

EXPLANATORY STATEMENT

STAMP DUTIES AND TAXES (AMENDMENT) ORDINANCE 1988

ORDINANCE NO. 55 OF 1988

The Stamp Duties and Taxes Ordinance 1987 (the Principal Ordinance) imposes stamp duties on conveyances and taxes on insurance premiums, transactions involving marketable securities, and the registration of vehicles in the ACT.

The Stamp Duties and Taxes (Amendment) Ordinance 1988 gives effect to undertakings given to the Senate Standing Committee on Regulations and Ordinances arising from its consideration of the Principal Ordinance. The Committee was concerned that certain decisions should be worded in mandatory rather than discretionary terms, and with review rights from certain decisions.

Details of the Ordinance are set out in the Attachment.

ISSUED BY THE AUTHORITY OF
THE MINISTER OF STATE FOR THE
ARTS AND TERRITORIES

Stamp Duties and Taxes (Amendment) Ordinance 1988

Section 1 cites the short title of the Ordinance as the Stamp Duties and Taxes (Amendment) Ordinance 1988.

Section 2 defines the Principal Ordinance to mean the Stamp Duties and Taxes Ordinance 1987.

Section 3 amends section 10 of the Principal Ordinance so that it will be mandatory rather than discretionary for the Commissioner to put an impressed stamp on the counterpart or copy of an instrument where that instrument has been duly stamped. The Senate Committee requested that this be a mandatory duty rather than a discretionary power.

Section 4 amends section 13 of the Principal Ordinance to remove the Commissioner's apparent discretion to decide whether:

- (i) an instrument has been duly stamped in order for that instrument to be regarded as being duly stamped notwithstanding defacement or removal of that stamp (subsection 13(1)); and
- (ii) an adhesive stamp has been spoilt or affixed to the instrument in error for the purposes of destroying the stamp and refunding the amount of the stamp duty or tax to the applicant (subsection 13(3)).

The Senate Committee requested that these be mandatory duties rather than discretionary powers.

Section 5 amends a typographical error in section 28 of the Principal Ordinance by inserting the word "of" after "hire" in paragraph (2)(d).

Section 6 amends section 36 of the Principal Ordinance by removing the Commissioner's apparent discretion in relation to a refund of taxes on premiums to the insurer. Thus, refunds in the situations outlined in the section will be mandatory. The Senate Committee requested that this be a mandatory duty rather than a discretionary power.

Section 7 amends section 62 of the Principal Ordinance by omitting subsection 3. The effect of this provision is included in a general notification provision relating to appellable decisions under section 9 of the proposed Ordinance.

Section 8 repeals section 65 of the Principal Ordinance and substitutes a new section 65 which provides appeals to the Administrative Appeals Tribunal from the following decisions of the Commissioner:

- (i) a refusal to refund an amount of stamp duty pursuant to paragraph 28(1)(c);

- (ii) a determination of an amount of duty that would have been payable on a lease under paragraph 28(1)(d);
- (iii) a refusal to refund an amount of stamp duty pursuant to paragraph 28(2)(d);
- (iv) in respect of an amount attributable to section 19 where relevant to a refund pursuant to subsection 28(2); and
- (v) a refusal to issue a certificate pursuant to subsection 62(1).

Section 9 amends section 66 of the Principal Ordinance by:

- (i) inserting a new subsection (1A) which requires the Commissioner to give written notice of a decision which is appellable pursuant to section 65 to the person whose interests are affected by the decision; and
- (ii) redrafting subsection (1) so that the statement outlining the review rights attaching to a decision must be included with the notifications referred to in subsection (1A).

The effect of these amendments is to expand the standard notification of decisions and review rights from a single appellable decision to the five decisions which are now appellable.