



Australian Capital Territory

# Rates Act 2004

A2004-3

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Australian Capital Territory

# Rates Act 2004

**A2004-3**

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An Act about rates, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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2002 255B

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Rates Act 2004*.

*Note* This Act is a **tax law** under the Taxation Administration Act. As a tax law, this Act is subject to provisions of the Taxation Administration Act about the administration and enforcement of tax laws generally.

### 2 Commencement

This Act commences on 1 July 2004.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (**signpost definitions**) to other words and expressions defined elsewhere.

For example, the signpost definition ‘**unit owner**—see Unit Titles Act, dictionary’ means that the term ‘unit owner’ is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2 Unimproved value of rateable land

### 6 Meaning of *unimproved value*

- (1) The *unimproved value* of a parcel of land held under a lease from the Commonwealth is the capital amount that might be expected to have been offered on the relevant date for the lease of the parcel, assuming that—
- (a) the only improvements on or to the parcel were the improvements (if any) by way of clearing, filling, grading, draining, levelling or excavating—
    - (i) if the Territory or Commonwealth had, before the parcel became rateable as a separate parcel, granted a development lease of land that included the parcel—made by the lessee under that lease or by the Territory or Commonwealth, or the cost of which was met by that lessee or by the Territory or Commonwealth; or
    - (ii) in any other case—made by the Territory or Commonwealth or the cost of which was met by the Territory or Commonwealth; and
  - (b) the circumstances that existed on the prescribed date also existed on the relevant date; and
  - (c) on the relevant date, the lease had an unexpired term of 99 years; and
  - (d) a nominal rent was payable under the lease for the 99 year term.

*Note* **Relevant date** is defined in the dictionary.

- (2) The *unimproved value* of a parcel of land held in fee simple is the capital amount that might be expected to have been offered for the parcel at a genuine sale on the relevant date on the reasonable terms and conditions that a genuine seller would require, assuming that no improvements had been made on or to the parcel.
- (3) In this section:
- prescribed date*, for a parcel of land, means—
- (a) for a determination of the unimproved value of the parcel—the date the parcel became rateable; or
  - (b) for an annual redetermination of the unimproved value of the parcel—the date the redetermination applies; or
  - (c) for a redetermination of the unimproved value of the parcel under section 11 (Redetermination—error or changed circumstances)—the date for the redetermination mentioned in the notice under section 11 (2) .

## **7 Unimproved value of land developed under development lease**

- (1) This section applies to a parcel of land on or to which an improvement mentioned in section 6 (1) (a) is made by a lessee under a development lease mentioned in section 6 (1) (a) (i).
- (2) For the determination of the unimproved value of the parcel, the improvement is taken to have been made only to the extent that the Territory or Commonwealth normally makes improvements of the same kind on or to a comparable parcel of land.

**8 Meaning of *rateable land***

- (1) All land in the ACT, including Commonwealth land, is *rateable land*, except—
- (a) commons, public parks and public reserves not held under lease or licence; and
  - (b) sites of cemeteries, public hospitals, benevolent institutions and buildings used exclusively for public charitable purposes; and
  - (c) sites of churches and other buildings used exclusively for public worship; and
  - (d) sites of buildings used for free public libraries; and
  - (e) land leased from the Commonwealth that is occupied by, or used in connection with, a school; and
  - (f) Commonwealth land that is not leased and is unoccupied (other than land that, immediately before becoming unoccupied, was occupied by a lessee of the Territory or Commonwealth on a weekly or fortnightly tenancy).

- (2) For this section:

*school* means a school that is registered or provisionally registered under the *Education Act 2003*, and includes a playground belonging to, or used in connection with, the school.

**9 First determination of unimproved value**

- (1) This section applies if a parcel of land becomes rateable on or after a relevant date (the *1st relevant date*).
- (2) The commissioner must—
- (a) determine the unimproved value of the parcel of land as at the 1st relevant date; and

- (b) if necessary, redetermine the unimproved value of the parcel as at each relevant date after the first relevant date when it was not determined.
- (3) A determination under subsection (2) (a) applies to rates for the period—
  - (a) beginning on 1 July in the calendar year in which the relevant date falls; and
  - (b) ending on 30 June in the next calendar year.
- (4) A redetermination under subsection (2) (b) for a parcel of land applies to rates for the period—
  - (a) beginning on 1 July in the calendar year in which the relevant date as at which the redetermination is made falls; and
  - (b) ending on 30 June in the next calendar year.

## **10 Annual redeterminations**

- (1) As soon as practicable after each 1 January, the commissioner must redetermine the unimproved value, as at that date, of each parcel of land rateable on that date.
- (2) An annual redetermination of the unimproved value of a parcel of land applies to rates for the period—
  - (a) beginning on 1 July in the calendar year in which the relevant date when the redetermination is made falls; and
  - (b) ending on 30 June in the next calendar year.

**11 Redetermination—error or changed circumstances**

- (1) This section applies if, in relation to a parcel of land—
  - (a) an error was made when the unimproved value of the parcel was determined by any of the last 3 determinations of the parcel (the *relevant determination*); or
  - (b) there has been a change of circumstances since the date of any of the last 3 determinations of the unimproved value of the parcel and the change was not taken into account in the most recent determination of the unimproved value of the parcel.
- (2) The commissioner may give written notice to the owner of the parcel of the commissioner's intention to redetermine the unimproved value of the parcel as at the date of the relevant determination.
- (3) If the commissioner gives notice, the commissioner must make the redetermination as soon as practicable.
- (4) A redetermination under this section for a parcel of land applies to rates for the period—
  - (a) beginning—
    - (i) if subsection (1) (a) applies—on the day when the relevant determination applies to rates for the parcel; or
    - (ii) if subsection (1) (b) applies—on the day the change of circumstance happened; and
  - (b) and ending on the day before the 1 July when the next redetermination applies to rates for the parcel.

(5) For this section:

*error*, in relation to a determination, includes—

- (a) an error in making a valuation on which the determination is based; and
- (b) the duplication of an error in relation to an earlier determination.

## **12 Recording and notification of determinations**

- (1) The commissioner must record particulars of each determination of the unimproved value of a parcel of land.
- (2) The commissioner must give written notice of the amount determined as the unimproved value of a parcel to the owner.

## Part 3 Imposition and payment of rates

### 13 Pt 3 subject to pt 5

This part is subject to part 5 (Unit subdivisions).

### 14 Imposition of rates

- (1) Rates of the fixed charge are imposed for a parcel of residential or commercial land that has an average unimproved value of the threshold amount or less.
- (2) Rates are imposed for a parcel of residential or commercial land that has an average unimproved value of more than the threshold amount in accordance with the following formula:

$$FC + ((AUV - TA) \times P)$$

- (3) Rates are imposed for a parcel of rural land that has an average unimproved value of more than the threshold amount in accordance with the following formula:

$$(AUV - TA) \times P$$

- (4) In this section:

*AUV* means the average unimproved value of the parcel.

*FC* or *fixed charge* means the fixed charge determined under the Taxation Administration Act, section 139 for the parcel.

*P* means the percentage rate determined under the Taxation Administration Act, section 139 for the parcel.

*TA* or *threshold amount* means the threshold amount determined under the Taxation Administration Act, section 139 for the parcel.

*Note* Different percentages may be determined for residential, commercial or rural land (see Legislation Act, s 48).

**15 Rates for part of year**

- (1) This section applies to a parcel of land if the parcel starts or stops being rateable in a year.
- (2) In working out the rates payable for the parcel under section 14 (Imposition of rates) for the year, the amount of rates payable is the amount worked out in accordance with the following formula:

$$\text{rates otherwise payable for year} \times \frac{\text{rateable days}}{\text{days in year}}$$

- (3) However, if a parcel of rateable land is held under a lease from the Commonwealth for only part of the year, the amount of rates payable for the year is the amount worked out in accordance with the following formula:

$$\text{rates otherwise payable for year} \times \frac{\text{days lease in force}}{\text{days in year}}$$

- (4) In this section:

*days lease in force* means the number of days in the year when the lease is in force, and includes any days when an owner continues to occupy the parcel of land after the ending of the lease.

*rateable days* means the number of days in the year that the parcel of land was a rateable parcel.

**16 Owner to pay rates**

- (1) Rates imposed for a parcel of land are payable to the commissioner by the owner of the parcel.
- (2) The person who is the owner of a parcel of land is liable to pay to the commissioner the whole or any part of rates payable for the parcel that have not been paid whether the amount became payable before or after the person became the owner.

**17 When are rates payable?**

- (1) The assessment notice for the rates payable for a year for a parcel of land must state a date for payment of the rates (the *payment date*).
- (2) The payment date must not be a date earlier than 4 weeks after the date of the notice.
- (3) The rates are payable on the payment date.

