

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Duties (Personal Relationship Agreements) Amendment Bill 2002

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(Treasurer)

Duties (Personal Relationship Agreements) Amendment Bill 2002

A Bill for

An Act to amend the *Duties Act 1999*

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

1 **1 Name of Act**

2 This Act is the *Duties (Personal Relationship Agreements)*
3 *Amendment Act 2002*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see *Legislation Act 2001*, s 75).

8 **3 Act amended**

9 This Act amends the *Duties Act 1999*.

10 **4 No double duty**
11 **New section 17 (7)**

12 *insert*

13 (7) This section does not apply to a financial agreement made under the
14 *Family Law Act 1975* (Cwlth), section 90B, 90C or 90D that is
15 binding on the parties under that Act, or to a domestic relationship
16 agreement or termination agreement under the *Domestic*
17 *Relationships Act 1994*, if:

- 18 (a) the agreement provides for a transfer of dutiable property; and
19 (b) the transfer is not exempt from duty under section 74B
20 (Transfers relating to certain personal relationships).

21 **5 Transfers related to certain personal relationships**
22 **Section 72, heading**

23 *substitute*

24 **72 Transfer to spouse of interest in principal place of**
25 **residence**

6 Section 72 (1)*omit***7 Section 72 (2)***omit*

(2) Duty

substitute

Duty

8 New sections 74A and 74B*insert***74A Financial and other agreements**

No duty is chargeable under this chapter on—

(a) a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, 90C or 90D that is binding on the parties under that Act; or

(b) a domestic relationship agreement, or a termination agreement, under the *Domestic Relationships Act 1994*.

74B Transfers relating to certain personal relationships

(1) No duty is chargeable under this chapter on a transfer of dutiable property under—

(a) an order of a court under the *Family Law Act 1975* (Cwlth) or the *Married Persons' Property Act 1986*; or

(b) any other order of a court for the distribution of property consequent on the end of the relationship between spouses.

(2) No duty is chargeable under this chapter on a transfer of dutiable property under a financial agreement made under the *Family Law*

- 1 *Act 1975* (Cwlth), section 90B, 90C or 90D that is binding on the
2 parties under that Act, if—
- 3 (a) the commissioner is satisfied that the transfer is consequent on
4 the dissolution, annulment or irretrievable breakdown of a
5 marriage; and
- 6 (b) the property is matrimonial property; and
- 7 (c) the transfer is:
- 8 (i) to the parties to the marriage, or to either of them; or
- 9 (ii) to a child or children of either of them, or to a person in
10 trust for the child or children.
- 11 (3) No duty is chargeable under this chapter on a transfer of dutiable
12 property under a domestic relationship agreement, or a termination
13 agreement, under the *Domestic Relationships Act 1994*, if—
- 14 (a) the agreement is in writing and signed by each party; and
- 15 (b) the agreement is endorsed with, or accompanied by, the
16 certificates mentioned in that Act, section 33 (1) (d) for each
17 party; and
- 18 *Note* The certificates relate to independent legal advice about the
19 agreement.
- 20 (c) the commissioner is satisfied that the transfer is consequent on
21 the end of the domestic relationship between the parties; and
- 22 (d) the property is relationship property; and
- 23 (e) the transfer is—
- 24 (i) to the parties to the relationship, or to either of them; or
- 25 (ii) to a child or children of either of them, or to a person in
26 trust for the child or children.
- 27 (4) For subsection (2) (a), in deciding whether a transfer is consequent
28 on the irretrievable breakdown of a marriage, the commissioner

1 must have regard to any statutory declaration made by a party to the
2 marriage to the effect that—

3 (a) the party intends to apply for dissolution or annulment of the
4 marriage; or

5 (b) the parties to the marriage have separated, and there is no
6 reasonable likelihood of cohabitation being resumed.

7 (5) For subsection (3) (c), in deciding whether a transfer under a
8 domestic relationship agreement is consequent on the end of a
9 relationship, the commissioner must have regard to any statutory
10 declaration made by a party to the relationship to the effect that the
11 relationship has ended.

