



Australian Capital Territory

Duties Act 1999

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Not all amendments are in force: see last endnote

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 26 August 2008. It also includes any amendment, repeal or expiry affecting the republished law to 26 August 2008.

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

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- 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 includes 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.

Modifications

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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Duties Act 1999

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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 terms used in this Act, and includes references (*signpost definitions*) to other terms 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 term ‘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, 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 the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

2C Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

3 Incorporation of Taxation Administration Act

The Taxation Administration Act is incorporated and is to 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 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.

U 4A Payment of duty equivalents by territory departments

- (1) This section applies to a department determined 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).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (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.

- (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 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 people, 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.

U 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;
 - (iv) a grant of a long-term lease;
 - (v) a grant of a franchise arrangement.

(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 (eg, 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 s (1) (a) or (b) (i) (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 mentioned in column 2 of an item in table 8:
 - (a) the property mentioned in the item, column 3 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 mentioned in the item, column 4 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 happened at the time mentioned in the item, column 5 (and a reference in this Act to the ***time*** when a transfer occurs includes a reference to such a time).

Table 8

column 1 item	column 2 dutiab transaction	column 3 property transferred	column 4 transferee	column 5 when transfer happens
1	agreement for sale or transfer	the property agreed to be sold or transferred	the purchaser or transferee	when the agreement is entered into
2	declaration of trust	the property vested or to be vested in the declarant	the person declaring the trust	when the declaration is made
3	grant of a Crown lease	the leasehold interest	the lessee	when the lease is granted

column 1 item	column 2 dutiable transaction	column 3 property transferred	column 4 transferee	column 5 when transfer happens
4	grant of a long-term lease	(a) for a long-term lease mentioned in section 10 (1) (d) or (e)—the leasehold interest; and (b) for a long-term lease mentioned in section 10 (1) (f)—the extension or further extension mentioned in that section	the lessor	(a) for a long-term lease mentioned in section 10 (1) (d) or (e)—when the lease is granted; and (b) for a long-term lease mentioned in section 10 (1) (f)—when the lease is extended or further extended as mentioned in that section
5	grant of a franchise arrangement	the franchise	the franchisee	when the franchise arrangement 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.

U 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) a lease (a *long-term lease*) that is 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;
 - (e) a lease (also a *long term lease*) of land that is granted to a person for a term of 30 years or less if—
 - (i) the lease is granted on the surrender of a previous lease of the land granted to the person; and
 - (ii) the term of the lease, taken together with—
 - (A) the term for which the person held the previous lease; and
 - (B) the term (if any) for which the person held a lease of the land under any earlier surrendered lease;would result in the person holding a lease of the land for a continuous period of longer than 30 years;
 - (f) a lease (also a *long term lease*) that is granted for an initial term of 30 years or less if—
 - (i) the lease is subsequently extended, or further extended; and

- (ii) the term as extended, or further extended, is longer than 30 years;
- (g) a franchise arrangement held in relation to a place or area located in the ACT that is granted for—
 - (i) a term of 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;

Note Paragraph (g) was inserted into the definition of **dutiable property** by the *Duties Amendment Act 2006 (No 2)*. It was formerly s 133, def **lease**, par (c). For transitional provisions applying in relation to that paragraph as in force on 30 June 2006, see s 401.

- (h) 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 1 After 30 June 2010, shares mentioned in this paragraph will no longer be dutiable property (see s 75A (Expiry—provisions relating to unquoted marketable securities)). For the relevant transitional provisions, see pt 15.3.

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

- (i) 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 1 After 30 June 2010, units mentioned in this paragraph will no longer be dutiable property (see s 75A (Expiry—provisions relating to unquoted marketable securities)). For the relevant transitional provisions, see pt 15.3.

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

- (j) an interest in a partnership that holds dutiable property mentioned elsewhere in this section (a *partnership interest*);

Note Former paragraphs (i) and (j) (covering certain business assets and statutory licences and permissions) were removed from the definition of *dutiable property* by the *Duties Amendment Act 2006*. For transitional provisions applying to these paragraphs, see s 400.

- (k) goods in the ACT, if the subject of an arrangement that includes a dutiable transaction over any dutiable property (other than intellectual property) elsewhere mentioned 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;

- (l) an option to purchase land in the ACT or a Crown lease over land in the ACT;
 - (m) an interest in any dutiable property mentioned in paragraphs (a) to (l), 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) (h) and (i), and related rights and interests (see dict, defs of **marketable securities**, **shares**, and **units**).
- (3) For subsection (1) (e), a lease is granted to, or held or surrendered by, a person if it is granted to, or held or surrendered by, the person or an associated person.
 - (4) In this section:
holds—a partnership **holds** dutiable property if (but not only if)—
 - (a) the partners hold the property for the partnership; or
 - (b) the partnership has an indirect interest in the property.

indirect interest—a partnership has an *indirect interest* in dutiable property if—

- (a) through a partnership interest or trust interest there is a connection between the partnership and dutiable property of the other partnership or trust; or
- (b) through a series of partnership interests or trust interests, or a combination of any of them, there is a connection between the partnership and dutiable property of a partnership in the series.

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 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, 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 etc with commissioner

- (1) A transferee who is liable to pay duty in relation to a dutiable transaction must, within 90 days after the day the liability arises lodge with the commissioner—
 - (a) the written instrument that effects the dutiable transaction or, if there is more than 1 written instrument that effects the transaction, each of them; or
 - (b) the written statement made in accordance with section 14.
- (2) This section does not apply in relation to a dutiable transaction if, within the 90-day period, an electronic application for assessment of duty in relation to the transaction is lodged with the commissioner by a person approved under section 239.

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, 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 following period, beginning on the date of the agreement, ends:
 - (i) for a purchase agreement for a declared affordable house and land package—2 years;
 - (ii) for any other 'off the plan' purchase agreement—1 year;
 - (d) a certificate of occupancy has been issued under the *Building Act 2004* for the building to which the agreement relates.
- (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, 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:
- declared affordable house and land package*** means a house and land package declared under section 16B.
- 'off the plan' purchase agreement*** means—
- (a) 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; or
 - (b) a purchase agreement for a declared affordable house and land package.

16B Declaration of affordable house and land packages

- (1) The Minister may declare a house and land package that is, or is to be, offered for purchase to be an affordable house and land package.
- (2) A declaration is a disallowable instrument.

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

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 people 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) The duty charged by this chapter on the grant of a long-term lease mentioned in section 10 (1) (e) must be reduced by the amount (if any) of duty paid under chapter 5 on the lease instrument that evidenced or effected the previous surrendered lease or any earlier surrendered lease mentioned in that section.
- (8) The duty charged by this chapter on the grant of a long-term lease mentioned in section 10 (1) (f) must be reduced by the amount (if any) of duty paid under chapter 5 on the lease instrument that evidenced or effected the lease that was extended or further extended as mentioned in that section.

- (9) This section does not apply to a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, section 90C or section 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 part 2.5 and part 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) whichever of the following applies:
 - (i) for a long-term lease or franchise arrangement—the unencumbered value of the Crown lease of the land in relation to which the long-term lease or franchise arrangement is granted;
 - (ii) for any other dutiable property—the unencumbered value of the dutiable property.
- (2) However, the *dutiable value* of a dutiable transaction that is a purchase agreement for a declared affordable house and land package, is the lesser of—
 - (a) the value of the land component of the package on the date of the agreement; and
 - (b) the value of the land component of the package on the date the liability for duty arises under section 16A (1).
- (3) However, if the land the subject of a long-term lease mentioned in section 10 (1) (e) is not identical to the land the subject of the previous lease and any earlier surrendered lease, *land* in subsection (1) (b) (i) means the part of the land the person would hold continuously for longer than 30 years.
- (4) The dutiable value of a partnership interest mentioned in section 28 is to be determined in accordance with that section.

- (5) In this section:

declared affordable house and land package means a house and land package declared under section 16B.

U 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) 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.
- (4) 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 taken to have been granted; and
- (f) any costs that are taken to form part of the consideration under subsection (3).

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) 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.
- (3) 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.
- (4) 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.
- (5) 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.

- (6) 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 (4) (a) or (5) (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.
- (7) The commissioner may recover from the lessee under a Crown lease—
- (a) the cost of getting a valuation under subsection (4) 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 (5).

- (8) 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 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 people; 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
 - (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 person commits an offence if the person—
 - (a) is a transferee in relation to dutiable transactions aggregated under this section; and
 - (b) fails to give the commissioner, in writing, no later than the time when an instrument or statement relating to the transactions is lodged for stamping, details known to the person of—
 - (i) each item or part of, or interest in, the dutiable property included or to be included in the arrangement mentioned in subsection (1); and
 - (ii) the consideration for each item or part of, or interest in, the dutiable property.

Maximum penalty: 50 penalty units.

- (7) An offence against this section is a strict liability offence.
- (8) In this section:
dutiable property does not include 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.

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 people jointly (as joint tenants or tenants in common) and beneficially is transferred or agreed to be transferred to 1 or more of those people.
- (2) For this section, section 15 and section 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 people 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.

U 32 Shares, units and interests—marketable securities

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

Note 1 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)).

Note 2 After 30 June 2010, no duty will be chargeable on transactions relating to unquoted marketable securities (see s 75A (Expiry—provisions relating to unquoted marketable securities)). For the relevant transitional provisions, see pt 15.3.

33 Certain business assets

- (1) Duty is chargeable at the determined rate on a dutiable transaction so far as it is in relation to—
 - (a) a partnership interest so far as it is not—
 - (i) an interest in property mentioned in section 10 (1) (a), (b) or (c); or
 - (ii) an interest in property mentioned in section 10 (1) (m) that is dutiable property mentioned in section 10 (1) (a), (b) or (c); or

- (b) an interest in property mentioned in section 10 (1) (m), other than an interest in dutiable property mentioned in section 10 (1) (a), (b), or (c).
- (2) The proportion of the dutiable value of a partnership interest that is chargeable with duty under subsection (1) (a) is—
- (a) if no interest in property of a kind mentioned in subsection (1) (a) (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 mentioned 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 mentioned 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, despite 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 people 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) This section applies if—
- (a) an amount of duty has been paid on a grant of a Crown lease; and
 - (b) the lease is surrendered or terminated; and
 - (c) part or all of the amount paid in relation to the grant of the lease is refunded under the *Planning and Development Act 2007*, section 300 (Refund on lease surrender or termination).
- (2) An amount calculated in accordance with the following formula must be refunded to the person who paid the duty:

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

- (3) In subsection (2):

D means the amount of duty.

R means the amount that would be refundable under the *Planning and Development Act 2007*, section 300 if no deduction were made for administrative expenses.

P means the amount paid for the grant of the lease.

- (4) However, a refund of duty is payable to a person only if the person applies to the commissioner for the refund.
- (5) An application for a refund of duty must—
- (a) be in writing; and
 - (b) be made not later than 1 year after the refund mentioned in subsection (1) (c) is made; and
 - (c) contain the information the commissioner requires to allow the amount of the refund to be worked out.

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.
- (4) Duty of \$20 is also chargeable in relation to a transfer of dutiable property to a person as a consequence of the retirement of a trustee or the appointment of a new trustee for a self managed superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

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 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 nominee

- (1) If—
- (a) dutiable property 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:

dutiable property does not include marketable securities.

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 mentioned 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.

60 Declaration of trust relating to managed investment scheme

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 Nomineeing 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 people:
- (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

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.

U 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 the lesser of—
- (a) ad valorem duty in accordance with this chapter; and
- (b) \$200.
- (3) However, the duty chargeable on a dutiable transaction is \$20 if the dutiable property transferred, or agreed to be transferred, is marketable securities.

Note 1 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)).

Note 2 After 30 June 2010, no duty will be chargeable on transactions relating to unquoted marketable securities (see s 75A (Expiry—provisions relating to unquoted marketable securities)). For the relevant transitional provisions, see pt 15.3.

- (4) 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.
- (5) 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 on a grant of a Crown lease to 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 under Workplace Relations Act

Duty of \$20 is chargeable on a transfer of land made in accordance with the *Workplace Relations Act 1996* (Cwlth), schedule 1B, section 82.

66 Conveyances to prescribed people

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 *Workplace Relations Act 1996* (Cwlth), schedule 1B, section 84.

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 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 partner of interest in principal place of residence

- (1) Duty of \$20 is payable for a transfer by someone to his or her partner 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.

Note The dictionary defines *partner* as a person's spouse or someone with whom the person has a domestic relationship. *Domestic relationship* is defined in the dictionary to have the same meaning as in the *Domestic Relationships Act 1994*, s 3.

- (2) However, subsection (1) only applies if the transfer results in the property being held by the partners 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 partners towards the purchase and improvement of the property; or
 - (d) tenants in common in shares that are in proportions prescribed by regulation.

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 State, another Territory or 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.

73A Transfers etc to entities for community housing

- (1) No duty is chargeable under this chapter on a dutiable transaction that is a transfer or grant of a residential lease if—
 - (a) the transfer or grant is to an entity declared by the Minister; and
 - (b) the commissioner is satisfied that the property the subject of the transfer or grant is to be used for community housing.
- (2) A declaration is a disallowable instrument.

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

- (3) The Minister may declare an entity only if satisfied that the entity is a provider of community housing in the ACT.
- (4) In this section:

community housing means housing provided for—

- (a) people on low and moderate incomes or with special needs; or
- (b) nonprofit community organisations.

residential lease means a lease granted for residential purposes only.

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, section 90C or section 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 partners.

Note The dictionary defines **partner** as a person's spouse or someone with whom the person has a domestic relationship. **Domestic relationship** is defined in the dictionary to have the same meaning as in the *Domestic Relationships Act 1994*, s 3.

- (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, section 90C or section 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 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 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—
 - (a) the relationship has ended; or
 - (b) if the relationship is a civil partnership—the party has given, or intends to give, a termination notice to the registrar-general under the *Civil Partnerships Act 2008*.
- (6) Subsections (4) and (5) do not limit the commissioner’s powers under the Taxation Administration Act, 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.

U 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 1 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)).

Note 2 After 30 June 2010, no duty will be chargeable on transactions relating to unquoted marketable securities (see s 75A (Expiry—provisions relating to unquoted marketable securities)). For the relevant transitional provisions, see pt 15.3.

Part 2.6A Deferred payments—home buyers

75AA Definitions—pt 2.6A

In this part:

deferral arrangement—see section 75AC (2).

eligible person means a person who—

- (a) is an eligible home buyer under the home buyer concession scheme; or
- (b) is eligible for a first home owner grant under the *First Home Owner Grant Act 2000*.

eligible property means a residential lease the value of which is not more than the upper property value threshold under the home buyer concession scheme.

home buyer concession scheme means the home buyer concession scheme under the Taxation Administration Act.

residential lease means a lease granted for residential purposes only.

75AB Application to defer payment of duty

- (1) An eligible person may apply to the commissioner to defer payment of duty payable by the person on a dutiable transaction that is—
 - (a) the transfer of an eligible property; or
 - (b) an agreement for the sale or transfer of an eligible property.

Note If a form is approved under the Taxation Administration Act, s 139C for this provision, the form must be used.
- (2) The application must be made before the duty is payable.

- (3) If there is more than 1 transferee or purchaser of the property, each transferee or purchaser—
 - (a) must be an eligible person; and
 - (b) must sign the application.
- (4) An applicant must provide the commissioner with any information the commissioner reasonably requires to decide the application.

75AC Approval to defer payment of duty

- (1) The commissioner must, on receipt of an application under section 75AB, approve the deferral of payment of duty payable by the applicant if—
 - (a) the applicant is an eligible person; and
 - (b) the duty is, or would be, payable on—
 - (i) the transfer of an eligible property; or
 - (ii) an agreement for the sale or transfer of an eligible property.
- (2) However, an approval under subsection (1) is subject to the person entering into an arrangement with the commissioner under the Taxation Administration Act, section 52 (Arrangements for payment of tax) about payment of the amount of deferred duty and interest (a *deferral arrangement*).

75AD Conditions of deferral arrangement

- (1) The conditions of a deferral arrangement include the following:
 - (a) that payment, or the first instalment of payment, of the duty may be deferred for not more than 5 years after the day of the dutiable transaction;
 - (b) that the duty, and any accrued interest, must be paid not later than 10 years after the day of the dutiable transaction;

- (c) that the amount of duty deferred must be at least—
 - (i) \$500; or
 - (ii) if a greater amount is declared under subsection (2) (b)—the amount declared;
 - (d) any other condition determined under subsection (2).
- (2) The Minister may determine other conditions, consistent with subsection (1) (a) to (c), to which a deferral arrangement is subject, including conditions to fix—
- (a) the rate of interest charged on the amount payable under the arrangement; and
 - (b) an amount for subsection (1) (c) (ii).
- (3) A determination is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (4) This section does not limit the Taxation Administration Act, section 52 but any arrangement under that section about deferred payment of duty under this part must not be inconsistent with conditions under subsection (1).

75AE Unpaid duty and interest a debt and charge on property

- (1) The amount payable under a deferral arrangement is a debt owing to the Territory.
- (2) The liability of a person under a deferral arrangement is a first charge on the person's interest in the property to which the deferred payment of duty relates.

