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**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**REVENUE LEGISLATION AMENDMENT BILL 2016 (NO 2)**

**EXPLANATORY STATEMENT**

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## REVENUE LEGISLATION AMENDMENT BILL 2016 (NO 2)

### Summary

The Revenue Legislation Amendment Bill 2016 (No 2) (the Bill) amends the following legislation:

- *Civil Law (Sale of Residential Property) Act 2003*;
- *Duties Act 1999* (Duties Act);
- *Land Rent Act 2008*;
- *Land Tax Act 2004*;
- *Land Titles Act 1925* (Land Titles Act);
- *Land Titles (Unit Titles) Act 1970*;
- *Payroll Tax Act 2011* (Payroll Tax Act);
- *Planning and Development Act 2007*;
- *Rates Act 2004*
- *Retirement Villages Act 2012*;
- *Taxation Administration Act 1999* (TAA);
- *Unlawful Gambling Act 2009*; and
- *Unlawful Gambling Regulation 2010*.

### Overview

The Bill makes extensive amendments to taxation legislation to adopt a 'Barrier Free' model for the collection of conveyance duty.

The major amendments include:

- modifying the timing of the conveyance duty process so that payment occurs after settlement;
- requiring the registration of dutiable instruments under the Land Titles Act;
- authorising the Registrar-General to collect information on behalf of the Commissioner for ACT Revenue (the Commissioner) for the purpose of duty assessment;
- repealing obsolete stamping provisions;
- simplifying and consolidating of exemptions from duty;
- abolishing \$20 and \$200 nominal duty;
- allowing the adjustment of certain amounts under \$20 to zero to prevent the accrual of very small debts;
- allowing unpaid duty debt to be secured as a charge against the relevant property, as a revenue protection measure; and
- updating wording in the Duties Act.

The Bill also amends other legislation in order to implement requirements stemming from the Revenue Collection Transformation Program (the Transformation), and in particular, requirements of Release One of a new IT system for revenue collection.

## Barrier Free Model

### *Background*

In the context of redesigning its business processes in the Transformation, the ACT Revenue Office (the Office) has developed a new model for collecting conveyance duty called the Barrier Free model.

The ACT has a leasehold system of land tenure. Under this system almost all Territory land is registered under the Land Titles Act in the form of Crown leases. The Registrar-General is responsible for administering this register. Unlike other jurisdictions, there is no prevalence of 'old system land' governed by different title rules.

The Barrier Free model is premised on the ACT land titles register acting as a single source of truth for all conveyancing transactions in the Territory.

### *Traditional conveyance duty model*

The most common type of dutiable transaction is an agreement to sell or transfer property; in other words, a standard contract for sale of real estate. This is commonly referred to as exchange of contracts.

Under the current Duties Act, the obligation to pay conveyance duty triggers when the liability is incurred. For an agreement to sell or transfer property, the trigger date is the contract execution date.

The payment timeframe is 90 days after the trigger date. However, for certain off the plan transactions, the timeframe can extend up to 1 year and 14 days.

Nonetheless, duty must be paid before settlement of a contract. The buyer initiates payment by lodging conveyance documents with the Office for an assessment of duty. Once the duty is paid, the Office stamps the contract or other instrument as proof of payment.

If a concession or exemption applies, the buyer must claim it at the time of lodgement and provide supporting documents at that time. The instrument will be stamped to denote that concessional duty was paid, or the instrument was exempt.

After settlement occurs the buyer must lodge a transfer instrument with Access Canberra to acquire the formal title to the property. The Office's stamp is evidence that duty has been assessed and fully paid—the Duties Act restricts the Registrar-General from registering unstamped instruments. However, even where there is no change to the register duty is still payable.

### *Barrier Free model*

The Barrier Free model moves the trigger date for payment from the date of exchange of contracts to the point that a buyer acquires the title to the property, which occurs after settlement.

Under this model customers will only have to lodge conveyance documents once, and this will occur at Access Canberra. Access Canberra will collect and automatically transfer information about transactions to the Office so duty can be assessed without further input from the customer.

The default time to pay conveyance duty will be 14 days after the Registrar-General registers the interest under the Land Titles Act.

However, the Commissioner has the power to extend this general timeframe (and certain other timeframes inserted by the Bill) by notifiable instrument. This power will allow for adjustments to the Barrier Free timeframes if feedback from external stakeholders indicates that 14-day period is too brief.

Exemptions and concessions will be claimed by indicating the correct category on the Access Canberra forms. Unlike the current conveyance model, supporting documents do not have to be supplied at the time of lodgement. Instead the Office will verify transactions after registration is complete. This will enable the Office to target and prioritise its compliance and awareness activities to a greater extent.

### *Amendments to Land Titles Act*

To effect the Barrier Free model the Bill makes it mandatory to have a transaction over dutiable property registered under the Land Titles Act. While registration is currently not a compulsory element of the Torrens title system, it has always been a necessary step to formally transfer the title. An exception applies to instruments which are dutiable but not registrable on the land titles register (see '*Transactions outside Barrier Free model*' below).

### *Abolition of stamping*

In conjunction with the requirement to lodge transactions for registration, the Bill removes all stamping provisions from the Duties Act. The main function of stamping was to provide proof of payment before registration, which is no longer required with post-settlement payment under the Barrier Free model.

However, the electronic lodgement (eLodge) and payment provisions under section 239 will be preserved. The eLodge system provides faster turnaround times for registered clients (legal practitioners) to process and pay for certain transactions online. eLodge will provide a secondary procedure of direct lodgement to the Office for any transactions which cannot be processed under the model.

### *Transactions outside Barrier Free model*

Some dutiable transactions do not cause a change in legal interests and therefore do not cause a change to the land titles register. This means that it will not be evident from land titles records that such a transaction has happened.

For example, landholder duty liability can arise by the acquisition of shares in a company owning land. There is no change to the land titles register after such a transaction, because the company that owns the land remains the legal owner. Another example is a declaration of trust, which is a dutiable transaction under the Duties Act, but which does not create a registrable legal interest.

In these cases the Barrier Free model does not apply but duty must still be paid.

The Bill places requirements on the taxpayer to ensure the Office can correctly assess duty in these cases. The procedure is generally for the taxpayer to lodge such instruments directly with the Office for assessment as per the pre-Barrier Free rules.

In general, the pre-Barrier Free timeframe of 90 days will be retained for these transactions.

### Simplification of concessions

The Bill also simplifies exemption provisions in the Duties Act that are repeated over several chapters. Shortening the list of exemption categories will streamline the registration process and make it easier for customers to understand their eligibility.

Consolidated exemptions will apply to property transferred:

- to a hospital or school;
- to the Commonwealth, States and Territories;
- under a deceased estate; or
- under a financial agreement relating to the end of a marriage, de facto relationship or domestic relationship.

