7 hdg (prev ch 8 pt 7 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Imposition and rates of duty

pt 9.1 hdg (prev ch 9 pt 1 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Insurance exempt from duty generally

s 201 hdg sub 2002 No 20 s 5
s 201 am 2002 No 6 s 5, s 6

Insurance exempt from duty in certain circumstances

s 201A ins 2002 No 20 s 6

Meaning of *dutiable value* for pt 9.1

s 203 sub 2001 No 55 s 25

Registration of vehicles in the name of 2 or more people

s 203A ins 2001 No 55 s 25

Imposition of duty

s 204 am 1999 No 79 s 5 sch 3; 2001 No 55 s 26

Lodgment of statement of dutiable value

s 205 am 1999 No 79 s 5 sch 3

Rate of duty

s 208 am A2003-29 s 6

Corporate reconstructions—concessional duty for motor vehicle registration applications

s 208AA ins A2003-29 s 7

Exemptions

pt 9.2 hdg (prev ch 9 pt 2 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Definitions for pt 9.2

s 208A ins 2000 No 46 s 18

Foreign countries

s 209A ins 2000 No 46 s 19

Successors of deceased persons

s 212 am 2001 No 55 s 27

Vehicle registration transfers relating to certain personal relationships

s 213 sub 2002 No 14 s 11

Registration charges consequent on Vehicle Registration Act

s 213A ins 2000 No 5 s 4
am 2001 No 44 amdt 1.1245; 2001 No 55 s 28
exp 1 March 2002 (s 213A (3))

Vehicle dealers—registration of demonstrators and trading stock

s 214 sub 2000 No 46 s 20

Renewal of registration of demonstrators and trading stock

s 214A ins 2000 No 46 s 20
am 2001 No 44 amdt 1.1246

Veteran, vintage and historic vehicles

s 217 am 1999 No 79 s 5 sch 3
ss (4), (5) exp 1 March 2002 (s 217 (5))

Avoidance of double duty—duty paid in a corresponding Australian jurisdiction

s 218 am 1999 No 79 s 5 sch 3

Miscellaneous

pt 9.3 hdg (prev ch 9 pt 3 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Meaning of licensed vehicle dealer in pt 9.3

s 220 am 1999 No 79 s 5 sch 3

Prerequisites for registration

s 221 am 1999 No 79 s 5 sch 3; 2001 No 55 s 29, s 30
ss (4), (5) exp 1 March 2002 (s 221 (5))

Certificates of exemption

s 222 sub 2000 No 46 s 21

Endnotes

4 Amendment history

Returns by road transport authority

s 223 sub 1999 No 79 s 5 sch 3
am 2001 No 55 s 31

Rectification of errors in registration

s 224 am 2000 No 5 s 5
am 2001 No 44 amdt 1.1247
ss (2), (3), (4) exp 31 March 2002 (s 224 (4))

Certificates as evidence

s 226 am 1999 No 79 s 5 sch 3

Minimum amount of duty

s 229 am 2000 No 34 s 19; 2001 No 44 amdt 1.1248, amdt 1.1249;
2001 No 55 s 32

Approved agents and taxpayers—exemption from \$20 concessional duty and s 229 minimum duty

s 229A ins 2001 No 55 s 33

Inter-generational rural transfers

s 230 am 2001 No 44 amdt 1.1250, amdt 1.1251

Corporate reconstructions—exemptions

s 232 sub 2001 No 55 s 34
om A2003-29 s 8

Stamping instruments

pt 12.1 hdg (prev ch 12 pt 1 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Deferred payments for certain stamped instruments

s 246 am 2001 No 44 amdt 1.1254, amdt 1.1255

Enforcement

pt 12.2 hdg (prev ch 12 pt 2 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Registration of instruments

s 247 am A2003-1 s 16, s 17

Registration of transfers of shares

s 248 am 2000 No 34 s 20

Registration of transfers of units

s 249 am 2000 No 34 s 21

Valuation of property

s 251 am 2001 No 55 s 35, s 36

Miscellaneous

pt 12.3 hdg (prev ch 12 pt 3 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)

Objections and review of decisions

s 252 am 2000 No 34 s 22; 2000 No 46 s 22; pars renum R4 LA; 2002 No 14 s 12, s 13; pars renum R6 LA (see 2002 No 14 s 14); A2003-29 s 9–12; pars renum R9 LA (see A2003-29 s 13)

Declaration of recognised stock exchanges

s 252A ins 2001 No 44 amdt 1.1256

Regulation-making power

s 253 sub 2001 No 44 amdt 1.1256

Transitional

ch 13 hdg ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276)

Application of Act to instruments

s 254 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276)

Continued operation of Stamp Duties and Taxes Act 1987 in relation to instruments

s 255 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276)

Application of ch 2

s 256 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276)

Transfers back from a nominee

s 257 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276)

Credit for duty paid on the acquisition of a business

s 258 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276)

