

2009

**The Legislative Assembly for
Australian Capital Territory**

Duties Amendment Bill 2009 (No 2)

Explanatory Statement

**Circulated by authority of
Treasurer
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Duties Amendment Bill 2009 (No 2)

Summary

The Duties Amendment Bill 2009 (No 2) (the Bill) amends the *Duties Act 1999* (the Act) in four respects.

Overview

The Bill makes four amendments to the *Duties Act 1999*.

1. The Bill amends the provision that relates to the rescission of agreements for the sale or transfer of dutiable property. The provision did not allow for the cancellation of a transfer of dutiable property. A definition of cancelled has been included in the amendments and this now includes abandoned or terminated without completion.
2. The *Family Law Act 1975* was amended to include provisions for financial agreements for de facto relationships. The amendments made by this bill do not override the existing exemption provisions for de facto relationships.
3. The *Taxation (Government Business Enterprises) Act 2003* has a regulation that lists certain entities that are liable for taxes and charges, therefore the provisions in the Act were redundant.
4. The terminology in this provision that relates to duty on the registration of a motor vehicle has been amended. The wording 'passenger' and 'constructed primarily for the carriage of not more than 9 occupants' has been removed. These words caused confusion as to whether some dual cab utes were a passenger vehicle or a goods carrying vehicle. Amendments were also made to ensure that vehicles that currently pay duty at the lower rate continued to do so, including plant and equipment vehicles and vehicles with a gross vehicle mass of more than 4.5 tonne. These amendments should ensure that all vehicle types are captured under the correct duty rate.

Commencement Date

The Bill amends the Act so that the amendments are effective on the day after notification.



Details of the *Duties Amendment Act 2009 (No 2)*

Clause 1 – Name of Act

This clause provides that the Act is named the *Duties Amendment Act 2009 (No 2)*.

Clause 2 – Commencement

This clause provides that the Act commences on the day after notification. The motor vehicle provisions in clause 19 and clause 20 will commence on a date set by the Minister.

Clause 3 – Legislation amended

This clause provides that the Act makes amendments to the [Duties Act 1999](#).

Clause 4 – Section 4

This clause removes from this section the liability of a territory authority or an agent of the territory to pay duty. These provisions now are under the [Taxation \(Government Business Enterprises\) Act 2003](#).

Clause 5 – Payment of duty equivalents by territory departments Section 4A

This clause omits the provisions that relate to the liability for duty by territory departments under the Act. The liability for duty by territory departments falls within the *Taxation (Government Business Enterprises) Act 2003*.

Clause 6 – No double duty Section 17 (9)

This clause changes the terminology so that this section does not apply to a personal relationship financial agreement.

This clause also inserts a new paragraph (10) into subsection 17 of the Act. It provides a definition of a personal relationship financial agreement to include part VIIIAB financial agreements made under section 90UB, 90UC or 90UD of the [Family Law Act 1975](#).

Clause 7 – Cancelled agreements Section 50

This clause omits the wording rescinded or annulled and substitutes the word cancelled.

Clause 8 Section 50 (2)

This clause amends the provisions relating to the cancellation of agreements and updates the language to reflect the new section 50A. A definition of cancelled is

inserted into the section to include rescinded, annulled or otherwise terminated without completion.

Clause 9 – New section 50A

This clause inserts a new section to allow transfers of dutiable property to be cancelled. The clause also includes abandoned in the definition of cancelled.

Clause 10 – Financial and other agreements New Section 74A (aa)

This clause inserts a new subsection to identify that part VIIIAB financial agreements regarding de facto relationships made under the *Family Law Act 1975* are not liable to duty.

Clause 11 – Transfers relating to certain personal relationships New Section 74B (2A)

This clause inserts a new section into the Act in relation to the duty liability on a transfer of dutiable property under a part VIIIAB financial agreement made under the *Family Law Act 1975*. These agreements must be made under the following sections of the *Family Law Act 1975*:

- : Section 90UB – Financial agreement before de facto relationship;
- : Section 90UC – Financial agreement during de facto relationship; and
- : Section 90UD – Financial agreement after the breakdown of a de facto relationship.

Clause 12 –New section 74B (4A)

This clause inserts a new section that relates to a part VIIIAB financial agreement and that the agreement is the consequence of an end to that relationship. The commissioner must take into account a separation declaration made under the *Family Law Act 1975* section 90UF. The provisions in this section deal with the requirement for a valid separation declaration.

Clause 13 –New section 74B (6)

This clause omits subsection (4) and inserts subsection (4) and the new subsection (4A). The commissioner has the power under the [*Taxation Administration Act 1999*](#) to acquire additional information in relation to the above mentioned subsections.

Clause 14 – New definitions of de facto relationship and spouse party

This clause inserts the definition of de facto relationship and spouse party as defined under the *Family Law Act 1975*.

Clause 15 – Exempt transactions relating to certain personal relationships

New section 115H (2A)

This clause relates to transactions made under a part VIIIAB financial agreement under the *Family Law Act 1975*, section 90UB, section 90UC and section 90UD. This clause inserts a new section that exempts from duty certain transactions under chapter 3 of the Act, if the transaction meets the criteria in this provision.

Clause 16 – New section 115H (4A)

This clause inserts a new section that relates to a part VIIIAB financial agreement and that the agreement is the consequence of an end to that relationship. The commissioner must take into account a separation declaration made under the *Family Law Act 1975* section 90UF. The provisions in this section deal with the requirement for a valid separation declaration.

Clause 17 – Section 115H (6)

This clause omits subsection (4) and inserts subsection (4) and the new subsection (4A). The commissioner has the power under the *Taxation Administration Act 1999* to acquire additional information in relation to the abovementioned subsections.

Clause 18 – Section 115H (7) – New definitions of de facto relationship and spouse party

This clause inserts the definition of de facto relationship and spouse party as defined under the *Family Law Act 1975*.

Clause 19 – Rate of duty

Section 208 (2)

This clause omits the word passenger from this section. A clause is also inserted to allow the dutiable value of a vehicle to be determined under the *Taxation Administration Act 1999*.

Section 208(4)

This clause is amended to remove from the section the list of motor vehicles. The provision in s 208(2) (b) includes a caravan, trailer and vehicles with a gross vehicle mass of more than 4.5 tonne to ensure these vehicles are excluded from section 208 (2). A provision to include a vehicle that is prescribed by regulation has also been included.

Clause 20 –Section 208 (3)

This clause has been amended to clarify that section 3 only applies to a determination of a determined rate, and not a determined amount.

Clause 21 – Vehicle registration transfers relating to certain personal relationships

New section 213 (2A)

This clause inserts a new section relating to the duty liability on an application to register a motor vehicle. No duty is chargeable if the vehicle is transferred to the applicant under the *Family Law Act 1975* section 90UB, section 90UC or section 90UD if the criteria in this section are met.

Clause 22 – New section 213 (4A)

This clause inserts a new section that relates to a part VIIIAB financial agreement and that the agreement is the consequence of an end to that relationship. The commissioner must take into account a separation declaration made under the *Family Law Act 1975* section 90UF. The provisions in this section deal with the requirement for a valid separation declaration.

Clause 23 – Section 213 (6)

This clause omits subsection (4) and inserts subsection (4) and the new subsection (4A). The commissioner has the power under the *Taxation Administration Act 1999* to acquire addition information in relation to the abovementioned subsections.

Clause 24 – Section 213 (7), new definitions of de facto relationship and spouse party

This clause inserts the definition of de facto relationship and spouse party as defined under the *Family Law Act 1975*.