Several exemptions now require the Commissioner to be satisfied of eligibility before allowing the exemption to apply. This change clarifies the Commissioner's role in verifying the applicability of exemptions once an assessment has been issued.

For example, the exemption under section 72 of the Duties Act (transferring an interest in a principal place of residence to a partner) has been amended to require the Commissioner *to be satisfied that* the property is used as a principal place of residence of the parties.

### Abolition of nominal duty

Various concessions in the Duties Act have required a \$20 or \$200 payment to the Office to effect the transaction. This is needless red tape for customers who are purchasing a property.

Nominal duty was introduced in September 1993 as a partial cost recovery measure.<sup>1</sup> However, the revenue collected from nominal duty has declined over the years. This decline was mainly due to GST reforms that abolished several types of duty in the 2000s.

This Bill will remove all remaining requirements to pay duty of \$20 or \$200. The continuation of nominal duty is unnecessary in a digital platform where the processing of transactions is less intensive and payments are handled electronically.

### Amounts under \$20

The Bill makes changes to various laws to prevent the accrual of very small debts (under \$20) on taxpayer accounts. Small amounts are uneconomical to collect under debt recovery processes. The adjustment of these amounts to nil will benefit taxpayers.

The Bill repeals the \$20 minimum for *ad valorem* duty where the amount payable is otherwise less than \$20. It was already possible for certain agents and taxpayers to obtain an exemption from concessional or minimum duty of \$20, illustrating its lack of utility in a digital platform. Any transactions that would have a duty liability of less than \$20 will now be exempt from duty.

The Bill amends the Payroll Tax Act to allow for the adjustment of balances to zero as part of an annual reconciliation, if the amount outstanding would otherwise be less than \$20.

The Bill also amends the TAA to provide amounts of penalty tax or interest are not payable if the amount falls under \$20. Minimum interest of \$20, however, only applies to interest imposed under section 25 of the TAA. No minimum will apply to interest imposed under the *Land Rent Act 2008*, *Land Tax Act 2004* or *Rates Act 2004* because interest is calculated on a different basis under these tax laws (compound and monthly).

### Revenue protection and payment

One of the functions of stamping in the conveyance duty model was to protect revenue by ensuring that tax was fully paid before an interest was registered (with the protections that land title registration affords).

While unpaid duty accrued interest under the TAA, it was an unsecured debt (a tax in relation to a transaction rather than a parcel of land). The primary disincentive to late payment or non-payment was the inability to have the instrument registered by the Registrar-General.

As this Bill abolishes stamping, a robust option is required to protect duty revenue. Therefore this Bill extends the sale of land provisions in division 7.3 of the TAA to cover unpaid duty.

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<sup>1</sup> *Stamp Duties and Taxes (Amendment) Act (No 2) 1993*.

Division 7.3 contains provisions that allow the Commissioner to sell property through an application to a court where tax is in arrears and has been for a number of years. It provides that the unpaid tax is a charge on the interest held by the property owner.

However, the charge does not have effect against a subsequent purchaser if the purchaser complies with the certificate procedure in section 56H (3) of the TAA.

A parcel of land that has been in arrears for at least one year may be 'declared' by notifiable instrument. If the tax continues to remain in arrears for at least 90 days, the Commissioner may apply to a court for an order to sell the land and apply the proceeds to the arrears.

The Bill makes minor amendments to the TAA and several tax laws to include duty payable in relation to a parcel in the division 7.3 process. Amendments also provide that a party to the transaction may obtain a 'certificate of duty and other charges', which ensures that the buyer is protected from any tax liability of the previous owner.

The Bill further amends section 122 of the TAA to repeal the Commissioner's requirement to accept posted cheques and money orders as a default payment method for ACT taxes. This amendment is in line with the declining emphasis on cheques and money orders in favour of electronic payments. The Commissioner will retain the discretion to approve cheque or money order payments for particular taxes.

#### Updated language

Finally, the Bill updates the language used in some sections of the Duties Act in line with current drafting practice. For example, the words 'charged' or 'chargeable' have been updated to 'payable' throughout the Act. These updates improve readability and reduce any ambiguities caused by different phrasings. These changes do not affect the general meaning of the provisions, in accordance with section 147 of the *Legislation Act 2001*.

#### **Human rights**

The amendments to the Land Titles Act give the Registrar-General the authority to collect prescribed information about dutiable transactions. They also require the Registrar-General to share this information with the Commissioner.

The passage of information from the Registrar-General to the Commissioner engages the right to privacy and reputation under section 12 (a) of the *Human Rights Act 2004*.

Section 12 (a) provides that an individual has the right 'not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily'.

Section 28 of the *Human Rights Act 2004* provides human rights are 'subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society'.

In deciding whether a limit is reasonable, all relevant factors must be considered including:

- the nature of the right affected;
- the importance of the purpose of the limitation;
- the nature and extent of the limitation;
- the relationship between the limitation and its purpose; and
- any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The Justice and Community Safety Directorate has considered the amendments to the Land Titles Act constitute a reasonable limitation on the right to privacy for the following reasons.

#### Nature of right affected

The new provisions make it mandatory for a transferee to disclose certain information to the Registrar-General. The provisions therefore allow for lawful interference with a person's privacy.

The right to privacy extends to arbitrary interference relating to an individual's family, home, or correspondence, even when authorised by law. Such interference should be in accordance with the provisions, aims and objectives of the *Human Rights Act 2004* and be reasonable in the particular circumstances.

#### Importance and purpose of the limitation

The purpose of the limitation is to ensure people meet their taxation obligations under the Duties Act.

The Commissioner is responsible for assessing the liabilities of taxpayers under tax laws. In order to make a full and accurate assessment of tax, the Commissioner requires certain information from individuals. This can fall into two general categories: information about the individual's identity and about the nature of the transaction.

It is essential for the Commissioner to know the true identity of an individual before issuing an assessment. Risks of fraud, misrepresentation or mistake may arise if the wrong person is assessed.

Even if the true taxpayer is a company, it is still relevant to collect information about individuals under their exact roles in a transaction:

- An individual could be a direct party to the transaction: a transferor or transferee of the property.
- An individual could also be acting as trustee, agent or solicitor for one of the parties.
- An individual could have a relationship with the taxpayer that is relevant to the imposition of duty—particularly under the 'related person' provisions of the Duties Act (see the dictionary). Examples of such relationships include family



members, partners, shareholder/company, director/company, and beneficiary/trustee.

Fairness and equity is better achieved by ensuring all taxpayers pay the correct amounts of tax in accordance with the law.

The Bill designates the Registrar-General to collect and provide the information to reduce red tape for the community and make conveyancing duty collection a simpler and faster process. The Barrier Free model in this Bill channels the provision of information through Access Canberra (the Registrar-General) as a 'front door' to the ACT Revenue Office.

It should be noted that some information on the land titles register (which is in the public domain) is useful to the Commissioner in making an assessment. For example, a transfer instrument publicly records the consideration for the transaction, the exchange and settlement dates of the agreement, and the relative interests held by each transferee.