**18 How may rates be paid?**

- (1) Rates payable for a year for a parcel of land must be paid by the owner—
  - (a) if the amount payable is for a year and any arrears of rates in relation to previous years have been paid in full—by paying, on or before the payment date, the amount of the rates less the discount rate; or
  - (b) if the amount payable is for part of a year—by paying the amount of the rates on or before the payment date; or
  - (c) by paying the rates in instalments in accordance with section 19; or
  - (d) by paying amounts so that the total amount paid by the person on or before a date in the year is not less than the total amount that the person would have paid on that date if the person were paying the rates in instalments in accordance with section 19.
- (2) If the amount payable under a notice of assessment is for a period of longer than a year, subsection (1) (a) applies only to the payment of that part of the amount payable that is for a year.
- (3) In this section:

*discount rate* means the discount rate determined under the Taxation Administration Act, section 139.

**19 Payment of rates by instalments**

- (1) For payment of rates in instalments—
  - (a) the amount of each instalment must be a whole dollar amount worked out by dividing the total amount of the rates payable by 4 and adding the amount of any remainder to the amount worked out for the 1st instalment; and
  - (b) the date when an instalment is due for payment is not less than 3 months after the date when any previous instalment is due for payment.
- (2) The Taxation Administration Act, section 52 (4) (which deals with failure to pay an instalment when due) does not apply to the payment of rates in instalments.

## Part 4 Enforcement

### 20 Non-application of provisions of Taxation Administration Act

The Taxation Administration Act, section 25 (Interest in relation to tax defaults), division 5.2 (Penalty tax) and section 110 (Interest payable on amounts to be paid by taxpayer) do not apply to unpaid overdue rates.

### 21 Interest payable on overdue rates

- (1) Interest on an amount of unpaid overdue rates is worked out—
  - (a) for each calendar month when the amount remains unpaid; and
  - (b) on the 1st day of that month; and
  - (c) at the interest rate applying to that day; and
  - (d) on the total amount of overdue rates that are unpaid on a day when the interest is worked out.

*Note* The Minister may determine an interest rate for this section under the Taxation Administration Act, s 139.

- (2) For subsection (1) (a), if an amount remains unpaid for part of a calendar month, interest is payable for the whole month.

#### Example

Fred's rates are due on 15 August. He doesn't pay it until 5 October. Fred has to pay interest worked out for the overdue period from 16 August to 5 October. Because of the operation of s (2), Fred has to pay interest for the period from 16 August to 15 October. Interest for the month from 16 August to 15 September is at the rate applying on 16 August, which is the 1st day of the 1st month that the amount remains unpaid (see s (1)). Interest for the month from 16 September to 15 October is at the rate applying on 16 September, which is the 1st day of the 2nd month that the amount remains unpaid (see s (1)).

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **22 Charge of rates on land**

- (1) Rates payable in relation to a parcel of land are a charge on the interest held by the owner of the parcel.
- (2) The charge takes priority over a sale, conveyance, transfer, mortgage, charge, lien or encumbrance in relation to the parcel.
- (3) The charge does not have effect against an honest purchaser of the parcel of land for value if—
  - (a) the purchaser had obtained a certificate under section 76 (Certificate of rates and other charges) in relation to the parcel before the purchase; and
  - (b) at the time of purchase, the purchaser did not have notice of liability under the charge.

## **23 Notice of rates in arrears**

- (1) If rates payable for a parcel of land have been in arrears for at least 1 year, the commissioner may give the owner of the parcel written notice that the rates are in arrears.
- (2) At any time after giving notice, the commissioner may declare, in writing, that the rates for the parcel of land are in arrears.
- (3) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## **24 Unoccupied land—letting for unpaid rates**

- (1) This section applies if—
  - (a) a declaration is made under section 22 in relation to an unoccupied parcel of land; and
  - (b) the rates payable for the parcel are not paid within 30 days after the day the declaration is notified.
- (2) The commissioner may—
  - (a) take possession of the parcel; and
  - (b) hold the parcel against anyone; and
  - (c) lease the parcel for not longer than 7 years.
- (3) If the commissioner takes possession of the parcel, the commissioner must keep accounts of—
  - (a) rent and other amounts received by the commissioner in relation to the parcel; and
  - (b) the expenses of the lease; and
  - (c) the rates and land tax payable for the land.
- (4) If rent and other amounts are received by the commissioner under this section—
  - (a) the rent and other amounts must be applied against—
    - (i) the expenses of the lease necessarily incurred by the commissioner; and
    - (ii) the rates payable for the land; and
    - (iii) the land tax payable for the land; and
    - (iv) any other expenses incurred by the commissioner in relation to the parcel; and

- (b) any remaining rent and other amounts received belongs to anyone who, at the time it is received, would have been entitled to receive it if the parcel had not been in the commissioner's possession.
- (5) In this section:
- expenses*, of a lease, includes expenses incidental to the lease and the collection of rent under the lease.

## **25 Entitlement to possession of land held by commissioner**

- (1) This section does not apply to a parcel of land sold under section 26.
- (2) A person who, apart from section 24, would be entitled to the parcel may, within 16 years after the day the commissioner takes possession of the parcel—
  - (a) inspect the accounts kept under section 24; and
  - (b) ask the commissioner to put the person in possession of the parcel.
- (3) On request under subsection (2), the commissioner must put the person in possession of the parcel—
  - (a) if rates, land tax or both are payable for the parcel—on payment by the person of the amount payable; and
  - (b) if the parcel is subject to a lease made by the commissioner under section 24—subject to the lease.
- (4) If no-one is put in possession of the parcel under this section within 16 years after the day the commissioner takes possession of the parcel—
  - (a) the parcel vests absolutely in the Commonwealth; and
  - (b) rent and any other amounts received by the commissioner in relation to the land vest in the Territory.

## 26 Sale of land for nonpayment of rates

- (1) This section applies if—
  - (a) a parcel of land is held by the owner under a lease from the Commonwealth for a term of years; and
  - (b) the commissioner has complied with section 22; and
  - (c) rates payable for the parcel are in arrears for at least 1 year after the day of notification of a declaration under section 22 in relation to the parcel.
- (2) The commissioner may apply to a court of competent jurisdiction for an order for the sale of all or part of the parcel.

### Example

The commissioner has given notice and made a declaration under section 22 in relation to a parcel of land held under lease from the Commonwealth. If the parcel is unoccupied, the commissioner may take action under section 24 to lease the parcel or, if the rates are in arrears for at least 1 year after the day of notification of the declaration, make an application under this section for an order for sale. The option to lease would not be available if the property were occupied.

*Note 1* A single application form may be approved for this section and the *Land Tax Act 2004*, s 24 (see Legislation Act, s 255 (7)).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the court is satisfied that this section applies to the parcel, the court must—
  - (a) order the sale by public auction of the parcel, or as much of the parcel as will be sufficient to pay the total of the following—
    - (i) the total amount of rates in arrears at the time of hearing of the application;
    - (ii) the total amount of any land tax in arrears at the time of hearing of the application;

- (iii) costs and expenses in relation to the declaration, application and sale; and
  - (b) order that the proceeds be paid into court; and
  - (c) order that the title to the parcel be transferred to the purchaser free from mortgages and other encumbrances.
- (4) The commissioner is entitled to be paid the total mentioned in subsection (3) (a) out of the proceeds of sale without a court order.
- (5) On application by an interested person, the court may order payment out of court of any remaining proceeds.
- (6) However, if a person who was the owner or mortgagee of the parcel of land before the sale hands over to the court the certificate or other title to the parcel sold, the person is entitled to be paid out of court, without any court order—
  - (a) if the person was the owner—any remaining proceeds; and
  - (b) if the person was the mortgagee—the amount owing to the mortgagee under the mortgage or, if that amount is more than the amount of any remaining proceeds, the remaining proceeds.
- (7) Any sale of a parcel or part of a parcel under this section must be abandoned if the owner of the parcel pays, in relation to the parcel or the part of the parcel—
  - (a) the total rates in arrears; and
  - (b) the total of any land tax in arrears; and
  - (c) the costs and expenses incurred, in relation to the declaration, application and sale, up to the time of payment.

**27 Application may relate to more than 1 parcel**

- (1) The commissioner may make a single application under section 26 in relation to more than 1 parcel of land even if—
  - (a) the parcels belong to different owners; or
  - (b) the notices under section 22 (Notice of rates in arrears) for the parcels were given at different times.
- (2) If the commissioner makes an application in relation to more than 1 parcel, the court may make the orders about apportionment of rates and land tax, and any other amounts payable, that the court considers just.

*Note* The application may include an application under the *Land Tax Act 2004*, s 25 in relation to the parcel (see Legislation Act, s 49).

