

Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2016 (No 1)

Disallowable instrument DI2016–142

made under the

***Taxation Administration Act 1999*, section 139 (Determination of amounts payable under tax laws)**

1 Name of instrument

This instrument is the *Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2016 (No 1)*.

2 Commencement

This instrument commences on 1 July 2016.

3 Application of instrument

This instrument applies to the following transactions:

- (a) a Crown lease granted on or after 1 July 2016;
- (b) a transfer of a Crown lease first executed on or after 1 July 2016;
- (c) an agreement for the transfer of a Crown lease, if—
 - (i) the agreement precedes the transfer of the Crown lease; and
 - (ii) the agreement is first executed on or after 1 July 2016.

4 Definitions

In this instrument:

Act means the *Duties Act 1999*.

Disability Duty Concession Scheme means the concessional duty scheme established by this instrument.

eligible applicant means a participant in the NDIS who is an applicant for the Disability Duty Concession Scheme, and who meets the eligibility requirements for the Concession as detailed in sections 7 to 10.

subject property means an estate in fee simple or a Crown lease in respect of a transaction for which an application under this instrument is made, and includes vacant land, or land with improvement.

5 Application for concession

- (1) An application for the Disability Duty Concession Scheme must be received by the Commissioner—
 - (a) in respect of a grant, transfer, or agreement to transfer a Crown lease for an ‘off the plan’ purchase agreement—within 14 days after the first of the events in section 16A (1) (a) to (d) of the Act happens; or
 - (b) in respect of any other grant, transfer, or agreement to transfer a Crown lease—within 90 days of the first of the following to happen:
 - (i) the date of the grant of the Crown lease;
 - (ii) the date of the transfer of the Crown lease;
 - (iii) the date of the agreement to transfer the Crown lease.
- (2) The Commissioner may accept a late application under this instrument if the Commissioner considers it fair and reasonable to do so.
- (3) The Commissioner may reassess the duty liability under section 9 of the *Taxation Administration Act 1999* for an eligible home buyer that has submitted a late application for concessional duty under this instrument.
- (4) In this section:
‘off the plan’ purchase agreement—see the Act, section 16A (4).

6 Determination

- (1) I determine no duty is payable to the Territory by an eligible applicant under the Disability Duty Concession Scheme if—
 - (a) the total and undivided dutiable value of the grant, transfer, or agreement for the transfer of the subject property, under section 20 of the Act, is not more than \$750 000; and
 - (b) under the grant, transfer, or agreement for the transfer, the eligible applicant acquires both a legal and equitable interest in at least 51 per cent of the subject property; and
 - (c) the eligible applicant complies with the eligibility requirements for the Disability Duty Concession Scheme under sections 7 to 10 of this instrument.
- (2) Other than subsection (1), an applicant need not comply with the eligibility requirements to the extent the applicant is exempted from compliance under this instrument.

7 Eligibility requirement—NDIS participant

(1) An eligible applicant must be a participant of the NDIS and in receipt of an individual funding package.

(2) In this section:

NDIS means the Commonwealth's National Disability Insurance Scheme, administered by the National Disability Insurance Authority, and established under the *National Disability Insurance Scheme Act 2013* (Cwlth).

8 Eligibility requirement—residency

(1) An eligible applicant must occupy the subject property as the applicant's principal place of residence for a continuous period of at least 1 year (the *residency period*).

(2) The applicant must start the residency period within 1 year after the required start date (that is, settlement).

(3) An eligible applicant may apply in writing to the Commissioner for an exemption from the requirement to comply with the residency period.

(4) An application under subsection (3) must be made within 18 months after the required start date.

(5) On receiving an application under subsection (3), if the Commissioner is satisfied the applicant cannot reside in the subject property because of an unforeseen circumstance, the Commissioner may—

(a) approve a shorter residency period; or

(b) extend the time in which the applicant must start the residency period; or

(c) exempt the applicant from the residency period.

Example—unforeseen circumstance

A health-related issue

(6) If the residency period is not complied with, the applicant must, within 14 days after the ineligibility date—

(a) give written notice of that fact to the Commissioner; and

(b) pay the Territory the amount of duty that would have been chargeable if the applicant had not been eligible for the Disability Duty Concession Scheme.

(7) In this section:

ineligibility date means the earlier of the following:

(a) the end of the period allowed for compliance with the residency period;

(b) the date it first becomes apparent that the residency period will not be complied with during the period allowed for compliance.

principal place of residence means the home a person primarily resides in on an ongoing and permanent basis as the person's settled or usual home, but it is not sufficient to establish occupation—

- (a) if the occupation is transient, temporary or of a passing nature; or
- (b) the occupation is for some other purpose.

required start date means—

- (a) if the subject property has a dwelling upon it—the date the transfer of the subject property is completed; or
- (b) if the subject property is vacant land—the date a certificate of occupancy is issued under section 69 of the *Building Act 2004* following completion of construction of a dwelling on the subject property.

9 Eligibility requirement—property ownership

- (1) The eligible applicant and the eligible applicant's domestic partner must not have had a legal or an equitable interest in land, other than the subject property, in the 2 years preceding the date of the grant, transfer, or agreement for the transfer of the subject property (whichever is first).

Note 1 Under section 169 of the *Legislation Act 2001*, a reference to a person's domestic partner is a reference to someone who lives with the person in a domestic partnership and includes a reference to a spouse, civil union partner or civil partner of the person.

Note 2 Section 169 of the *Legislation Act 2001* defines a domestic partnership as the relationship between 2 people, whether of a different or the same sex, living together as a couple on a genuine domestic basis. The section also provides some examples of indicators used to decide whether or not 2 people are in a domestic partnership.

- (2) Subsection (1) does not apply to an interest in land if the eligible applicant or the eligible applicant's domestic partner:
 - (a) is required to relinquish the interest under—
 - (i) an order of a court; or
 - (ii) a written financial agreement made under the *Family Law Act 1975* (Cwlth), sections 90B, 90C, 90D, 90UB, 90UC or 90UD that is binding on the person (and the person's relationship has ended); or
 - (iii) a written domestic relationship agreement or a termination agreement under the *Domestic Relationships Act 1994* as a result of the termination of a relationship between domestic partners; or
 - (b) entered into an agreement to purchase a property in the 2 years preceding the date of the grant, transfer, or agreement for the transfer of the subject property, and subsequently rescinded the agreement—
 - (i) under sections 50 or 50A of the Act; or
 - (ii) under the relevant provisions of another jurisdiction.

10 Eligibility requirement—previous concessions

- (1) An applicant must not receive more than one concession under the Disability Duty Concession Scheme.
- (2) An applicant must not have previously received a concession under the following schemes:
 - (a) the Home Buyer Concession Scheme;
 - (b) the Pensioner Duty Concession Scheme;
 - (c) the Over 60s Home Bonus Scheme.

Andrew Barr MLA
Treasurer
21 June 2016