

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Revenue Legislation Amendment Bill 2005 (No 2)

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2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Revenue Legislation Amendment Bill 2005 (No 2)

A Bill for

An Act to amend the *Duties Act 1999*, the *Land Tax Act 2004*, the *Payroll Tax Act 1987* and the *Rates Act 2004*

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

J2005-76

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Revenue Legislation Amendment Act 2005 (No 2)*.

4 **2 Commencement**

5 (1) Section 9, section 24 and section 26 commence on a day fixed by
6 the Minister by written notice.

7 *Note 1* A single day or time may be fixed, or different days or times may be
8 fixed, for the commencement of different provisions (see Legislation
9 Act, s 77 (1)).

10 *Note 2* If a provision has not commenced within 6 months beginning on the
11 notification day, it automatically commences on the first day after that
12 period (see Legislation Act, s 79).

13 (2) Section 25, section 27 and section 28 commence on the first day of
14 the month immediately after the month in which this Act is notified.

15 (3) The remaining provisions commence on the day after this Act's
16 notification day.

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

19 **3 Legislation amended**

20 This Act amends the *Duties Act 1999*, the *Land Tax Act 2004*, the
21 *Payroll Tax Act 1987* and the *Rates Act 2004*.

1 **Part 2** **Duties Act 1999**

2 **4** **Legislation amended—pt 2**

3 This part amends the *Duties Act 1999*.

4 **5** **Definitions for ch 8**
5 **Section 175, definition of *general insurer***

6 *substitute*

7 ***general insurer*** means a person who—

- 8 (a) writes general insurance (otherwise than as an insurance
9 intermediary); and
10 (b) is authorised under the *Insurance Act 1973* (Cwlth), section 12
11 to carry on insurance business in Australia.

12 **6** **Section 175, definition of *insurer***

13 *substitute*

14 ***insurer***—

- 15 (a) other than for part 8.4 means—
16 (i) a life company under the *Life Insurance Act 1995* (Cwlth)
17 that writes life insurance; or
18 (ii) a person who writes general insurance (otherwise than as
19 an insurance intermediary); and
20 (b) for part 8.4 (Payment of duty by insurers)—see section 188A.

1 **7 New section 188A**

2 *in part 8.4, insert*

3 **188A Meaning of *insurer* for pt 8.4**

4 In this part:

5 *insurer* means—

6 (a) a life company under the *Life Insurance Act 1995* (Cwlth) that
7 writes life insurance; or

8 (b) a general insurer.

9 **8 Cancellation of registration by commissioner**
10 **Section 191 (1) (a)**

11 *substitute*

12 (a) if the insurer stops being authorised under the *Insurance*
13 *Act 1973* (Cwlth), section 12 to carry on insurance business in
14 Australia; or

15 **9 Section 203**

16 *substitute*

17 **203 Meaning of *dutiable value* for pt 9.1**

18 (1) In this part:

19 *dutiable value*, of a motor vehicle, means—

20 (a) for a vehicle that has not previously been registered under the
21 Vehicle Registration Act or any other territory law and for
22 which there is a list price—

23 (i) if it has no optional equipment—the list price for the
24 vehicle; and

- 1 (ii) if it has optional equipment—the total of the list price for
2 the vehicle and the value of the optional equipment; and
- 3 (b) for a vehicle that is to be registered in the name of someone
4 who is not the person in whose name the vehicle was last
5 registered—the greater of the following amounts:
- 6 (i) the consideration (in money or money's worth) given for
7 the acquisition of the vehicle;
- 8 (ii) the market value of the vehicle at the time duty is
9 payable; and
- 10 (c) for any other vehicle—the greater of the following amounts:
- 11 (i) the consideration (in money or money's worth) given for
12 the acquisition of the vehicle;
- 13 (ii) the market value of the vehicle at the time duty is
14 payable.
- 15 *Note* See also s 211A (Partial exemption—modified vehicles for
16 people with disabilities).
- 17 (2) The **dutiable value** of a motor vehicle does not include a premium
18 paid for extended warranty insurance.
- 19 (3) In this section:
- 20 **list price** means—
- 21 (a) for a motor vehicle—the amount (inclusive of GST) fixed by
22 the manufacturer, importer or main distributor in the ACT as
23 the retail selling price in the ACT of a vehicle of that make and
24 model; and
- 25 (b) for optional equipment for a motor vehicle—the additional
26 amount (inclusive of GST) fixed by the manufacturer, importer
27 or main distributor in the ACT of the vehicle as the retail
28 selling price in the ACT for the equipment if the vehicle is to
29 be sold with it.