## **Part 5**                      **Unit subdivisions**

### **Division 5.1**              **Application of Act to unit subdivisions**

#### **28**      **Unit subdivisions**

- (1) For this Act, if a parcel of land is a unit subdivision, the land making up the parcel is taken to continue to be a single parcel of land.

**Example**

A determination of the unimproved value of a parcel of land that is a unit subdivision is a determination of the unimproved value of the parcel.

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, in the application of this Act to a unit subdivision—
- (a) a reference to a parcel of land in relation to the assessment or payment of rates is a reference to a unit; and
  - (b) a reference to the owner is—
    - (i) in relation to the assessment or payment of rates—a reference to the unit owner; and
    - (ii) in relation to a notice of transfer—a reference to the unit owner; and
    - (iii) in relation to any other notice—a reference to the owners corporation.

## **29 Unit subdivisions—rates**

- (1) This section applies to a parcel of land that is a unit subdivision.
- (2) If rates imposed for the parcel for the year when the units plan is registered are not paid before registration of the units plan, they are payable by the person who was the owner of the parcel on the day before the day when the units plan was registered.
- (3) On and after 1 July after the day when the units plan is registered or, if it is registered on 1 July, on and after that 1 July—
  - (a) the rates imposed for the parcel are payable by the unit owners; and
  - (b) the amount payable by each unit owner is the amount worked out under subsection (5); and
  - (c) no rates for the parcel are payable by the owners corporation.
- (4) Section 14 (Imposition of rates) applies to impose rates on a unit that is part of a unit subdivision as if a reference to a parcel of land were a reference to the unit.
- (5) In working out the rates payable for the unit under section 14, the average unimproved value of the unit is the amount worked out in accordance with the following formula:

$$\frac{UE}{TUE} \times AUV$$

- (6) In subsection (5):

***AUV*** means the average unimproved value of the parcel.

***TUE*** means the unit entitlement of all the units in the units plan.

***UE*** means the unit entitlement of the unit.

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## Division 5.2      Certain proposed unit subdivisions

### 30      Definitions for div 5.2

In this division:

*eligible parcel of land* means a parcel of rateable land for which the lease of the parcel allows development of the parcel for residential and commercial purposes.

*qualifying development application*, for an eligible parcel of land, means an application under section 31 (2) for the parcel.

*qualifying development determination*, for an eligible parcel of land, means a determination under section 32 for the parcel.

*qualifying parcel of land* means a parcel of land to which this division applies because of section 35.

*variation*, of a lease, includes—

- (a) amendment of the lease; and
- (b) surrender and regrant of the lease.

### 31      Application by owner of eligible parcel of land

- (1) The owner of an eligible parcel of land may apply to the commissioner for the parcel to be dealt with under this division if the owner intends—
  - (a) to develop the land partly for residential purposes and partly for commercial purposes; and
  - (b) to apply for subdivision of the developed land under the Unit Titles Act.

*Note 1* If a form is approved under the Taxation Administration Act, s 139C for the application, the form must be used.

*Note 2* A fee may be determined under s 78 for this section.

- (2) The application must—
  - (a) be in writing and signed by the owner of the parcel of land; and
  - (b) identify the parcel of land; and
  - (c) specify, in relation to the intended development—
    - (i) the parts that are intended to be used for residential purposes; and
    - (ii) the parts that are intended to be used for commercial purposes.
- (3) The application must be accompanied by—
  - (a) any draft or approved plans relating to the intended development; and
  - (b) a copy of the lease of the parcel of land.

**32 Determination of percentages of residential and commercial parts of development**

- (1) This section applies if the commissioner has received—
  - (a) a qualifying development application for an eligible parcel of land; and
  - (b) any information and documents requested by the commissioner in relation to the application.
- (2) The commissioner must determine—
  - (a) the percentage of the intended development that is to be used for commercial purposes; and
  - (b) the percentage of the intended development that is to be used for residential purposes.

- (3) The commissioner must determine the percentage of the intended development that is to be used for commercial purposes to be—
- (a) the percentage of the total development of the parts identified in the application as parts intended to be used for commercial purposes; or
  - (b) the percentage of the intended development that the commissioner considers can be developed for commercial purposes in accordance with the lease, if the commissioner believes, on reasonable grounds—
    - (i) that the development in accordance with the percentage identified from the application would contravene the lease of the parcel; or
    - (ii) that the percentage was not identified honestly.
- (4) The commissioner must determine the percentage of the intended development that is to be used for residential purposes to be 100% less the percentage determined to be used for commercial purposes.
- (5) The commissioner may redetermine a percentage determined under this section if the commissioner considers it justified because of further information or documents received by the commissioner in relation to the parcel.
- (6) The commissioner must give written notice to the owner of the parcel of a determination under this section in relation to the parcel.

### **33 Variation of lease or change of intention**

- (1) This section applies if, after a qualifying development application has been made for an eligible parcel of land—
  - (a) a variation of the lease changes the maximum development for commercial purposes permitted by the lease of the parcel; or
  - (b) the applicant's intention changes about—
    - (i) the parts of the intended development to be used for residential purposes; and
    - (ii) the parts of the intended development to be used for commercial purposes.
- (2) Within 2 weeks after the day the variation or change of intention happens, the applicant must give written notice of the variation or change to the commissioner.

*Note* If a form is approved under the Taxation Administration Act, s 139C for the notice, the form must be used.

- (3) The commissioner may, in writing, ask the applicant to give the commissioner any information or documents that the commissioner reasonably needs about the variation or change of intention.
- (4) The applicant must comply with a request within 2 weeks after the day the applicant receives it or, if the commissioner allows a longer period, the longer period.
- (5) The applicant commits an offence if the applicant contravenes subsection (2).

Maximum penalty: 50 penalty units.

- (6) An offence against subsection (5) is a strict liability offence.
- (7) Subsection (2) does not apply to the applicant if a notice of a kind mentioned in section 36 (2) or section 37 (2) has been given for the parcel by the applicant.

### 34 Imposition of rates—qualifying parcels of land

- (1) This section applies to a parcel of land if—
  - (a) it is a qualifying parcel of land; and
  - (b) it has an average unimproved value more than the threshold amount.
- (2) In its application to the imposition of rates to the parcel of land, section 14 has effect as if subsections (3) and (4) of this section were substituted for section 14 (2), (3) and (4).
- (3) Rates are imposed for a parcel of land to which section 34 applies in accordance with the following formula:

$$FC + [(AUV - TA) \times (\{CP \times PC\} + \{RP \times PR\})]$$

- (4) In this section:

*AUV* means the average unimproved value of the parcel.

*CP* means the percentage, as determined under section 32, of the intended development that is to be used for commercial purposes.

*FC* means the fixed charge determined under the Taxation Administration Act, section 139 for the parcel.

*PC* means the percentage rate determined under the Taxation Administration Act, section 139 for a parcel of commercial land.

*PR* means the percentage rate determined under the Taxation Administration Act, section 139 for a parcel of residential land.

*RP* means the percentage, as determined under section 32, of the intended development that is to be used for residential purposes

*TA* or *threshold amount* means the threshold amount determined under the Taxation Administration Act, section 139 for the parcel.

**35 When div 5.2 applies to parcel of land**

If the commissioner makes a qualifying development determination for a parcel of land—

- (a) this division applies to the parcel; and
- (b) this division is taken to have begun to apply to the parcel on the 1st day when, under the current lease of the land, the parcel became an eligible parcel of land.

**36 End of application of div 5.2**

- (1) This division stops applying to a parcel of land on the happening of any of the following days:
  - (a) if the parcel is subdivided under the Unit Titles Act—the day after the end of the financial year when the subdivision happens;
  - (b) if the owner of the land does not apply under the Unit Titles Act, part 3 within 30 days beginning on the day when a certificate of occupancy under the *Building Act 2003* is issued for the development, or within any longer period that the commissioner allows, for the subdivision of the land under the Unit Titles Act—the 1st day after the end of the 30 day period or the longer period;
  - (c) if the land is not subdivided under the Unit Titles Act within 1 year beginning on the day the application (or, if there is more than 1 application, the 1st application) mentioned in paragraph (b) was made, or within any longer period that the commissioner allows—the 1st day after the end of the 1 year period or the longer period;
  - (d) if there is a variation of the lease, so that the development of the land partly for residential and partly for commercial purposes is no longer permitted—the day the change happens;

- (e) if development of the land for subdivision under the Unit Titles Act is abandoned—the day it is abandoned.
- (2) This division also stops applying to a parcel of land if—
  - (a) the qualifying development application for the parcel of land is withdrawn by the applicant by written notice to the commissioner; or
  - (b) the commissioner gives notice to the applicant that the application is to be treated as withdrawn.
- (3) For subsection (3), this division stops applying to the parcel on the day the notice is given.

