

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