1 **optional equipment**, for a motor vehicle, means equipment or a
2 feature of the vehicle—

- 3 (a) that is not covered by the list price for the vehicle; or
4 (b) that is prescribed by regulation to be optional equipment for
5 the vehicle.

6 **Examples of things that may not be covered by list price**

- 7 1 a particular kind of transmission
8 2 power steering

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

12 **value**, of optional equipment, means—

- 13 (a) if there is a list price for the equipment—the list price; or
14 (b) if there is no list price for the equipment—the consideration (in
15 money or money's worth) given for the acquisition of the
16 equipment.

17 **10 New section 211A**

18 *insert*

19 **211A Partial exemption—modified vehicles for people with**
20 **disabilities**

- 21 (1) This section applies to duty chargeable on an application to register
22 a motor vehicle if—
23 (a) modifications have been made to the vehicle for a person with
24 a disability; and
25 (b) either—
26 (i) the applicant is a person with a disability; or
27 (ii) the motor vehicle is to be used to transport a person with
28 a disability.

1 (2) For the purposes of duty chargeable on the application, the dutiable
2 value of the motor vehicle is the dutiable value of the vehicle apart
3 from this section reduced by the value of the modifications.

4 (3) For this section:

5 **modifications**, made to a vehicle for a person with a disability,
6 means modifications made—

7 (a) to enable the person with a disability to drive the vehicle; or

8 (b) to enable someone else to transport the person with a disability
9 in the vehicle.

10 **Example**

11 the addition to a vehicle of an hydraulic lift for a wheelchair

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

15 **value**, of modifications, means the consideration (in money or
16 money's worth) given for the modifications.

17 **11 Dictionary, note 2, new dot point**

18 *insert*

- 19 • Corporations Act

20 **12 Dictionary, definitions of *Corporations Act* and *disabled***
21 ***person***

22 *omit*

1 **13 Dictionary, definitions of *dutiable value* and *general***
2 ***insurance***

3 *substitute*

4 ***dutiable value***—

5 (a) of a motor vehicle for part 9.1—see section 203; and

6 (b) of other dutiable property—see section 20.

7 ***general insurance***, for chapter 8 (Insurance)—see section 175.

8 **14 Dictionary, new definition of *general insurer***

9 *insert*

10 ***general insurer***, for chapter 8 (Insurance)—see section 175.

11 **15 Dictionary, definition of *insurer***

12 *substitute*

13 ***insurer***—

14 (a) for chapter 8 (Insurance), other than part 8.4—see section 175;
15 and

16 (b) for part 8.4 (Payment of duty by insurers)—see section 188A.

17 **16 Dictionary, definition of *life insurance***

18 *substitute*

19 ***life insurance***, for chapter 8 (Insurance)—see section 175.

20 **17 Dictionary, new definition of *life insurance rider***

21 *insert*

22 ***life insurance rider***, for chapter 8 (Insurance)—see section 175.

18 Dictionary, new definition of *person with a disability*

insert

person with a disability means a person who has a disability that—

(a) is attributable to an intellectual, psychiatric, sensory, physical or neurological impairment, or acquired brain injury; and

(b) is likely to be permanent; and

(c) results in substantially reduced capacity in self-care, self-management, mobility or communication requiring significant ongoing, or long-term episodic, support.