### **37 Notice of end of application of div 5.2**

- (1) This section applies if, after a qualifying development application is made for a parcel of land, a circumstance of a kind mentioned in section 36 (1) happens in relation to the parcel.
- (2) Within 2 weeks after the day the circumstance happens, the owner of the land must give the commissioner written notice of the circumstance.
- (3) The notice must—
  - (a) identify the owner and the parcel; and
  - (b) state the circumstance and the date it happened.
- (4) A person commits an offence if—
  - (a) the person is the owner of a parcel of land; and
  - (b) a circumstance mentioned in section 36 (1) happens in relation to the parcel; and
  - (c) the person fails to give notice under subsection (2).

Maximum penalty: 50 penalty units.

- (5) An offence against subsection (4) is a strict liability offence.
- (6) This section applies whether or not a qualifying development determination has been made in relation to the parcel.

### **38 Transfer of lease**

- (1) This section applies if—
  - (a) a qualifying development application has been made for a qualifying parcel of land, whether or not a qualifying development determination has been made for the parcel; and
  - (b) the lessee (the *transferor*) of the lease of the land transfers the lease to someone else (the *transferee*).
- (2) Within 2 weeks after the day when the transferor transfers the lease, the transferor must give the commissioner written notice of the transfer that complies with subsection (3).
- (3) The notice must—
  - (a) identify the land; and
  - (b) state the name and address of the transferee; and
  - (c) state that the lease of the land has been transferred; and
  - (d) state the date of the transfer.
- (4) The transferor commits an offence if the transferor contravenes subsection (2).

Maximum penalty: 50 penalty units.

- (5) An offence against subsection (4) is a strict liability offence.
- (6) Subsection (2) does not apply to the transferor if a notice of a kind mentioned in section 36 (2) or 37 (2) is given for the parcel by the applicant.

### **39 Reassessment—completion of development**

- (1) This section applies if—
  - (a) the commissioner has prepared an assessment of rates payable in relation to a qualifying parcel of land for a period; and
  - (b) before the end of the period the land stops being a qualifying parcel because it is subdivided under the Unit Titles Act; and
  - (c) the commissioner is satisfied that the percentages of the development that are to be used for residential and commercial purposes are different from the percentages determined by a qualifying development determination for the parcel.
- (2) The commissioner must—
  - (a) redetermine the percentages under section 32 (5); and
  - (b) reassess the amount of rates payable for the parcel for the whole period when the land was a qualifying parcel.

### **40 Reassessment—noncompletion of development**

- (1) This section applies if—
  - (a) the commissioner has made an assessment of rates (the *previous rates assessment*) for a qualifying parcel of land for a period; and
  - (b) before the end of the period—
    - (i) the parcel stops being a qualifying parcel because of the happening of a circumstance mentioned in section 36 (1) (b) or (c) or the giving of a notice under section 36 (2); or
    - (ii) the commissioner is satisfied that the parcel has stopped being a qualifying parcel because of a circumstance mentioned in section 36 (1) (d) or (e).

- (2) The commissioner must reassess the amount of rates payable for the parcel for the period when the parcel was a qualifying parcel for—
  - (a) the period when the previous rates assessment was made; or
  - (b) if there has been more than 1 assessment—the period equal to both or all of the periods for which assessments were made.
- (3) The reassessment must be on the basis that the parcel is not, and was never, a qualifying parcel.

## Part 6 Exemptions, remissions and certain interest payments

### 41 Exemption from rates

(1) The Minister may, in writing, exempt the owner of a parcel of land from payment of rates owing for any period in relation to the parcel of land, or from payment of a stated part of the rates.

(2) An exemption is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

(3) The Minister may make guidelines for the exercise of a function under this section.

(4) Guidelines are a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### 42 Remission of rates

(1) The Minister may remit the rates, or a part of the rates, payable for a parcel of land if the Minister is satisfied that it is fair and reasonable in the circumstances.

(2) The Minister may make guidelines for the exercise of a function under this section.

(3) Guidelines are a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**43 Remission of interest**

- (1) The commissioner may remit all or part of an amount of interest payable by a person in relation to rates if the commissioner is satisfied that it is fair and reasonable having regard to—
  - (a) any circumstances that contributed to the delay in payment of the rates; or
  - (b) any other relevant matter.
- (2) The Minister may make guidelines for the exercise of a function under this section.
- (3) Guidelines are a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (4) In this section:

*rates* includes an amount for which a person is indebted to the Territory because of a determination under division 7.2 (Deferral of rates).

**44 Interest on refund**

- (1) This section applies if the commissioner is satisfied that—
  - (a) an assessment of rates payable for a parcel of land has been wrongly made because of an administrative error by the commissioner; and
  - (b) because of the error, a person has overpaid rates for the parcel.
- (2) The commissioner may pay interest to the owner of the parcel—
  - (a) at the market rate component determined under the Taxation Administration Act, section 26; and
  - (b) worked out from the date when the overpayment was made or a later date the commissioner considers appropriate.

## **Part 7**                      **Deferral and rebates**

### **Division 7.1**              **Interpretation for pt 7**

#### **45**      **Definitions for pt 7**

*deferral determination* means a determination under section 47 (Determination for deferral of rates), and includes a deferral determination as amended under section 50.

*domestic relationship*—see the *Domestic Relationships Act 1994*, section 3 (1).

*eligible person* means—

- (a) a pensioner; or
- (b) a non-pensioner who is the partner of a special rate pensioner and is not separated from the pensioner; or
- (c) a non-pensioner who—
  - (i) was the partner of a special rate pensioner until the pensioner's death; and
  - (ii) was not separated from the pensioner immediately before the death; and
  - (iii) has not subsequently formed a partnership with someone else.

**owner**, of a parcel of land—

- (a) means—
  - (i) for a parcel held under a lease—the lessee (or, if 2 or more people are lessees, each lessee); or
  - (ii) for a parcel of land held in fee simple—the person in whom the fee simple is vested (or, if it is vested in 2 or more people, each person in whom it is vested); and
- (b) for division 7.3 (Rebate of rates), includes someone who—
  - (i) has a life interest, or an interest for a term of years, in the parcel under a will or court order; and
  - (ii) is liable under the will or court order for rates for the parcel.

**partner**—a person's **partner** is either of the following:

- (a) the person's spouse;
- (b) someone with whom the person has a domestic relationship.

**partnership** means the partnership between 2 partners.

**pensioner** means—

- (a) a person to, or for whom, a pension, allowance or benefit is being paid under the *Social Security Act 1991* (Cwlth) and who has been given a pensioner concession card under that Act; or
- (b) a service pensioner within the meaning of the *Veterans' Entitlements Act 1986* (Cwlth); or
- (c) a person who has been given a card or other written authority by the Commonwealth that evidences the person's eligibility under the *Veterans' Entitlements Act 1986* (Cwlth) to be given treatment for all injuries suffered, and all diseases contracted, by the person; or

- (d) a person who is (or was) in a partnership who would be eligible as a pensioner mentioned in paragraph (a) because of that partnership if the person's partner were (or had been) the person's partner within the meaning of the *Social Security Act 1991* (Cwlth), section 4; or
- (e) a person who is (or was) in a partnership who would be eligible as a pensioner mentioned in paragraph (b) because of that partnership if the person's partner were (or had been) the person's partner within the meaning of the *Veterans' Entitlements Act 1986* (Cwlth), section 5E; or
- (f) a person who was in a partnership until the death of his or her partner who would be eligible under the *Veterans' Entitlements Act 1986* (Cwlth), section 86 to be given treatment mentioned in paragraph (c) because of the partner's death if the person were the partner's dependant within the meaning of the *Veterans' Entitlements Act 1986* (Cwlth), section 11.

*Note for par (d), (e) and (f)*

This Act, def **partner** and def **partnership** apply to spouses, but also extend to unmarried partners (irrespective of their sex) in **domestic relationships** within the meaning of the *Domestic Relationships Act 1994*, s 3 (1). The *Social Security Act 1991* (Cwlth), s 4, def **partner** and the *Veterans' Entitlements Act 1986* (Cwlth), s 5E, def **partner** and s 11, def **dependant** only apply to partners (or former partners) of the opposite sex to each other in married or marriage-like relationships.

**rebate** means a rebate under division 7.3.

**special rate pensioner** means a pensioner—

- (a) who is being paid a pension under the *Veterans' Entitlements Act 1986* (Cwlth), part 2; and
- (b) to whom that Act, section 24 applies.

## **Division 7.2                    Deferral of rates**

### **46      Application for deferral determination**

- (1) A person who is the owner of a parcel of land may apply to the commissioner for a deferral under section 47 (a *deferral determination*).

