

# Duties (Pensioner Duty Deferral Scheme) Determination 2020

## Disallowable instrument DI2020–179

made under the

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

## EXPLANATORY STATEMENT

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### Background

Duty is ordinarily payable at the times tabled in section 16 of the *Duties Act 1999* (**the Duties Act**). For example, duty becomes payable on a transfer of dutiable property when the transfer is registered with the Registrar-General under the *Land Titles Act 1925*.

Under Division 2.6A.2 of the Duties Act, the Minister may determine a scheme for deferring duty. The Minister has previously determined that pensioners eligible for a benefit under the Pensioner Duty Concession Scheme were also able to defer payment of duty – see, for example, the *Duties (Pensioner Concession Duty Deferral Scheme) Determination 2019*, DI2019-270 (**the PDCS Determination**).

### Pensioner Duty Deferral Scheme Determination

The Minister has, in the *Duties (Pensioner Duty Deferral Scheme) Determination 2020* (**the Determination**), determined the Pensioner Duty Deferral Scheme. The opportunity to defer the payment of duty is extended to all pensioners acquiring a property as a principal place of residence.

To be eligible for a duty deferral under the Determination, a transferee must be a prescribed pensioner which, for the purposes of the Determination, relevantly means a person who, on the transaction date:

- (a) was in receipt of an Australian Centrelink age pension or Department of Veterans' Affairs age pension equivalent; or
  - (b) was in receipt of an Australian Centrelink disability support pension and was 50 years of age or older; or
- has held a Department of Veterans' Affairs Gold Card for a period of at least 1 year.

At least one of the transferees of the eligible property (being a pensioner or their domestic partner) must occupy the property as their principal place of residence continuously for a period of at least one year. That period must commence within one

year of completion of the transfer for an eligible home, or the date that the certificate of occupancy that is issued following completion of construction of a home for vacant land. Some exemptions apply to the residence requirement.

The domestic partner of a transferee can only fulfil the residence requirements if they are a transferee themselves; that is, they are named in the grant, transfer or agreement and they hold a relevant interest in the property.

A principal place of residence is defined as the home a person primarily occupies, on an ongoing and permanent basis, as their settled or usual home.

### **Conditions of Duty Deferral**

A duty deferral arrangement determined under Division 2.6A.2 of the Duties Act may be subject to conditions – refer to section 75AG (3) and section 75AJ of the Duties Act.

The Determination sets conditions on duty deferrals:

- **Application**

An eligible person must apply to the Commissioner for the deferred payment of duty – refer to section 75AH of the Duties Act. The application must be made at the same time the instrument of transfer for the property is lodged with the Registrar-General under the *Land Tiles Act 1925*.

- **Interest**

Interest at the market rate (determined under section 26 of the *Taxation Administration Act 1999*) will be payable on the deferred amount of duty for as long as the amount of duty remains unpaid.

- **Payment of deferred amount**

The deferred duty and any interest that accrues must be paid when:

- (a) the property is transferred to any other person;
- (b) the interest in the property held by the ‘pensioner’ for the purposes of the transaction, is transferred to:
  - (i) another transferee;
  - (ii) an administrator or executor of the estate of the pensioner (includes a transfer by transmission application);
  - (iii) any other person.

Any duty payable is a debt owing to the Territory and is a first charge on the interest held by an owner that takes priority over other interests – see section 5 of the Duties Act and section 56H of the *Taxation Administration Act 1999*.

### **Application of the PDCS Determination**

The Determination does not affect the operation of the 2019 Determination. The PDCS Determination continues to be in force until its expiry (which is due to expire on 30 June 2020).

**Commencement and Expiry**

The Determination commences on 1 July 2020 and expires on 30 June 2021. Duty deferrals approved under the Determination (and its conditions of approval) will continue to apply after the expiration of the Determination until the duty amount deferred and any accrued interest is paid in full.

Authorised by the Treasurer  
Andrew Barr MLA