19 Dictionary, new definitions of *premium* and *third-party insurance*

insert

premium, in relation to general insurance for chapter 8 (Insurance)—see section 175.

third-party insurance, for chapter 8 (Insurance)—see section 175.

1 **Part 3 Land Tax Act 2004**

2 **20 Legislation amended—pt 3**

3 This part amends the *Land Tax Act 2004*.

4 **21 Section 24**

5 *substitute*

6 **24 Sale of land for nonpayment of land tax**

- 7 (1) This section applies if—
- 8 (a) a parcel of land is held by the owner under a lease from the
9 Commonwealth for a term of years; and
- 10 (b) the commissioner has complied with section 21 (Notice of land
11 tax in arrears) in relation to the parcel; and
- 12 (c) land tax payable for the parcel are in arrears for at least 1 year
13 after the day of notification under section 21 in relation to the
14 parcel.
- 15 (2) The commissioner may apply to a court of competent jurisdiction
16 for an order for the sale of all or part of the parcel.

17 **Example**

18 The commissioner has given notice and made a declaration under section 21 in
19 relation to a parcel of land held under lease from the Commonwealth. If the parcel
20 is unoccupied, the commissioner may take action under section 22 to lease the
21 parcel or, if the land tax is in arrears for at least 1 year after the day of notification
22 of the declaration, make an application under this section for an order for sale.
23 The option to lease would not be available if the property were occupied.

24 *Note 1* An example is part of the Act, is not exhaustive and may extend, but
25 does not limit, the meaning of the provision in which it appears (see
26 Legislation Act, s 126 and s 132).

27 *Note 2* A single application form may be approved for this section and the
28 *Rates Act 2004*, s 26 (see Legislation Act, s 255 (7)).

-
- 1 (3) In the application, the commissioner may ask that the proceeds of
2 the sale also be applied in paying the total amount of any land tax or
3 rates in arrears for 1 or more related parcels of land stated in the
4 application.
- 5 (4) If the court is satisfied that this section applies to the parcel, the
6 court must—
- 7 (a) order the sale by public auction of the parcel, or as much of the
8 parcel as will be sufficient to pay the total of the following:
- 9 (i) the total amount of land tax in arrears for the parcel at the
10 time the court makes the order;
- 11 (ii) the total amount of any rates in arrears for the parcel at
12 the time the court makes the order;
- 13 (iii) costs and expenses in relation to the declaration,
14 application and sale in relation to the parcel;
- 15 (iv) if the commissioner has made a request mentioned in
16 subsection (3) in the application in relation to another
17 parcel of land and the court is satisfied that the parcel is a
18 related parcel of land—the total amount of any land tax
19 or rates in arrears for the other parcel, at the time the
20 court makes the order; and
- 21 (b) order that the proceeds be paid into court; and
- 22 (c) order that the title to the parcel be transferred to the purchaser
23 free from mortgages and other encumbrances.
- 24 (5) The proceeds of the sale are to be applied in the following order:
- 25 (a) first, the commissioner is entitled to be paid the total of the
26 amounts mentioned in subsection (4) (a) (i) to (iii);
- 27 (b) second, a person who was a mortgagee of the parcel before the
28 sale is entitled to be paid the amount owing to the person under
29 the mortgage (or, if that amount is more than the amount of
30 any remaining proceeds, the remaining proceeds);
-