12 (6) Subsections (4) and (5) do not limit the commissioner's powers
13 under the *Taxation Administration Act 1999*, section 82 (Power to
14 require information, instruments or records or attendance for
15 examination).

16 (7) For this section:

17 *child* means a person under 18 years old.

18 **9 Ch 3 transactions—concessional duty**
19 **Section 91 (1) (c) to (f)**

20 *substitute*

21 (c) made by operation of law on the bankruptcy of a person or the
22 winding-up of a company.

10 New part 3.7

insert

Part 3.7 Exemptions—chapter 3 transactions

115H Exempt transactions relating to certain personal relationships

- (1) No duty is chargeable on a chapter 3 transaction made under—
- (a) an order of a court under the *Family Law Act 1975* (Cwlth) or the *Married Persons' Property Act 1986*; or
 - (b) any other order of a court for the distribution of property consequent on the end of the relationship between spouses.
- (2) No duty is chargeable on a chapter 3 transaction made under a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, 90C or 90D that is binding on the parties under that Act, if—
- (a) the commissioner is satisfied that the transaction is consequent on the dissolution, annulment or irretrievable breakdown of a marriage; and
 - (b) the property that is the subject of the transaction is matrimonial property; and
 - (c) the parties to the transaction are—
 - (i) the parties to the marriage, or either of them; or
 - (ii) a child or children of either of them, or a trustee for the child or children.
- (3) No duty is chargeable on a chapter 3 transaction made under a domestic relationship agreement, or a termination agreement, under the *Domestic Relationships Act 1994*, if—

- 1 (a) the agreement is in writing and signed by each party; and
- 2 (b) the agreement is endorsed with, or accompanied by, the
- 3 certificates mentioned in that Act, section 33 (1) (d) for each
- 4 party; and
- 5 *Note* The certificates relate to independent legal advice about the
- 6 agreement.
- 7 (c) the commissioner is satisfied that the transaction is consequent
- 8 on the end of the domestic relationship between the parties;
- 9 and
- 10 (d) the property that is the subject of the transaction is relationship
- 11 property; and
- 12 (e) the parties to the transaction are—
- 13 (i) the parties to the relationship, or either of them; or
- 14 (ii) a child or children of either of them, or a trustee for the
- 15 child or children.
- 16 (4) For subsection (2) (a), in deciding whether a transaction is
- 17 consequent on the irretrievable breakdown of a marriage, the
- 18 commissioner must have regard to any statutory declaration made
- 19 by a party to the marriage to the effect that—
- 20 (a) the party intends to apply for dissolution or annulment of the
- 21 marriage; or
- 22 (b) the parties to the marriage have separated, and there is no
- 23 reasonable likelihood of cohabitation being resumed.
- 24 (5) For subsection (3) (c), in deciding whether a transaction under a
- 25 domestic relationship agreement is consequent on the end of a
- 26 relationship, the commissioner must have regard to any statutory
- 27 declaration made by a party to the relationship to the effect that the
- 28 relationship has ended.

(6) Subsections (4) and (5) do not limit the commissioner's powers under the *Taxation Administration Act 1999*, section 82 (Power to require information, instruments or records or attendance for examination).

(7) For this section:

child means a person under 18 years old.

Note For exemptions under pt 3.6, see s 115G.

11 Vehicles transferred under certain court orders and agreements

Section 213

substitute

213 Vehicle registration transfers relating to certain personal relationships

(1) No duty is chargeable under this chapter on an application to transfer the registration of a motor vehicle following a transfer of property in the vehicle to the applicant under—

(a) an order of a court under the *Family Law Act 1975* (Cwlth) or the *Married Persons' Property Act 1986*; or

(b) any other order of a court for the distribution of property consequent on the end of the relationship between spouses.