Part 2.7 Expiry—provisions relating to unquoted marketable securities

75A Expiry—provisions relating to unquoted marketable securities

This part and the following provisions expire on 30 June 2010:

- section 6, definition of *transfer*
- section 10 (1) (h) and (i)
- section 10 (1) (m) (i) and (iii)
- section 10 (2)
- section 24 (8)
- section 32
- section 57 (3), definition of *dutiable property*
- section 60A
- section 63 (3)
- section 70
- section 72A
- section 75
- section 90 (4)
- section 91 (2) (h)
- part 3.3
- part 3.5
- section 248
- section 249

- dictionary, definitions of *ADR*, *capital reduction*, *company*, *dutiable entitlement*, *marketable securities*, *person*, *rights alteration* and *voting share*
- dictionary, definition of *transfer*, paragraph (b).

Note The expiry takes effect at midnight on 30 June 2010 (see Legislation Act, s 85 (3)).

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

U Division 3.2.1 Landholding private corporations

U 78 Meaning of private corporation

In this part:

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

U 78A Meaning of *entity*—pt 3.2

U 79 When is a private corporation a landholder?

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

U 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.

U 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 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.

U 82 **Constructive ownership of landholdings and other property—discretionary trusts**

- (1) A person or a member of a class of people 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.

U **Division 3.2.2 Acquisitions of interests in private corporations**

U **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 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.

U **83A Meaning of *associated person*—pt 3.2**

U **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 mentioned in paragraphs (a), (b), (c), (d) and (e).

Division 3.2.3 Charging of duty

85 When does liability for duty arise?

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

U 86 What is 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*.

U 87 Acquisition statements

- (1) A person who has made a relevant acquisition shall prepare a statement and lodge it with the commissioner.
- (2) The statement must be lodged not later than 90 days after the day the relevant acquisition is made.

- (3) 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 before 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 mentioned in paragraph (e);
 - (h) the other information that the commissioner may require.

Note If a form is approved under the Taxation Administration Act, s 139C 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 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 people, the person who made the relevant acquisition and the associated person or people are jointly and severally liable for payment of the duty.

U 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 way 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 people, but the commissioner is satisfied that the associated people 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 people.
- (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 (Nominee transactions—unquoted marketable securities);
 - (i) section 62 (Transfer of property from one superannuation fund to another);
 - (j) section 63 (2) (b) (Transfers to trustees or custodians of superannuation funds or trusts);
 - (k) section 63 (3).
- (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 (2) (a).

U 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 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.

U 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.

U 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.

U 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.

U 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.

U Part 3.2A **Registration of unit trust schemes**

Part 3.3 Entitlements arising from capital reductions or alterations of rights

U 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 people who are associated people.

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

voting share—see the Corporations Act, section 9.

(2) For this part, if voting shares acquired by associated people severally do not, but taken in the aggregate would, give an entitlement to which this part applies, the voting shares acquired by the associated people 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 people, the associated people 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 people concerned acquired their several shares independently and for no common purpose.

97 When does 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 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 people, the associated people are jointly and severally liable for payment of the duty.

U 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, s 139C 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.

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 before 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 before 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

U 103 When does liability for duty arise?

- (1) 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 anyone otherwise than in circumstances to which subsection (2) applies.
- (2) This subsection applies to an allotment of shares to anyone 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.

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 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, s 139C 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;
- (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

U 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 Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cwlth)

115A Definitions for pt 3.6

In this part:

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

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

FS (BTGR) Act means the *Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cwlth)*.

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

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

U 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 (BTGR) 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 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
 - (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 (BTGR) 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 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 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 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.

Part 3.7 Exemptions—ch 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 partners.

Note The dictionary defines **partner** as a person's spouse or someone with whom the person has a domestic relationship. **Domestic relationship** is defined in the dictionary to have the same meaning as in the *Domestic Relationships Act 1994*, s 3.

- (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, section 90C or section 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—
- (a) the relationship has ended; or
 - (b) if the relationship is a civil partnership—the party has given, or intends to give, a termination notice to the registrar-general under the *Civil Partnerships Act 2008*.
- (6) Subsections (4) and (5) do not limit the commissioner’s powers under the Taxation Administration Act, 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.

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 does not include a long-term lease.

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

Part 5.2 Liability for duty

134 Imposition of duty

This chapter charges duty on a lease instrument.

135 How duty is charged on lease instrument

Duty is chargeable on a lease instrument on the cost or value of the lease as determined under this chapter.

136 What is the cost of a lease?

- (1) For this chapter, the *cost* of a lease 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.

138 Who is liable to pay duty?

The person liable to pay the duty is the lessor.

139 When must 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 lease instrument mentioned in section 142 (Related instruments—exemptions and concessions); or
- (b) a lease instrument mentioned in section 150 (Exemptions—lease instruments).

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 section 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) A lessor commits an offence if the lessor fails to give the commissioner, within 1 month after each estimate date, a 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 last estimate and the date of the current estimate; and
 - (b) the rate at which the cost component is payable as at the date of the current estimate.

Maximum penalty: 50 penalty units.

- (8) An offence against this section is a strict liability offence.

- (9) 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.
- (10) 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.

U 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 table 146, of the value of the additions or improvements.

Table 146

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	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 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 for residential purposes;
 - (c) a lease to a hospital, school or charitable organisation or to a trustee for a hospital, school or charitable organisation in that capacity;
 - (d) 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 $2\frac{1}{2}$).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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 $2\frac{1}{2}$).

Part 5.6 Expiry—ch 5

150A Expiry—ch 5

This chapter and the following provisions expire on 30 June 2009:

- dictionary, definitions of *fit-out costs*, *lease instrument*, *value of the lease* and *variation*.

Note The expiry takes effect at midnight on 30 June 2009 (see Legislation Act, s 85 (3)).

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 who—

- (a) writes general insurance (otherwise than as an insurance intermediary); and
- (b) is authorised under the *Insurance Act 1973* (Cwlth), section 12 to carry on insurance business in Australia.

insurer—

- (a) other than for part 8.4 means—
 - (i) a life company under the *Life Insurance Act 1995* (Cwlth) that writes life insurance; or
 - (ii) a person who writes general insurance (otherwise than as an insurance intermediary); and
- (b) for part 8.4 (Payment of duty by insurers)—see section 188A.

life insurance means insurance described in the *Life Insurance Act 1995* (Cwlth), section 9 (1) (a) to (g) and section 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 people 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.

paid, for a premium or an instalment of a premium—see section 176.

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, 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, people 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 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 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 duty?

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

U 180 Circumstances in which duty is payable by 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 about 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, s 139C 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 if premiums 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 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 way 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 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 When duty payable by 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, s 139C 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.

188 Refund on cancellation of life insurance policy

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

188A Meaning of *insurer* for pt 8.4

In this part:

insurer means—

- (a) a life company under the *Life Insurance Act 1995* (Cwlth) that writes life insurance; or
- (b) a general insurer.

189 Insurers to be registered

An insurer commits an offence if the insurer does not register 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, s 139C for an application, the form must be used.

191 Cancellation of registration by commissioner

- (1) The commissioner may, by written notice, cancel an insurer's registration under this part—
 - (a) if the insurer stops being authorised under the *Insurance Act 1973* (Cwlth), section 12 to carry on insurance business in Australia; 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 considers sufficient.
- (2) A cancellation of registration has effect from the date specified for the purpose by the commissioner in the notice of cancellation.

192 Insurer stopping writing insurance business

- (1) A registered insurer commits an offence if—
- (a) the insurer stops writing insurance business in the ACT; and
 - (b) the insurer fails to—
 - (i) give written notice to the commissioner that the insurer has stopped writing insurance business in the ACT; or
 - (ii) lodge the return required to be lodged under this part; or
 - (iii) pay the duty payable in relation to the return by the 21st day of the month after the month in which the notice is given.

Maximum penalty: 250 penalty units.

- (2) If a registered insurer stops writing business in the ACT, the insurer's registration is cancelled on the day when the notice mentioned in subsection (1) (b) (i) 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 section 178 and section 185.

Note If a form is approved under the Taxation Administration Act, s 139C 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 people 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, the commissioner may determine the apportionment, reassess the liability to duty and charge duty accordingly.

Division 8.5.2 Apportionment of premiums and other amounts 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, the commissioner 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 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).
- (3) Part 8.2 (other than section 180 and section 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.

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 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 people, two-wheel drive panel van with seats for more than 3 people, three-wheel car, forward-control passenger vehicle, small bus (seating not more than 9 people, including the driver), motor home, and snow vehicle, but not including a motorcycle (with or without a sidecar), large bus (seating more than 9 people, 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 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.

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.

209B International organisations and diplomats

Duty under this chapter is not chargeable on an application to register a motor vehicle if the application is exempt from duty under the *International Organisations (Privileges and Immunities) Act 1963* (Cwlth) or the *Diplomatic Privileges and Immunities Act 1967* (Cwlth).

210 Hospitals and schools

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

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

210A Charitable organisations

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

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

211 Certain disabled people

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) both the following paragraphs apply—
 - (i) a doctor has certified that the applicant is permanently unable to use public transport because of the loss of, or loss of use of, a leg or both legs;
 - (ii) the vehicle is for use by the person in travelling to and from gainful employment.

211A Partial exemption—modified vehicles for people with disabilities

- (1) This section applies to duty chargeable on an application to register a motor vehicle if—
 - (a) modifications have been made to the vehicle for a person with a disability; and
 - (b) either—
 - (i) the applicant is a person with a disability; or

- (ii) the motor vehicle is to be used to transport a person with a disability.
- (2) For the purposes of duty chargeable on the application, the dutiable value of the motor vehicle is the dutiable value of the vehicle apart from this section reduced by the value of the modifications.
- (3) For this section:
modifications, made to a vehicle for a person with a disability, means modifications made—
 - (a) to enable the person with a disability to drive the vehicle; or
 - (b) to enable someone else to transport the person with a disability in the vehicle.

Example

the addition to a vehicle of an hydraulic lift for a wheelchair

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

value, of modifications, means the consideration (in money or money's worth) given for the modifications.

212 Successors of deceased people

- (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 partners.

Note The dictionary defines *partner* as a person's spouse or someone with whom the person has a domestic relationship. *Domestic relationship* is defined in the dictionary to have the same meaning as in the *Domestic Relationships Act 1994*, s 3.

- (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, section 90C or section 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 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 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—
- (a) the relationship has ended; or
 - (b) if the relationship is a civil partnership—the party has given, or intends to give, a termination notice to the registrar-general under the *Civil Partnerships Act 2008*.
- (6) Subsections (4) and (5) do not limit the commissioner’s powers under the Taxation Administration Act, 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 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.

215 Organisations registered under Workplace Relations Act

Duty under this chapter is not chargeable on an application to register a motor vehicle made by an organisation registered under the *Workplace Relations Act 1996* (Cwlth) if the registration is to happen in accordance with that Act, schedule 1B, section 85.

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 vehicle dealer.

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 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

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, any other territory law or a corresponding law and the last previous registration was solely in the name of the person who is applying for registration; or
 - (b) for an application for registration that is claimed to be exempt from duty under part 9.2 (Exemptions)—the commissioner is satisfied that the application is exempt; 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) the person is carrying on business as a licensed vehicle dealer; and
 - (ii) the vehicle is held by the person 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 motor vehicle from duty under part 9.2 must give the road transport authority any relevant information the authority requires.

223 Returns by road transport authority

- (1) As soon as practicable after the end of each month, the road transport authority must report to the commissioner about applications mentioned in section 221 decided in the month.
- (2) If required by the commissioner, 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

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 mentioned 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 mentioned 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 stamped is to be marked in the way the commissioner considers appropriate 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 stamped; and

(d) has been lost, spoiled or destroyed.

229 Minimum amount of duty

- (1) Subject to subsection (2) and section 229A, despite any other provision of this Act, if the amount of duty chargeable under this Act in respect of a transaction or an instrument would, apart from 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 a regulation (see Legislation Act, 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 people) 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 people) 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 people 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 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.

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 Meaning of *stamp* etc

- (1) An instrument is *stamped* if—
 - (a) the instrument is endorsed by the commissioner to indicate that—
 - (i) an amount of duty has been paid; or
 - (ii) the duty payable is subject to a deferral arrangement under section 75AC (Approval to defer payment of duty); or
 - (iii) duty is not payable; or
 - (b) a unique authorisation number in relation to the instrument is given by the commissioner under section 239.
- (2) If an electronic assessment application in relation to an instrument has been made to the commissioner by a person approved under section 239, the instrument is taken to have been lodged with the commissioner for stamping.

234 Stamping instruments

If an instrument in relation to which duty is chargeable under this Act, or that effects or evidences a dutiable transaction, is lodged with the commissioner for stamping, the commissioner must—

- (a) if the instrument is chargeable with duty, or effects or evidences a dutiable transaction, and the duty and any interest or penalty tax under the Taxation Administration Act, part 5 is paid in full—stamp the instrument indicating the amount of duty paid; or

- (b) if the instrument is not chargeable with duty, or no duty is chargeable for the transaction effected or evidenced by the instrument—stamp the instrument indicating that duty is not payable.

235 Stamping duplicates or counterparts of instruments

If an instrument is stamped and a duplicate or counterpart of the instrument has been lodged with the commissioner in accordance with section 227 (1), the commissioner must stamp the duplicate or counterpart of the instrument.

238 Stamp defaced or removed

If an instrument has been stamped as mentioned in section 233 (1) (a), the instrument is taken to have been stamped even if the stamp is defaced or removed from the instrument.

239 Electronic assessment and payment of duty

- (1) A person may apply to the commissioner, in writing, for approval to make assessment applications and pay duty electronically.

Note If a form is approved under the Taxation Administration Act, s 139C for this provision, the form must be used.

- (2) On application under subsection (1), the commissioner must—
- (a) approve the application; or
 - (b) refuse to approve the application.
- (3) An approval may be given subject to conditions stated in the approval.

Examples

- 1 a condition about the kinds of transactions to which the approval applies
- 2 a condition about how payment must be made

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The commissioner may amend, suspend or cancel an approval given to a person under this section by written notice given to the person.
- (5) If the commissioner receives an electronic assessment application in relation to a transaction or instrument in accordance with an approval under this section, the commissioner must—
 - (a) make an assessment of the duty payable in relation to the transaction or instrument; and
 - (b) give the person written notice of the assessment stating—
 - (i) the amount of duty payable; or
 - (ii) that duty is not payable; and
 - (c) if the person accepts the assessment, and the full amount of any duty payable is paid—give the person a unique authorisation number for the transaction or instrument.

Note A person given a notice under s (5) (b) must keep the records required under the Taxation Administration Act, s 57 (2).

241 Offence to stamp without authority

A person other than the commissioner commits an offence if the person—

- (a) endorses an instrument in a way that purports to indicate that the instrument has been stamped by the commissioner as mentioned in section 233 (1) (a); or
- (b) does something that purports to indicate that a unique authorisation number in relation to the instrument has been given by the commissioner as mentioned in section 233 (1) (b).

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.

U 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) This section applies to a person liable to duty in relation to an instrument chargeable with duty or a dutiable transaction.
- (2) The person commits an offence if the person fails to have the instrument, or an instrument that effects or evidences the transaction—
 - (a) stamped within 6 months after it is first executed; or
 - (b) marked ‘Interim stamp only’ within 6 months after it is first executed.

Maximum penalty: 50 penalty units.

Note An instrument may be stamped as mentioned in par (b) under s 49 (Interim payment of duty). Also, the stamp is required under s 147 (Interim stamping of lease instrument).

- (3) An offence against this section is a strict liability offence.
- (4) For this section, an instrument that is a written statement is taken to be first executed when the transaction to which the statement relates happens.

U **245** **Stamping taken to constitute 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 people engaged in the administration of this Act) an instrument liable to duty is not stamped because of the refusal of those people 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 people, as to the payment of duty in respect of the instrument.

Note If a form is approved under the Taxation Administration Act, s 139C 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 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 people are prescribed people:
 - (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

- (1) A person commits an offence if—
 - (a) the person registers 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; and
 - (b) the transaction or instrument is not—
 - (i) stamped; or
 - (ii) marked by the commissioner or in a way approved by the commissioner; or
 - (iii) endorsed in accordance with an approval under the Taxation Administration Act, division 6.2 (Special arrangements for making returns and paying tax).

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

248 Registration of transfers of shares

- (1) This section applies to—
 - (a) a transfer of shares on which duty is charged; or
 - (b) a transfer made as a consequence of a sale or purchase of shares on which duty is charged.
- (2) A corporation, company or society commits an offence if it enters the transfer in its records without receiving a transfer instrument that—
 - (a) is stamped; or
 - (b) bears any of the following:

- (i) an endorsement in accordance with an approval under the Taxation Administration Act, division 6.2 (Special arrangements for making returns and paying tax);
- (ii) an exempt stamp;
- (iii) a current foreign resident declaration; or
- (c) is accompanied by a current exemption certificate.