*Note*      If a form is approved under the Taxation Administration Act, s 139C for the application, the form must be used.

- (2) This division does not prevent the owner of a parcel of land who has received a rebate for rates under division 7.3 from making an application under this section.

### **47      Determination for deferral of rates**

- (1) If the owner of a parcel of land applies to the commissioner for a deferral determination under section 46, the commissioner must make the determination if satisfied—
- (a) that the owner is a pensioner or, if there are 2 or more owners, each owner is a pensioner; or
  - (b) if the owner, or each owner, is not a pensioner—that payment of the total amount of rates payable or to become payable is likely to cause substantial hardship to the owner or each owner; or
  - (c) that the owners are a pensioner and his or her partner who is not a pensioner; or
  - (d) for an application made by a pensioner who is a joint owner—that no other owner of the parcel can reasonably contribute to the payment of rates for the parcel.

- (2) The determination may—
- (a) defer the obligation of the owner or an owner to pay all or part of the total amount of rates payable for the parcel as at the date of the determination; or
  - (b) defer the obligation of an owner to pay all or part of each amount of rates to become payable for the parcel while the determination is in force.
- (3) If the commissioner makes a determination, the commissioner must give a copy of the determination to the person to whom it relates.
- (4) However, the commissioner may make a determination only if—
- (a) for a parcel held under a lease—
    - (i) the lease permits the parcel to be used only for residential purposes; and
    - (ii) each applicant is ordinarily resident on the parcel; and
  - (b) for a parcel held in fee simple—
    - (i) the parcel is used for residential purposes only; and
    - (ii) each applicant is ordinarily resident on the parcel.
- (5) Despite subsection (4), the commissioner may make a determination in relation to 1 or more joint owners of a parcel (but not by all the joint owners) even if each owner is not ordinarily resident of the land, if—
- (a) the applicant is an owner who is ordinarily resident on the land; and
  - (b) the commissioner is satisfied that it is appropriate to make the determination.

#### **48 Effect of deferral determination**

- (1) If a deferral determination defers a person's obligation to pay all or part of the total amount of rates payable for a parcel of land as at the date of the determination—
  - (a) the person's obligation to pay the rates is reduced in accordance with the determination; and
  - (b) the person becomes indebted to the Territory for the amount by which the obligation is reduced.
- (2) If a deferral determination defers a person's obligation to pay all or part of each amount of rates to become payable while the determination is in force—
  - (a) immediately after each amount of rates becomes payable, the person's obligation to pay the amount of rates is reduced in accordance with the determination; and
  - (b) the person becomes indebted to the Territory for the amount by which the obligation is reduced.
- (3) A person who becomes indebted to the Territory for an amount under this section must pay interest on the amount at the market rate component determined under the Taxation Administration Act, section 26.
- (4) Interest is payable on the amount from the date of deferral of the obligation to pay the amount until the earlier of—
  - (a) the day the amount is paid; and
  - (b) the day the deferral determination is revoked.
- (5) For subsection (4), the date of deferral of the obligation to pay an amount is—
  - (a) for an amount payable at the date of the deferral determination—that date; or

- (b) for an amount deferred after the date of the determination—the date when, if the determination had not been made, interest would begin to be payable on the amount under section 21 (Interest payable on overdue rates).

**49 Deferred amount not recoverable if determination in force**

If a person is indebted to the Territory for an amount because of a deferral determination, the amount is not recoverable by the Territory while the determination is in force.

**50 Amendment of deferral determination**

- (1) The commissioner may, at any time, amend a deferral determination.
- (2) The commissioner may increase an amount deferred if the commissioner is satisfied that the amendment is necessary to avoid substantial hardship to the person whose obligation is deferred under the determination.
- (3) The commissioner may reduce an amount deferred if the commissioner is satisfied that the amendment is not likely to cause substantial hardship to the person whose obligation is deferred under the determination.

**51 Revocation of deferral determination—payment of debt and on request**

The commissioner must revoke a deferral determination in relation to a person if—

- (a) the amount for which the person is indebted to the Territory because of the determination is paid to the commissioner to discharge the debt; or
- (b) the person asks the commissioner in writing to revoke the determination.

**52 Additional grounds for revocation of deferral determination**

Any of the following circumstances is a ground for revocation of a deferral determination in relation to a parcel of land:

- (a) if each person to whom the determination relates was a pensioner when the determination was made—each person stops being a pensioner;
- (b) if the determination relates to 2 or more people, each of whom was a pensioner when the determination was made—
  - (i) 1 or more, but not all of them, stops being a pensioner; and
  - (ii) the revocation of the determination is not likely to cause substantial hardship to them;
- (c) if each person to whom the determination relates was not a pensioner when the determination was made—the revocation of the determination is not likely to cause substantial hardship to a person to whom the determination relates;
- (d) a person to whom the determination relates fails to comply with a request under section 58 (Information about deferral determination);
- (e) each person to whom the determination relates who was ordinarily resident on the parcel when the application for the determination was made has stopped being ordinarily resident on the parcel;
- (f) each person to whom the determination relates has stopped being an owner of the parcel.

### **53 Notice of proposed revocation on additional grounds**

- (1) If the commissioner considers that a ground mentioned in section 52 exists for revocation of a deferral determination, the commissioner may give written notice to the person to whom the determination relates of his or her intention to revoke the determination.

*Note* For how documents may be served, see Legislation Act, pt 19.5.

- (2) The notice must state the ground for revocation.
- (3) However, if a deferral determination relates to 2 or more people as owners (whether jointly or as tenants in common) of a parcel of land and 1 of them dies, the commissioner must not give notice only on the ground mentioned in section 52 (1) (e) or (f).

### **54 Revocation of deferral determination on grounds**

- (1) The commissioner may revoke a deferral determination on a ground mentioned in section 52 if notice has been given under section 53 in relation to the ground.
- (2) However, the commissioner must not revoke the determination—
  - (a) within the time when a person may object to the decision that the ground exists; or
  - (b) if the person has objected to the decision, until—
    - (i) the objection is decided; and
    - (ii) either—
      - (A) the prescribed time under the *Administrative Appeals Tribunal Act 1989*, section 27 for applying for review of the decision on the objection has ended and no application has been lodged; or
      - (B) an application has been made and the AAT has completed the review.

## **55 Recovery of deferred amounts**

- (1) This section applies if the commissioner revokes a deferral determination.
- (2) The amount to which a person is indebted to the Territory because of the determination is payable by the person to the Territory on the day immediately after the day the determination is revoked.

*Note* An amount owing under a law is recoverable as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

- (3) However, if the commissioner declares that the amount may be paid in stated instalments, the amount of each instalment is payable to the Territory on the day stated in the declaration.

*Note* A declaration may be included in the revocation (see Legislation Act, s 49 (Single instrument may exercise several powers or satisfy several requirements)).

- (4) Despite subsection (3), if the person to whom the determination relates stops being an owner of the parcel of land to which the determination relates (other than because of the person's death) any balance of an amount to be paid in instalments is payable on the day immediately after the day the person stops being an owner.

## **56 Interest payable after revocation of deferral determination**

- (1) Interest is payable on an unpaid amount payable under section 55.
- (2) Interest on the unpaid amount is worked out in the same way as interest on overdue rates is worked out under section 21.
- (3) The Taxation Administration Act, section 25 (Interest in relation to tax defaults) does not apply to the unpaid amount.

## **57 Memorandum of discharge**

- (1) This section applies if a deferral determination is registered under the *Land Titles Act 1925*.
- (2) The commissioner must give the registrar-general a memorandum of discharge if—
  - (a) all amounts to which a person is indebted to the Territory because of the determination are paid to the Territory; or
  - (b) the commissioner is satisfied that it is justified in the circumstances.
- (3) If the registrar-general is given a memorandum of discharge, the registrar-general must register the memorandum.

## **58 Information about deferral determination**

- (1) If a deferral determination is in force in relation to a person for a parcel of land, the commissioner may ask the person for information about the parcel or the means and income of the person.
- (2) The person must give the commissioner the information asked for.

## **59 Notice of revocation**

If the commissioner revokes a deferral determination, the commissioner must give the person to whom the determination relates a copy of the revocation.

*Note* For how documents may be served, see Legislation Act, pt 19.5.

