



Australian Capital Territory

Duties (Landholders) Amendment Act 2008

A2008-31

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Australian Capital Territory

Duties (Landholders) Amendment Act 2008

A2008-31

An Act to amend the *Duties Act 1999*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Duties (Landholders) Amendment Act 2008*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Duties Act 1999*.

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
 - (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
- (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
 - (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).

- (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
 - (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;
 - (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.

95I 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.

**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 16

insert

Chapter 16 Transitional—Duties (Landholders) Amendment Act 2008

440 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.

441 Transitional regulations—ch 16

- (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.

442 Expiry—ch 16

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.

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

[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;

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)

[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).

[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.

[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

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 8 May 2008.

2 Notification

Notified under the Legislation Act on 18 August 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Duties (Landholders) Amendment Bill 2008, which was passed by the Legislative Assembly on 7 August 2008.

Clerk of the Legislative Assembly

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