

Duties (Pensioner Duty Deferral Scheme) Determination 2023 (No 2)

Disallowable instrument DI2023–281

made under the

Duties Act 1999, s 75AG (Duty deferral schemes—determination)

1 Name of instrument

This instrument is the *Duties (Pensioner Duty Deferral Scheme) Determination 2023 (No 2)*.

2 Commencement

This instrument commences on 27 November 2023.

3 Definitions

In this instrument:

Act means the *Duties Act 1999*.

Commissioner means the Commissioner for ACT Revenue.

Crown lease—see the *Land Titles Act 1925*, dictionary.

declared land sublease—see the *Planning Act 2023*, dictionary.

home means a building (affixed to land in the ACT) or a unit in a units plan that—

- (a) may lawfully be used as a place of residence; and
- (b) is, in the Commissioner’s opinion, a suitable building for use as a place of residence.

occupy, in relation to a principal place of residence, does not include occupation—

- (a) of a transient, temporary or passing nature; or
- (b) for a purpose other than as a place of residence.

off the plan agreement means an agreement for the sale of a unit in a units plan before the units plan is registered.

pensioner means a person who meets the requirements under section 5 (1) (a) as a transferee of an eligible transaction.

principal place of residence means the home a person primarily occupies on an ongoing and permanent basis as the person's settled or usual home.

registered—for an off the plan agreement, means registered by the registrar-general under the *Land Titles Act 1925* or the *Land Titles (Unit Titles) Act 1970*.

transfer means—

- (a) a transfer of eligible property; or
- (b) an agreement for the sale or transfer of eligible property (including an off the plan agreement); or
- (c) a grant of eligible property.

transferee—see the Act, dictionary.

unit—see the *Unit Titles Act 2001*, dictionary.

units plan—see the *Unit Titles Act 2001*, dictionary.

vacant land means land in the ACT, which has a Crown lease or a declared land sublease that does not have a home built, in full or in part, on it.

4 Meaning of *eligible property*

In this instrument:

eligible property means—

- (a) a home; or
- (b) vacant land.

5 Meaning of *eligible transaction*

(1) In this instrument:

eligible transaction means a transfer with a transaction date on or after 27 July 2023 that meets the following requirements:

- (a) on the transaction date, at least 1 transferee—
 - (i) received an Australian Centrelink age pension or Department of Veterans' Affairs age pension equivalent; or
 - (ii) received an Australian Centrelink disability support pension and was 50 years of age or older; or
 - (iii) held a Department of Veterans' Affairs Gold Card, and had held it for a continuous period of at least 1 year immediately prior to the transaction date; and
- (b) at least 1 transferee, who is a pensioner or their domestic partner (if any), will occupy the eligible property, as the transferee's principal place of residence, within 1 year of the residence start date for the duration of the residence period.

- (2) If it becomes apparent that a transaction is not an eligible transaction, a transferee must give the Commissioner written notice of that fact within 14 days after the first of the following events:
- (a) the end of any period allowed for compliance with a requirement of the transaction; or
 - (b) the date that the transferee first becomes aware that the transaction is not an eligible transaction.

Example—transaction not an eligible transaction

The transaction ceases to be eligible because no pensioner can occupy the eligible property as a principal place of residence.

- (3) In this section:

transaction date, of an eligible transaction, means the date that liability for duty arises under the Act, section 11.

6 Meaning of *residence period* and *residence start date*

- (1) In this instrument:

residence period means a continuous period of at least 1 year.

residence start date means—

- (a) for a home—the date of completion of the eligible transaction; or
 - (b) for vacant land—the date that a certificate of occupancy has been issued under the *Building Act 2004* for a home on the land that will be a person's principal place of residence.
- (2) The Commissioner may determine a shorter residence period (including no period), if—
- (a) the shorter period is requested, in writing, for a pensioner not later than 18 months after the residence start date; and
 - (b) the Commissioner is satisfied that the pensioner is unable to occupy the eligible property for a continuous period of 1 year because of an unforeseen circumstance.

Example—unforeseen circumstance

A health-related issue.

- (3) The Commissioner may determine a later residence date, if—

- (a) the later date is requested, in writing, for a pensioner not later than 18 months after the applicable residence start date under subsection 6 (1); and
- (b) the Commissioner is satisfied that the transferee is unable to begin occupying the eligible property because of an unforeseen circumstance.

Example—unforeseen circumstance

A health-related issue.

7 Determination—Pensioner Duty Deferral Scheme

For the purposes of section 75AG of the Act, I determine a scheme for the deferred payment of duty by a pensioner and their domestic partner (if any) on an eligible transaction, subject to the conditions specified in section 8.

8 Conditions of Duty Deferral

- (1) An application for the deferred payment of duty must be made in accordance with section 75AH of the Act.
- (2) Interest at the market rate component determined under section 26 of the *Taxation Administration Act 1999* is payable on the deferred duty, calculated from the date the duty becomes payable until the amount deferred is paid in full.
- (3) The deferred duty that is payable, and any accrued interest, must be paid on:
 - (a) the transfer of the eligible property to any other person; or
 - (b) the transfer of the pensioner's interest or their domestic partner's interest (if any) in the eligible property to:
 - (i) any other transferee;
 - (ii) the administrator or executor of the estate of the pensioner; or
 - (iii) any other person.
- (4) For the purposes of section 8 (3) (b) (ii), 'transfer' includes a transfer by transmission application.

9 Revocation

This instrument revokes *Duties (Pensioner Duty Deferral Scheme) Determination 2023*, DI2021-167.

Andrew Barr MLA
Treasurer

24 November 2023