However an accurate assessment cannot be issued unless the Commissioner can obtain other information of a more personal nature, such as the contact address of an individual (to deliver a notice of assessment).

#### Nature and extent of the limitation

The following limitations apply to the Registrar-General's collection of the additional information under these amendments:

- Information must only be collected in relation to transactions or instruments with a tax liability under the Duties Act.
- The Registrar-General is not authorised to distribute the information more widely. This Bill prescribes the relevant provision of the Land Titles Act as a **tax law** under section 4 of the TAA. By virtue of acquiring the information under this law, the Registrar-General is bound by the secrecy and confidentiality provisions under division 9.4 of the TAA, in addition to the privacy protections in the *Information Privacy Act 2014*.
- The required information types are specified clearly in the Land Titles Act and are similar in scope to what would have formerly been lodged with the Commissioner under the traditional conveyancing model. Specifying this information in the Land Titles Act will give certainty to vendors, purchasers and their agents about the scope of information to be collected.
- While the land titles register is searchable by the public, additional information which is collected only for duty purposes is not added to the public register. A note to the relevant provision makes it clear that the tax-related information is to be excluded from the register unless its inclusion is authorised elsewhere in the Land Titles Act.

### Relationship between limitation and purpose

There is a rational connection between the amendments and the issue being addressed. In the Barrier Free model, ACT Revenue Office customers are relieved of the obligation to lodge documents relating to the transaction with the Commissioner before it has settled and to have their documents stamped after payment.

Without this obligation it is necessary to have a method for the Commissioner to obtain details of the transaction to enable a correct assessment.

The amendments achieve this by replacing a stamping obligation with a registration obligation, removing the need for additional interactions with a government agency until after the transaction is complete. The overall burden on the taxpayer to provide information to government agencies decreases under the Barrier Free model.

### Less restrictive means

It is considered there are no less restrictive means reasonably available to achieve the purpose.

One alternative to the amendments in this Bill is retaining the pre-Barrier Free system where taxpayers must separately provide details to the Commissioner. However, this system negates the red tape benefits of having a single point of contact at Access Canberra. As noted above, the amendments do not significantly expand the types of information that are collected before making an assessment of duty.

The prescribing of some information by regulation, namely the proof of identity requirements, is necessary to achieve the purpose of collecting information for assessment purposes. It may be necessary to authorise different types of identity documents in relation to different classes of people.

Finally, it is not possible to de-identify the data as the Commissioner must know who each taxpayer is in order to charge duty to the correct entity.

### **Commencement**

The amendments will commence on a date fixed by the Minister by written notice. The commencement of the Bill will be timed to coincide with the launch of Release One of the Transformation. The Bill will automatically commence on 1 January 2018 if no date is fixed.

The commencement provision in this Bill will displace section 79 of the *Legislation Act 2001*, which provides that a postponed law automatically commences 6 months after notification.

It is considered justifiable to delay the default commencement of the Bill to 1 January 2018 due to the substantial dependencies between the operation of the duties legislation and the changes required to ICT systems used by both the Office and Access Canberra.

## **Details of the Revenue Legislation Amendment Bill 2016 (No 2)**

### **Clause 1      Name of Act**

This clause provides that the name of the Act is the *Revenue Legislation Amendment Act 2016 (No 2)*.

### **Clause 2      Commencement**

This clause provides that the Act commences on 1 January 2018 or an earlier day fixed by the Minister by written notice.

### **Clause 3      Legislation amended—sch 1**

This clause provides that the Act amends the legislation mentioned in schedule 1.

### **Schedule 1    Legislation amended**

#### **Part 1.1      *Civil Law (Sale of Residential Property) Act 2003***

##### **Clause 1.1    Section 15 (7), note**

This clause amends a note as a consequence of the omission of the *Duties Act 1999*, section 50 (2) by another amendment.

#### **Part 1.2      *Duties Act 1999 (Duties Act)***

##### **Clause 1.2    Section 6, new definition of *cancelled***

This clause relocates the definition of ***cancelled*** from section 50A (which is modified by another amendment) so that the definition is applicable to the whole of chapter 2 of the Duties Act.

The similar definition of ***cancelled*** in section 50 has been omitted by another amendment.

##### **Clause 1.3    Section 7 (3), definition of *transfer*, note**

This clause updates the word ‘charged’ to ‘payable’.

##### **Clause 1.4    Section 8 (1)**

This clause updates the word ‘charged’ to ‘payable’.

##### **Clause 1.5    Section 8 (2)**

This clause updates the word ‘charging’ to ‘paying’.

## **Clause 1.6 Section 11**

This clause amends section 11 to prevent the payment of a duty liability until it becomes payable under the amended section 16.

In the conventional conveyancing model, the liability to pay duty arises and becomes payable before settlement.

One of the aspects of the Barrier Free model is the separation of the liability date and payment date, so that a triggering event must happen before the taxpayer is obliged to pay duty.

Maintaining the same liability date ensures that duty remains calculated by reference to the same point (i.e. the dutiable value determined under the contract).

Another reason for the prevention of payment before settlement is that the ACT Revenue Office will not receive information in relation to transactions and customers until it is automatically notified of a registration by Access Canberra.

Due to technical considerations, it is not possible to receive a duty payment unless a taxpayer account has been set up with all the required information. Access Canberra will be responsible for collecting this information, but it will not be collected before the point of lodgement for registration.

The clause also moves the content of section 11 (2) to section 11 (1) (b). The effect of the provision has not changed.

## **Clause 1.7 Section 15 (2)**

This clause provides that a transferee's obligation to lodge an instrument or statement with the Commissioner for ACT Revenue (the Commissioner) is taken to be fulfilled if the Registrar-General has told the Commissioner about the transaction.

If it is not possible for the Registrar-General to tell the Commissioner about the transaction, section 15 (1) will apply. In such cases the taxpayer will generally be required to lodge the agreement or transfer with the Commissioner directly within 90 days of the liability arising.

The reason for this amendment is to remove the need for a separate lodgement of documents with the ACT Revenue Office. A direct lodgement with the Commissioner will not be required for the vast majority of dutiable transactions. However, the option is preserved if exceptional circumstances arise (such as a computer system breakdown).

Subsections (3) and (4) relate to the lodgement obligations for cancelled agreements under section 50 of the Duties Act if they give effect to a subsale. As a cancelled agreement does not create a change in the land titles register, and may not be cancelled with regard to the 90 day timeframe under subsection (1), it is necessary to provide an avenue for *ad valorem* duty to be assessed on the agreement.

Therefore the amendments require the agreement to be lodged directly with the Commissioner within at least 14 days of the agreement's cancellation date. A longer period than 14 days can be determined by notifiable instrument.