Section 21

- 1 (c) third, subject to subsection (9), the commissioner is entitled to
2 be paid the total of amounts to which subsection (4) (a) (iv)
3 applies (or, if that amount is more than the amount of any
4 remaining proceeds, the remaining proceeds);
- 5 (d) finally, subject to subsection (10), the person who was the
6 owner of the parcel before the sale is entitled to be paid any
7 balance.
- 8 (6) The commissioner must be paid out of court any amounts to which
9 the commissioner is entitled under subsection (5) without a court
10 order.
- 11 (7) If a person who was the owner or mortgagee of the parcel before the
12 sale hands over to the court the certificate or other title to the parcel,
13 the person must be paid out of court any amount to which the person
14 is entitled under subsection (5) without a court order.
- 15 (8) If there were 2 or more mortgagees of the parcel before the sale, the
16 court may make the orders about their respective entitlements that
17 the court considers just.
- 18 (9) On application by a person who has an interest in the land otherwise
19 than as owner or mortgagee, the court may order that the person is
20 entitled to be paid the value of the person's interest (as decided by
21 the court) in priority to the commissioner's entitlement under
22 subsection (5) (c).
- 23 (10) On application by any other interested person, the court may order
24 payment out of court of all or part of any balance to a person other
25 than the person who was the owner before the sale if the court
26 considers it just to do so.
- 27 (11) Any sale of the parcel or a part of the parcel under this section must
28 be abandoned if the owner pays—
- 29 (a) the total land tax in arrears for the parcel at the time of the
30 payment; and

- 1 (b) the total of any rates in arrears for the parcel at the time of the
2 payment; and
- 3 (c) the costs and expenses incurred up to the time of payment in
4 relation to the declaration, application and sale in relation to
5 the parcel; and
- 6 (d) the costs and expenses reasonably incurred in relation to the
7 abandonment of the sale; and
- 8 (e) if the commissioner has made a request under subsection (3) in
9 the application in relation to 1 or more related parcels of
10 land—the total amount of any land tax or rates in arrears for
11 the related parcel or parcels at the time of the payment.

12 **Example for par (d)**

13 advising the public that an auction has been cancelled

14 (12) In this section:

15 *related*—a parcel of land is a *related* parcel of land in relation to
16 another parcel of land if—

- 17 (a) the parcels have the same owner; and
- 18 (b) the commissioner has complied with section 21 in relation to
19 them.

20 **22 Application may relate to more than 1 parcel**
21 **Section 25 (2)**

22 *substitute*

- 23 (2) If the commissioner makes an application in relation to 2 or more
24 parcels of land, the following provisions apply:
- 25 (a) if the parcels or 2 or more of them have the same owner—the
26 court may, on application by the commissioner, make a single
27 order under section 24 in relation to all of those parcels;

1 (b) the court may make the orders about apportionment of rates
2 and land tax, and any other amounts payable, that the court
3 considers just;

4 (c) if the court makes an order under paragraph (a)—the court
5 may, on application by the commissioner, also make any
6 consequential or ancillary orders that the court considers
7 appropriate.

8 *Note* The application may include an application under the *Rates Act 2004*,
9 s 26 in relation to the parcel (see Legislation Act, s 49).

1 **Part 4** **Payroll Tax Act 1987**

2 **23 Legislation amended—pt 4**

3 This part amends the *Payroll Tax Act 1987*.

4 **24 New sections 7 and 8**

5 *insert*

6 **7 Registration of employers**

7 (1) This section applies to an employer if the total of all taxable wages
8 paid or payable in Australia by the employer in the month exceeds
9 the amount determined for this section under the *Taxation*
10 *Administration Act 1999*, section 139.

11 (2) If this section applies to an employer in relation to a month, the
12 employer may apply to be registered under this part.

13 *Note* If a form is approved under the *Taxation Administration Act 1999*,
14 s 139C for an application, the form must be used.

15 (3) If an employer applies to be registered under this part, the
16 commissioner must register the employer.

17 (4) The commissioner may, by written notice given to an employer who
18 is registered under this part, cancel the employer's registration if
19 satisfied that this section has never applied, or no longer applies, to
20 the employer in relation to a month.

21 (5) The cancellation of an employer's registration under subsection (4)
22 does not prevent the employer from again applying for registration
23 or being registered under this part.

- 1 (6) An employer commits an offence if—
2 (a) the employer is not already registered under this part; and
3 (b) the total of all taxable wages paid or payable in Australia by
4 the employer in the month exceeds the amount determined for
5 this section under the *Taxation Administration Act 1999*,
6 section 139; and
7 (c) the employer does not apply to be registered under this part
8 within 7 days after the end of the month.