## Division 7.3                      Rebate of rates

### 60      Meaning of *liability for rates* for div 7.3

- (1) A reference in this division to an eligible person's *liability for rates* for a parcel of land for a year is—
  - (a) for a person who is the sole owner of the parcel—a reference to the amount of rates payable by the person for the parcel for the year; and
  - (b) for a person who is a joint owner of the parcel—a reference to the part of the rates payable by the owners for the parcel for the year—
    - (i) if the parcel is held by the owners as tenants in common—that is proportional to the person's interest in the land; and
    - (ii) if the parcel is held by the owners as joint tenants—that would be proportional to the person's interest in the land if the joint tenants were tenants in common in equal shares.
- (2) However, if an eligible person is a joint owner of a parcel of land and 1 or more of the other joint owners cannot reasonably contribute to the payment of rates for the parcel for the year, a reference in this division to the person's *liability for rates* for the parcel for the year is taken to be—
  - (a) if no other joint owner can reasonably contribute to the payment of the rates—a reference to the rates payable for the land; or
  - (b) if the rates are to be paid by 2 or more of the joint owners—a reference to so much of the rates payable by the person for the parcel as would be payable if the joint owners paying the rates—

- (i) were the sole owners of the land as tenants in common in equal shares; and
  - (ii) the value of their interests in the land were increased proportionately.
- (3) A reference in subsection (2) to *rates payable* is a reference to rates payable apart from this division.

### **61 Application for rebate**

- (1) A person may apply to the commissioner for a rebate under this division.
- (2) The application must—
- (a) be in writing signed by the applicant; and
  - (b) include a statement of particulars in support; and
  - (c) include a statement signed by the applicant authorising any entity chosen by the commissioner to disclose relevant information about the applicant to the commissioner for the purpose of deciding the application.

*Note* If a form is approved under the Taxation Administration Act, s 139C for the application, the form must be used.

- (3) The commissioner may ask the applicant for additional information or documents that the commissioner reasonably needs to decide the application.
- (4) The applicant must give the commissioner the information or documents asked for.

### **62 No entitlement for past years**

A person is not entitled to a rebate under this division for rates for any year before the year when the person applies for the rebate.

**63    Rebate of rates—uncapped**

- (1) This section applies to a person if the person has been an eligible person continuously, and has been an owner of the same parcel of land, since 30 June 1997.
- (2) This section also applies to a person if—
  - (a) the person has been an eligible person continuously since 30 June 1997; and
  - (b) the person has changed his or her principal place of residence since 30 June 1997; and
  - (c) each principal place of residence of the person since 30 June 1997 has been a parcel of land owned by the person (an *eligible place of residence*); and
  - (d) no period since 30 June 1997 between the person’s occupation of an eligible place of residence and the next is longer than 6 months or any longer period approved by the commissioner.
- (3) The person is, on application to the commissioner under section 61, entitled to a rebate of the person’s liability for rates for a parcel of land for a year if—
  - (a) this section applies to the person in the year; and
  - (b) the parcel is the person’s principal place of residence for all or part of the year.
- (4) The commissioner may approve a longer period for subsection (2) (c) if satisfied that it is justified in the circumstances.
- (5) The amount of rebate is the amount worked out using the formula:

$$\frac{RL}{2} \times \frac{D}{\text{days in year}}$$

(6) In this section:

*D* means the number of days in the year when the parcel is the person's principal place of residence.

*rates*, for the year, includes any rates deferred under a deferral determination.

*RL* means the amount of the person's liability for rates for the parcel for the year.

#### **64 Rebate of rates—capped**

(1) This section applies to a person if—

- (a) the person is an eligible person; but
- (b) section 63 does not apply to the person.

(2) The person is entitled, on application to the commissioner under section 61, to a rebate of the person's liability for rates for a parcel of land for a year if—

- (a) this section applies to the person in the year; and
- (b) the parcel is the person's principal place of residence for all or part of the year.

(3) The amount of rebate is the lesser of—

- (a) the rebate cap; and
- (b) the amount worked out using the formula:

$$\frac{RL}{2} \times \frac{D}{\text{days in year}}$$

- (4) If the person is a joint owner of the parcel, the reference to the *rebate cap* in subsection (3) (a) is a reference to the part of the rebate cap—
- (a) if the parcel is held by the owners as tenants in common—that is proportional to the person’s interest in the land; and
  - (b) if the parcel is held by the owners as joint tenants—that would be proportional to the person’s interest in the land if the joint tenants were tenants in common in equal shares.

- (5) In this section:

*D* means the number of days in the year when the parcel is the person’s principal place of residence.

*rates*, for the year, includes any rates deferred under a deferral determination.

*rebate cap* means the rebate cap determined under the Taxation Administration Act, section 139.

*RL* means the amount of the person’s liability for rates for the parcel for the year.

## **65 Rebates and deferred liability**

- (1) This section applies if—
- (a) a person’s liability for part of the person’s rates for a parcel of land for a year has been deferred under a deferral determination; and
  - (b) the person has applied for, and is entitled to, a rebate for the parcel for the year.
- (2) The rebate applies to reduce the amount of the person’s liability for rates for the year, other than the person’s deferred liability.
- (3) Any remaining rebate applies to reduce the person’s deferred liability.

## **66 Joint and several liability for rates**

This division does not affect the operation of the Taxation Administration Act, section 50 (Joint and several liability).

## **67 Change in circumstances**

- (1) This section applies to a person who has applied for a rebate if any of the following circumstances happens:
  - (a) the person stops being an eligible person;
  - (b) the person stops being the owner or a joint owner of the person's principal place of residence;
  - (c) for a tenant in common—there is a change in the extent of the person's interest in the person's principal place of residence;
  - (d) the person changes his or her principal place of residence.
- (2) Within 30 days after the day the circumstance happens, the person must give written notice of it to the commissioner.
- (3) The person commits an offence if the person contravenes subsection (2).

Maximum penalty: 5 penalty units.

- (4) An offence against this section is a strict liability offence.
- (5) Subsection (1) (b) or (c) does not apply to the person in relation to the transfer of an interest in land if notice of the transfer has been given to the commissioner under section 75 by the person.

## **68     Adjustment of liability for rates**

- (1) This section applies if the commissioner believes on reasonable grounds that a person's entitlement to a rebate has changed or ended, or will change or end.
- (2) The commissioner must—
  - (a) decide an amount for the person's adjusted liability for rates; and
  - (b) give the person written notice of the decision, setting out—
    - (i) the amount of the person's adjusted liability; and
    - (ii) the date or dates when any unpaid rates (including instalments of rates) are payable.

*Note*     For how documents may be served, see Legislation Act, pt 19.5.

- (3) A person may request a decision under this section.
- (4) If on request by a person for a decision, the commissioner decides that the person's entitlement has not changed or ended, the commissioner must give the person written notice of the decision.

## **69     Break in entitlement**

- (1) If a person—
  - (a) stops being an eligible person; and
  - (b) more than 14 days later, becomes an eligible person again;the person is entitled to a rebate for rates for which the person became liable after the day when the person again becomes an eligible person only if the person applies for the rebate under section 61.
- (2) If a person—
  - (a) stops being the owner or a joint owner of the person's principal place of residence; and

- (b) more than 14 days later, again becomes the owner or a joint owner of a parcel of land that is the person's principal place of residence;

the person is entitled to a rebate for rates for the parcel mentioned in paragraph (b) for which the person became liable after the day when the person becomes the owner or a joint owner of that parcel only if the person applies for the rebate under section 61.

## Part 8 Miscellaneous

### 70 Objections

The following decisions are prescribed for the Taxation Administration Act, section 100 (Objection):

- (a) a decision under section 44 to refuse to pay interest on an overpayment or to pay interest other than from the date when the overpayment was made;
- (b) a decision under section 47—
  - (i) refusing to make a deferral determination; or
  - (ii) determining a period of deferral other than that applied for; or
  - (iii) making a determination for the deferral of an amount other than that applied for;
- (c) a decision under section 50 amending a deferral determination;
- (d) a decision under section 53 that a ground for revocation exists.

*Note* Assessments are made under the Taxation Administration Act and objections may be made under that Act, s 100 (1) (a). For example, if a person is given an assessment for rates for a parcel of land and the person is dissatisfied with the assessment because rates were not payable for the parcel, the person may object under that paragraph.

### 71 Objections relating to valuations—general

- (1) This section applies to an objection to an assessment if the objection relates to the valuation on which the assessment is based.
- (2) The objection must be made within 60 days after the day the commissioner gives notice under section 12. (2) of the amount determined as the unimproved value of the parcel.

- (3) The Taxation Administration Act, section 103 (Objections lodged out of time) does not apply to the objection.

## **72 Objections relating to valuations—unit owners**

For a unit subdivision, if an objection to an assessment relates to the valuation on which the assessment is based, the Taxation Administration Act, section 100 (1) (Objection)—

- (a) applies to the owners corporation as if the assessment were served on the owners corporation; and
- (b) does not apply to a unit owner.