#### **Clause 1.8 Sections 16 and 16A**

This clause amends section 16 to specify when duty must be paid for a dutiable transaction. Instead of a general 90-day timeframe, the amendments move the date duty becomes payable (the 'trigger date' mentioned above) to the date on which an instrument is registered by the Registrar-General.

Once payment has triggered, section 16 (2) provides the duty must be paid within 14 days to avoid a tax default under the *Taxation Administration Act 1999* (the TAA). A longer period than 14 days can be determined by notifiable instrument.

This clause also omits section 16A. The omitted content of section 16A made special provision for 'off the plan' agreements. The omission ensures that off the plan agreements are treated the same as any other agreement for the sale or transfer of dutiable property. The trigger date for such agreements will be the date the transaction is registered by the Registrar-General as determined under the amended section 16 (1).

#### **Clause 1.9 Section 17 (1) to (5)**

The purpose of section 17 (No double duty) is to ensure that duty is not paid more than once on the same transaction involving multiple instruments (for example, a contract for sale and a transfer instrument that conforms to the contract).

Subsection (1) is amended by this clause to revise language and remove references to stamping. Duty is stated to be payable only on the first executed instrument effecting a transaction.

The amended subsection (2) abolishes the imposition of \$20 nominal duty in relation to a transfer of dutiable property made in conformity with an agreement for the sale or transfer of the property, and removes the reference to the time of stamping.

Subsection (3), which prevented double duty for certain transactions that involved related people, has been amended to abolish \$20 duty. Subsection (3A) has been included to clarify that while duty is still payable in relation to the agreement, it is the non-conforming transfer that is exempt from duty if the conditions in subsection (3) are satisfied.

Subsections (4) and (5) have been amended to abolish \$20 nominal duty.

#### **Clause 1.10 Section 17 (7) (b)**

This clause updates references to the financial agreement exemptions, which have been relocated by another amendment.

**Clause 1.11 Section 18**

This clause updates the word 'charged' to 'payable'.

**Clause 1.12 Section 18, new note**

This is a consequential amendment to the omission of section 19 and part 2.6 (Concessions). It inserts a note into section 18 referring to part 2.5, which contains exemptions specifically relating to conveyance duty under chapter 2.

**Clause 1.13 Section 19**

This clause omits section 19. Its content has been relocated to a note under section 18 by a previous amendment.

**Clause 1.14 Section 24 (5)**

This clause updates the word 'charged' to 'payable'.

**Clause 1.15 Section 24 (6) and (7)**

This clause amends section 24 to omit the requirement to lodge an aggregation statement with the Commissioner.

Under the Barrier Free model a statement will not be required by the Commissioner to apply the exemption. Any information that may be needed by the Commissioner in relation to a potential aggregation will be obtained under subsequent business processes.

**Clause 1.16 Section 26 (1)**

This clause updates the word 'chargeable' to 'payable'.

**Clause 1.17 Section 26 (2)**

This clause updates the word 'chargeable' to 'payable'.

**Clause 1.18 Section 26 (2)**

This clause updates the word 'chargeable' to 'payable'.

**Clause 1.19 Section 29 (4)**

This clause omits \$20 minimum duty for transactions effecting partitions.

### **Clause 1.20 Section 33 (2)**

This clause updates the word ‘chargeable’ to ‘payable’.

### **Clause 1.21 New section 49**

This clause omits section 49 (Interim payment of duty). The Barrier Free model deprecates the use of interim assessments and interim stamps. It is no longer the case that duty will become due on a transaction before settlement. Also, the full dutiable value of the property should always be evident at the time of registration. Therefore it is unnecessary to have a special procedure for assessing duty before a transaction is complete.

Section 11 (2) of the TAA continues to provide that the Commissioner may make an assessment by way of estimate if there is insufficient information to make an exact assessment of a tax liability. Section 11 (2) of the TAA is not amended by this Bill.

### **Clause 1.22 Section 50**

This clause amends section 50 (Cancelled agreements) as a consequence of the new requirement to lodge cancelled agreements directly with the Commissioner under section 15.

Section 50 now provides that *ad valorem* duty is only payable on a cancelled agreement if it was cancelled to give effect to a subsale. *Ad valorem* duty is not payable on other cancelled agreements. These agreements do not need to be lodged with the Commissioner under section 15.

This clause also omits the administrative procedure for a refund under section 50 (2). Under the pre-Barrier Free model, there was a possibility of duty being paid on the first agreement before it was subsequently cancelled. Section 50 (2) entitled the first transferee to a refund of this amount, provided it was applied for within a specified time.

The Barrier Free model no longer allows duty on contracts to be paid before settlement. This means that there is no earlier duty payment to refund if the contract is cancelled.

Finally, the definition of **cancelled** has been omitted because a similar definition has been relocated to section 6 of the Act by another amendment.

### **Clause 1.23 Section 50A (1)**

This clause updates language in line with current drafting practice.

### **Clause 1.24 Section 50A (2) (a)**

This clause updates language in line with current drafting practice.

**Clause 1.25 Section 50A (4)**

This clause omits the definition of *cancelled* for section 50A as it has been relocated to section 6 of the Act by another amendment.

**Clause 1.26 Section 51 (1)**

This clause updates the wording of the exemption under section 51 for surrenders and regrants of Crown leases, and abolishes nominal duty.

**Clause 1.27 Section 53 (2)**

This clause omits the requirement for the Commissioner to retain \$20 out of an amount refunded in accordance with section 53 (2), which relates to a dutiable property transferred by way of mortgage and then retransferred to the mortgagor.

**Clause 1.28 Part 2.5 heading**

This clause renames the heading of part 2.5 from ‘Concessional rates of duty’ to ‘Exemptions’. This is due to other amendments which convert nominal duty concessions under this part to full exemptions.

**Clause 1.29 Section 54 (2)**

This clause abolishes nominal duty for a change in trustees under section 54.

**Clause 1.30 Section 54 (2)**

This clause updates the word ‘chargeable’ to ‘payable’.

**Clause 1.31 Section 54 (3)**

This clause abolishes nominal duty for a change in trustees under section 54.

**Clause 1.32 Section 54 (4)**

This clause abolishes nominal duty for a change in trustees under section 54.

**Clause 1.33 Section 55**

This clause abolishes nominal duty for a transfer to a custodian of a managed investment scheme under section 55.

**Clause 1.34 Section 55A**

This clause abolishes nominal duty for a transfer in relation to a managed investment scheme under section 55A.



**Clause 1.35 Section 55B (1)**

This clause abolishes nominal duty for a transfer in relation to a registered scheme under section 55B.

**Clause 1.36 Section 55B (2)**

This clause updates wording so that the Commissioner must be satisfied of the matters in subsection (2) before the exemption can apply.

**Clause 1.37 Section 56 (1)**

This clause abolishes nominal duty for a declaration of trust involving an apparent purchaser under section 56.

**Clause 1.38 Section 57 (1)**

This clause abolishes nominal duty for a transfer back from a nominee under section 57.