Application of ch 3

s 259 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276)

How duty is charged on relevant acquisitions

s 260 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276)

Application of ch 4

s 261 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276)

Continued application of Stamp Duties and Taxes Act 1987 in relation to marketable securities

s 262 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276)

Endnotes

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Application of ch 5

s 263 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276)

Application of ch 6

s 264 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276)

Continued operation of Part VIB of the Stamp Duties and Taxes Act 1987

s 265 ins 2000 No 80 amdt 3.4
am 2001 No 55 amdt 1.1
exp 21 December 2003 (s 276 (1))

Application of ch 8

s 266 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276 (1))

Continued operation of pt IV of the Stamp Duties and Taxes Act 1987

s 267 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276 (1))

Refunds where premiums are returned

s 268 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276 (1))

Refund on cancellation of policy of life insurance

s 269 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276 (1))

Application of ch 9

s 270 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276 (1))

Continued operation of certain provisions of pt IV of the Stamp Duties and Taxes Act 1987

s 271 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276 (1))

Certificates of exemption

s 272 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276 (1))

Duty and tax paid under the Stamp Duties and Taxes Act 1987

s 273 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276 (1))

Stamping under the Stamp Duties and Taxes Act 1987

s 274 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276 (1))

Determined duties and taxes

s 275 ins 2000 No 80 amdt 3.4
exp 21 December 2003 (s 276 (1))

Expiry of chapter

s 276 hdg sub 2001 No 55 amdt 1.2
exp 21 December 2003 (s 276 (1))
s 276 ins 2000 No 80 amdt 3.4
am 2001 No 44 amdt 1.1257; 2001 No 55 amdt 1.3
exp 21 December 2003 (s 276 (1))

Dictionary

dict ins 2000 No 34 s 23
def **Act imposing duty** reloc from s 4 2000 No 34 s 5
def **ADR** reloc from s 4 2000 No 34 s 5
def **application to register a motor vehicle** sub 1999 No 79
sch 3
reloc from s 4 2000 No 34 s 5
def **approved** reloc from s 4 2000 No 34 s 5
def **associated person** reloc from s 4 2000 No 34 s 5
am 2001 No 40 s 12
def **Australian register** reloc from s 4 2000 No 34 s 5
am 2001 No 40 s 13
def **bankrupt** reloc from s 4 2000 No 34 s 5
def **business asset** om 2001 No 55 amdt 1.4
def **charge** reloc from s 4 2000 No 34 s 5
def **charitable organisation** reloc from s 4 2000 No 34 s 5
def **commercial hire business** reloc from s 4 2000 No 34 s 5
def **commissioner** reloc from s 4 2000 No 34 s 5
def **company title dwelling** reloc from s 4 2000 No 34 s 5
def **complying approved deposit fund** reloc from s 4 2000
No 34 s 5
def **complying superannuation fund** am 2001 No 55 s 37
def **Corporations Act** ins 2001 No 40 s 14
def **corresponding law** reloc from s 4 2000 No 34 s 5
def **cost** reloc from s 4 2000 No 34 s 5
def **Crown lease** reloc from s 4 2000 No 34 s 5
def **determined amount** reloc from s 4 2000 No 34 s 5
def **determined rate** reloc from s 4 2000 No 34 s 5
def **disabled person** reloc from s 4 2000 No 34 s 5
def **discretionary trust** reloc from s 4 2000 No 34 s 5
def **domestic partner** reloc from s 4 2000 No 34 s 5
def **domestic relationship** reloc from s 4 2000 No 34 s 5
def **duly stamped** reloc from s 4 2000 No 34 s 5
def **dutiable property** reloc from s 4 2000 No 34 s 5
def **dutiable transaction** reloc from s 4 2000 No 34 s 5
def **dutiable value** reloc from s 4 2000 No 34 s 5
def **dutiable value** reloc from s 4 2000 No 34 s 5