## **73 Review by AAT**

- (1) This section applies to a determination by the commissioner of an objection to a decision mentioned in section 70.
- (2) The determination is prescribed for the Taxation Administration Act, section 107.

*Note* Applications for review by the AAT may also be made in relation to determination by the commissioner of a decision on an objection to an assessment.

## **74 Working out amounts with fractions for Act**

- (1) If an amount worked out under this Act contains a fraction of a cent, the amount must be rounded to the nearest cent, with  $\frac{1}{2}$  a cent being disregarded.
- (2) However, if the amount is a part of the average unimproved value of a parcel of land, any fraction of a dollar in the amount worked out must be disregarded.
- (3) The Taxation Administration Act, section 123 (Adjustments of amounts) does not apply in working out an amount under this Act.

**75 Notice of transfer**

- (1) If the owner or lessee of rateable land transfers his or her interest in the land, the transferor and transferee must each give the commissioner written notice of the transfer that complies with subsection (2) within 30 days after the day of transfer.
- (2) The notice must state the following:
  - (a) the name, residential address, and address for service of documents, of the person giving the notice;
  - (b) the distinguishing number or name given to the division, block or section to describe the land under the *Districts Act 2002*;
  - (c) if the land or lease is registered under the *Land Titles Act 1925*—particulars of the entry in the register;
  - (d) the value of the consideration for the transfer;
  - (e) the date of any agreement to make the transfer and the date when the instruments to effect the transfer were executed;
  - (f) any other particulars prescribed under the regulations.

*Note* If a form is approved under the Taxation Administration Act, s 139C for the notice, the form must be used.

- (3) A person commits an offence if the person contravenes subsection (1).

Maximum penalty: 5 penalty units.

- (4) An offence against this section is a strict liability offence.

**76 Certificate of rates and other charges**

- (1) A person may apply to the commissioner for a certificate of—
  - (a) the rates assessed to be payable under this Act for a parcel of land for the current year; and
  - (b) the rates and other amounts immediately payable to the commissioner under this Act in relation to the parcel.

*Note 1* A fee may be determined under s 78 for this provision.

*Note 2* If a form is approved under the Taxation Administration Act, s 139C for an application, the form must be used.

*Note 3* A single application form may be approved for this section and the *Land Tax Act 2004*, s 41 (see Legislation Act, s 255 (7)).

- (2) The commissioner must give the applicant the certificate.
- (3) The certificate is conclusive proof for an honest buyer for value of the matters certified.

*Note* The certificate may include a certificate of amounts payable under the *Land Tax Act 2004* in relation to the parcel (see Legislation Act, s 49).

- (4) For this section, rates and other amounts are taken to be payable immediately even though any necessary time after service of a notice has not ended.

**77 Statement of amounts payable and payments made**

- (1) A person may apply to the commissioner for a statement of—
  - (a) the amounts that became payable to the commissioner under this Act in relation to a parcel of land in a stated year; and

- (b) the payments received by the commissioner in the year for amounts that became payable under this Act in relation to the parcel.

*Note 1* A fee may be determined under s 78 for this provision.

*Note 2* If a form is approved under the Taxation Administration Act, s 139C for an application, the form must be used.

*Note 3* A single application form may be approved for this section and the *Land Tax Act 2004*, s 42 (see Legislation Act, s 255 (7)).

- (2) The commissioner must give the applicant the statement.

*Note* The statement may include a statement of land tax payable and received under the *Land Tax Act 2004* in relation to the parcel (see Legislation Act, s 49).

## 78 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## 79 Regulation-making power

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## Part 9 Transitional

### 80 Definitions for pt 9

In this part:

*repealed Rates Act* means the *Rates and Land Tax Act 1926* (repealed).

*repealed Rates Relief Act* means the *Rates and Land Rent (Relief) Act 1970* (repealed).

### 81 Annual redetermination for 1991

- (1) This section applies if, immediately before 1 July 2004, the commissioner had not redetermined the unimproved value of a parcel of land that was rateable on 1 January 1991 under the repealed Rates Act, section 8.
- (2) The repealed Rates Act, section 8 continues to apply to the parcel.

### 82 Determinations for 1995 and 1996

- (1) This section applies if, immediately before 1 July 2004, the commissioner had not determined the unimproved value as at 1 January 1995 and 1 January 1996 of a parcel of land to which the repealed Rates Act, section 9 applied.
- (2) The repealed Rates Act, section 9 continues to apply to the parcel.

### 83 Unimproved values for 1995 and 1996

The repealed Rates Act, section 11A continues to apply to a parcel of land that was rateable on 1 January 1995 or 1 January 1996.

**84 Determinations of unimproved value**

A determination under the repealed Rates Act, part 2 (Unimproved value) in force immediately before 1 July 2004 is taken to have been made under part 2.

**85 Assessments**

In this Act:

*assessment*, of rates, includes an assessment of rates made under the repealed Rates Act.

**86 Rates payable under repealed Rates Act**

- (1) This section applies if—
  - (a) rates (including interest) were payable under the repealed Rates Act; and
  - (b) the rates had not been not paid before 1 July 2004.
- (2) The rates are taken to be payable under this Act.

**87 Land to which repealed Rates Act, pt 4A applied**

- (1) This section applies to a parcel of land if, immediately before 1 July 2004, the repealed Rates Act, part 4A (Certain parcels of land intended to be subdivided under Unit Titles Act) applied to the parcel.
- (2) The parcel is taken to be a qualifying parcel of land for division 5.2 (Certain proposed unit subdivisions).

**88 Application under repealed Rates Act, pt 4A**

- (1) This section applies if—
  - (a) the owner of a parcel of land made an application under the repealed Rates Act, section 22GK (Application by owner of eligible parcel of land); and
  - (b) the application had not been decided before 1 July 2004.
- (2) The application is taken to have been made under section 31.

**89 Right to object if no objection lodged**

- (1) This section applies if—
  - (a) a decision for which an objection could be lodged was made under the repealed Rates Act; and
  - (b) the decision related to rates or the unimproved value of a parcel of land; and
  - (c) immediately before 1 July 2004—
    - (i) the time for lodging an objection in relation to the decision had not ended; and
    - (ii) no objection had been lodged.
- (2) The right to lodge an objection in relation to the decision is taken to be a right to lodge an objection against the decision under this Act.

*Note* Objections against decisions under this Act are heard under the Taxation Administration Act.
- (3) The right to lodge an objection under this Act ends when the right to object under the repealed Rates Act would have ended under that Act if it had not been repealed.

## **90 Objections lodged under repealed Rates Act**

- (1) This section applies if—
  - (a) a decision for which an objection could be lodged was made under the repealed Rates Act; and
  - (b) the decision related to rates or the unimproved value of a parcel of land; and
  - (c) a person lodged an objection to the decision; and
  - (d) the objection had not been decided before 1 July 2004.
- (2) The objection may be decided as if it were an objection lodged against a decision under this Act.

*Note* Objections against decisions under this Act are heard under the Taxation Administration Act.

## **91 Applications for review if no application lodged**

- (1) This section applies if—
    - (a) a decision was made under the repealed Rates Act from which an application for review by the AAT could be made; and
- Note* The repealed Rates Act, s 31 listed the decisions from which application for review could be made.
- (b) the decision related to rates or the unimproved value of a parcel of land; and
  - (c) immediately before 1 July 2004—
    - (i) the time for applying for a review of the decision had not ended; and
    - (ii) no application for review had been made.

- (2) The decision—
- (a) is taken to be a decision under this Act; and
  - (b) is taken to be prescribed under section 73 (Review by AAT).

*Note* The review of determinations on objections to assessments is dealt with by the Taxation Administration Act, s 107.

- (3) The right to apply for a review of the decision ends when the right to apply for a review would have ended if the repealed Rates Act had not been repealed.

## **92 Application for review if application lodged**

- (1) This section applies if—
- (a) a decision was made under the repealed Rates Act from which an application for review by the AAT could be made; and
  - (b) the decision related to rates or the unimproved value of a parcel of land; and
  - (c) a person applied for a review of the decision; and
  - (d) the review had not been decided before 1 July 2004.
- (2) The application for review may be decided as if—
- (a) it were an application for review of a decision under this Act; and
  - (b) the decision were a decision prescribed under section 73 (Review by AAT).

## **93 Notice of rates in arrears**

A declaration under the repealed Rates Act, section 17 (2) (Notice of rates in arrears) in relation to rates for a parcel of land is taken to be a declaration under this Act, section 22 for the parcel.

**94 Determination for deferral of rates**

A determination deferring rates for a parcel of land under the repealed Rates Relief Act, section 3 (Deferral of rent and rates) in force immediately before 1 July 2004 continues in force in relation to the parcel as if it were made under division 7.2.