**Clause 1.39 Section 57 (2)**

This clause abolishes nominal duty for a transfer back from a nominee under section 57.

**Clause 1.40 Section 58**

This clause abolishes nominal duty, and updates drafting language, for a property passing to a beneficiary in conformity with a declaration of trust under section 58. Paragraph (2) (b), formerly subsection (3), has been updated to reflect the split in the liability and payment trigger dates under the Barrier Free model.

**Clause 1.41 Section 60**

This clause abolishes nominal duty for a declaration of trust relating to a managed investment scheme under section 60.

**Clause 1.42 Section 62 (1)**

This clause updates wording so that the Commissioner must be satisfied of the matters in subsection (1) before the exemption can apply.

**Clause 1.43 Section 62 (2) to (6)**

This clause abolishes nominal and concessional duty (of an amount between \$20 and \$200) for a transfer of property between superannuation funds.

**Clause 1.44 Section 63 (1) to (3)**

This clause abolishes nominal duty for a transfer between trustees or custodians of a relevant superannuation fund or trust under section 63.

**Clause 1.45 Sections 64, 65 and 66**

This clause omits section 64 dealing with Commonwealth authorities, hospitals and schools. These exemptions have been consolidated into new sections by other amendments.

It also abolishes nominal duty for a transfer under the *Fair Work (Registered Organisations) Act 2009* (Cwlth), or a grant or transfer to a prescribed person, under sections 65 and 66 respectively.

**Clause 1.46 Section 67**

This clause abolishes nominal duty for a conversion of a property to unit title under section 67.

**Clause 1.47 Section 68 (1)**

This clause abolishes nominal duty for surrenders and regrants of Crown leases under section 68.

**Clause 1.48 Section 68 (2)**

This clause abolishes nominal duty for surrenders and regrants of Crown leases under section 68.

**Clause 1.49 Section 68 (3)**

This clause abolishes nominal duty for surrenders and regrants of Crown leases under section 68.

**Clause 1.50 Section 69**

This clause omits section 69 dealing with deceased estates. The exemptions for deceased estates have been consolidated into a new section by another amendment.

**Clause 1.51 Section 71**

This clause abolishes nominal duty for a transaction consequential on receivership, liquidation or bankruptcy under section 71.

**Clause 1.52 Section 72 (1), except note**

This clause abolishes nominal duty for a transfer of an interest in a principal place of residence to a partner under section 72.

**Clause 1.53 Part 2.6 heading**

This clause omits the separate heading for part 2.6. The part has been combined with part 2.5 (Exemptions) by other amendments.

**Clause 1.54 Section 73**

This clause omits section 73 dealing with transfers to States, Territories and prescribed government authorities. These exemptions have been consolidated into a new section by other amendments.

**Clause 1.55 Section 73A (1)**

This clause updates the language used in the exemption for community housing entities under section 73A.

**Clause 1.56 Section 73B (1)**

This clause updates the language used in the exemption for special disability trusts under section 73B.

**Clause 1.57 Section 74 (1)**

This clause updates the language used in the exemption for mortgage-related transfers under section 74.

**Clause 1.58 Section 74A**

This clause updates the language used in the exemption for instruments that are personal relationship financial agreements under section 74A.

**Clause 1.59 Section 74B**

This clause omits section 74B dealing with personal relationship financial agreements. The exemptions for such agreements have been consolidated into a new part by another amendment.

**Clause 1.60 Section 75AB (2) and (3)**

This clause amends section 75AB in relation to the timing of a deferred duty application, which must now be made at the time an instrument is lodged for registration with the Registrar-General. The application has been simplified by removing the requirement for the application to be signed.

**Clause 1.61 Section 75AD (1) (a) and (b)**

This clause amends the payment timeframe of a duty deferral arrangement to start on the day the duty becomes payable on the dutiable transaction, rather than the day of the dutiable transaction (the liability date). These dates are split under the Barrier Free model, with payment triggering on the registration date.

**Clause 1.62 Section 77**

This clause updates the word ‘charges’ to ‘payable’.

**Clause 1.63 Section 91**

This clause omits section 91. The content of this section has been transferred to another section by another amendment.

**Clause 1.64 Section 93 (1)**

This clause updates the word ‘chargeable’ to ‘payable’.

**Clause 1.65 Section 95 (1)**

This clause updates the language used in the landholder duty exemption for acquisitions effected for the purpose of securing financial accommodation under section 95.

**Clause 1.66 Section 95 (2)**

This clause updates the word ‘chargeable’ to ‘payable’.

**Clause 1.67 Section 108**

This clause updates the word ‘chargeable’ to ‘payable’.

**Clause 1.68 Section 115F (1)**

This clause updates the word ‘chargeable’ to ‘payable’.

**Clause 1.69 Division 3.7.1**

This clause omits the existing content of section 115H (the only section in this division) dealing with personal relationship financial agreements. The exemptions for such agreements have been consolidated into a new division by another amendment.

The clause then substitutes section 115H with the content of former section 91 of the Act, modifying them to abolish nominal duty for several landholder duty transactions and updating the language used to describe the exemptions.

Former section 91 (1) (a) and (b), which provided concessions for hospitals, schools and deceased estates, are not included in new section 115H as the exemptions for these cases have also been consolidated into other sections.

Former section 91 (1) (c), dealing with bankruptcies and winding-up, has been renumbered as section 115H (1).

Subsections (2) to (4) correspond to former section 91 (2) to (4).

**Clause 1.70 Section 174**

This clause updates the word 'charged' to 'payable'.

**Clause 1.71 Sections 177 (1) and 183**

This clause updates the word 'charges' to 'payable'.

**Clause 1.72 Section 204**

This clause updates the word 'charges' to 'payable'.

**Clause 1.73 Section 205**

This clause updates the word 'chargeable' to 'payable'.

**Clause 1.74 Sections 209, 210, 212 and 213**

This clause omits these sections dealing with motor vehicle duty exemptions for the Commonwealth, States and Territories; for hospitals and schools; for deceased estates; and for personal relationship financial agreements. The exemptions for these cases have been consolidated into new sections by other amendments.

**Clause 1.75 Section 224**

This clause abolishes nominal duty for a rectification of a registration error under section 224.

**Clause 1.76 Sections 227 to 229A**

This clause abolishes nominal duty for duplicates or counterparts of instruments under section 227 (2) and updates the language used in section 227.

It also abolishes nominal duty for replicas of instruments under section 228.

New section 229 does not contain the provisions imposing a minimum amount of \$20 on any duty payable under the Act, and which also allow approved agents and taxpayers to be

exempted from minimum duty. As nominal duty of \$20 is being abolished, it is not necessary to impose a minimum level of duty that aligns with the \$20 amount.

In place of the minimum amount or 'floor' of \$20, an exemption from duty will now apply in relation to a transaction that would otherwise be liable to duty of less than \$20.

The language and style of section 229 has also been updated to be consistent with current legislative drafting practice.