Maximum penalty: 250 penalty units.

- (3) An offence against this section is a strict liability offence.

249 Registration of transfers of units

- (1) This section applies to—
 - (a) a transfer of units on which duty is charged; or
 - (b) a transfer made as a consequence of a sale or purchase of units on which duty is charged.
- (2) A trustee or manager of a unit trust scheme commits an offence if the trustee or manager enters the transfer in the records of the scheme without receiving a transfer instrument that—
 - (a) is stamped; or
 - (b) bears any of the following:
 - (i) an endorsement in accordance with an approval under the Taxation Administration Act, division 6.2 (Special arrangements for making returns and paying tax);
 - (ii) an exempt stamp;
 - (iii) a current foreign resident declaration; or
 - (c) is accompanied by a current exemption certificate.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

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 stamped; or
 - (b) it is marked by the commissioner or in a way 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 stamped, or is marked in a way 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 considers appropriate.
- (2) The commissioner may assess duty in accordance with the value so declared.
- (3) The commissioner may have property valued if the commissioner 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

U 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 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 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 people; 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 191 (1) cancelling an insurer's registration; or
- (o) under section 199 (3) refusing to apportion a premium or amount on the basis specified in an application under section 199 (2); or
- (p) under section 199 (4) reassessing liability to duty; or
- (q) under section 200 (2) reassessing liability to duty; or
- (r) under section 208AA (3) imposing a condition on an approval under section 208AA (1) (c); or
- (s) under section 213 (2) (a) that a transfer is not consequent on the dissolution, annulment or irretrievable breakdown of a marriage; or
- (t) under section 213 (3) (c) that a transfer is not consequent on the end of a domestic relationship; or
- (u) under section 214A (1) refusing to give an authorisation to a licensed vehicle dealer; or

- (v) under section 214A (2) imposing conditions on an authorisation; or
 - (w) under section 214A (4) revoking an authorisation; or
 - (x) 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 mentioned in subsection (1).
- (3) In this section:
taxpayer—see the Taxation Administration Act.

U 252A Declaration of recognised stock exchanges

- (1) The Minister may 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.

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.

- (2) A regulation may prescribe offences for contraventions of a regulation and prescribe maximum penalties of not more than 10 penalty units for offences against a regulation.

Chapter 14 Transitional—Duties Amendment Act 2006

400 Application of ch 2 to certain transfers and transactions

- (1) In this section:

repealed provisions means section 10 (1) (k) and (l) as in force on 30 June 2006.

Note 1 On 30 June 2006, section 10 (1) (k) and (l) provided as follows:

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

Note 2 Section 27 (Apportionment—business assets in this and other jurisdictions) (as in force before 1 July 2006) applied in relation to property mentioned in section 10 (1) (k) and section 33 (Certain business assets) (as in force before 1 July 2006) provided for the rate of duty chargeable in relation to the property.

transaction means a transaction mentioned in section 7 (1) (b).

- (2) Despite the repeal of the repealed provisions by the *Duties Amendment Act 2006*, chapter 2 as in force on 30 June 2006 applies to a transfer or transaction in relation to dutiable property mentioned in the repealed provisions if—
- (a) the transfer or transaction is a transfer or transaction that replaces a transfer or transaction that—
 - (i) included the dutiable property; and
 - (ii) was made before 1 July 2006; or
 - (b) the transfer or transaction is a transfer or transaction under which a party had an option to purchase the dutiable property, or a party had an option to require another party to purchase the dutiable property, if the option was granted before 1 July 2006 and is exercised on or after 1 July 2006; or
 - (c) another arrangement was made before 1 July 2006 the only or main purpose of which was to defer the making of the transfer or transaction until 1 July 2006 or later so that chapter 2 would not apply to it.
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

401 Application of ch 5 to certain franchise arrangements

- (1) In this section:

previous provision means section 133, definition of *lease*, paragraph (c) as in force on 30 June 2006.

Note On 30 June 2006, the definition of *lease*, paragraph (c) provided as follows:

- (c) a franchise arrangement that is held in respect of a place or area located in the ACT;

- (2) Despite the replacement of the previous provision by the *Duties Amendment Act 2006*, chapter 5 (Lease instruments) as in force on 30 June 2006 applies to a lease instrument mentioned in the previous provision if—
- (a) the lease instrument replaces a lease instrument evidencing or effecting the franchise arrangement that was made before 1 July 2006; or
 - (b) another arrangement was made before 1 July 2006 the only or main purpose of which was to defer the execution of, or a variation to, the lease instrument until 1 July 2006 or later so that chapter 5 would not apply to the lease instrument.
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

402 Transitional regulations—ch 14

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Duties Amendment Act 2006*.
- (2) A regulation may modify this chapter to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.
- (4) A regulation under subsection (2) expires 12 months after the day it commences.

403 Expiry—ch 14

This chapter expires on 1 July 2011.

Chapter 15 **Transitional—Duties Amendment Act 2006 (No 2)**

Part 15.1 **Transitional—hire of goods**

Note to pt 15.1

The *Duties Amendment Act 2006 (No 2)* inserted s 173A which provides for the expiry of ch 6 (Hire of goods) on 30 June 2007.

410 **Application of ch 6 to hiring charges received by commercial hire business before 1 July 2007**

- (1) The repeal of chapter 6 (Hire of goods) by section 173A (Expiry—ch 6) does not affect any obligation to pay duty under part 6.3 (Arrangements applying to people engaged in business of hiring out goods) in relation to hiring charges received by a commercial hire business before 1 July 2007 and, for that purpose, that part continues to apply as if it had not been repealed.
- (2) In particular, section 169 (Lodgment of returns and payment of duty) continues to apply so that a commercial hire business—
 - (a) is required to lodge a return in accordance with that section in relation to each month before July 2007; and
 - (b) may request a reassessment of duty under section 169 (6).
- (3) This section applies whether or not the hire to which the charges relate is for a period after 30 June 2007.

411 Application of ch 6 to hire of goods entered into before 1 July 2007

- (1) The repeal of chapter 6 (Hire of goods) by section 173A (Expiry—ch 6) does not affect any obligation to pay duty under part 6.4 (Arrangements applying to people other than those engaged in business of hiring out goods) in relation to a hire of goods entered into before 1 July 2007.
- (2) For that purpose—
 - (a) part 6.4 continues to apply to a hire of goods entered into before 1 July 2007 but only if the first or only payment of hiring charges is paid or becomes payable before that date; and
 - (b) no refund of duty is payable in relation to any part of the hiring charges that is paid or becomes payable after 30 June 2007.
- (3) Subsection (2) does not prevent a reassessment of duty being made under section 169 (6) as in force immediately before its repeal.
- (4) This section applies whether or not the hire to which the charges relates is for a period after 30 June 2007.

412 Application of ch 6 to certain arrangements

- (1) In this section:
repealed provisions means the provisions mentioned in section 173A (Expiry—ch 6) as those provisions were in force immediately before their expiry.
- (2) Despite their expiry, the repealed provisions apply to a hire of goods mentioned in repealed chapter 6 (Hire of goods) if—
 - (a) the hire of goods replaces a hire of goods that was entered into before 1 July 2007; or
 - (b) another arrangement was made before 1 July 2007 the only or main purpose of which was to defer the hire of goods until 1 July 2007 or later so that chapter 6 would not apply to it.

- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

413 Transitional regulations—pt 15.1

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of section 173A (Expiry—ch 6) by the *Duties Amendment Act 2006 (No 2)*.
- (2) A regulation may modify this part to make provision in relation to anything that, in the Executive’s opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.
- (4) A regulation under subsection (2) expires 12 months after the day it commences.

414 Expiry—pt 15.1

This part expires on 30 June 2012.

Part 15.2 Transitional—lease instruments

Note to pt 15.2

The *Duties Amendment Act 2006 (No 2)* inserted s 150A which provides for the expiry of ch 5 (Lease instruments) on 30 June 2009.

420 Application of ch 5 to leases entered into before 1 July 2009

- (1) The repeal of chapter 5 (Lease instruments) by section 150A (Expiry—ch 5) does not affect any obligation to pay duty under chapter 5 in relation to a lease first executed before 1 July 2009 and, for that purpose, the chapter continues to apply as if it had not been repealed.
- (2) However, section 139 (2) does not apply in relation to a variation to a lease if the variation is made after 30 June 2009.
- (3) Also, the following provisions apply if a lease executed before 1 July 2009 has any unascertainable cost components for which there is an estimate date after 30 June 2009:
 - (a) on the first estimate date after 30 June 2009 (the *final estimate date*), the commissioner must make a final estimate of the cost of the lease;
 - (b) section 144 (3) applies (with any necessary changes) for the making of the final estimate;
 - (c) the lease instrument is chargeable with duty as if the final estimate were the full cost of the lease;
 - (d) no further estimates of the cost of the lease are to be made (despite section 144 (5));
 - (e) section 144 (7) applies only to the final estimate date or an estimate date that happens before the final estimate date;
 - (f) sections 144 (9) and (10) do not apply in relation to any period after the final estimate date.

421 Application of ch 5 to certain arrangements

- (1) In this section:

repealed provisions means the provisions mentioned in section 150A (Expiry—ch 5) as those provisions were in force immediately before their expiry.

- (2) Despite their expiry, the repealed provisions apply to a lease instrument mentioned in repealed chapter 5 (Lease instruments) if—
- (a) the lease instrument replaces a lease instrument evidencing or effecting a lease that was entered into before 1 July 2009; or
 - (b) an option was granted, or another arrangement was made, before 1 July 2009 the only or main purpose of which was to defer the execution of, or a variation to, the lease instrument until 1 July 2009 or later so that chapter 5 would not apply to the lease instrument.
- (3) Without limiting subsection (2), the commissioner must not refund duty under section 148 (Reassessment of duty—early termination) on a lease instrument evidencing or effecting a lease of property if satisfied that the lessee or any associated person will continue to lease the property, or substantially the same property, under a new arrangement.
- (4) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

422 Transitional regulations—pt 15.2

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of section 150A (Expiry—ch 5) by the *Duties Amendment Act 2006 (No 2)*.
- (2) A regulation may modify this part to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.

- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.
- (4) A regulation under subsection (2) expires 12 months after the day it commences.

423 Expiry—pt 15.2

This part expires on 30 June 2014.

Part 15.3 Transitional—unquoted marketable securities

Note to pt 15.3

The *Duties Amendment Act 2006 (No 2)* inserted s 75A which provides for the expiry of provisions relating to duty on unquoted marketable securities on 30 June 2010.

430 Application of repealed provisions to certain arrangements

- (1) In this section:

repealed provisions means the provisions mentioned in section 75A (Expiry—provisions relating to unquoted marketable securities) as those provisions were in force immediately before their expiry.

- (2) Despite their expiry, the repealed provisions and chapter 2 and chapter 3 as in force immediately before the expiry apply to a transfer or transaction in relation to dutiable property mentioned in the repealed provisions if—
- (a) the transfer or transaction replaces a transfer or transaction that was entered into before 1 July 2010; or
 - (b) another arrangement was made before 1 July 2010 the only or main purpose of which was to defer the transfer or transaction until 1 July 2010 or later so that chapter 2 would not apply to it.
- (3) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

431 Transitional regulations—pt 15.3

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of section 75A (Expiry—provisions relating to unquoted marketable securities) by the *Duties Amendment Act 2006 (No 2)*.
- (2) A regulation may modify this part to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.
- (4) A regulation under subsection (2) expires 12 months after the day it commences.

432 Expiry—pt 15.3

This part expires on 30 June 2015.

Chapter 16 Transitional—Duties Amendment Act 2008

Note The *Duties Amendment Act 2008* inserted s 72B which provides for the expiry of s 59 (Establishment of a trust relating to unidentified property and non-dutiable property), s 60 (1) (Instrument relating to managed investment scheme) and s 61 (Instruments relating to superannuation) on 30 June 2008.

440 Meaning of *repealed provisions*—ch 16

In this chapter:

repealed provisions means the provisions expired under section 72B (Expiry—provisions relating to duty on certain instruments).

441 Application of repealed provisions

- (1) Despite the expiry of the repealed provisions—
 - (a) the expiry of a repealed provision does not affect any obligation to pay duty under the provision in relation to—
 - (i) for section 60 (1)—an instrument executed before 1 July 2008; or
 - (ii) for section 59 or section 61—an instrument first executed before 1 July 2008; and
 - (b) for paragraph (a)—the repealed provision continues to apply as if it had not expired.
- (2) Also, despite the expiry of the repealed provisions, each repealed provision, as in force immediately before 1 July 2008, continues to apply to an instrument mentioned in the provision if an arrangement was made before 1 July 2008 the only or main purpose of which was to defer until 1 July 2008 or later—
 - (a) for section 60 (1)—the execution of the instrument; or

(b) for section 59 or section 61—the first execution of the instrument;

so that the repealed provision would not apply to the instrument.

442 Transitional regulations—ch 16

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of section 72B by the *Duties Amendment Act 2008*.
- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.
- (4) A regulation under subsection (2) expires 12 months after the day it commences.

443 Expiry—ch 16

This chapter expires on 30 June 2013.

**U Chapter 17 Transitional—Duties
(Landholders) Amendment
Act 2008**

U Dictionary

(see s 2A)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACT
- Australia
- civil partnership
- commissioner for revenue
- Corporations Act
- doctor
- external territory
- GST
- in relation to
- land.

acquired, for an interest in a landholding private corporation, for part 3.2 (Acquisition of interests in certain landholders)—see section 84.

acquisition statement, for chapter 3 (Certain transactions treated as transfers)—see section 76.

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.

asset, for part 3.6 (Voluntary transfers under Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cwlth))—see section 115A.

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

- (a) people are associated people if they are related people;
- (b) individuals are associated people if they are partners in a partnership to which the *Partnership Act 1963* applies;
- (c) private companies are associated people if common shareholders have a majority interest in each private company;
- (d) trustees are associated people 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 people 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 people.

Australian register—see the Corporations Act, section 9.

bankrupt includes having executed a personal insolvency agreement.

business, for part 3.6 (Voluntary transfers under Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cwlth))—see section 115A.

capital reduction, for part 3.3 (Entitlements arising from capital reductions or alterations of rights)—see section 96 (1).

chapter 3 transaction, for chapter 3 (Certain transactions treated as transfers)—see section 76.

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.

commissioner means the commissioner for revenue.

company, for part 3.3 (Entitlements arising from capital reductions or alterations of rights)—see section 96 (1).

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.

consideration—see section 21.

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

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).

declaration of trust, for chapter 2 (Transactions concerning dutiable property)—see section 6.

deferral arrangement, for part 2.6A—see section 75AC (2).

demonstrator, for part 9.2 (Exemptions)—see section 208A.

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

- (a) determined by the Minister; or
- (b) calculated in a way 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.

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 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 people in whom it is vested if a discretion conferred under the trust is exercised.

domestic relationship—see the *Domestic Relationships Act 1994*, section 3.

dutiable entitlement, for part 3.3 (Entitlements arising from capital reductions or alterations of rights)—see section 96 (1).

dutiable property—see section 10.

dutiable transaction—see section 7 (2).

dutiable value—

- (a) of a motor vehicle for part 9.1—see section 203; and
- (b) of other dutiable property—see section 20.

eligible person, for part 2.6A—see section 75AA.

eligible property, for part 2.6A—see section 75AA.

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).

first executed, for an instrument (including a contract)—see section 243.

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 mentioned 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 people—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 people 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**.

FS (BTGR) Act, for part 3.6 (Voluntary transfers under Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cwlth))—see section 115A.

general insurance, for chapter 8 (Insurance)—see section 175.

general insurer, for chapter 8 (Insurance)—see section 175.

home buyer concession scheme, for part 2.6A—see section 75AA.

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

instrument includes a written document and a written statement.

insurance includes assurance.

insurance intermediary—see the *Insurance Contracts Act 1984* (Cwlth), section 11.

insurer—

- (a) for chapter 8 (Insurance), other than part 8.4—see section 175; and
- (b) for part 8.4 (Payment of duty by insurers)—see section 188A.

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—

- (a) includes an estate, an interest under a lease or a sublease, a proprietary right and a beneficial interest; and
- (b) for a private corporation, for part 3.2 (Acquisition of interests in certain landholders)—see section 83 (1).

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.

landholding, for part 3.2 (Acquisition of interests in certain landholders)—see section 80.

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 means—

- (a) a lease of land in the ACT or an agreement for a lease of land in the ACT; or

- (b) an agreement (for example, a licence) by which a right to use land in the ACT at any time and for any purpose is given to or acquired by a person.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

lease instrument, for chapter 5 (Lease instruments)—see section 133.

lessee includes—

- (a) any assignee for the time being of the rights of the lessee under a lease; and
- (b) a person who has a right of the kind mentioned in the definition of ***lease***, paragraph (b).

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

licensed vehicle dealer means a licensed dealer under the *Sale of Motor Vehicles Act 1977*, or the holder of a similar licence under a corresponding law.