9 Maximum penalty: 250 penalty units.

10 **8 Transitional—registration of existing employers**

- 11 (1) The commissioner must, on the commissioner's own initiative,
12 register under this part an employer who, in relation to the month
13 immediately before the commencement of this section, lodged a
14 return under section 16.
15 (2) This section expires 1 year after the day it commences.

16 **25 New section 9AB**

17 *insert*

18 **9AB Exemption from tax—trainees under approved training**
19 **contracts**

- 20 (1) This section applies to a trainee if an approved group training
21 organisation employs the trainee under an approved training
22 contract.
23 (2) Section 6 does not apply to wages paid or payable to the trainee by
24 the approved group training organisation.
25 (3) On application by an entity, the commissioner may approve the
26 entity as a **group training organisation** if satisfied that the entity—
27 (a) is a not-for-profit entity; and

1 (b) provides training to trainees under approved training contracts;
2 and

3 (c) makes trainees available to work for other people.

4 *Note* If a form is approved under the *Taxation Administration Act 1999*,
5 s 139C for an application, the form must be used.

6 (4) In this section:

7 ***approved group training organisation*** means an organisation that is
8 approved by the commissioner under subsection (3).

9 ***approved training contract***—see the *Vocational Education and*
10 *Training Act 2003*, dictionary.

11 ***trainee***—see the *Vocational Education and Training Act 2003*,
12 dictionary.

13 *Note* ***Trainee*** is defined as a person who undertakes training under a training
14 contract, and includes an apprentice.

15 **26 Section 16**

16 *substitute*

17 **16 Payroll tax returns**

18 (1) This section applies to an employer if section 7 (Registration of
19 employers) applies to the employer in relation to a month.

20 (2) The employer must—

21 (a) lodge a return for the month; and

22 (b) lodge a return for each subsequent month in the financial year;
23 and

24 (c) pay any interim tax that is payable in relation to the return
25 because of section 12 (1) or (2).

26 *Note* The employer must also be registered under s 7.

- 1 (3) A return for a month must—
2 (a) be in writing; and
3 (b) be lodged no later than 7 days after the end of the month; and
4 (c) state the taxable wages that were paid or payable by the
5 employer during the month.

6 *Note* If a form is approved under the *Taxation Administration Act 1999*,
7 s 139C for a return, the form must be used.

8 **27 Review of decisions**
9 **New section 19 (d)**

10 *insert*

- 11 (d) under section 9AB refusing to approve an entity as a group
12 training organisation; or

13 **28 Section 19 (d) to (f)**

14 *renumber as section 19 (e) to (g)*

1 Part 5 Rates Act 2004

2 29 Legislation amended—pt 5

3 This part amends the *Rates Act 2004*.

4 30 Section 26

5 *substitute*

6 26 Sale of land for nonpayment of rates

- 7 (1) This section applies if—
- 8 (a) a parcel of land is held by the owner under a lease from the
9 Commonwealth for a term of years; and
- 10 (b) the commissioner has complied with section 23 (Notice of
11 rates in arrears) in relation to the parcel; and
- 12 (c) rates payable for the parcel are in arrears for at least 1 year
13 after the day of notification under section 23 in relation to the
14 parcel.
- 15 (2) The commissioner may apply to a court of competent jurisdiction
16 for an order for the sale of all or part of the parcel.

17 Example

18 The commissioner has given notice and made a declaration under section 23 in
19 relation to a parcel of land held under lease from the Commonwealth. If the parcel
20 is unoccupied, the commissioner may take action under section 24 to lease the
21 parcel or, if the rates are in arrears for at least 1 year after the day of notification
22 of the declaration, make an application under this section for an order for sale.
23 The option to lease would not be available if the property were occupied.

24 *Note 1* An example is part of the Act, is not exhaustive and may extend, but
25 does not limit, the meaning of the provision in which it appears (see
26 Legislation Act, s 126 and s 132).