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def **eligible rollover fund** reloc from s 4 2000 No 34 s 5
def **error transaction** reloc from s 4 2000 No 34 s 5
def **fit-out costs** reloc from s 4 2000 No 34 s 5
def **foreign resident** reloc from s 4 2000 No 34 s 5
def **franchisee** reloc from s 4 2000 No 34 s 5
def **franchisor** reloc from s 4 2000 No 34 s 5
def **general insurance** reloc from s 4 2000 No 34 s 5
def **hire of goods** reloc from s 4 2000 No 34 s 5
def **hire-purchase agreement** reloc from s 4 2000 No 34 s 5
def **hiring charges** reloc from s 4 2000 No 34 s 5
def **hospital** reloc from s 4 2000 No 34 s 5
def **impressed stamp** reloc from s 4 2000 No 34 s 5
def **instrument** reloc from s 4 2000 No 34 s 5
def **insurance** reloc from s 4 2000 No 34 s 5
def **insurance intermediary** reloc from s 4 2000 No 34 s 5
def **insurer** reloc from s 4 2000 No 34 s 5
def **intellectual property** reloc from s 4 2000 No 34 s 5
def **interest**, reloc from s 4 2000 No 34 s 5
def **international trade insurance** reloc from s 4 2000 No 34 s 5
def **international transport** reloc from s 4 2000 No 34 s 5
def **land** reloc from s 4 2000 No 34 s 5
def **land used for primary production** reloc from s 4 2000 No 34 s 5
def **land use entitlement** reloc from s 4 2000 No 34 s 5
def **lease** reloc from s 4 2000 No 34 s 5
def **life** reloc from s 4 2000 No 34 s 5
def **life insurance** reloc from s 4 2000 No 34 s 5
def **majority shareholder** reloc from s 4 2000 No 34 s 5
def **managed investment scheme** am 2001 No 40 s 15
def **marriage** ins 2002 No 14 s 15
def **marketable securities** ins 2001 No 34 s 23
def **market value** reloc from s 4 2000 No 34 s 5
def **matrimonial property** ins 2002 No 14 s 15
def **mortgage** reloc from s 4 2000 No 34 s 5
def **motor vehicle** am 1999 No 79 sch 3
reloc from s 4 2000 No 34 s 5
def **new motor vehicle** sub 1999 No 79 sch 3
reloc from s 4 2000 No 34 s 5
def **non-commercial Commonwealth authority** reloc from s 4 2000 No 34 s 5
def **partnership interest** am 2001 No 55 amdt 1.5
def **party** ins 2002 No 14 s 16
def **pooled superannuation trust** reloc from s 4 2000 No 34 s 5

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- def **private company** ins 2001 No 34 s 23
def **private corporation** reloc from s 4 2000 No 34 s 5
def **public unit trust scheme** reloc from s 4 2000 No 34 s 5
def **public unit trust scheme** am 2000 No 34 s 5
reloc from s 4 2000 No 34 s 5
am 2001 No 40 ss 16-18
def **registered insurer** reloc from s 4 2000 No 34 s 5
def **registered scheme** ins 2000 No 46 s 6
sub 2001 No 40 s 19
reloc from s 4 2000 No 34 s 5
def **related body corporate** sub 2001 No 40 s 20
reloc from s 4 2000 No 34 s 5
def **related person** am 2001 No 40 s 21
reloc from s 4 2000 No 34 s 5
def **relationship property** ins 2002 No 14 s 17
def **replica** reloc from s 4 2000 No 34 s 5
def **responsible entity** sub 2001 No 40 s 22
reloc from s 4 2000 No 34 s 5
def **right** reloc from s 4 2000 No 34 s 5
def **scheme** reloc from s 4 2000 No 34 s 5
def **shares** reloc from s 4 2000 No 34 s 5
def **solicitor** reloc from s 4 2000 No 34 s 5
def **special hiring agreement** reloc from s 4 2000 No 34 s 5
def **spouse** reloc from s 4 2000 No 34 s 5
def **stock exchange** ins 2001 No 34 s 23
am 2001 No 44 amdt 1.1258
def **subsidiary** reloc from s 4 2000 No 34 s 5
def **Taxation Administration Act** reloc from s 4 2000 No 34
s 5
def **tax avoidance scheme** reloc from s 4 2000 No 34 s 5
def **tenement** reloc from s 4 2000 No 34 s 5
def **Territory company** sub 2001 No 40 s 23
reloc from s 4 2000 No 34 s 5
def **trading stock** reloc from s 4 2000 No 34 s 5
def **transfer** sub 2001 No 55 s 38
def **trustee** am 2000 No 34 s 5
reloc from s 4 2000 No 34 s 5
def **unencumbered value** reloc from s 4 2000 No 34 s 5
def **unit** reloc from s 4 2000 No 34 s 5
def **unit trust scheme** reloc to from s 4 2000 No 34 s 5
def **value of the lease** ins 2001 No 55 s 39
def **variation** reloc from s 4 2000 No 34 s 5
def **Vehicle Registration Act** ins 1999 No 79 sch 3
reloc from s 4 2000 No 34 s 5
sub 2001 No 44 amdt 1.1259

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 2002 No 6	17 April 2002
2	Act 2002 No 6	17 April 2002
3 (RI) ‡	Act 2002 No 6	30 September 2016
4 (RI) ‡	Act 2002 No 6	30 September 2016
5 (RI) ‡	Act 2002 No 6	30 September 2016
6 (RI) ‡	Act 2002 No 14	30 September 2016
7 (RI) ‡	Act 2002 No 20	30 September 2016
8 (RI) ‡	A2003-1	30 September 2016
9 (RI) ‡	A2003-29	30 September 2016
10 (RI) ‡	A2003-41	30 September 2016

‡ reissue for correction to ch 13 expiry

Republication 6 was published in printed format. It has been replaced with republication 6 (RI).

6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation 'exp' followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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