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

life insurance, for chapter 8 (Insurance)—see section 175.

life insurance rider, for chapter 8 (Insurance)—see section 175.

long-term lease—see section 10 (1) (d), (e) and (f).

majority interest, in a private corporation—see section 83 (2).

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) (h); or
- (b) units mentioned in section 10 (1) (i); 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 (other than 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.

paid, for a premium or an instalment of a premium, for chapter 8 (Insurance)—see section 176.

partner—a person's ***partner*** is either of the following:

- (a) the person's spouse;
- (b) someone with whom the person has a domestic relationship.

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

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

person, for part 3.3 (Entitlements arising from capital reductions or alterations of rights)—see section 96 (1).

person with a disability means a person who has a disability that—

- (a) is attributable to an intellectual, psychiatric, sensory, physical or neurological impairment, or acquired brain injury; and
- (b) is likely to be permanent; and
- (c) results in substantially reduced capacity in self-care, self-management, mobility or communication requiring significant ongoing, or long-term episodic, support.

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

premium, in relation to general insurance for chapter 8 (Insurance)—see section 175.

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.

property transferred, by a dutiable transaction—see section 8 (2).

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 people 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.

receiving body, for part 3.6 (Voluntary transfers under Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cwlth))—see section 115A.

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 people if—
- (i) they are partners, or they have been partners and the partnership has ended (whether the partnership ended in Australia or elsewhere); or
 - (ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister;
- (b) private companies are related people if they are related bodies corporate;
- (c) an individual and a private company are related people 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 people 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 people 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.

relevant acquisition, for division 3.2.3 (Charging of duty)—see section 86.

replica—see section 228.

residential lease, for part 2.6A—see section 75AA.

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.

rights alteration, in relation to voting shares, for part 3.3 (Entitlements arising from capital reductions or alterations of rights)—see section 96 (1).

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.

stamped—see section 233.

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—see section 81 (3) to (5).

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 people 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.

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.

third-party insurance, for chapter 8 (Insurance)—see section 175.

time, of transfer of dutiable property—see section 8 (2).

trading stock, for part 9.2 (Exemptions)—see section 208A.

transfer—

- (a) includes—
 - (i) assignment; and
 - (ii) exchange; and
 - (iii) a buyback of shares in accordance with the Corporations Act, part 2J.1, division 2; and
 - (iv) vesting of an interest in property under a law of the Territory, the Commonwealth, a State or another Territory, unless the interest does not exist before it is vested; and
 - (v) vesting of an interest in property under a court order, unless the interest did not exist before it is vested; and
- (b) for chapter 2 (Transactions concerning dutiable property)—see section 6.

transferee, of dutiable property—see section 8 (2).

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.

unascertainable, for an amount of a cost component, for part 5.4 (Unascertainable lease costs)—see section 143 (2).

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 people 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 a regulation (see Legislation Act, s 104).

voluntary transfer, for part 3.6 (Voluntary transfers under Financial Sector (Business Transfer and Group Restructure) Act 1999 (Cwlth))—see section 115A.

voting share, for part 3.3 (Entitlements arising from capital reductions or alterations of rights)—see the Corporations Act, section 9.

Endnotes

1 About the endnotes

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.

2 Abbreviation key

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

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))

Endnotes

3 Legislation history

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))

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))

Sexuality Discrimination Legislation Amendment Act 2004 A2004-2 sch 1 pt 1.6

notified LR 18 February 2004
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))
sch 1 pt 1.6 commenced 22 March 2004 (s 2 and CN2004-4)

Construction Occupations Legislation Amendment Act 2004 A2004-13 sch 2 pt 2.8

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 2 pt 2.8 commenced 1 September 2004 (s 2 and see Construction Occupations (Licensing) Act 2004 A2004-12, s 2 and CN2004-8)

**Criminal Code (Theft, Fraud, Bribery and Related Offences)
Amendment Act 2004 A2004-15 sch 2 pt 2.29**

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 2 pt 2.29 commenced 9 April 2004 (s 2 (1))

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.18

notified LR 12 May 2005
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))
sch 3 pt 3.18 commenced 2 June 2005 (s 2 (1))

Revenue Legislation Amendment Act 2005 A2005-29 pt 2

notified LR 28 June 2005
s 1, s 2 commenced 28 June 2005 (LA s 75 (1))
pt 2 commenced 1 July 2005 (s 2 (1))

Criminal Code Harmonisation Act 2005 A2005-54 sch 1 pt 1.18

notified LR 27 October 2005
s 1, s 2 commenced 27 October 2005 (LA s 75 (1))
sch 1 pt 1.18 commenced 24 November 2005 (s 2)

Duties Amendment Act 2006 A2006-13

notified LR 6 April 2006
s 1, s 2 commenced 6 April 2006 (LA s 75 (1))
remainder commenced 1 July 2006 (s 2)

Revenue Legislation Amendment Act 2006 A2006-19 pt 2

notified LR 17 May 2006
s 1, s 2 commenced 17 May 2006 (LA s 75 (1))
pt 2 commenced 18 May 2006 (s 2 (3))

Civil Unions Act 2006 A2006-22 sch 1 pt 1.12

notified LR 19 May 2006
s 1, s 2 commenced 19 May 2006 (LA s 75 (1))
sch 1 pt 1.12 never commenced

Note Act repealed by disallowance 14 June 2006 (see Cwlth Gaz
2006 No S93)

Revenue Legislation Amendment Act 2006 (No 2) A2006-32 pt 2

notified LR 30 August 2006
s 1, s 2 commenced 30 August 2006 (LA s 75 (1))
pt 2 commenced 31 August 2006 (s 2)

Revenue Legislation Amendment Act 2006 (No 3) A2006-37 pt 2

notified LR 26 September 2006

s 1, s 2 commenced 26 September 2006 (LA s 75 (1))

pt 2 commenced 27 September 2006 (s 2)

Statute Law Amendment Act 2006 A2006-42 sch 3 pt 3.10

notified LR 26 October 2006

s 1, s 2 taken to have commenced 12 November 2005 (LA s 75 (2))

sch 3 pt 3.10 commenced 16 November 2006 (s 2 (1))

Duties Amendment Act 2006 (No 2) A2006-45

notified LR 28 November 2006

s 1, s 2 commenced 28 November 2006 (LA s 75 (1))

remainder commenced 29 November 2006 (s 2)

Statute Law Amendment Act 2007 A2007-3 sch 3 pt 3.33

notified LR 22 March 2007

s 1, s 2 taken to have commenced 1 July 2006 (LA s 75 (2))

sch 3 pt 3.33 commenced 12 April 2007 (s 2 (1))

Revenue Legislation Amendment Act 2007 A2007-21 pt 2

notified LR 19 June 2007

s 1, s 2 commenced 19 June 2007 (LA s 75 (1))

pt 2 commenced 20 June 2007 (s 2)

**Planning and Development (Consequential Amendments) Act 2007
A2007-25 sch 1 pt 1.9**

notified LR 13 September 2007

s 1, s 2 commenced 13 September 2007 (LA s 75 (1))

sch 1 pt 1.9 commenced 31 March 2008 (s 2 and see Planning and
Development Act 2007 A2007-24, s 2 and CN2008-1)

Duties Amendment Act 2007 A2007-38

notified LR 4 December 2007

s 1, s 2 commenced 4 December 2007 (LA s 75 (1))

remainder commenced 5 December 2007 (s 2)

Civil Partnerships Act 2008 A2008-14 sch 1 pt 1.10

notified LR 15 May 2008

s 1, s 2 commenced 15 May 2008 (LA s 75 (1))

sch 1 pt 1.10 commenced 19 May 2008 (s 2 and CN2008-8)

Endnotes

4 Amendment history

Duties Amendment Act 2008 A2008-17

notified LR 30 June 2008
s 1, s 2 commenced 30 June 2008 (LA s 75 (1))
s 4 commenced 1 July 2008 (s 2 (2))
remainder commenced 30 June 2008 (s 2 (1))

Statute Law Amendment Act 2008 A2008-28 sch 3 pt 3.23

notified LR 12 August 2008
s 1, s 2 commenced 12 August 2008 (LA s 75 (1))
sch 3 pt 3.23 commenced 26 August 2008 (s 2)

Duties (Landholders) Amendment Act 2008 A2008-31

notified LR 18 August 2008
s 1, s 2 commenced 18 August 2008 (LA s 75 (1))
remainder commences 1 September 2008 (s 2 and CN2008-12)

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

Offences against Act—application of Criminal Code etc

s 2C ins A2005-54 amdt 1.98

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** reloc to dict A2000-34 s 5
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** reloc to dict A2000-34 s 5
 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
 am A2006-42 amdt 3.55

Payment of duty equivalents by territory departments

s 4A ins 2001 No 55 s 4
 am A2006-42 amdt 3.55; A2008-31 amdt 1.1

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
 def **transfer** exp 30 June 2010 (s 75A)

Imposition of duty on certain transactions concerning dutiable property

s 7 am 2001 No 55 s 5, s 6; A2006-45 s 4; A2008-31 amdt 1.2

Imposition of duty on dutiable transactions that are not transfers

s 8 am 2001 No 55 s 7; table renum R11 LA; A2006-45 ss 5-9;
 A2007-38 s 4

Endnotes

4 Amendment history

Dutiable property

s 10 am 2000 No 34 s 6; A2003-1 s 4; A2006-13 s 4, s 6; pars renum R18 LA (see also A2006-13 s 5); A2006-45 ss 10-12; pars renum R22 LA; A2007-38 s 5, s 6; ss, pars renum R27 LA; A2008-31 amdt 1.3, amdt 1.39 (1) (h), (i), (m) (i), (iii), (2) exp 30 June 2010 (s 75A)

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 etc with commissioner

s 15 am 2000 No 34 s 8
sub A2006-37 s 4

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
am A2004-13 amdt 2.21; A2007-29 s 4, s 5

Declaration of affordable house and land packages

s 16B ins A2007-29 s 6

No double duty

s 17 am 2002 No 14 s 4; A2006-22 amdt 1.57, amdt 1.58
(A2006-22 rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); A2007-38 s 7; ss renum R27 LA

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; A2006-13 s 7; ss renum R18 LA; A2006-45 s 13; A2007-29 s 7, s 8; ss renum R26 LA; A2007-38 s 8; ss renum R27 LA

What is the consideration for the transfer of dutiable property?

s 21 am A2006-13 s 8; ss renum R18 LA; A2008-31 amdt 1.40

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); A2006-13 s 9; ss renum R18 LA

Aggregation of dutiable transactions

s 24 am 2001 No 17 amdt 2.8; A2005-54 amdt 1.99
(8) exp 30 June 2010 (s 75A)

Apportionment—business assets in this and other jurisdictions

s 27 am 2001 No 55 amdt 1.5
om A2006-13 s 10

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; A2006-45 s 14; <u>A2008-31 amdt 1.39 exp 30 June 2010 (s 75A)</u>
Certain business assets	
s 33	am 2000 No 46 s 8; 2001 No 55 amdt 1.5; A2006-13 s 11, s 12
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

Endnotes

4 Amendment history

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)

Refund if Crown lease surrendered

s 52 sub A2007-25 amdt 1.36
am A2008-28 amdt 3.78

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; A2006-32 s 4

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

Transfers back from nominee

s 57 am A2006-45 s 15, s 16
(3) def **dutiable property** exp 30 June 2010 (s 75A)

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

s 59 am 2000 No 30 s 4; ss renum R4 LA
exp 30 June 2008 (s 72B)

Declaration of trust relating to managed investment scheme

s 60 hdg sub A2008-17 s 4
s 60 (1) exp 30 June 2008 (s 72B)

Nomineeing transactions—unquoted marketable securities

s 60A ins 2000 No 46 s 12
exp 30 June 2010 (s 75A)

Superannuation

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

Instruments relating to superannuation

s 61 exp 30 June 2008 (s 72B)

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); A2006-45 s 17; ss renum R22 LA; A2008-31
amdt 1.39
(3) exp 30 June 2010 (s 75A)

Miscellaneous

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

Transfer of land to certain authorities and other bodies

s 64 am A2007-21 s 4

Transfer of land under Workplace Relations Act

s 65 sub A2005-20 amdt 3.142

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

Certain transfers of marketable securities

s 70 am A2005-20 amdt 3.143
exp 30 June 2010 (s 75A)

Corporate reconstructions—concessional duty for dutiable transactions

s 70A ins A2003-29 s 4
am A2006-42 amdt 3.55

Transfer to partner 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
sub A2004-2 amdt 1.17
am A2006-22 amdt 1.46 (A2006-22 rep before commenced by
disallowance (see Cwlth Gaz 2006 No S93)); A2007-3
amdt 3.175

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Reduction of duty—payment in non-Australian jurisdiction

s 72A ins 2000 No 34 s 12
exp 30 June 2010 (s 75A)

Expiry—duty on certain instruments

pt 2.5A hdg ins A2008-17 s 5
exp 30 June 2008 (s 72B)

Expiry—provisions relating to duty on certain instruments

s 72B ins A2008-17 s 5
exp 30 June 2008 (s 72B)

Exemptions

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

Transfers etc to entities for community housing

s 73A ins A2007-29 s 9

Transfers relating to mortgages

s 74 am 2000 No 46 s 14

Financial and other agreements

s 74A ins 2002 No 14 s 8
am A2006-22 amdt 1.57, amdt 1.58 (A2006-22 rep before
commenced by disallowance (see Cwlth Gaz 2006 No S93))

Transfers relating to certain personal relationships

s 74B ins 2002 No 14 s 8
am A2004-2 amdt 1.18, amdt 1.19; A2006-22 amdt 1.47,
amdt 1.48, amdt 1.57, amdt 1.58 (A2006-22 rep before
commenced by disallowance (see Cwlth Gaz 2006 No S93));
A2007-3 amdt 3.175; A2008-14 amdt 1.29

Marketable securities

s 75 am 2000 No 34 s 13; 2000 No 46 s 15; 2001 No 40 s 7
(4), (4A), (4B) exp 30 June 2001 (s 75 (4B))
am A2003-1 s 14; ss renum R8 LA (see A2003-1 s 15);
A2006-45 s 18; A2008-31 amdt 1.39
exp 30 June 2010 (s 75A)

Deferred payments—home buyers

pt 2.6A hdg ins A2007-29 s 10

Definitions—pt 2.6A

s 75AA ins A2007-29 s 10
def *deferral arrangement* ins A2007-29 s 10
def *eligible person* ins A2007-29 s 10
def *eligible property* ins A2007-29 s 10
def *home buyer concession scheme* ins A2007-29 s 10
def *residential lease* ins A2007-29 s 10

Application to defer payment of duty

s 75AB ins A2007-29 s 10

Approval to defer payment of duty

s 75AC ins A2007-29 s 10

Conditions of deferral arrangement

s 75AD ins A2007-29 s 10

Unpaid duty and interest a debt and charge on property

s 75AE ins A2007-29 s 10

Expiry—provisions relating to unquoted marketable securitiespt 2.7 hdg ins A2006-45 s 19
exp 30 June 2010 (s 75A)**Expiry—provisions relating to unquoted marketable securities**s 75A ins A2006-45 s 19
exp 30 June 2010 (s 75A)**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)

Preliminarydiv 3.2.1 hdg (prev ch 3 pt 2 div 1 hdg) renum R1 LA (see 2001 No 55
amdt 1.6)
sub A2008-31 s 4**Definitions—pt 3.2**s 78 sub A2008-31 s 4
def **acquires** ins A2008-31 s 4
def **associated person** ins A2008-31 s 4
def **entity** ins A2008-31 s 4
def **interest** ins A2008-31 s 4
def **landholder** ins A2008-31 s 4
def **landholding** ins A2008-31 s 4
def **private corporation** om A2008-31 s 4
def **relevant acquisition** ins A2008-31 s 4
def **relevant period** ins A2008-31 s 4
def **significant interest** ins A2008-31 s 4**Landholding entities**div 3.2.2 hdg (prev ch 3 pt 2 div 2 hdg) renum R1 LA (see 2001 No 55
amdt 1.6)
sub A2008-31 s 4**Meaning of entity—pt 3.2**

s 78A ins A2008-31 s 4

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Meaning of landholder—pt 3.2

s 79 sub A2008-31 s 4

Meaning of landholding—pt 3.2

s 80 sub A2008-31 s 4

Constructive ownership of landholdings and other property—linked entities

s 81 am 2001 No 40 s 8
sub A2008-31 s 4

Constructive ownership of landholdings and other property—discretionary trusts

s 82 sub A2008-31 s 4

Interest and significant interest in landholders—pt 3.2

s 83 sub A2008-31 s 4

Meaning of associated person—pt 3.2

s 83A ins A2008-31 s 4

How person acquires an interest in a landholder—pt 3.2

s 84 am 2000 No 46 s 16; 2001 No 55 s 10
sub A2008-31 s 4

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)

What is a relevant acquisition?—pt 3.2

s 86 sub A2008-31 s 5

Acquisition statements

s 87 am 2001 No 44 amdt 1.1227, amdt 1.1228; A2006-45 s 20;
ss renum R22 LA; A2008-31 s 6, amdt 1.4