27 *Note 2* A single application form may be approved for this section and the
28 *Land Tax Act 2004*, s 24 (see Legislation Act, s 255 (7)).

Section 30

- 1 (3) In the application, the commissioner may ask that the proceeds of
2 the sale also be applied in paying the total amount of any rates or
3 land tax in arrears for 1 or more related parcels of land stated in the
4 application.
- 5 (4) If the court is satisfied that this section applies to the parcel, the
6 court must—
- 7 (a) order the sale by public auction of the parcel, or as much of the
8 parcel as will be sufficient to pay the total of the following:
- 9 (i) the total amount of rates in arrears for the parcel at the
10 time the court makes the order;
- 11 (ii) the total amount of any land tax in arrears for the parcel
12 at the time the court makes the order;
- 13 (iii) costs and expenses in relation to the declaration,
14 application and sale in relation to the parcel;
- 15 (iv) if the commissioner has made a request mentioned in
16 subsection (3) in the application in relation to another
17 parcel of land and the court is satisfied that the parcel is a
18 related parcel of land—the total amount of any rates or
19 land tax in arrears for the other parcel, at the time the
20 court makes the order; and
- 21 (b) order that the proceeds be paid into court; and
- 22 (c) order that the title to the parcel be transferred to the purchaser
23 free from mortgages and other encumbrances.
- 24 (5) The proceeds of the sale are to be applied in the following order:
- 25 (a) first, the commissioner is entitled to be paid the total of the
26 amounts mentioned in subsection (4) (a) (i) to (iii);
- 27 (b) second, a person who was a mortgagee of the parcel before the
28 sale is entitled to be paid the amount owing to the person under
29 the mortgage (or, if that amount is more than the amount of
30 any remaining proceeds, the remaining proceeds);

-
- 1 (c) third, subject to subsection (9), the commissioner is entitled to
2 be paid the total of amounts to which subsection (4) (a) (iv)
3 applies (or, if that amount is more than the amount of any
4 remaining proceeds, the remaining proceeds);
- 5 (d) finally, subject to subsection (10), the person who was the
6 owner of the parcel before the sale is entitled to be paid any
7 balance.
- 8 (6) The commissioner must be paid out of court any amounts to which
9 the commissioner is entitled under subsection (5) without a court
10 order.
- 11 (7) If a person who was the owner or mortgagee of the parcel before the
12 sale hands over to the court the certificate or other title to the parcel,
13 the person must be paid out of court any amount to which the person
14 is entitled under subsection (5) without a court order.
- 15 (8) If there were 2 or more mortgagees of the parcel before the sale, the
16 court may make the orders about their respective entitlements that
17 the court considers just.
- 18 (9) On application by a person who has an interest in the land otherwise
19 than as owner or mortgagee, the court may order that the person is
20 entitled to be paid the value of the person's interest (as decided by
21 the court) in priority to the commissioner's entitlement under
22 subsection (5) (c).
- 23 (10) On application by any other interested person, the court may order
24 payment out of court of all or part of any balance to a person other
25 than the person who was the owner before the sale if the court
26 considers it just to do so.
- 27 (11) Any sale of the parcel or a part of the parcel under this section must
28 be abandoned if the owner pays—
- 29 (a) the total rates in arrears for the parcel at the time of the
30 payment; and

- 1 (b) the total of any land tax in arrears for the parcel at the time of
2 the payment; and
- 3 (c) the costs and expenses incurred up to the time of payment in
4 relation to the declaration, application and sale in relation to
5 the parcel; and
- 6 (d) the costs and expenses reasonably incurred in relation to the
7 abandonment of the sale; and
- 8 (e) if the commissioner has made a request under subsection (3) in
9 the application in relation to 1 or more related parcels of
10 land—the total amount of any rates or land tax in arrears for
11 the related parcel or parcels at the time of the payment.