**95 Application for deferral determination**

- (1) This section applies if—
  - (a) the owner of a parcel of land made an application under the repealed Rates Relief Act, section 3 (Deferral of rent and rates); and
  - (b) the application had not been decided before 1 July 2004.
- (2) The application is taken to have been made under section 46.

**96 Rebate of rates**

A person who, immediately before 1 July 2004, was entitled to a rebate of rates under the repealed Rates Relief Act, part 3 (Rebate for pensioners) continues to be entitled to the rebate if the person had applied for, and were entitled to, a rebate under division 7.3.

**97 Application for determination for rebate of rates**

- (1) This section applies if—
  - (a) the owner of a parcel of land made an application under the repealed Rates Relief Act, section 21F (Application for rebates); and
  - (b) the application had not been decided before 1 July 2004.
- (2) The application is taken to have been made under section 61.

**98 Statements under s 77**

A reference in section 77 to an amount payable under this Act includes a reference to an amount of rates payable under the repealed Rates Act.

**99 Modification of pt 9's operation**

The regulations may modify the operation of this part to make provision in relation to any matter that, in the Executive's opinion, is not, or is not adequately, dealt with in this part.

**100 Expiry of pt 9**

This part expires on 1 July 2005.

*Note* Transitional provisions are usually of transitional effect. They are kept with the original provisions for a limited time to ensure people are aware of them. However, the expiry of transitional provisions does not end their effect (see Legislation Act, s 88).

## **Part 10** Consequential amendments and repeals

### **101** Legislation amended or repealed—sch 1

This Act amends or repeals the legislation mentioned in schedule 1.

## **Schedule 1            Consequential amendments and repeals**

(see s 101)

### **Part 1.1                Firearms Regulations 1997**

#### **[1.1] Regulation 6 (1) (a) (i)**

*omit*

given to the applicant in accordance with the *Rates and Land Tax Act 1926*, section 14

### **Part 1.2                Taxation Administration Act 1999**

#### **[1.2] New section 4 (fa)**

*insert*

(fa) the *Land Tax Act 2004*;

#### **[1.3] New section 4 (ga)**

*insert*

(ga) the *Rates Act 2004*;

#### **[1.4] Section 4**

*renumber paragraphs when Act next republished under the  
Legislation Act*

**[1.5] Section 20 (1)**

*omit*

or under the *Rates and Land Tax Act 1926*

**[1.6] Section 100 (1)**

*substitute*

- (1) A taxpayer may lodge a written objection with the commissioner if the taxpayer is dissatisfied with—
- (a) an assessment, other than a compromise assessment, that is shown in a notice of assessment served on the taxpayer; or
  - (b) a decision mentioned in schedule 1 or schedule 2; or
  - (c) a decision under a tax law that is prescribed under the law for this section.

*Note* Decisions are prescribed for this section under the *Land Tax Act 2004*, s 38 (Objections) and the *Rates Act 2004*, s 70 (Objections).

**[1.7] Section 107 (1)**

*substitute*

- (1) A taxpayer may apply to the tribunal for a review of a determination by the commissioner of an objection by the taxpayer to—
- (a) an assessment; or
  - (b) a decision of a kind listed in schedule 1; or
  - (c) a decision under a tax law that is prescribed under the law for this section.

## **Part 1.3**                      **Repeals**

### **[1.8] Legislation repealed**

- (1) The following Acts are repealed:
  - *Rates and Land Tax Act 1926* A1926-6
  - *Rates and Land Rent (Relief) Act 1970* A1970-5.
- (2) The *Rates and Land Tax Regulations 1992* SL1992-7 are repealed.
- (3) The following instruments are repealed:
  - *Rates and Land Tax (Certificate and Statement of Fees) Determination 2003 (No 1)* DI2003-83
  - *Rates and Land Tax (Setting the Discount Rate) 1999* DI1999-155.
  - *Rates and Land Tax (Objection Fees) Determination 2002* DI2002-59.

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- AAT
- calendar month
- calendar year
- commissioner for revenue
- contravene
- financial year
- function
- person
- public employee
- registrar-general
- under.

***annual redetermination***, of a parcel of land, means a redetermination of the unimproved value of the parcel under section 10.

***assessment notice***, in relation to rates, means a notice of assessment under the Taxation Administration Act, section 14 in relation to the rates.

***average unimproved value***, of a parcel of land for a particular year, means the following:

- (a) if the parcel has not been rateable previously—the unimproved value of the parcel;
- (b) if the parcel has been rateable for less than 3 years—the average unimproved value of the parcel over those years;

- (c) in any other case—the average unimproved value of the parcel over the 3 years immediately before the particular year.

**commercial land** means rateable land that is not residential land or rural land.

**commissioner** means the commissioner for revenue.

**Commonwealth land** means land that is the property of the Commonwealth.

**deferral determination**, for part 7 (Deferral and rebates)—see section 45.

**determination**, of the unimproved value of a parcel of land, includes redetermination of the unimproved value.

**development lease**, of land, means a lease for the development of the land by the lessee, or at the lessee's expense, by clearing, filling, grading, draining, levelling or excavating the land to make it suitable for subdivision into parcels of land to be leased.

**domestic relationship**, for part 7 (Deferral and rebates)—see section 45.

**eligible parcel of land**, for division 5.2 (Certain proposed unit subdivisions)—see section 30.

**eligible person**, for part 7 (Deferral and rebates)—see section 45.

**land tax**—see the *Land Tax Act 2004*, dictionary.

**lease** means a lease from the Commonwealth or the Territory, and includes an agreement with the Commonwealth or the Territory—

- (a) for a lease of a parcel of land; or
- (b) for the tenancy or occupation of a parcel of land.

**liability for rates**, for division 7.3 (Rebate of rates)—see section 60.

**owner**, of a parcel of land, means—

- (a) except for part 7—
  - (i) the registered proprietor of an interest in the parcel (other than an interest in a lease granted by a person other than the Territory or the Commonwealth); or
  - (ii) a mortgagee in possession of the parcel; or
  - (iii) a person holding the parcel of land under a sublease from the Territory, if the Territory holds the parcel under lease from the Commonwealth; and
- (b) for part 7 (Deferral and rebates)—see section 45.

**owners corporation**—see the Unit Titles Act, dictionary.

**parcel** includes a part of a parcel of land that is separately held by an occupier, tenant, lessee or owner.

**partner**, for part 7 (Deferral and rebates)—see section 45.

**partnership**, for part 7 (Deferral and rebates)—see section 45.

**pensioner**, for part 7 (Deferral and rebates)—see section 45.

**payment date**—see section 17.

**primary production** means—

- (a) production resulting directly from—
  - (i) cultivation of land; or
  - (ii) keeping animals for their sale, their bodily produce or natural increase; or
  - (iii) fishing operations; or
  - (iv) forest operations; and
- (b) the manufacture of dairy produce by the person who produced the raw material used in that manufacture.

**qualifying development application**, for division 5.2 (Certain proposed unit subdivisions)—see section 30.

**qualifying development determination**, for division 5.2 (Certain proposed unit subdivisions)—see section 30.

**qualifying parcel of land**, for division 5.2 (Certain proposed unit subdivisions)—see section 30.

**rateable land**—see section 8.

**rates** includes the total of—

- (a) costs and expenses reasonably incurred by the commissioner in attempting to recover the rates; and
- (b) interest payable in relation to the rates.

**rebate**, for part 7 (Deferral and rebates)—see section 45.

**relevant date**, for a parcel of land, means a date when a determination of the unimproved value of the parcel is or is to be made.

**residential land** means rateable land—

- (a) leased for residential purposes only; or
- (b) leased for residential purposes and other purposes but used for residential purposes only.

**rural land** means rateable land—

- (a) leased for the purpose of primary production only; or
- (b) leased for the purpose of primary production and other purposes but used mainly for primary production.

**special rate pensioner**, for part 7 (Deferral and rebates)—see section 45.

**Taxation Administration Act** means the *Taxation Administration Act 1999*.

***unimproved value***—see section 6.

***unit*** means a unit under the Unit Titles Act, section 9.

***unit entitlement***—see the Unit Titles Act, section 8.

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

***units plan*** means a units plan under the Unit Titles Act, section 7.

***unit subdivision*** means a parcel of land subdivided by registration of a units plan.

***Unit Titles Act*** means the *Unit Titles Act 2001*.

***variation***, of a lease—for division 5.2 (Certain proposed unit subdivisions) see section 30.

***year*** means a financial year.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 27 November 2003.

**2 Notification**

Notified under the Legislation Act on 18 February 2004.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Rates Bill 2004, which originated in the Assembly as the Rates Bill 2003 and was passed by the Legislative Assembly on 12 February 2004.

Clerk of the Legislative Assembly

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