How duty is charged on relevant acquisitions

s 90 am A2008-31 s 7, amdt 1.5
(4) exp 30 June 2010 (s 75A)

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)

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
(2) (h) exp 30 June 2010 (s 75A)

Corporate reconstructions—concessional duty for relevant acquisitions

s 91A ins A2003-29 s 5
am A2006-42 amdt 3.55; A2008-31 amdt 1.6

Maximisation of entitlements on distribution of propertys 92 [am A2008-31 amdts 1.7-1.9](#)**Valuation of property**s 93 [am A2008-31 amdt 1.10](#)**Agreements for sale or conveyance of land**s 94 [sub A2008-31 amdt 1.11](#)**Duty concession—acquisitions securing financial accommodation**s 95 [am A2008-31 amdt 1.12](#)**Registration of unit trust schemes**pt 3.2A hdg [ins A2008-31 s 8](#)**Definitions—pt 3.2A**

s 95A [ins A2008-31 s 8](#)
def ***disqualifying circumstance*** [ins A2008-31 s 8](#)
def ***registered*** [ins A2008-31 s 8](#)
def ***responsible entity*** [ins A2008-31 s 8](#)

Applications for registrations 95B [ins A2008-31 s 8](#)**Registration of imminent public unit trust schemes**s 95C [ins A2008-31 s 8](#)**Registration of wholesale unit trust schemes**s 95D [ins A2008-31 s 8](#)**Registration of imminent wholesale unit trust schemes**s 95E [ins A2008-31 s 8](#)**Duration of registration**s 95F [ins A2008-31 s 8](#)**Register of wholesale unit trust schemes**s 95G [ins A2008-31 s 8](#)**Reporting requirements for registered schemes**s 95H [ins A2008-31 s 8](#)**Cancellation of registration**s 95I [ins A2008-31 s 8](#)**Disqualifying circumstances for registered unit trust schemes**s 95J [ins A2008-31 s 8](#)**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)
[exp 30 June 2010 \(s 75A\)](#)**Interpretation for pt 3.3**s 96 [exp 30 June 2010 \(s 75A\)](#)

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def **capital reduction** am A2001-40 s 9
def **company** sub A2000-34 s 14
am A2000-46 s 17
sub A2001-40 s 10
am A2008-31 s 9
def **voting shares** sub A2001-40 s 11
om A2006-42 amdt 3.35
def **voting share** ins A2006-42 amdt 3.35

When does liability for duty arise?

s 97 [exp 30 June 2010 \(s 75A\)](#)

When must duty be paid?

s 98 [exp 30 June 2010 \(s 75A\)](#)

Who is liable to pay duty?

s 99 [exp 30 June 2010 \(s 75A\)](#)

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; [A2008-31 amdt 1.13](#)
[exp 30 June 2010 \(s 75A\)](#)

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
[exp 30 June 2010 \(s 75A\)](#)

Assessment of duty

s 102 sub 2000 No 34 s 15
[exp 30 June 2010 \(s 75A\)](#)

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)

When does liability for duty arise?

s 103 sub A2006-45 s 21
[am A2008-31 s 10, amdt 1.14](#)

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)
[exp 30 June 2010 \(s 75A\)](#)

Application of pt 3.5

s 109 am 2000 No 34 s 16; A2008-31 s 11, amdt 1.14
exp 30 June 2010 (s 75A)

When does a liability for duty arise?

s 110 exp 30 June 2010 (s 75A)

When must duty be paid?

s 111 exp 30 June 2010 (s 75A)

Who is liable to pay the duty?

s 112 exp 30 June 2010 (s 75A)

Acquisition of shares by allotment

s 113 exp 30 June 2010 (s 75A)

What allotment statement must contain

s 114 hdg sub 2001 No 44 amdt 1.233

s 114 am 2001 No 44 amdt 1.1233
exp 30 June 2010 (s 75A)

Assessment of duty

s 115 exp 30 June 2010 (s 75A)

Voluntary transfers under Financial Sector (Business Transfer and Group Restructure) 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)
sub A2008-28 amdt 3.79

Definitions for pt 3.6

s 115A ins 2001 No 55 s 15
def **asset** am A2008-28 amdt 3.81
def **business** am A2008-28 amdt 3.81
def **FS (BTGR) Act** ins A2008-28 amdt 3.80
def **FS (TB) Act** om A2008-28 amdt 3.80
def **receiving body** am A2008-28 amdt 3.81
def **voluntary transfer** am A2008-28 amdt 3.81

Declaration required if business transferred

s 115B ins 2001 No 55 s 15
am A2008-28 amdt 3.82; A2008-31 amdt 1.15

When does 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 duty?

s 115E ins 2001 No 55 s 15

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Assessment of duty

s 115F ins 2001 No 55 s 15

Exemptions from duty

s 115G ins 2001 No 55 s 15
am A2006-42 amdt 3.55

Exemptions—ch 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
am A2004-2 amdt 1.18, amdt 1.19; A2006-22 amdt 1.49,
amdt 1.50, amdt 1.57, amdt 1.58 (A2006-22 rep before
commenced by disallowance (see Cwlth Gaz 2006 No S93));
A2007-3 amdt 3.175; A2008-14 amdt 1.30

On-market transfers of marketable securities

ch 4 hdg om 2000 No 34 s 17

Off-market transfers of marketable securities

pt 4 hdg om 2000 N 34 s 11

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

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

Lease instrumentsch 5 hdg exp 30 June 2009 (s 150A)**Preliminary**pt 5.1 hdg (prev ch 5 pt 1 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)
exp 30 June 2009 (s 150A)**Definitions for ch 5**s 133 exp 30 June 2009 (s 150A)
def **lease** am A2006-13 s 13
sub A2006-45 s 22
def **lessee** om A2006-45 s 23
def **lessor** om A2006-45 s 23**Liability for duty**pt 5.2 hdg (prev ch 5 pt 2 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)
exp 30 June 2009 (s 150A)**Imposition of duty**s 134 exp 30 June 2009 (s 150A)**How duty is charged on lease instrument**s 135 sub 2001 No 55 s 16
am A2006-45 s 24
exp 30 June 2009 (s 150A)**What is the cost of a lease?**s 136 am A2006-45 s 25, s 26
exp 30 June 2009 (s 150A)

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Splitting or redirection of cost of franchise arrangement

s 137 om A2006-45 s 27

Who is liable to pay duty?

s 138 sub A2006-45 s 28
exp 30 June 2009 (s 150A)

When must duty be paid?

s 139 exp 30 June 2009 (s 150A)

Rates of duty

pt 5.3 hdg (prev ch 5 pt 3 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)
exp 30 June 2009 (s 150A)

General rate—short-term leases

s 140 sub 2001 No 55 s 17
am A2006-45 s 29; pars renum R22 LA
exp 30 June 2009 (s 150A)

General rate—long-term leases

s 141 sub 2001 No 55 s 17
om A2006-45 s 30

General rate—franchise arrangements

s 141A ins 2001 No 55 s 17
am A2006-13 s 14
om A2006-45 s 31

Related instruments—exemptions and concessions

s 142 hdg sub 2001 No 55 s 18
s 142 exp 30 June 2009 (s 150A)

Unascertainable lease costs

pt 5.4 hdg (prev ch 5 pt 4 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)
exp 30 June 2009 (s 150A)

Operation of pt 5.4

s 143 am 2001 No 55 s 19
exp 30 June 2009 (s 150A)

Estimate and subsequent adjustment

s 144 am A2005-54 amdt 1.100, amdt 1.101
exp 30 June 2009 (s 150A)

CPI method

s 145 am A2003-41 amdts 3.210-3.213; A2008-31 amdt 1.40
exp 30 June 2009 (s 150A)

Quantification of lessee's improvements

s 146 table renum R11 LA
am A2006-45 s 32; items renum R22 LA
exp 30 June 2009 (s 150A)

Miscellaneous

pt 5.5 hdg (prev ch 5 pt 5 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)
exp 30 June 2009 (s 150A)

Interim stamping of lease instrument

s 147 exp 30 June 2009 (s 150A)

Reassessment of duty—early termination

s 148 exp 30 June 2009 (s 150A)

Reassessment of duty—reduction of cost

s 149 am 2001 No 55 s 20
exp 30 June 2009 (s 150A)

Exemptions—lease instruments

s 150 hdg sub 2001 No 55 s 21
 s 150 am 2001 No 55 ss 22-24; A2006-45 s 33, s 34; pars
 renum R22 LA
exp 30 June 2009 (s 150A)

Expiry—ch 5

pt 5.6 hdg ins A2006-45 s 35
exp 30 June 2009 (s 150A)

Expiry—ch 5

s 150A ins A2006-45 s 35
exp 30 June 2009 (s 150A)

Hire of goods

ch 6 hdg exp 30 June 2007 (s 173A)

Preliminary

pt 6.1 hdg (prev ch 6 pt 1 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)
 exp 30 June 2007 (s 173A)

Definitions for ch 6

s 151 exp 30 June 2007 (s 173A)

What is a *hire of goods*?

s 152 exp 30 June 2007 (s 173A)

Exclusions from definition of *hire of goods*

s 153 am A2006-45 s 36, s 37
 exp 30 June 2007 (s 173A)

What form may a hire of goods take?

s 154 exp 30 June 2007 (s 173A)

What are *hiring charges*?

s 155 exp 30 June 2007 (s 173A)

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Payments exempted from *hiring charges*

s 156 am 2000 No 34 s 18
exp 30 June 2007 (s 173A)

Hire of goods to which ch 6 applies—jurisdictional nexus

s 157 exp 30 June 2007 (s 173A)

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)
exp 30 June 2007 (s 173A)

Imposition of duty

s 158 exp 30 June 2007 (s 173A)

Rates of duty

s 159 exp 30 June 2007 (s 173A)

Credit for duty paid in another Australian jurisdiction

s 160 exp 30 June 2007 (s 173A)

Splitting or redirection of hiring charges

s 161 exp 30 June 2007 (s 173A)

Ascertainment and disclosure of place of use of goods

s 162 am A2005-54 amdt 1.102
exp 30 June 2007 (s 173A)

Arrangements applying to people engaged in 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)
exp 30 June 2007 (s 173A)

Meaning of *commercial hire business*

s 163 exp 30 June 2007 (s 173A)

Application of pt 6.3

s 164 exp 30 June 2007 (s 173A)

Commercial hire business to be registered

s 165 sub A2005-54 amdt 1.103
exp 30 June 2007 (s 173A)

Registration of commercial hire businesses

s 166 am 2001 No 44 amdt 1.1234, amdt 1.1235
exp 30 June 2007 (s 173A)

Cancellation of registration of commercial hire business

s 167 am A2005-54 amdt 1.104, amdt 1.105
exp 30 June 2007 (s 173A)

Duty base

s 168 exp 30 June 2007 (s 173A)

- Lodgment of returns and payment of duty**
s 169 am 2001 No 44 amdt 1.1236, amdt 1.1237
exp 30 June 2007 (s 173A)
- Returns of related bodies corporate**
s 170 exp 30 June 2007 (s 173A)
- Arrangements applying to people other than those engaged in 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)
exp 30 June 2007 (s 173A)
- Statement of transaction**
s 171 exp 30 June 2007 (s 173A)
- Lodgment of statement and payment of duty**
s 172 exp 30 June 2007 (s 173A)
- Method of calculating total hiring charges if they are not readily ascertainable**
s 173 exp 30 June 2007 (s 173A)
- Expiry—ch 6**
pt 6.5 hdg ins A2006-45 s 38
exp 30 June 2007 (s 173A)
- Expiry—ch 6**
s 173A ins A2006-45 s 38
exp 30 June 2007 (s 173A)
- 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 insurer** am 2002 No 6 s 4; 2002 No 20 s 4
def **general insurer** sub A2006-19 s 5
def **insurer** sub A2006-19 s 6
def **paid** ins A2006-42 amdt 3.36
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 insured person**
s 180 am 2001 No 44 amdt 1.1238, amdt 1.1239; A2008-31
amdt 1.40
- Life insurance**
pt 8.3 hdg (prev ch 8 pt 3 hdg) renum R1 LA (see 2001 No 55 amdt 1.6)
- When duty payable by insured person**
s 187 am 2001 No 44 amdt 1.1240, amdt 1.1241

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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)

Meaning of *insurer* for pt 8.4

s 188A ins A2006-19 s 7

Insurers to be registered

s 189 sub A2005-54 amdt 1.106

Registration of insurers

s 190 sub 2001 No 44 amdt 1.1242

Cancellation of registration by commissioner

s 191 am A2006-19 s 8

Insurer stopping writing insurance business

s 192 sub A2005-54 amdt 1.107

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 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
am A2006-42 amdt 3.55

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 applicationss 208AA ins A2003-29 s 7
am A2006-42 amdt 3.55**Exemptions**

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

Definitions for pt 9.2s 208A def **demonstrator** ins A2000-46 s 18
def **licensed vehicle dealer** ins A2000-46 s 18
om A2006-42 amdt 3.37
def **trading stock** ins A2000-46 s 18**Foreign countries**

s 209A ins 2000 No 46 s 19

International organisations and diplomats

s 209B ins A2005-29 s 4

Hospitals and schools

s 210 sub A2005-29 s 5

Charitable organisations

s 210A ins A2005-29 s 5

Certain disabled persons

s 211 am A2005-20 amdt 3.144

Partial exemption—modified vehicles for people with disabilities

s 211A ins A2006-19 s 9

Successors of deceased people

s 212 am 2001 No 55 s 27

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Vehicle registration transfers relating to certain personal relationships

s 213 sub 2002 No 14 s 11
am A2004-2 amdt 1.18, amdt 1.19; A2006-22 amdt 1.51,
amdt 1.52, amdt 1.57, amdt 1.58 (A2006-22 rep before
commenced by disallowance (see Cwlth Gaz 2006 No S93));
A2007-3 amdt 3.175; A2008-14 amdt 1.31

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; A2006-42 amdt 3.55

Organisations registered under Workplace Relations Act

s 215 sub A2005-20 amdt 3.145

Repossessed motor vehicles

s 216 am A2007-21 s 5

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 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
om A2006-42 amdt 3.38

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))
am A2005-20 amdt 3.146; A2005-29 s 6, s 7; A2007-21 s 6

Certificates of exemption

s 222 sub 2000 No 46 s 21
om A2005-29 s 8

Returns by road transport authority

s 223 sub 1999 No 79 s 5 sch 3
am 2001 No 55 s 31
sub A2005-29 s 9

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

Replicas

s 228 am A2006-37 s 5, s 6

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; A2006-42
amdt 3.55

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)

Meaning of *stamp* etc

s 233 sub A2006-37 s 7
am A2007-29 s 11

Stamping instruments

s 234 sub A2006-37 s 7

Stamping duplicates or counterparts of instruments

s 235 sub A2006-37 s 7

Stamping duplicates or counterparts of instruments

s 236 om A2006-37 s 7

Stamping instruments if no duty chargeable

s 237 om A2006-37 s 7

Stamp defaced or removed

s 238 sub A2006-37 s 7

Endnotes

4 Amendment history

Electronic assessment and payment of duty

s 239 om A2004-15 amdt 2.62
ins A2006-37 s 7

Possession of counterfeiting equipment

s 240 om A2004-15 amdt 2.62

Offence to stamp without authority

s 241 sub A2005-54 amdt 1.108; A2006-37 s 7

Execution of instruments

s 243 am A2008-31 amdt 1.40

Stamping of instruments after execution

s 244 sub A2005-54 amdt 1.109

Stamping taken to constitute assessment

s 245 am A2008-31 amdt 1.40

Deferred payments for certain stamped instruments

s 246 am 2001 No 44 amdt 1.1254, amdt 1.1255; A2006-37 s 8

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
sub A2005-54 amdt 1.110

Registration of transfers of shares

s 248 am 2000 No 34 s 20
sub A2005-54 amdt 1.110
am A2006-37 s 9, s 10; pars renum R20 LA
exp 30 June 2010 (s 75A)

Registration of transfers of units

s 249 am 2000 No 34 s 21
sub A2005-54 amdt 1.110
am A2006-37 s 11, s 12; pars renum R20 LA
exp 30 June 2010 (s 75A)

Receipt of instruments in evidence

s 250 am A2006-37 s 13

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); A2006-22 amdt 1.57 (A2006-22 rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); A2006-45 s 39; pars renum R22 LA (1) (n), (o), (p) exp 30 June 2007 (s 173A) pars renum R25 LA am A2008-31 s 12, amds 1.16-1.21

Declaration of recognised stock exchanges

s 252A ins 2001 No 44 amdt 1.1256 am A2006-42 amdt 3.55; A2008-31 amdt 1.22

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 (1))

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)

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4 Amendment history

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)

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))

Transitional—Duties Amendment Act 2006

ch 14 hdg ins A2006-13 s 15
exp 1 July 2011 (s 403)

Application of ch 2 to certain transfers and transactions

s 400 ins A2006-13 s 15
exp 1 July 2011 (s 403 (LA s 88 declaration applies))