12 **Example for par (d)**

13 advising the public that an auction has been cancelled

14 (12) In this section:

15 *related*—a parcel of land is a *related* parcel of land in relation to
16 another parcel of land if—

- 17 (a) the parcels have the same owner; and
- 18 (b) the commissioner has complied with section 23 in relation to
19 them.

20 **31 Application may relate to more than 1 parcel**
21 **Section 27 (2)**

22 *substitute*

- 23 (2) If the commissioner makes an application in relation to 2 or more
24 parcels of land, the following provisions apply:
- 25 (a) if the parcels or 2 or more of them have the same owner—the
26 court may, on application by the commissioner, make a single
27 order under section 26 in relation to all of those parcels;

1 (b) the court may make the orders about apportionment of rates
2 and land tax, and any other amounts payable, that the court
3 considers just;

4 (c) if the court makes an order under paragraph (a)—the court
5 may, on application by the commissioner, also make any
6 consequential or ancillary orders that the court considers
7 appropriate.

8 *Note* The application may include an application under the *Land Tax*
9 *Act 2004*, s 24 in relation to the parcel (see Legislation Act, s 49).

10 **32** **Definitions for pt 7**
11 **Section 45, definition of *deferral determination***

12 *substitute*

13 *deferral determination* means a determination under section 46
14 (Determination for deferral of rates on application) or section 47
15 (Determination for deferral of rates without application), and
16 includes a deferral determination as amended under section 50.

17 **33** **Sections 46 and 47**

18 *substitute*

19 **46** **Determination for deferral of rates on application**

20 (1) The owner of a parcel of land may apply to the commissioner for a
21 determination deferring payment of rates payable for the parcel.

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

24 (2) The commissioner must make the determination if satisfied—

25 (a) that the owner is a pensioner or, if there are 2 or more owners,
26 each owner is a pensioner; or

27 (b) if the owner, or each owner, is not a pensioner—that payment
28 of the total amount of rates payable or to become payable is

- 1 likely to cause substantial hardship to the owner or each owner;
2 or
- 3 (c) that the owners are a pensioner and his or her partner who is
4 not a pensioner; or
- 5 (d) for an application made by a pensioner who is a joint owner—
6 that no other owner of the parcel can reasonably contribute to
7 the payment of rates for the parcel.
- 8 (3) The determination may do either or both of the following:
- 9 (a) defer the obligation of the owner or an owner to pay all or part
10 of the total amount of rates payable for the parcel as at the date
11 of the determination;
- 12 (b) defer the obligation of the owner or an owner to pay all or part
13 of each amount of rates to become payable for the parcel while
14 the determination is in force.
- 15 (4) If the commissioner makes a determination, the commissioner must
16 give a copy of the determination to the person to whom it relates.
- 17 *Note* For how documents may be served, see the Legislation Act, pt 19.5.
- 18 (5) However, the commissioner may make a determination only if—
- 19 (a) the lease under which the parcel is held permits the parcel to be
20 used only for residential purposes; and
- 21 (b) each applicant ordinarily lives on the parcel.
- 22 (6) Despite subsection (5), the commissioner may make a determination
23 in relation to 1 or more joint owners of a parcel (but not by all the
24 joint owners) even if each owner does not ordinarily live on the
25 parcel, if—
- 26 (a) the applicant is an owner who ordinarily lives on the parcel;
27 and
- 28 (b) the commissioner is satisfied that it is appropriate to make the
29 determination.

- 1 (7) To remove any doubt, the owner of a parcel of land who has
2 received a rebate for rates under division 7.3 may make an
3 application under this section.