Motor vehicle registration duty is excluded from section 229 as the administration of this form of duty is shared between Access Canberra and the ACT Revenue Office.

Finally, this clause abolishes the ability to exempt approved taxpayers from \$20 minimum duty.

#### **Clause 1.77 New part 11.1 heading**

This clause inserts a new part heading under chapter 11 concerning general exemptions from duty.

#### **Clause 1.78 Section 232A (1)**

This clause replaces the word 'chapter' with 'Act', to rectify an incorrect reference. Duty is not imposed under chapter 11, but under other chapters of the Duties Act.

It also updates the word 'chargeable' to 'payable'.

#### **Clause 1.79 Section 232A (5), definition of *dutiable transaction***

This clause omits an unnecessary definition for *dutiable transaction*, which is already defined in the dictionary.

#### **Clause 1.80 New sections 232B to 232D and part 11.2**

This clause inserts new consolidated exemptions which apply to duty imposed under the Act.

##### Section 232B Hospitals and schools

This section exempts hospitals, schools, and trustees holding property in trust for hospitals or schools from payment of duty.

The new exemption inserts a new definition of *school*, meaning a government school or registered non-government school under the *Education Act 2004*.

The term *hospital* is already defined in the dictionary.

### Section 232C Commonwealth, States and Territories

This section exempts the Commonwealth, a State or another Territory, a prescribed authority of a Commonwealth, State or Territory, and a non-commercial Commonwealth authority from payment of duty.

### Section 232D Deceased estates

This section exempts transfers of dutiable property relating to deceased estates from payment of duty.

Subsections (2) and (3) provide that concessional duty is payable for a transfer made in partial conformity with a will. This concession applies only in relation to transactions under chapter 2 of the Act which are transfers of dutiable property.

### Part 11.2 Exemptions from duty—certain personal relationships

This section exempts transactions relating to personal relationship financial agreements under chapters 2, 3 or 9 from payment of duty. The provisions apply to transfers to dutiable property, applications for the registration of motor vehicles and chapter 3 transactions.

While the former provisions have been rearranged into several sections, the effect of these provisions has not changed.

### Section 232E Definitions—pt 11.2

This section contains definitions for part 11.2.

### Section 232F Transactions under certain court orders

This section provides duty is not payable on transactions made under an order of the court under the *Family Law Act 1975* (Cwlth), under the *Married Persons Property Act 1986* or for the distribution of property consequent on the end of a relationship between partners.

### Section 232G Transactions under *Family Law Act 1975* (Cwlth), s 90B, s 90C or s 90D financial agreements

This section provides duty is not payable on transactions made under a financial agreement pursuant to sections 90B, 90C or 90D of the *Family Law Act 1975* (Cwlth), provided the requirements of the section are fulfilled.

### Section 232H Transactions under *Family Law Act 1975* (Cwlth), pt VIIIAB financial agreements

This section provides duty is not payable on transactions made under a financial agreement pursuant to sections 90UB, 90UC or 90UD of the *Family Law Act 1975* (Cwlth), provided the requirements of the section are fulfilled.

Section 2321 Transactions under *Domestic Relationships Act 1994*, s 33 (1) (d)

This section provides duty is not payable on transactions made under a domestic relationship agreement or termination agreement pursuant to the *Domestic Relationships Act 1994*, provided the requirements of the section are fulfilled.

**Clause 1.81 Part 12.1 heading**

This clause omits a heading relating to the stamping of instruments.

**Clause 1.82 Sections 233 to 238**

This clause omits provisions relating to the stamping of instruments including duplicates, counterparts, and replicas, and the defacing of stamps.

These provisions are obsolete in the Barrier Free model because of the abolition of stamping.

**Clause 1.83 Section 239 (5) (c), except note**

This clause omits the legislative requirement to give a unique authorisation number to a person approved to pay duty electronically.

Under the Barrier Free model there is no requirement for the Commissioner to 'authorise' an instrument to fulfil the function of a stamp (in accordance with section 244 (1) (b), which is omitted by another amendment).

While this amendment removes a legislative requirement to issue what is effectively an electronic stamp, it does not prevent the ACT Revenue Office from using unique identifying numbers for transactions as a routine function of its IT system.

**Clause 1.84 Section 241**

This clause repeals the offence of purporting to stamp an instrument without authority.

**Clause 1.85 Section 243 (3)**

This clause omits a provision relating to refunds of money paid for stamping.

**Clause 1.86 Sections 244 to 246**

This clause omits provisions relating to stamping (sections 244 to 246).

Section 244 has been substituted with a new provision allowing a person to apply to the Commissioner for a certificate of duty payable under the Act in relation to a dutiable transaction including a deferred duty arrangement. The certificate is issued for the purpose of settlement of the property transfer, and is similar to the existing certificate provisions under the *Land Rent Act 2008*, *Land Tax Act 2004* and *Rates Act 2004*.



This Bill makes related amendments to the TAA to specify that duty in relation to a dutiable transaction is secured against the parcel of land which is the subject of the transaction.

**Clause 1.87 Part 12.2 heading**

This provision omits an unnecessary heading.

**Clause 1.88 Section 247**

This clause omits an enforcement provision relating to the offence of registering an unstamped instrument. Removing the offence under section 247 is necessary to effect the Barrier Free model. By removing the offence, the Registrar-General will be permitted to register an instrument before the payment of duty in respect of it.

**Clause 1.89 Section 250**

This clause amends section 250, which governs the use of dutiable instruments in evidence, to repeal the requirement that an instrument must be stamped before it is made available for use in law or equity for any purpose.

While the instrument is no longer required to be stamped, it must be marked by the Commissioner (or in a way approved by the Commissioner) to preserve the effect of section 250 in the absence of a stamping requirement.

Subsection (3) corresponds to the old subsection (2) and permits a court or tribunal to admit the instrument in evidence if it is sent to the Commissioner in accordance with that provision. Subsection (4) corresponds to the old subsection (3) and removes a reference to stamping.

The language of the provision has been updated to be consistent with other changes made to the Duties Act and current legislative drafting practice.

**Clause 1.90 Part 12.3 heading**

This provision omits an unnecessary heading.

**Clause 1.91 Sections 252 (d), (e), (j), (k), (s) and (t)**

This clause omits references to several reviewable decisions, as the relevant provisions have been consolidated by other amendments.

**Clause 1.92 New section 252 (z) to (zb)**

This clause is consequential on the consolidation of several exemptions into new part 11.2. It provides for the reviewability of decisions under that part rather than the original sections.

These reviewable decisions are:

- that a transfer is not consequent on the dissolution, annulment or irretrievable breakdown of a marriage;
- that a transfer is not consequent on the end of a de facto relationship; or
- that a transfer is not consequent on the end of a domestic relationship.

### **Clause 1.93    New chapter 19**

This clause inserts transitional provisions for the amendments made by this Bill.