Application of ch 5 to certain franchise arrangements

s 401 ins A2006-13 s 15
exp 1 July 2011 (s 403 (LA s 88 declaration applies))

Transitional regulations—ch 14

s 402 ins A2006-13 s 15
exp 1 July 2011 (s 403)

Expiry—ch 14

s 403 ins A2006-13 s 15
exp 1 July 2011 (s 403)

Transitional—Duties Amendment Act 2006 (No 2)

ch 15 hdg ins A2006-45 s 40

Transitional—hire of goods

pt 15.1 hdg ins A2006-45 s 40
exp 30 June 2012 (s 414)

Application of ch 6 to hiring charges received by commercial hire business before 1 July 2007

s 410 ins A2006-45 s 40
exp 30 June 2012 (s 414)

Endnotes

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Application of ch 6 to hire of goods entered into before 1 July 2007

s 411 ins A2006-45 s 40
exp 30 June 2012 (s 414)

Application of ch 6 to certain arrangements

s 412 ins A2006-45 s 40
exp 30 June 2012 (s 414 (LA s 88 declaration applies))

Transitional regulations—pt 15.1

s 413 ins A2006-45 s 40
exp 30 June 2012 (s 414)

Expiry—pt 15.1

s 414 ins A2006-45 s 40
exp 30 June 2012 (s 414)

Transitional—lease instruments

pt 15.2 hdg ins A2006-45 s 40
exp 30 June 2014 (s 423)

Application of ch 5 to leases entered into before 1 July 2009

s 420 ins A2006-45 s 40
exp 30 June 2014 (s 423)

Application of ch 5 to certain arrangements

s 421 ins A2006-45 s 40
am A2007-38 s 9, s 10
exp 30 June 2014 (s 423 (LA s 88 declaration applies))

Transitional regulations—pt 15.2

s 422 ins A2006-45 s 40
exp 30 June 2014 (s 423)

Expiry—pt 15.2

s 423 ins A2006-45 s 40
exp 30 June 2014 (s 423)

Transitional—unquoted marketable securities

pt 15.3 hdg ins A2006-45 s 40
exp 30 June 2015 (s 432)

Application of repealed provisions to certain arrangements

s 430 ins A2006-45 s 40
exp 30 June 2015 (s 432 (LA s 88 declaration applies))

Transitional regulations—pt 15.3

s 431 ins A2006-45 s 40
exp 30 June 2015 (s 432)

Expiry—pt 15.3

s 432 ins A2006-45 s 40
exp 30 June 2015 (s 432)

Transitional—Duties Amendment Act 2008

ch 16 hdg ins A2008-17 s 6
exp 30 June 2013 (s 443)

Note for ch 16 ch 16 hdg also ins A2008-31 s 13
 renum as ch 17 hdg R32 LA

Meaning of repealed provisions—ch 16

s 440 ins A2008-17 s 6
exp 30 June 2013 (s 443)

Note for s 440 s 440 also ins A2008-31 s 13
 renum as s 450 R32 LA

Application of repealed provisions

s 441 ins A2008-17 s 6
exp 30 June 2013 (s 443)

Note for s 441 s 441 also ins A2008-31 s 13
 renum as s 451 R32 LA

Transitional regulations—ch 16

s 442 ins A2008-17 s 6
exp 30 June 2013 (s 443)

Note for s 442 s 442 also ins A2008-31 s 13
 renum as s 452 R32 LA

Expiry—ch 16

s 443 ins A2008-17 s 6
exp 30 June 2013 (s 443)

Transitional—Duties (Landholders) Amendment Act 2008

ch 17 hdg (prev ch 16 hdg) ins A2008-31 s 13
 renum as ch 17 hdg R32 LA
exp 1 September 2010 (s 452)

Application of pt 3.2 to existing private unit trust schemes

s 450 (prev s 440) ins A2008-31 s 13
 renum as s 450 R32 LA
exp 1 September 2010 (s 452 (LA s 88 declaration applies))

Transitional regulations—ch 17

s 451 (prev s 441) ins A2008-31 s 13
 renum as s 451 R32 LA
exp 1 September 2010 (s 452)

Expiry—ch 17

s 452 (prev s 442) ins A2008-31 s 13
 renum as s 452 R32 LA
exp 1 September 2010 (s 452)

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Dictionary

dict

ins 2000 No 34 s 23
am A2006-19 s 10; A2006-22 amdt 1.53, amdt 1.54 (A2006-22 rep before commenced by disallowance (see Cwlth Gaz 2006 No S93)); A2008-14 amdt 1.32, amdt 1.33
def **acquired** ins A2006-42 amdt 3.39
om A2008-31 amdt 1.23
def **acquires** ins A2008-31 amdt 1.24
def **acquisition statement** ins A2006-42 amdt 3.39
def **Act imposing duty** reloc from s 4 2000 No 34 s 5
def **ADR** reloc from s 4 2000 No 34 s 5
exp 30 June 2010 (s 75A)
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 **asset** ins A2006-42 amdt 3.39
am A2008-28 amdt 3.84
def **associated person** reloc from s 4 2000 No 34 s 5
am 2001 No 40 s 12
sub A2008-31 amdt 1.25
def **Australian register** reloc from s 4 2000 No 34 s 5
am 2001 No 40 s 13
def **Australian Stock Exchange** ins A2008-31 amdt 1.26
def **bankrupt** reloc from s 4 2000 No 34 s 5
sub A2006-42 amdt 3.40
def **business** ins A2006-42 amdt 3.41
am A2008-28 amdt 3.84
def **business asset** om 2001 No 55 amdt 1.4
def **capital reduction** ins A2006-42 amdt 3.41
exp 30 June 2010 (s 75A)
def **chapter 3 transaction** ins A2006-42 amdt 3.41
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
exp 30 June 2007 (s 173A)
def **commissioner** reloc from s 4 2000 No 34 s 5
def **company** ins A2006-42 amdt 3.41
exp 30 June 2010 (s 75A)
def **company title dwelling** reloc from s 4 2000 No 34 s 5
om A2006-45 s 41
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 **consideration** ins A2006-42 amdt 3.41
def **Corporations Act** ins 2001 No 40 s 14
om A2006-19 s 11

- 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 **declaration of trust** ins A2006-42 amdt 3.41
- def **deferral arrangement** ins A2007-29 s 12
- def **demonstrator** ins A2006-42 amdt 3.41
- 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
om A2006-19 s 11
- def **discretionary trust** reloc from s 4 2000 No 34 s 5
- def **disqualifying circumstance** ins A2008-31 amdt 1.26
- def **domestic partner** reloc from s 4 2000 No 34 s 5
om A2004-2 amdt 1.20
- def **domestic relationship** reloc from s 4 2000 No 34 s 5
om A2006-22 amdt 1.55 (A2006-22 rep before
commenced by disallowance (see Cwlth Gaz 2006
No S93))
sub A2007-3 amdt 3.176
- def **duly stamped** reloc from s 4 2000 No 34 s 5
om A2006-37 s 14
- def **dutiable entitlement** ins A2006-42 amdt 3.41
exp 30 June 2010 (s 75A)
- 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**, in relation to a motor vehicle reloc from s 4
2000 No 34 s 5
om A2006-19 s 12
- def **dutiable value**, in relation to dutiable property reloc from
s 4 2000 No 34 s 5
om A2006-19 s 12
- def **dutiable value** ins A2006-19 s 12
- def **eligible person** ins A2007-29 s 12
- def **eligible property** ins A2007-29 s 12
- def **eligible rollover fund** reloc from s 4 2000 No 34 s 5
- def **entity** ins A2008-31 s 14
- def **equipment financing arrangement** ins A2006-42
amdt 3.41
exp 30 June 2007 (s 173A)
- def **error transaction** reloc from s 4 2000 No 34 s 5
om A2006-45 s 41
- def **financial market** ins A2008-31 amdt 1.26
- def **first executed** ins A2006-42 amdt 3.41
- def **fit-out costs** reloc from s 4 2000 No 34 s 5
exp 30 June 2009 (s 150A)
- def **foreign resident** reloc from s 4 2000 No 34 s 5

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- def **franchisee** reloc from s 4 2000 No 34 s 5
- def **franchisor** reloc from s 4 2000 No 34 s 5
- def **FS (BTGR) Act** ins A2008-28 amdt 3.83
- def **FS (TB) Act** ins A2006-42 amdt 3.41
om A2008-28 amdt 3.83
- def **general insurance** reloc from s 4 2000 No 34 s 5
am 2002 No 20 s 4
- def **general insurer** ins A2006-19 s 13
- def **goods** ins A2006-42 amdt 3.41
exp 30 June 2007 (s 173A)
- def **hire of goods** reloc from s 4 2000 No 34 s 5
sub A2006-42 amdt 3.42
exp 30 June 2007 (s 173A)
- def **hire-purchase agreement** reloc from s 4 2000 No 34 s 5
exp 30 June 2007 (s 173A)
- def **hiring charges** reloc from s 4 2000 No 34 s 5
sub A2006-42 amdt 3.43
exp 30 June 2007 (s 173A)
- def **home buyer concession scheme** ins A2007-29 s 12
- def **hospital** reloc from s 4 2000 No 34 s 5
- def **impressed stamp** reloc from s 4 2000 No 34 s 5
om A2006-37 s 15
- 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
sub A2006-42 amdt 3.44
- def **insurer** reloc from s 4 2000 No 34 s 5
sub A2006-19 s 14
- def **intellectual property** reloc from s 4 2000 No 34 s 5
- def **interest** reloc from s 4 2000 No 34 s 5
sub A2006-42 amdt 3.45; [A2008-31 amdt 1.27](#)
- def **interest**, in relation to a land-rich corporation reloc from s 4
2000 No 34 s 5
[om A2008-31 amdt 1.27](#)
- 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 **landholder** ins [A2008-31 amdt 1.28](#)
- def **landholding** ins A2006-42 amdt 3.46
- 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
sub A2006-45 s 42
- def **lease instrument** ins A2006-42 amdt 3.46
[exp 30 June 2009 \(s 150A\)](#)

- def **lessee** ins A2006-42 amdt 3.46
sub A2006-45 s 43
- def **lessor** ins A2006-42 amdt 3.46
sub A2006-45 s 43
- def **licensed vehicle dealer** ins A2006-42 amdt 3.46
sub A2007-21 s 7
- def **life** reloc from s 4 2000 No 34 s 5
- def **life company** reloc from s 4 2000 No 34 s 5
sub A2006-42 amdt 3.47
- def **life insurance** reloc from s 4 2000 No 34 s 5
sub A2006-19 s 15
- def **life insurance rider** ins A2006-19 s 16
- def **listed trust** ins A2008-31 s 14
- def **long-term lease** ins A2006-45 s 44
sub A2007-38 s 11
- def **majority interest** ins A2006-42 amdt 3.48
om A2008-31 amdt 1.29
- 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
exp 30 June 2010 (s 75A)
- 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 **paid** ins A2006-42 amdt 3.48
- def **partner** ins A2004-2 amdt 1.21
am A2006-22 amdt 1.57 (A2006-22 rep before
commenced by disallowance (see Cwlth Gaz 2006
No S93))
- def **partnership interest** am 2001 No 55 amdt 1.5
sub A2006-13 s 16
- def **party** ins 2002 No 14 s 16
- def **person** ins A2006-42 amdt 3.48
exp 30 June 2010 (s 75A)
- def **personal relationship** ins A2006-22 amdt 1.56 (A2006-22
rep before commenced by disallowance (see Cwlth Gaz 2006
No S93))
- def **person with a disability** ins A2006-19 s 17
- def **pooled superannuation trust** reloc from s 4 2000 No 34
s 5

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- def **premium** ins A2006-19 s 18
- def **private company** ins 2001 No 34 s 23
sub A2008-31 s 15
- def **private corporation** reloc from s 4 2000 No 34 s 5
om A2008-31 amdt 1.30
- def **private unit trust scheme** sub A2008-31 s 15
- def **property transferred** ins A2006-42 amdt 3.48
- 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
sub A2008-31 s 15
- def **receiving body** ins A2006-42 amdt 3.48
am A2008-28 amdt 3.84
- def **recognised stock exchange** ins A2008-31 s 16
- def **registered** ins A2008-31 s 31
- def **registered insurer** reloc from s 4 2000 No 34 s 5
- def **registered scheme** ins 2000 No 46 s 6
reloc from s 4 A2000-34 s 5
sub 2001 No 40 s 19
- 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
am A200-4-2 amdt 1.22
- def **relationship property** ins 2002 No 14 s 17
am A2006-22 amdt 1.57 (A2006-22 rep before
commenced by disallowance (see Cwlth Gaz 2006
No S93))
- def **relevant acquisition** ins A2006-42 amdt 3.48
sub A2008-31 amdt 1.32
- def **relevant period** ins A2008-31 s 33
- def **replica** reloc from s 4 2000 No 34 s 5
- def **residential lease** ins A2007-29 s 12
- def **responsible entity** sub 2001 No 40 s 22
reloc from s 4 2000 No 34 s 5
sub A2008-31 amdt 1.34
- def **right** reloc from s 4 2000 No 34 s 5
- def **rights alteration** ins A2006-42 amdt 3.48
exp 30 June 2010 (s 75A)
- def **scheme** reloc from s 4 2000 No 34 s 5
- def **shares** reloc from s 4 2000 No 34 s 5
- def **significant interest** ins A2008-31 s 35
- def **solicitor** reloc from s 4 2000 No 34 s 5
om A2006-42 amdt 3.49
- def **special hiring agreement** reloc from s 4 2000 No 34 s 5
exp 30 June 2007 (s 173A)

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- def **spouse** reloc from s 4 2000 No 34 s 5
om A2004-2 amdt 1.23
- def **stamped** ins A2006-37 s 16
- def **stock exchange** ins 2000 No 34 s 23
am 2001 No 44 amdt 1.1258
om A2008-31 amdt 1.36
- def **subsidiary** reloc from s 4 2000 No 34 s 5
sub A2006-42 amdt 3.50
om A2008-31 amdt 1.37
- 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
om A2006-45 s 45
- def **territory company** sub 2001 No 40 s 23
reloc from s 4 2000 No 34 s 5
- def **third-party insurance** ins A2006-19 s 18
- def **time** ins A2006-42 amdt 3.51
- def **trading stock** reloc from s 4 2000 No 34 s 5
sub A2006-42 amdt 3.52
- def **transfer** sub 2001 No 55 s 38; A2006-42 amdt 3.53
am A2006-45 s 46; pars renum R22 LA
sub A2008-31 amdt 1.38
- def **transferee** ins A2006-42 amdt 3.54
- def **trustee** am 2000 No 34 s 5
reloc from s 4 2000 No 34 s 5
- def **unascertainable** ins A2006-42 amdt 3.54
- 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
exp 30 June 2009 (s 150A)
- def **variation** reloc from s 4 2000 No 34 s 5
exp 30 June 2009 (s 150A)
- 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
- def **voluntary transfer** ins A2006-42 amdt 3.54
am A2008-28 amdt 3.84
- def **voting share** ins A2006-42 amdt 3.54
exp 30 June 2010 (s 75A)
- def **wholesale unit trust scheme** ins A2008-31 s 16
- def **widely held trust** ins A2008-31 s 16

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. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
ROA 13 Feb 2006	1 Mar 1999– 27 Feb 2000	–	new Act and retrospective amendments by A2002-6
ROB 13 Feb 2006	1 Mar 2000– 30 June 2000	A2000-5	amendments by A1999-79, SL2000-15, A2000-5 and A2000-46 and includes retrospective amendments by A2002-6
ROC 13 Feb 2006	6 July 2000– 27 Sept 2000	A2000-34	amendments by A2000-30 and A2000-34 and includes retrospective amendments by A2002-6
ROD 13 Feb 2006	28 Sept 2000– 30 June 2001	A2000-46	amendments by A2000-46 and includes retrospective amendments by A2002-6

Republication No and date	Effective	Last amendment made by	Republication for
R1 17 Apr 2001	12 Sept 2001– 4 Oct 2001	A2001-55	amendments by A2000-80, A2001-22, A2001-40, A2001-44 and A2001-55 and includes retrospective amendments by A2002-6
R2 17 Apr 2002	5 Oct 2001– 1 Mar 2002	A2001-55	amendments by A2001-17 and includes retrospective amendments by A2002-6
R3 (RI) 30 Sept 2016	2 Mar 2002– 31 Mar 2002	A2001-55	commenced expiry and includes retrospective amendments by A2002-6 reissue for correction to ch 13 expiry
R4 (RI) 30 Sept 2016	1 Apr 2002– 16 Apr 2002	A2001-55	commenced expiry and includes retrospective amendments by A2002-6 reissue for correction to ch 13 expiry
R5 (RI) 30 Sept 2016	17 Apr 2002– 23 May 2002	A2002-6	amendments by A2002-6 reissue for correction to ch 13 expiry

