

# Duties (Pensioner Duty Deferral Scheme) Determination 2020

## Disallowable instrument DI2020–179

made under the

***Duties Act 1999, s 75AG (Duty deferral schemes—determination)***

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### 1 Name of instrument

This instrument is the *Duties (Pensioner Duty Deferral Scheme) Determination 2020*.

### 2 Commencement

This instrument commences on 1 July 2020.

### 3 Definitions

In this instrument:

*Act* means the *Duties Act 1999*.

*Commissioner* means the Commissioner for ACT Revenue.

*Crown lease*—see the *Land Titles Act 1925*, dictionary.

*declared land sublease*—see the *Planning and Development Act 2007*, section 312C.

*eligible home* means land in the ACT, which has a Crown lease or a declared land sublease, that has a home built on it.

*eligible property* means property that is an eligible home or vacant land.

*home* means a building (affixed to land) that—

- (a) may lawfully be used as a place of residence; and
- (b) is, in the Commissioner’s opinion, a suitable building for use as a place of residence.

*pensioner* means a person who meets the requirements under section 4 (1) (a) as a transferee of an eligible transaction.

*transfer* means—

- (a) a transfer of eligible property; or
- (b) an agreement for the sale or transfer of eligible property; or
- (c) a grant of eligible property.

*transferee*—see the Act, dictionary

*vacant land* means land in the ACT, which has a Crown lease or a declared land sublease, that does not have a home built on it.

#### **4 Meaning of *eligible transaction***

(1) In this instrument:

*eligible transaction* means a transfer with a transaction date on or after 1 July 2020 that meets the following requirements:

- (a) on the transaction date, at least 1 transferee—
    - (i) received an Australian Centrelink age pension or Department of Veterans' Affairs age pension equivalent; or
    - (ii) received an Australian Centrelink disability support pension and was 50 years of age or older; or
    - (iii) held a Department of Veterans' Affairs Gold Card, and had held it for a continuous period of at least 1 year prior to the transaction date; and
  - (b) at least 1 transferee, who is a pensioner or their domestic partner (if any), will occupy the eligible property as the transferee's principal place of residence—
    - (i) beginning within 1 year of the residence start date; and
    - (ii) for the duration of the residence period.
- (2) If it becomes apparent that a transaction is not an eligible transaction, a transferee must give the Commissioner written notice of that fact within 14 days after the first of the following events:
- (a) the end of any period allowed for compliance with a requirement of the transaction; or
  - (b) the date that the transferee first becomes aware that the transaction is not eligible.

##### **Example—transaction not an eligible transaction**

The transaction ceases to be eligible because no pensioner can occupy the eligible property as a principal place of residence.

(3) In this section:

**occupy**, in relation to a principal place of residence, does not include occupation—

- (a) of a transient, temporary or passing nature; or
- (b) for a purpose other than as a place of residence.

**principal place of residence** means the home a person primarily occupies on an ongoing and permanent basis as the person's settled or usual home.

**registration date** means the date that the eligible transaction is registered on the land titles register.

**residence period** means—

- (a) a continuous period of at least 1 year; or
- (b) a shorter period (including no period) determined by the Commissioner, if—
  - (i) the shorter period is requested, in writing, for a pensioner not later than 18 months after the residence start date; and
  - (ii) the Commissioner is satisfied that the pensioner is unable to occupy the eligible property because of an unforeseen circumstance.

**residence start date** means—

- (a) for an eligible home—the date of completion of the eligible transaction; or
- (b) for vacant land—the date that a certificate of occupancy has been issued under the *Building Act 2004* for a home on the land that will be a person's principal place of residence; or
- (c) a later date determined by the Commissioner, if—
  - (i) a later date is requested, in writing, for a pensioner or their domestic partner (if any), not later than 18 months after the applicable residence start date under section 4 (3) (a) or (b); and
  - (ii) the Commissioner is satisfied that the pensioner or their domestic partner (if any) is unable to begin occupying the eligible property because of an unforeseen circumstance.

**Example—unforeseen circumstance**

A health-related issue.

**transaction date**, of an eligible transaction, means the date that liability for duty arises under the Act, section 11.

## **5 Determination—Pensioner Duty Deferral Scheme**

For the purposes of section 75AG of the Act, I determine a scheme for the deferred payment of duty by a pensioner and their domestic partner (if any) on an eligible transaction, subject to the conditions specified in section 6.

## **6 Conditions of Duty Deferral**

- (1) An application for the deferred payment of duty must be made in accordance with section 75AH of the Act.
- (2) Interest at the market rate component determined under section 26 of the *Taxation Administration Act 1999* is payable on the deferred duty, calculated from the date the duty becomes payable until the amount deferred is paid in full.
- (2) The deferred duty that is payable, and any accrued interest, must be paid on:
  - (a) the transfer of the eligible property to any other person;
  - (b) the transfer of the pensioner's interest or their domestic partner's interest (if any) in the eligible property to:
    - (i) any other transferee;
    - (ii) the administrator or executor of the estate of the pensioner; or
    - (iii) any other person.
- (3) For the purposes of section 6 (2) (b) (ii), 'transfer' includes a transfer by transmission application.

## **6 Expiry**

This instrument expires on 30 June 2021.

Andrew Barr MLA  
Treasurer

25 June 2020