#### Section 470    Definitions—ch 19

This section contains definitions for chapter 19.

#### Section 471    Application of ch 2 and ch 12 to pre-commencement day transactions

This section provides that chapters 2 and 12 of the Duties Act, as in force immediately before the commencement day, apply to a dutiable transaction mentioned in section 471 (1) if a liability for duty in relation to the transaction arose before the commencement day, but the duty had not been paid immediately before that day.

Chapter 2 contains provisions relating to duty on conveyance transactions. The relevant provisions of chapter 12 affected by this Bill relate to stamping requirements.

#### Section 472    Application of ch 12 to pre-commencement day instruments

This section provides that chapter 12, as in force immediately before the commencement day, applies to either an instrument that effects a dutiable transaction, or an instrument chargeable with duty, if a liability arose before the commencement day but had not been paid immediately before that day.

#### Section 473    Transitional regulations

Section 473 enables the Executive to make regulations dealing with transitional matters. The section contains two different regulation making powers.

Section 473 (1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose.

Section 473 (2) enables the making of a regulation that modifies the Act. A regulation under this section may only modify chapter 19 of the Act, and only if the Executive is of the opinion that the chapter does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the

Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Section 473 (3) gives a regulation under section 473 (2) full effect according to its terms. A provision of chapter 19 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Also, any modification by regulation of chapter 19 of the Act has no ongoing effect after the expiry of that chapter.

#### Section 474 Expiry—ch 19

This section provides chapter 19 expires five years after the commencement day.

The transitional period of five years is considered appropriate for the Duties Act, as a tax law, because it aligns with the normal reassessment period of five years under section 9 (3) of the TAA. Under that provision, the Commissioner may only make a reassessment of tax within five years after an initial assessment.

Exceptions to the five-year period only apply if the reassessment is for giving effect to an objection or appeal decision or if all the facts and circumstances were not fully and truly disclosed at the time of the initial assessment.

#### **Clause 1.94 Dictionary, note 2**

This clause adds to the note that the term *child* is defined in the *Legislation Act 2001*.

#### **Clause 1.95 Dictionary, new definitions**

This clause inserts new terms into the dictionary as a consequence of other amendments.

#### **Clause 1.96 Dictionary, definition of *stamped***

This clause omits a provision relating to stamping.

#### **Clause 1.97 Dictionary, new definition of *transaction***

This clause inserts a new term into the dictionary as a consequence of other amendments.

#### **Clause 1.98 Further amendments, mentions of *chargeable***

This clause updates the word ‘chargeable’ to ‘payable’ in various provisions of the Duties Act.

#### **Clause 1.99 Further amendments, mentions of *charged by***

This clause updates the words ‘charged by’ to ‘payable under’ in various provisions of the Duties Act.

**Part 1.3      *Land Rent Act 2008***

**Clause 1.100   Section 31 (1), note 3**

This clause substitutes a note relating to a certificate of duty and other charges as a result of amendments to the Duties Act and TAA that make unpaid duty a charge upon the relevant land.

**Part 1.4      *Land Tax Act 2004***

**Clause 1.101   Section 41 (1), note 3**

This clause substitutes a note relating to a certificate of duty and other charges as a result of amendments to the Duties Act and TAA that make unpaid duty a charge upon the relevant land.

**Part 1.5      *Land Titles Act 1925 (Land Titles Act)***

**Clause 1.102   New section 47C**

This clause inserts a new provision in relation to dutiable instruments.

New section 47C of the Land Titles Act requires a transferee to lodge any instrument effecting a dutiable transaction with the Registrar-General for registration under the Act.

There was no such requirement to have these instruments registered under the traditional conveyancing model, even though there was an obligation to pay duty in respect of them.

Nonetheless, a prerequisite to registration was the obtaining of a stamp from the Commissioner to provide evidence that duty was payable (or exempt) on the instrument being registered. Unstamped instruments could not be registered. In addition, the registration was and is a necessary step to formally transfer a property and gain an indefeasible interest in the Torrens system.

The mandatory registration of these instruments will ensure compliance with the Duties Act in place of the stamping obligations that this Bill repeals.

The following transactions are not subject to new section 47C. The transferee is responsible for lodging them directly with the Commissioner under the Duties Act:

- declarations of trust over dutiable property;
- cancelled agreements for the sale or transfer of dutiable property (only to be lodged where they give effect to a subsale); and
- grants of a commercial lease with a premium.

If the transaction is an agreement for sale or transfer, a 14-day deadline on lodgement applies. This 14-day period begins on the day after settlement (completion). However, the Commissioner may determine a longer deadline by notifiable instrument.

For dutiable instruments that are not agreements, the transferee is generally obliged to lodge the instrument as soon as possible: see section 151B of the *Legislation Act 2001*.

A failure to lodge the agreement in time would be regarded as a tax default (see the TAA, dictionary) meaning that penalty tax and interest may be payable as a result of not meeting the obligation under new section 47C.

This provision has been included as a **tax law** under section 4 of the TAA by another amendment.

#### **Clause 1.103 Section 58 (1) (f)**

Section 58 (1) (f) provides for the priority of an interest that is a charge upon land consisting of unpaid rates, taxes or other moneys. This clause inserts a reference to duty as a consequence of amendments to the TAA that make unpaid duty a charge upon the relevant land.

#### **Clause 1.104 New section 139 (1) (ca)**

This clause allows the Minister who is allocated responsibility for the Land Titles Act to determine fees, charges or other amounts that relate to the Duties Act. This is consequential to other amendments which link functions in the Duties Act to the Land Titles Act.

#### **Clause 1.105 New section 140 (1) (ba)**

This clause allows the Registrar-General to approve forms for the Duties Act. This is consequential to other amendments which link functions in the Duties Act to the Land Titles Act.

#### **Clause 1.106 New section 178B**

This clause inserts a new section authorising the Registrar-General to collect information about any of the dutiable transactions or instruments mentioned in subsection (1).

Under subsection (2) the Registrar-General is authorised to collect several types of information in relation to a transaction of instrument. The purpose of this information collection is to allow the Commissioner to assess a transaction's tax liability on full or correct information.

It is anticipated that a regulation will prescribe how a purchaser will provide proof of identity in relation to the transaction: for example, by prescribing certain documents (passport, driver's licence, Medicare card, etc) as acceptable forms of proof.

The Registrar-General is then authorised to give the information to the Commissioner under subsection (3).

Subsection (4) prohibits the Registrar-General from including any information on the register that is collected only under this section (that is, collected only for the purposes of the Duties Act and TAA). The inclusion of this new section does not affect the Registrar-General's power to add information to the register under other provisions of the Land Titles Act.

Some information on the land titles register is public and can be used by the Commissioner in making an assessment. For example, a transfer instrument publicly records the consideration for the transaction, the exchange and settlement dates of the agreement, and the relative interests held by each transferee. A note confirms that this information may continue to be included on the register.