Endnotes

5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R6 (RI) 30 Sept 2016	24 May 2002– 30 June 2002	A2002-14	amendments by A2002-14 reissue for correction to ch 13 expiry
R7 (RI) 30 Sept 2016	1 July 2002– 3 Mar 2003	A2002-20	amendments by A2002-20 reissue for correction to ch 13 expiry
R8 (RI) 30 Sept 2016	4 Mar 2003– 30 June 2003	A2003-1	amendments by A2003-1 reissue for correction to ch 13 expiry
R9 (RI) 30 Sept 2016	1 July 2003– 8 Oct 2003	A2003-29	amendments by A2003-29 reissue for correction to ch 13 expiry
R10 (RI) 30 Sept 2016	9 Oct 2003– 21 Dec 2003	A2003-41	amendments by A2003-41 reissue for correction to ch 13 expiry
R10A 30 Sept 2016	22 Dec 2003– 21 Mar 2004	A2003-41	expiry of transitional provisions (ch 13)
R11 22 Mar 2004	22 Mar 2004– 8 Apr 2004	A2004-2	amendments by A2004-2
R12 9 Apr 2004	9 Apr 2004– 31 Aug 2004	A2004-15	amendments by A2004-15
R13 1 Sept 2004	1 Sept 2004– 1 June 2005	A2004-15	amendments by A2004-13
R14 2 June 2005	2 June 2005– 30 June 2005	A2005-20	amendments by A2005-20

Republication No and date	Effective	Last amendment made by	Republication for
R15 1 July 2005	1 July 2005– 23 Nov 2005	A2005-29	amendments by A2005-29
R16 24 Nov 2005	24 Nov 2005– 17 May 2006	A2005-54	amendments by A2005-54
R17 18 May 2006	18 May 2006– 30 June 2006	A2006-19	amendments by A2006-19
R18 1 July 2006	1 July 2006– 30 Aug 2006	A2006-19	amendments by A2006-13
R19 31 Aug 2006	31 Aug 2006– 26 Sept 2006	A2006-32	amendments by A2006-32
R20 27 Sept 2006	27 Sept 2006– 15 Nov 2006	A2006-37	amendments by A2006-37
R21 16 Nov 2006	16 Nov 2006– 28 Nov 2006	A2006-42	amendments by A2006-42
R22* 29 Nov 2006	29 Nov 2006– 11 Apr 2007	A2006-45	amendments by A2006-45
R23 12 Apr 2007	12 Apr 2007– 19 June 2007	A2007-3	amendments by A2007-3
R24 20 June 2007	20 June 2007– 30 June 2007	A2007-21	amendments by A2007-21
R25 1 July 2007	1 July 2007– 2 Oct 2007	A2007-21	commenced expiry
R26 3 Oct 2007	3 Oct 2007– 4 Dec 2007	A2007-29	amendments by A2007-29
R27 5 Dec 2007	5 Dec 2007– 30 Mar 2008	A2007-38	amendments by A2007-38
R28 31 Mar 2008	31 Mar 2008– 18 May 2008	A2007-38	amendments by A2007-25
R29 19 May 2008	19 May 2008– 29 June 2008	A2008-14	amendments by A2008-14
R30 30 June 2008	30 June 2008– 30 June 2008	<u>A2008-17</u>	amendments by A2008-17

Endnotes

6 Expired transitional or validating provisions

Republication No and date	Effective	Last amendment made by	Republication for
R31 1 July 2008	1 July 2008– 25 Aug 2008	A2008-17	amendments by A2008-17 and commenced expiry

Note 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.

7 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

Duties (Landholders) Amendment Act 2008 A2008-31

4 Divisions 3.2.1 and 3.2.2

substitute

Division 3.2.1 Preliminary

78 Definitions—pt 3.2

In this part:

acquires, an interest in a landholder—see section 84.

associated person—see section 83A and section 86 (2).

entity—see section 78A.

interest, in a landholder—see section 83.

landholder—see section 79.

landholding—see section 80.

relevant acquisition, in relation to a person—see section 86.

relevant period, for a relevant acquisition, means—

- (a) the 3-year period before the relevant acquisition; or
- (b) if a person makes a relevant acquisition because the person acquires an interest by exercising a right to acquire the interest—the 3-year period before the person or an associated person acquired the right to acquire the interest and ending on the date of the relevant acquisition.

significant interest, in a landholder—see section 83.

Division 3.2.2 Landholding entities

78A Meaning of *entity*—pt 3.2

In this part:

entity means—

- (a) a private company; or
- (b) a private unit trust scheme; or
- (c) a wholesale unit trust scheme.

Note *Private company, private unit trust scheme* and *wholesale unit trust scheme*—see the dictionary.

79 Meaning of *landholder*—pt 3.2

For this part, a *landholder* is an entity that has a landholding in the ACT.

80 Meaning of *landholding*—pt 3.2

- (1) For this part, a *landholding* is any interest in land, other than the interest of a mortgagee, chargee or other secured creditor or a *profit à prendre*.

Note Interest—see the dictionary.

- (2) However, an interest in land is not a *landholding* of—
- (a) a private company unless the interest of the company is a beneficial interest; or
 - (b) a unit trust scheme unless the interest is held by the trustees in their capacity as trustees of the scheme.
- (3) This section is in aid of, but does not limit, the operation of any provision of this part providing for constructive ownership of interests.
- (4) For this part, the vendor and the purchaser under an uncompleted agreement for the sale of land are taken to be separately entitled to the whole of the land.

81 Constructive ownership of landholdings and other property—linked entities

- (1) In addition to any interest in land or other property that it may hold in its own right, an entity (the *principal entity*) is taken, for this part, to hold an interest in land or other property held by a linked entity of the principal entity.
- (2) For this section, a *linked entity* of a principal entity means a person (other than an individual)—
- (a) who is part of a chain of people—
 - (i) which includes the principal entity; and
 - (ii) which is comprised of 1 or more links; and

- (iii) in which a link exists if a person would be entitled to receive at least 20% of the unencumbered value of the property of another person if the other person were to be wound up; and
 - (iv) which does not include in any of the links between the person and the principal entity, a public unit trust scheme, a wholesale unit trust scheme or a company whose shares are listed on the Australian Stock Exchange or any other exchange of the World Federation of Exchanges; and
- (b) who is not a public unit trust scheme, a wholesale unit trust scheme or a company whose shares are listed on the Australian Stock Exchange or any other exchange of the World Federation of Exchanges.
- (3) The value, for duty purposes, of the interest in land or other property that a principal entity is taken, by subsection (1), to hold because of a holding by a linked entity is that portion of the interest's unencumbered value to which the principal entity would be entitled (without regard to any liabilities of the linked entity or any other person in the ownership chain) if each entity in the chain of entities were to be wound up.
- (4) In this section:
- person** includes an entity.
- Note* **Entity**—see s 78A.

82 Constructive ownership of landholdings and other property—discretionary trusts

- (1) For this section, a person is a **beneficiary** of a discretionary trust if the person is a person, or a member of a class of people, in whose favour, by the terms of the trust, capital the subject of the trust may be applied in the event—
- (a) of the exercise of a power or discretion in favour of the person or class; or

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7 Uncommenced amendments

(b) that a discretion conferred under the trust is not exercised.

Note **Discretionary trust**—see the dictionary.

- (2) A beneficiary of a discretionary trust is taken to own or to be otherwise entitled to the property the subject of the trust.
- (3) For this part, any property that is the subject of a discretionary trust (the **primary trust**) is taken to be the subject of any other discretionary trust—
- (a) that is a beneficiary of the primary trust; or
- (b) any trustee of which (in the capacity of trustee) is a beneficiary of the primary trust.
- (4) Subsection (3) extends to apply to property that is the subject of a discretionary trust only by the operation of that subsection.
- (5) However, subsection (2) or (3) does not apply in a particular case if the commissioner—
- (a) is satisfied that the application of the subsection would be inequitable; and
- (b) determines, in writing, that the subsection does not apply.
- (6) In this section:
- person** includes an entity.

Note **Entity**—see s 78A.

83 **Interest and significant interest in landholders—pt 3.2**

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

- (2) A person who, under subsection (1), has an interest in a landholder has a **significant interest** in the landholder if the person, in the event of a distribution of all the property of the landholder immediately after the interest was acquired, would be entitled to—
- (a) if the landholder is a private unit trust scheme—at least 20% of the property distributed; or
 - (b) if the landholder is a private company or wholesale unit trust scheme—at least 50% of the property distributed.
- (3) In this section:
- person** includes an entity.

Note **Entity**—see s 78A.

83A Meaning of **associated person**—pt 3.2

- (1) Without limiting the meaning of the dictionary, definition of **associated person**, paragraph (a), a public company and a subsidiary of a public company are taken to be associated people for this part.
- (2) However, the responsible entity of a managed investment scheme (the **first scheme**), and the responsible entity of another managed investment scheme (the **other scheme**), are associated people for this part only if a person who is a member of the first scheme and is beneficially entitled to more than 20% of the property to which the scheme relates is also a member of the other scheme and is beneficially entitled to more than 20% of the property to which the other scheme relates.

Note For another exception to **associated person**—see s 86 (2).

- (3) In this section:
- subsidiary**—see the Corporations Act, section 9.

84 How person *acquires* an interest in a landholder—pt 3.2

- (1) For this part, a person *acquires* an interest in a landholder if the person obtains an interest, or the person's interest increases, in the landholder regardless of how it is obtained or increased.
- (2) Without limiting subsection (1), a person may acquire an interest in a landholder—
 - (a) by any of the following:
 - (i) purchase, gift, allotment, issue or transfer of a share or unit in the landholder;
 - (ii) variation, abrogation or alteration of a right attaching to any such share or unit;
 - (iii) cancellation, redemption or surrender of any such share or unit;
 - (iv) variation, abrogation or alteration of a right of a holder of any such share or unit;
 - (v) payment of an amount owing for any such share or unit;
or
 - (b) by any combination of the means mentioned in paragraph (a).
- (3) If the acquisition arises from an agreement to purchase, allot or issue a unit or share, the acquisition is made, for this part, when the agreement is completed.
- (4) For subsection (3)—
 - (a) it does not matter whether or not the acquisition or interest acquired is registered; and
 - (b) an agreement is taken to be completed when the necessary transfer or title documents are delivered to the person acquiring the interest and the purchase price is paid in full.

- (5) To remove any doubt, a person may acquire an interest in a landholder without acquiring shares or units in the landholder.

5 Section 86

substitute

86 What is a *relevant acquisition*?—pt 3.2

- (1) For this part, a person is taken to have made a *relevant acquisition* if the person—
- (a) acquires an interest in a landholder—
 - (i) that is of itself a significant interest in the landholder; or
 - (ii) that, when aggregated with other interests in the landholder held by the person or an associated person, results in an aggregation that amounts to a significant interest in the landholder; or
 - (iii) that, when aggregated with other interests in the landholder acquired by the person or other people in an associated transaction, results in an aggregation that amounts to a significant interest in the landholder; or
 - (b) having an interest described in paragraph (a) in a landholder, acquires a further interest in the landholder.
- (2) For this part, a person in their capacity as a qualifying investor of a wholesale unit trust scheme is taken not to be an *associated person* of other qualifying investors in relation to the scheme.

Note *Associated person*—see s 83A.

- (3) In this section:

associated transaction, in relation to the acquisition of an interest in a landholder by a person, means an acquisition of an interest in the landholder by another person in circumstances in which—

- (a) those people are acting in concert; or

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- (b) the acquisitions form, are evidence of, give effect to or arise from substantially 1 arrangement, 1 transaction or 1 series of transactions.

qualifying investor—see section 95D.

6 Acquisition statements Section 87 (3) (e)

substitute

- (e) the unencumbered value of all landholdings in the ACT of the landholder as at the date of the relevant acquisition and as at the date of acquisition of each interest acquired in the landholder during the relevant period for the relevant acquisition;

Note **Relevant period**—see s 78.

7 How duty is charged on relevant acquisitions Section 90 (1) to (3)

substitute

- (1) If an acquisition statement does not disclose any acquisitions during the relevant period for 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 landholdings of the landholder 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.

Note **Relevant period**—see s 78.

- (2) If an acquisition statement discloses 1 or more acquisitions during the relevant period for 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 way 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 relevant period for the relevant acquisition, by the person or any associated person of an interest in the same landholder, 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.

8 New part 3.2A

insert

Part 3.2A Registration of unit trust schemes

95A Definitions—pt 3.2A

In this part:

disqualifying circumstance, in relation to a registered unit trust scheme, means a circumstance that causes the scheme to fail or cease to meet the relevant criteria for registration of the scheme.

registered means registered under this part.

responsible entity, of a unit trust scheme for which there is no responsible entity within the meaning of the Corporations Act, section 9, means the trustee of the scheme.

Note **Responsible entity**, for this Act generally—see the Corporations Act, s 9 (see dict).

95B Applications for registration

- (1) The responsible entity of a unit trust scheme may apply to the commissioner for registration of the scheme as—
- (a) an imminent public unit trust scheme; or
 - (b) a wholesale unit trust scheme; or

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(c) an imminent wholesale unit trust scheme.

Note If a form is approved under the Taxation Administration Act, s 139C for an application, the form must be used.

- (2) In considering an application for registration, the commissioner may take into account any matter the commissioner considers on reasonable grounds relevant.

95C Registration of imminent public unit trust schemes

- (1) On application by the responsible entity of a unit trust scheme, the commissioner may register the unit trust scheme as an imminent public unit trust scheme if satisfied that the scheme meets the criteria for registration as an imminent public unit trust scheme.

- (2) The criteria for registration as an imminent public unit trust scheme are that—

(a) the unit trust scheme will become a listed trust or widely held trust within the prescribed period after the date of effect under section 95F (1) of the registration of the unit trust scheme as an imminent public unit trust scheme; and

(b) the units issued in the unit trust scheme before the scheme becomes a listed trust or widely held trust have been or will be issued only for the purpose of the unit trust scheme becoming a listed trust or widely held trust; and

(c) those units are or will be the only units issued until the unit trust scheme becomes a listed trust or widely held trust.

- (3) In this section:

prescribed period means—

(a) 12 months; or

(b) if the commissioner allows, in writing, a longer period—the longer period.

95D Registration of wholesale unit trust schemes

- (1) On application by the responsible entity of a unit trust scheme, other than a listed trust, the commissioner may register the unit trust scheme as a wholesale unit trust scheme if satisfied that the scheme meets the criteria for registration as a wholesale unit trust scheme.

Note **Listed trust**—see the dictionary.

- (2) The criteria for registration as a wholesale unit trust scheme are that—
- (a) at least 80% of the units in the unit trust scheme are held by qualifying investors; and
 - (b) each qualifying investor holds less than 50% of the units in the unit trust scheme or, if a qualifying investor holds units in the unit trust scheme in more than 1 capacity, the qualifying investor holds less than 50% of the units in each capacity.
- (3) For this section, a **qualifying investor** in a unit trust scheme is a person who holds units in the unit trust scheme in any of the following capacities:
- (a) as the trustee of a complying superannuation fund that has at least 300 members;
 - (b) as the trustee of a complying approved deposit fund that has at least 300 members;
 - (c) as the trustee of a pooled superannuation trust;
 - (d) as the trustee of a public unit trust scheme;
 - (e) as a life company if its holding of the units in the unit trust scheme is an investment of a statutory fund maintained by it under the *Life Insurance Act 1995* (Cwlth);

Note For units held in a separate capacity by a life company, see s (4).

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- (f) as a custodian for a trustee, or a trustee for a life company, mentioned in any of paragraphs (a) to (e) in its capacity as such a custodian or trustee;
- (g) as the trustee of another wholesale unit trust scheme;
- (h) as the custodian or trustee for an IDPS if the IDPS has at least 300 clients or investors none of whom (individually or together with any associated person) is beneficially entitled to more than 20% of the property to which the IDPS relates;

Note **IDPS** means an investor directed portfolio service—see the relevant ASIC regulatory guide which is defined in s (6).

- (i) as the responsible entity of a managed investment scheme registered under the Corporations Act (not being a person to whom paragraph (d) or (h) applies) if the managed investment scheme has at least 300 members, none of whom (individually or together with any associated person) is beneficially entitled to more than 20% of the property to which the scheme relates;
 - (j) as the Crown in right of the Territory, the Commonwealth, a State or another Territory (including any statutory body representing the Crown in right of the Territory, the Commonwealth, a State or another Territory);
 - (k) a capacity approved by the commissioner under subsection (5).
- (4) For subsection (3) (e), the holding of units by a life company by way of an investment of a statutory fund of the life company is taken to be a holding of units by the life company in a separate capacity from a holding of units by the life company by way of investment of another statutory fund of the life company.
- (5) The commissioner may approve a capacity to be a capacity for subsection (3) (k) if satisfied that—
- (a) the capacity corresponds to a capacity mentioned in any of subsection (3) (a) to (f) under the law of an external Territory or foreign country; or

- (b) the capacity is as a wholly owned subsidiary of a person in a capacity referred to in paragraph (a).
- (6) In this section:
- IDPS**—see the relevant ASIC regulatory guide.
- relevant ASIC regulatory guide** means—
- (a) the regulatory guide *RG 148: Investor directed portfolio services* published by the Australian Securities and Investments Commission, as in force from time to time; or
- (b) if the Commission publishes another regulatory guide (the **replacement guide**) as a replacement for the guide mentioned in paragraph (a)—the replacement guide.
- subsidiary**—see the Corporations Act, section 9.
- (7) The Legislation Act, section 47 (6) does not apply to the relevant ASIC regulatory guide.