(2) No duty is chargeable under this chapter on an application to transfer the registration of a motor vehicle following a transfer of property in the vehicle to the applicant under a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, 90C or 90D that is binding on the parties under that Act, if—

(a) the commissioner is satisfied that the transfer is consequent on the dissolution, annulment or irretrievable breakdown of a marriage; and

- 1 (b) the vehicle is matrimonial property; and
- 2 (c) the transfer is—
 - 3 (i) to the parties to the marriage, or to either of them; or
 - 4 (ii) to a child or children of either of them, or to a person in
 - 5 trust for the child or children.
- 6 (3) No duty is chargeable under this chapter on an application to
- 7 transfer the registration of a motor vehicle following a transfer of
- 8 property in the vehicle to the applicant under a domestic relationship
- 9 agreement, or a termination agreement, under the *Domestic*
- 10 *Relationships Act 1994*, if—
 - 11 (a) the agreement is in writing and signed by each party; and
 - 12 (b) the agreement is endorsed with, or accompanied by, the
 - 13 certificates mentioned in that Act, section 33 (1) (d) for each
 - 14 party; and
 - 15 *Note* The certificates relate to independent legal advice about the
 - 16 agreement.
 - 17 (c) the commissioner is satisfied that the transfer is consequent on
 - 18 the end of the relationship between the parties; and
 - 19 (d) the vehicle is relationship property; and
 - 20 (e) the transfer is—
 - 21 (i) to the parties to the relationship, or to either of them; or
 - 22 (ii) to a child or children of either of them, or to a person in
 - 23 trust for the child or children.
 - 24 (4) For subsection (2) (a), in deciding whether a transfer is consequent
 - 25 on the irretrievable breakdown of a marriage, the commissioner
 - 26 must have regard to any statutory declaration made by a party to the
 - 27 marriage to the effect that—

- 1 (a) the party intends to apply for dissolution or annulment of the
2 marriage; or
- 3 (b) the parties to the marriage have separated, and there is no
4 reasonable likelihood of cohabitation being resumed.
- 5 (5) For subsection (3) (c), in deciding whether a transfer under a
6 domestic relationship agreement is consequent on the end of a
7 relationship, the commissioner must have regard to any statutory
8 declaration made by a party to the relationship to the effect that the
9 relationship has ended.
- 10 (6) Subsections (4) and (5) do not limit the commissioner's powers
11 under the *Taxation Administration Act 1999*, section 82 (Power to
12 require information, instruments or records or attendance for
13 examination).
- 14 (7) For this section:
- 15 *child* means a person under 18 years old.

16 **12 Objections and review of decisions**
17 **New section 252 (1) (ca), (cb), (cc) and (cd)**

- 18 *insert*
- 19 (ca) under section 74B (2) (a) that a transfer is not consequent on
20 the dissolution, annulment or irretrievable breakdown of a
21 marriage; or
- 22 (cb) under section 74B (3) (c) that a transfer is not consequent on
23 the end of a domestic relationship; or
- 24 (cc) under section 115H (2) (a) that a transaction is not consequent
25 on the dissolution, annulment or irretrievable breakdown of a
26 marriage; or
- 27 (cd) under section 115H (3) (c) that a transaction is not consequent
28 on the end of a domestic relationship; or

1 **13 New section 252 (1) (oa) and (ob)**

2 *insert*

3 (oa) under section 213 (2) (a) that a transfer is not consequent on
4 the dissolution, annulment or irretrievable breakdown of a
5 marriage; or

6 (ob) under section 213 (3) (c) that a transfer is not consequent on
7 the end of a domestic relationship; or

8 **14 Section 252 (1)**

9 *renumber paragraphs when Act next republished under Legislation*
10 *Act 2001*

11 **15 Dictionary, new definitions of *marriage* and *matrimonial***
12 ***property***

13 *insert*

14 *marriage* includes a void marriage.

15 *matrimonial property*, of a marriage, means property of the parties
16 to the marriage or of either of them.

17 **16 Dictionary, new definition of *party***

18 *insert*

19 *party*, to a marriage, includes a person who was a party to a marriage
20 that has been dissolved or annulled, in Australia or elsewhere.

21 **17 Dictionary, new definition of *relationship property***

22 *insert*

23 *relationship property*, of a domestic relationship, means property of
24 the parties to the relationship or of either of them.

Endnote

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au

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