4 **47 Determination for deferral of rates without application**

- 5 (1) The commissioner may, at any time on the commissioner's own
6 initiative, make a determination deferring payment of rates payable
7 by the owner or an owner for a parcel of land if the commissioner is
8 satisfied that there are exceptional circumstances justifying the
9 deferral.
- 10 (2) The determination may do either or both of the following:
- 11 (a) defer the obligation of the owner or an owner to pay all or part
12 of the total amount of rates payable for the parcel as at the date
13 of the determination;
- 14 (b) defer the obligation of the owner or an owner to pay all or part
15 of each amount of rates to become payable for the parcel while
16 the determination is in force.
- 17 (3) If the commissioner makes a determination, the commissioner must
18 give a copy of the determination to the person to whom it relates.
- 19 *Note* For how documents may be served, see the Legislation Act, pt 19.5.
- 20 (4) However, the commissioner may make the determination only if—
- 21 (a) the lease under which the parcel is held permits the parcel to be
22 used only for residential purposes; and
- 23 (b) if the owner does not ordinarily live on the parcel—
- 24 (i) the owner is living elsewhere because of the exceptional
25 circumstances; and
- 26 (ii) the owner has not entered into a tenancy agreement in
27 relation to the parcel.

- 1 (5) In this section:
2 *tenancy agreement*, in relation to a parcel of land—
3 (a) means an agreement under which a person grants to someone
4 else for value a right of occupation of the parcel of land, or any
5 part of it (including any building on it), for use as a
6 residence—
7 (i) whether or not the right of occupation is exclusive; and
8 (ii) whether the agreement is express or implied; and
9 (iii) whether the agreement is in writing, is oral, or is partly in
10 writing and partly oral; but
11 (b) does not include an agreement giving a right of occupation
12 only as a boarder or lodger.
13 (6) To remove any doubt, the commissioner may make a determination
14 under this section in relation to a parcel of land even though the
15 owner of the parcel has received a rebate for rates under
16 division 7.3.

17 **34 Revocation of deferral determination—payment of debt**
18 **and on request**
19 **Section 51 (b)**

- 20 *substitute*
21 (b) if the determination was made under section 46 (Determination
22 for deferral of rates on application)—the person asks the
23 commissioner in writing to revoke the determination.

1 **35 Additional grounds for revocation of deferral**
2 **determination**
3 **Section 52**

4 *omit everything before paragraph (a), substitute*

- 5 (1) Each of the following circumstances is a ground for revocation of a
6 deferral determination made under section 46 (Determination for
7 deferral of rates on application) in relation to a parcel of land:

8 **36 Section 52 (1) (e)**

9 *substitute*

- 10 (e) each person to whom the determination relates who ordinarily
11 lived on the parcel when the application for the determination
12 was made has stopped ordinarily living on the parcel;

13 **37 New section 52 (2) and (3)**

14 *insert*

- 15 (2) Each of the following circumstances is a ground for revocation of a
16 deferral determination made under section 47 (Determination for
17 deferral of rates without application) in relation to a parcel of land:

18 (a) each person to whom the determination relates has stopped
19 being an owner of the parcel;

20 (b) the owner has entered into a tenancy agreement in relation to
21 the parcel;

22 (c) the circumstances in relation to which the determination was
23 made no longer exist or have changed.

- 24 (3) In this section:

25 ***tenancy agreement***, in relation to a parcel of land—see
26 section 47 (5).

1 **38 Notice of proposed revocation on additional grounds**
2 **Section 53 (3)**

3 *omit*

4 section 52 (1) (e) or (f)

5 *substitute*

6 section 52 (1) (e) or (f) or (2) (a)

7 **39 Revocation of deferral determination on grounds**
8 **Section 54 (2)**

9 *omit*

10 the determination

11 *substitute*

12 a determination made under section 46

13 **40 Objections**
14 **Section 70 (b), (c) and (d)**

15 *substitute*

16 (b) a decision under section 46—

17 (i) refusing to make a deferral determination; or

18 (ii) determining a period of deferral other than the period
19 applied for; or

20 (iii) making a determination for the deferral of an amount
21 other than the amount applied for;

22 (c) a decision under section 47 to make a deferral determination;

23 (d) a decision under section 50 amending a deferral determination;

24 (e) a decision under section 53 that a ground for revocation of a
25 deferral determination made under section 46 exists.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2005.

2 Notification

Notified under the Legislation Act on 2005.

3 Republications of amended laws

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

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