95E Registration of imminent wholesale unit trust schemes

- (1) On application by the responsible entity of a unit trust scheme, the commissioner may register the unit trust scheme as an imminent wholesale unit trust scheme if satisfied that the scheme meets the criteria for registration as an imminent wholesale unit trust scheme.
- (2) The criteria for registration as an imminent wholesale unit trust scheme are that—
- (a) the unit trust scheme will meet the criteria for registration as a wholesale unit trust scheme within the prescribed period after the date of effect under section 95F (1) of the registration of the unit trust scheme as an imminent wholesale unit trust scheme; and

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7 Uncommenced amendments

- (b) the units issued in the unit trust scheme before the scheme meets the criteria for registration as a wholesale unit trust scheme have been or will be issued only for the purpose of the unit trust scheme meeting those criteria; and
 - (c) those units are or will be the only units issued before the unit trust scheme meets those criteria.
- (3) In this section:
- prescribed period* means—
- (a) 12 months; or
 - (b) if the commissioner allows, in writing, a longer period—the longer period.

95F Duration of registration

- (1) Registration of a unit trust scheme takes effect on the day notified in writing by the commissioner to the applicant for registration of the scheme as being the date of effect of the registration.
- (2) The date of effect may be earlier than the day on which the unit trust scheme is registered.
- (3) Unless cancelled sooner, the registration of an imminent public unit trust scheme remains in force for the prescribed period under section 95C.

Note For the cancellation of registration, see s 95I.

- (4) Registration of a unit trust scheme registered as a wholesale unit trust scheme remains in force until it is cancelled by the commissioner.
- (5) Unless cancelled sooner, the registration of an imminent wholesale unit trust scheme remains in force for the prescribed period under section 95E.

95G Register of wholesale unit trust schemes

- (1) The commissioner must keep a register of unit trust schemes registered as wholesale unit trust schemes.
- (2) The register must include the following information for each unit trust scheme registered as a wholesale unit trust scheme:
 - (a) the name of the scheme;
 - (b) the date of effect under section 95F (1) of the registration of the scheme;
 - (c) any other information the commissioner approves.
- (3) The register is to be kept in the form the commissioner considers appropriate.
- (4) The commissioner must arrange for a copy of the register to be made available for public inspection on the revenue website and in any other way the commissioner approves.
- (5) For subsection (4), the commissioner may declare a website to be the revenue website.
- (6) A declaration under subsection (5) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

95H Reporting requirements for registered schemes

- (1) It is a condition of registration of a wholesale unit trust scheme that the responsible entity of the unit trust scheme gives the commissioner, within 1 month after the end of each financial year, a report containing the following particulars for the financial year:
 - (a) any acquisition by a person of any interest in the unit trust scheme that would entitle the person, in the event of an immediate distribution of all the property of the unit trust scheme, to at least 20% of the property distributed;

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- (b) any acquisition by a person of any interest in the unit trust scheme that, when aggregated with other interests the person has in the unit trust scheme, would entitle the person, in the event of an immediate distribution of all the property of the unit trust scheme, to at least 20% of the property distributed.

Note If a form is approved under the Taxation Administration Act, s 139C for a report, the form must be used.

- (2) The commissioner may, as a condition of registration, impose other reporting requirements on the responsible entity of a registered unit trust scheme (whether or not a wholesale unit trust scheme).
- (3) Requirements may be imposed under subsection (2) at the time of registration or at any later time by written notice sent to the responsible entity by the commissioner.

951 Cancellation of registration

- (1) The commissioner may cancel the registration of a unit trust scheme at any time if the commissioner is satisfied that—
 - (a) a disqualifying circumstance has occurred in relation to the scheme; or

Note **Disqualifying circumstance**—see s 95A.

 - (b) the responsible entity of the unit trust scheme has contravened a condition of registration of the unit trust scheme imposed under this part; or
 - (c) for an imminent public unit trust scheme—the unit trust scheme has become a listed trust or widely held trust; or
 - (d) for an imminent wholesale unit trust scheme—the unit trust scheme is registered as a wholesale unit trust scheme.
- (2) The registration of a unit trust scheme is cancelled by the commissioner giving written notice of the cancellation to the responsible entity of the scheme.

- (3) A notice under subsection (2) must include the reasons for the cancellation.

95J Disqualifying circumstances for registered unit trust schemes

- (1) If a disqualifying circumstance happens in relation to a registered unit trust scheme—
- (a) the responsible entity of the unit trust scheme must give the commissioner written notice of the disqualifying circumstance not later than 28 days after the day it happens; and
 - (b) the unit trust scheme is taken to have not been a public unit trust scheme or wholesale unit trust scheme on and after the disqualification date; and
 - (c) the commissioner must make an assessment of duty chargeable under this Act in relation to any acquisition of an interest in the unit trust scheme as if the unit trust scheme had not been a wholesale unit trust scheme or public unit trust scheme, as the case requires, on and after the disqualification date; and
 - (d) a tax default occurs for the purposes of the Taxation Administration Act if the whole of any duty assessed under paragraph (c) is not paid to the commissioner within 90 days after the assessment.

Note **Disqualifying circumstance**—see s 95A.

- (2) For this section, the **disqualification date** means—
- (a) in relation to a unit trust scheme registered as a wholesale unit trust scheme—the date on which the disqualifying circumstance happens; or
 - (b) in relation to a unit trust scheme registered as an imminent public unit trust scheme or imminent wholesale unit trust scheme—the date of effect under section 95F (1) of the registration of the unit trust scheme.

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**9 Interpretation for pt 3.3
Section 96 (1), definition of company, paragraph (b)**

omit

the stock exchange

substitute

a recognised stock exchange

**10 When does liability for duty arise?
Section 103 (2)**

omit

a stock exchange

substitute

the Australian Stock Exchange or any other exchange that is a member of the World Federation of Exchanges

**11 Application of pt 3.5
Section 109**

omit

stock exchange

substitute

recognised stock exchange

**12 Objections and review of decisions
New section 252 (1) (ma) to (mh)**

insert

(ma) under section 95C (1) refusing to register a unit trust scheme as an imminent public unit trust scheme; or

- (mb) under section 95C (3), definition of *prescribed period*, paragraph (b) refusing to extend the period for an imminent public unit trust scheme to become a listed trust or widely held trust; or
- (mc) under section 95D (1) refusing to register a unit trust scheme as a wholesale unit trust scheme; or
- (md) under section 95D (5) refusing to approve a corresponding capacity; or
- (me) under section 95E (1) refusing to register a unit trust scheme as an imminent wholesale unit trust scheme; or
- (mf) under section 95E (3), definition of *prescribed period*, paragraph (b) refusing to extend the period for an imminent wholesale unit trust scheme to become a wholesale unit trust scheme; or
- (mg) under section 95H (2) imposing a reporting condition on the registration of a unit trust scheme; or
- (mh) under section 95I (1) (a) or (b) cancelling the registration of a unit trust scheme; or

13 New chapter 17

insert

**Chapter 17 Transitional—Duties
(Landholders) Amendment
Act 2008**

**450 Application of pt 3.2 to existing private unit trust
schemes**

- (1) In this section:
commencement day means the day the *Duties (Landholders) Amendment Act 2008*, section 4 commences.
- (2) This section applies to a private unit trust scheme that was a public unit trust scheme immediately before the commencement day.
- (3) Despite anything in part 3.2 (Acquisition of interests in certain landholders), the private unit trust scheme is not taken to be an entity.
- (4) This section ceases to apply to the private unit trust scheme on the happening of the earliest of the following:
 - (a) the expiry of 12 months after the commencement day;
 - (b) the registration of the unit trust scheme under part 3.2A (Registration of unit trust schemes);
 - (c) the unit trust scheme becoming a listed trust or widely held trust.
- (5) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

451 Transitional regulations—ch 17

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Duties (Landholders) Amendment Act 2008*.
- (2) A regulation may modify this chapter (including in its operation in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

452 Expiry—ch 17

This chapter expires 2 years after the day this section commences.

14 Dictionary, new definitions of entity and listed trust

insert

entity, for part 3.2 (Acquisition of interests in certain landholders)—see section 78A.

listed trust means a unit trust scheme all of the units in which are listed for quotation on the Australian Stock Exchange or any other exchange that is a member of the World Federation of Exchanges.

15 Dictionary, definitions of private company, private unit trust scheme and public unit trust scheme

substitute

private company means a company—

- (a) that is not limited by shares; or
- (b) whose shares are not quoted on the Australian Stock Exchange or any other exchange that is a member of the World Federation of Exchanges.

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

public unit trust scheme means any of the following unit trust schemes:

- (a) a listed trust;
- (b) a widely held trust;
- (c) a unit trust scheme registered under part 3.2A (Registration of unit trust schemes) as an imminent public unit trust scheme.

16 Dictionary, new definitions

insert

recognised stock exchange means—

- (a) the Australian Stock Exchange; or
- (b) any other exchange that is a member of the World Federation of Exchanges; or
- (c) a financial market that is declared to be a recognised stock exchange under section 252A.

wholesale unit trust scheme means a unit trust scheme, other than a listed trust, that is registered under part 3.2A (Registration of unit trust schemes) as—

- (a) a wholesale unit trust scheme; or
- (b) an imminent wholesale unit trust scheme.

widely held trust means a unit trust scheme—

- (a) that is a managed investment scheme registered under the Corporations Act, part 5C.1; and
- (b) in which units have been offered to the public; and
- (c) that has at least 300 registered unit holders; and

- (d) in which none of the registered unit holders, individually or together with any associated person, holds or is entitled to more than 20% of the units in the unit trust scheme.

Schedule 1 Minor and consequential amendments

(see s 3)

[1.1] Section 4A (1), new note

insert

Note *Territory company*—see the dictionary.

[1.2] Section 7 (3), definition of *transfer*, note

substitute

Note Ch 3 treats certain transactions as transfers (eg, acquiring an interest in a landholder—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 s (1) (a) or (b) (i) (see dict, def *transfer*, par (a) (v)).

[1.3] Section 10 (1) (h) (i), new note

insert

Note *Territory company*—see the dictionary.

[1.4] Section 87 (3) (d) and (f)

omit

private corporation

substitute

landholder

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[1.5] Section 90 (4)

omit

private corporation

substitute

landholder

[1.6] Section 91A (6), definition of *relevant acquisition*

omit

[1.7] Section 92 (1)

omit

a private corporation, whether on a winding-up of the private corporation or otherwise

substitute

a landholder, whether on a winding-up of the landholder or otherwise

[1.8] Section 92 (2) and (3)

omit

private corporation

substitute

landholder

[1.9] Section 92 (4)

substitute

- (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.
- (5) However, subsection (4) does not apply in a particular case if the commissioner—
 - (a) is satisfied that the application of the subsection would be inequitable; and
 - (b) determines, in writing, that the subsection does not apply.

[1.10] Section 93

omit

land holdings

substitute

landholdings

[1.11] Section 94

substitute

94 Agreements for sale or conveyance of land

- (1) If—
 - (a) at the time of acquisition of an interest by any person in a landholder that requires the lodgment of an acquisition statement under division 3.2.3 (Charging of duty), the landholder was the vendor under an uncompleted agreement for the sale or conveyance of land; and
 - (b) the agreement is subsequently completed;

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the commissioner must 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 landholder.

Note For pt 3.2, the vendor and the purchaser under an uncompleted agreement for the sale of land are taken to be separately entitled to the whole of the land (see s 80 (4)).

(2) If—

- (a) at the time of acquisition of an interest by any person in a landholder that requires the lodgment by any person of an acquisition statement under division 3.2.3, the landholder 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 must 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 landholder.

(3) In this section:

landholder includes a linked entity of the landholder.

linked entity—see section 81 (2) (Constructive ownership of landholdings and other property—linked entities).

[1.12] Section 95 (1)

omit

landholding private corporation

substitute

landholder

[1.13] Section 100 (3)

substitute

- (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*?—pt 3.2).

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

[1.14] Sections 103 (2) and 109, new note

insert

Note **Territory company**—see the dictionary.

[1.15] Section 115B (2)

omit

in the approved form

[1.16] Section 252 (1) (f)

relocate as section 252 (1) (ca)

[1.17] Section 252 (1) (g)

relocate as section 252 (1) (la)

[1.18] Section 252 (1) (h) and (i)

relocate as section 252 (1) (mi) to (mj)

Endnotes

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[1.19] Section 252 (1) (j)

omit

section 82 (2)

substitute

section 82 (5)

[1.20] Section 252 (1) (k)

omit

section 82 (3)

substitute

section 82 (5)

[1.21] Section 252 (1) (m)

substitute

- (m) under section 92 (5) refusing to determine that a person's entitlement to participate in a distribution of the property of a landholder is to be evaluated otherwise than in accordance with whichever of section 92 (2) or (3) results in a greater entitlement; or

[1.22] Section 252A (1)

substitute

- (1) The Minister may declare a financial market to be a recognised stock exchange for this Act.

[1.23] Dictionary, definition of *acquired*

omit

[1.24] Dictionary, new definition of *acquires*

insert

acquires, an interest in a landholder, for part 3.2 (Acquisition of interests in certain landholders)—see section 84.

[1.25] Dictionary, definition of *associated person*

substitute

associated person—

- (a) for this Act generally—means a person who is associated with another person in accordance with any of the following provisions:
- (i) people are associated people if they are related people;
 - (ii) individuals are associated people if they are partners in a partnership to which the *Partnership Act 1963* applies;
 - (iii) private companies are associated people if common shareholders have a significant interest in each private company;
 - (iv) trustees are associated people if any person is a beneficiary common to the trusts (not including a public unit trust scheme) of which they are trustees;
 - (v) a private company and a trustee are associated people 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
- (b) for part 3.2 (Acquisition of interests in certain landholders)—see section 83A and section 86 (2).

Endnotes

7 Uncommenced amendments

[1.26] Dictionary, new definitions

insert

Australian Stock Exchange means ASX Limited, ACN 008 624 691.

disqualifying circumstance, in relation to a registered unit trust scheme, for part 3.2A (Registration of unit trust schemes)—see section 95A.

financial market—see the Corporations Act, section 9.

[1.27] Dictionary, definitions of *interest*

substitute

interest—

- (a) for this Act generally—includes an estate, an interest under a lease or a sublease, a proprietary right and a beneficial interest; and
- (b) in a landholder, for part 3.2 (Acquisition of interests in certain landholders)—see section 83.

[1.28] Dictionary, new definition of *landholder*

insert

landholder, for part 3.2 (Acquisition of interests in certain landholders)—see section 79.

[1.29] Dictionary, definition of *majority interest*

omit

[1.30] Dictionary, definition of *private corporation*

omit

[1.31] Dictionary, new definition of *registered*

insert

registered, for part 3.2A (Registration of unit trust schemes)—see section 95A.

[1.32] Dictionary, definition of *relevant acquisition*

substitute

relevant acquisition, in relation to a person, for part 3.2 (Acquisition of interests in certain landholders)—see section 86.

[1.33] Dictionary, new definition of *relevant period*

insert

relevant period, for a relevant acquisition, for part 3.2 (Acquisition of interests in certain landholders)—see section 78.

[1.34] Dictionary, definition of *responsible entity*

substitute

responsible entity—

- (a) for this Act generally—see the Corporations Act, section 9; and
- (b) of a unit trust scheme for which there is no responsible entity within the meaning of the Corporations Act, section 9, for part 3.2A (Registration of unit trust schemes)—see section 95A.

[1.35] Dictionary, new definition of *significant interest*

insert

significant interest, in a landholder—see section 83.

Endnotes

7 Uncommenced amendments

[1.36] Dictionary, definition of *stock exchange*

omit

[1.37] Dictionary, definition of *subsidiary*

omit

[1.38] Dictionary, definition of *transfer*

substitute

***transfer*—**

- (a) includes any of the following:
 - (i) assignment;
 - (ii) exchange;
 - (iii) a buyback of shares in accordance with the Corporations Act, part 2J.1, division 2;
 - (iv) vesting of an interest in property under a law of the Territory, the Commonwealth, a State or another Territory, unless the interest does not exist before it is vested;
 - (v) vesting of an interest in property under a court order, unless the interest did not exist before it is vested; and
- (b) for chapter 2 (Transactions concerning dutiable property)—see section 6.

[1.39] Further amendments, mentions of *stock exchange*

omit

stock exchange

substitute

recognised stock exchange

in

- section 10 (1) (h) and (i), note 2
- section 10 (2)
- section 32 (3), note 1
- section 63 (3), note 1
- section 75 (3) (a)
- section 75 (3), note 1

[1.40] Further amendments, mentions of *shall be taken*

omit

shall be taken

substitute

is taken

in

- section 21 (3) and (4)
- section 145 (2)
- section 180 (4)
- section 243 (1) and (2)
- section 245

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