#### **Clause 1.107 Dictionary, note 2**

This clause adds to the note that the terms *GST* and *home address* are defined in the *Legislation Act 2001*.

### **Part 1.6 Land Titles (Unit Titles) Act 1970**

#### **Clause 1.108 New section 7 (1) (e) (iii)**

This clause inserts a reference to duty as a consequence of amendments to the Duties Act and TAA that make unpaid duty a charge upon the relevant land.

#### **Clause 1.109 Section 7 (1) (e), note**

This clause inserts a reference to a certificate of duty and other charges as a consequence of amendments to the Duties Act and TAA that make unpaid duty a charge upon the relevant land.

### **Part 1.7 Payroll Tax Act 2011**

#### **Clause 1.110 New section 83 (2A)**

This clause provides that, in relation to an annual reconciliation, if the difference between the amount of payroll tax paid or payable by an employer and the correct amount of payroll tax payable is less than \$20, the Commissioner must determine that the difference is \$0.

The purpose of this condition is to prevent small outstanding tax balances from accruing on an employer's payroll tax account during the annual reconciliation process.

**Part 1.8      *Planning and Development Act 2007***

**Clause 1.111    Section 272B (2) (a)**

This clause inserts a reference to duty as a consequence of amendments to the Duties Act and TAA that make unpaid duty a charge upon the relevant land.

**Part 1.9        *Rates Act 2004***

**Clause 1.112    Section 76 (1), note 3**

This clause substitutes a note relating to a certificate of duty and other charges as a result of amendments to the Duties Act and TAA that make unpaid duty a charge upon the relevant land.

**Part 1.10      *Retirement Villages Act 2012***

**Clause 1.113    Section 57 (11), note 2**

This clause amends a note as a consequence of the omission of the Duties Act, section 50 (2) by another amendment.

**Part 1.11      *Taxation Administration Act 1999***

**Clause 1.114    New section 4 (ha)**

This clause specifies that new sections 47C and 178B of the Land Titles Act, inserted by another amendment, are a **tax law** under the TAA.

The amendment ensures that these provisions of the Land Titles Act are subject to the general provisions contained in the TAA:

- The inclusion of section 47C as a tax law allows the enforcement and compliance sanctions of the TAA to apply if a person fails to lodge a dutiable instrument for registration.
- The inclusion of section 178B clarifies that information collected by the Registrar-General is subject to the secrecy provisions of division 9.4 of the TAA at the point of collection.

**Clause 1.115    New section 27**

This clause inserts a new section providing that no interest is payable under a tax law if the amount of interest that would otherwise be payable is less than \$20.

Subsection (2) excludes the *Rates Act 2004*, *Land Tax Act 2004* and *Land Rent Act 2008*. This provision clarifies that those Acts are governed by a different interest regime. The TAA's

interest provisions (other than the interest rate calculation) do not apply to unpaid rates, land tax or land rent.

**Clause 1.116 New section 35**

This clause inserts a new provision to provide that no penalty tax is payable if the amount that would otherwise be payable is less than \$20.

**Clause 1.117 Section 42 (2)**

This clause omits a provision stating that taxpayers approved under section 42 are exempt from paying duty of \$20 or less. This is a consequence of amendments to the Duties Act that abolish \$20 minimum duty.

**Clause 1.118 Section 43 (2)**

This clause omits a provision stating that taxpayers approved under section 43 are exempt from paying duty of \$20 or less. This is a consequence of amendments to the Duties Act that abolish \$20 minimum duty.

**Clause 1.119 Section 44 (2) (f)**

This clause omits a provision relating to exemptions for stamping.

**Clause 1.120 Section 47**

This clause omits a provision relating to exemptions for stamping.

**Clause 1.121 New section 56F (aa)**

This clause applies division 7.3 of the TAA to a tax under the Duties Act.

Division 7.3 of the TAA contains a sale of land process for properties with tax in arrears.

**Clause 1.122 Section 56G (1), definition of *owner*, new paragraph (f)**

This clause amends the definition of *owner* so that it includes a transferee in relation to a dutiable transaction.

**Clause 1.123 Section 56G (1), definition of *parcel*, new paragraph (c)**

This clause amends the definition of *parcel* so that it includes a parcel of land that is part of the property transferred under a dutiable transaction.

This provision is required because duty is a tax imposed on a transaction. In contrast, general rates and land tax are taxes imposed on a parcel of land with a particular status.



The amendment ensures that duty debt can be charged against the specific parcel of land that was subject to the transaction.

**Clause 1.124 Section 56G (1), new definition of *tax payable***

This clause inserts a definition to relate the duty payable on a dutiable transaction under the Duties Act to the parcel of land that would be subject to division 7.3 of the TAA.

**Clause 1.125 Section 56G (2), new definitions**

This clause inserts signpost definitions to terms in the Duties Act.

**Clause 1.126 New section 56H (3) (a) (ia)**

This clause inserts a reference to a certificate of duty and other charges under the Duties Act, ensuring that a charge of unpaid duty does not have effect against an honest purchaser for value if the purchaser had obtained the certificate and did not have notice of the liability at the time of purchase.

**Clause 1.127 Section 67 (3)**

This clause omits an offence relating to the failure to submit an instrument for stamping.

**Clause 1.128 Section 71 (1) (c)**

This clause omits a provision relating to stamping.

**Clause 1.129 Section 122 (2)**

This clause omits section 122 (2) (a) of the TAA, which allowed for any tax (other than those subject to section 239 of the Duties Act) to be paid to the Commissioner by a bank cheque or postal money order delivered to an office of the Commissioner.

This provision is outdated in a digital platform where post is no longer a default method of delivering payment, and where it may be more efficient to make an electronic means of payment the default payment method.

The amended section 122 (2) permits the Commissioner to approve the appropriate means of payment (including electronic means) for all taxes generally.

**Part 1.12 *Unlawful Gambling Act 2009***

**Clause 1.130 Section 3, note 1**

This clause updates a note as a result of other amendments.

### **Clause 1.131 Dictionary, definition of *charitable organisation***

This clause substitutes an incorrect reference to the definition of *charitable organisation* under the Duties Act.

The *Revenue (Charitable Organisations) Legislation Amendment Act 2015* (2015 Act) relocated the definition of *charitable organisation* for duty purposes to the TAA, and made modifications to that definition to exclude certain types of organisation for the purposes of tax exemption or concession. However, this reference was not updated at that time.

The amendment adds the definition of *charitable organisation* that was in force under the Duties Act before the commencement of the 2015 Act.

The changes made by the 2015 Act were intended to apply narrowly to ACT tax laws. Therefore it is considered more appropriate to apply the former definition for the purposes of the *Unlawful Gambling Act 2009*.

### **Part 1.13 *Unlawful Gambling Act Regulation 2010***

#### **Clause 1.132 Section 4 (2), note**

This clause updates a note as a result of other amendments.