

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Duties (Commercial Leases) Amendment Bill 2014

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Definitions—ch 2	
Section 6, new definitions	2
5 New section 6A	4
6 Imposition of duty on certain transactions concerning dutiable property	
Section 7 (1) (b) (iv) and (v)	5
7 Imposition of duty on dutiable transactions that are not transfers	
Table 8, items 4 and 5	5

Contents

	Page
8 Dutiable property	
Section 10 (1) (d) to (g) and note	5
9 Section 10 (1) (k)	5
10 Section 10 (2)	6
11 Section 10 (3), definition of <i>intellectual property</i> , paragraph (b)	6
12 No double duty	
Section 17 (7) and (8)	6
13 What is the <i>dutiable value</i> of dutiable property?	
Section 20 (1) (b) (i)	6
14 Section 20 (3)	6
15 Transfers etc—long-term leases for residential purposes	
Section 73D	7
16 New section 251A	7
17 Dictionary, new definitions	8
18 Dictionary	8
19 Dictionary, new definition of <i>market rent</i>	8
20 Dictionary, definition of <i>premium</i>	8
21 Dictionary, new definitions	9

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Duties (Commercial Leases) Amendment Bill 2014

A Bill for

An Act to amend the *Duties Act 1999*

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

1 Name of Act

This Act is the *Duties (Commercial Leases) Amendment Act 2014*.

2 Commencement

This Act commences on the 14th day after its notification day.

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

3 Legislation amended

This Act amends the *Duties Act 1999*.

**4 Definitions—ch 2
Section 6, new definitions**

insert

commercial lease means a lease granted for—

- (a) commercial purposes only; or
- (b) more than 1 purpose including commercial purposes.

commercial lease with premium—see section 6A.

commercial purposes does not include residential purposes or the purposes of primary production.

Examples—commercial purposes

- industrial use
- business use
- retail use

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

1 **market rent**, in relation to a commercial lease, means the rent
2 (worked out as at the date the lease was granted) that would be
3 charged by the lessor if the land the subject of the lease was leased
4 by a willing lessor to a willing lessee—

5 (a) dealing with each other at arm's length; and

6 (b) each of whom had acted knowledgeably, sensibly and without
7 compulsion.

8 **premium**, in relation to a commercial lease, means any
9 consideration (being the amount of a monetary consideration or the
10 value of a non-monetary consideration) that is paid or agreed to be
11 paid in relation to the lease, other than rent reserved.

12 **primary production** means—

13 (a) production resulting directly from—

14 (i) cultivation of land; or

15 (ii) keeping animals for their sale, their bodily produce or
16 natural increase; or

17 (iii) fishing operations; or

18 (iv) forest operations; and

19 (b) the manufacture of dairy produce by the person who produced
20 the raw material used in that manufacture.

21 **rent reserved**, in relation to a commercial lease, means—

22 (a) the rent paid or payable during the term of the lease that is
23 market rent; and

- (b) any reasonable amount paid or payable for the right to use the land under the lease.

Examples—payments for right to use land under commercial lease

- rates
- maintenance and repairs
- services and utilities
- legal costs payable by lessee on behalf of lessor in relation to grant of lease
- insurance premiums
- car park contributions
- turnover rent
- fit-out costs
- security
- land rent
- gardening and landscaping
- lifts
- administration

5 New section 6A

insert

6A Meaning of *commercial lease with premium*—ch 2

- (1) In this chapter:

commercial lease with premium means a commercial lease in relation to which there is a premium that is more than the amount (if any) determined by the commissioner.

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

6 Imposition of duty on certain transactions concerning dutiable property
Section 7 (1) (b) (iv) and (v)

substitute

(iv) a grant of a commercial lease with premium.

7 Imposition of duty on dutiable transactions that are not transfers
Table 8, items 4 and 5

substitute

4	grant of a commercial lease with premium	the leasehold interest	the lessee	when the lease is granted
---	--	------------------------	------------	---------------------------

8 Dutiable property
Section 10 (1) (d) to (g) and note

substitute

(d) a commercial lease with premium;

9 Section 10 (1) (k)

substitute

(k) an interest in any dutiable property mentioned in paragraphs (a) to (j), except to the extent that it is, or is attributable to, an option over dutiable property.

1	10	Section 10 (2)
2		<i>omit</i>
3	11	Section 10 (3), definition of <i>intellectual property</i>, paragraph (b)
4		<i>omit</i>
5		<i>omit</i>
6		, whether or not under a franchise arrangement,
7	12	No double duty Section 17 (7) and (8)
8		<i>omit</i>
9		<i>omit</i>
10	13	What is the <i>dutiable value</i> of dutiable property? Section 20 (1) (b) (i)
11		<i>omit</i>
12		<i>omit</i>
13	14	Section 20 (3)
14		<i>substitute</i>
15	(3)	Also, the <i>dutiable value</i> of a dutiable transaction that is the transfer of a commercial lease with premium is the amount of the premium.
16		
17	(3A)	However, if the lease is granted for more than 1 purpose including commercial purposes, the dutiable value is worked out as follows:
18		
19		PxDV
20		<i>DV</i> means the dutiable value mentioned in subsection (3).
21		<i>P</i> means the percentage of the land the subject of the lease, determined by the commissioner, that is used for commercial purposes.
22		
23		
24	(3B)	A determination is a disallowable instrument.
25	<i>Note</i>	A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act .
26		

**15 Transfers etc—long-term leases for residential purposes
Section 73D**

omit

16 New section 251A

in part 12.2, insert

251A Valuation of market rent for commercial lease with premium

- (1) The commissioner may require a person who is liable to pay duty determined by reference to a premium in relation to a commercial lease with premium to provide a declaration by a competent valuer of the market rent for the lease or to provide the other evidence of the market rent that the commissioner considers appropriate.
- (2) The commissioner may assess duty taking into account the declaration or other evidence provided under subsection (1).
- (3) The commissioner may have the market rent valued (the ***calculated market rent***) if the commissioner is not satisfied with the declaration or other evidence provided under subsection (1).
- (4) The commissioner may assess duty taking into account the calculated market rent.
- (5) The commissioner may recover the cost of obtaining the valuation under subsection (3) from the person liable to pay the duty.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see [Legislation Act](#), s 177).

- (6) In this section:

commercial lease with premium—see section 6A.

market rent—see section 6.

premium—see section 6.

17 Dictionary, new definitions

insert

commercial lease, for chapter 2 (Transactions concerning dutiable property)—see section 6.

commercial lease with premium, for chapter 2 (Transactions concerning dutiable property)—see section 6A.

commercial purposes, for chapter 2 (Transactions concerning dutiable property)—see section 6.

18 Dictionary

omit the definitions of

franchise

franchise arrangement

franchisee

long-term lease

19 Dictionary, new definition of *market rent*

insert

market rent, for chapter 2 (Transactions concerning dutiable property)—see section 6.

20 Dictionary, definition of *premium*

substitute

premium—

(a) for chapter 2 (Transactions concerning dutiable property)—see section 6; and

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

1	21	Dictionary, new definitions
2		<i>insert</i>
3		<i>primary production</i> , for chapter 2 (Transactions concerning dutiable
4		property)—see section 6.
5		<i>rent reserved</i> , for chapter 2 (Transactions concerning dutiable
6		property)—see section 6.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 20 March 2014.

2 Notification

Notified under the [Legislation Act](#) on 2014.

3 Republications of amended laws

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