

# Land Tax (Affordable Community Housing) Determination 2023 (No 2)

## Disallowable instrument DI2023–48

made under the

*Land Tax Act 2004*, section 13A (5) (Exemption for land provided for affordable community housing)

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### 1 Name of instrument

This instrument is the *Land Tax (Affordable Community Housing) Determination 2023 (No 2)*\*.

### 2 Commencement

This instrument is taken to have commenced on 1 April 2023.

### 3 Definitions

In this instrument:

*Act* means the *Land Tax Act 2004*.

*child* means an individual who is—

- (a) under 18 years old; and
- (b) financially dependent on another individual in the child’s household.

*combined annual gross income* as it relates to an eligible tenant means the combined gross income for the previous 12 months of the individual or individuals who occupy or will occupy the dwelling as a principal place of residence.

*dwelling*—see the Act, section 15.

*eligible tenant* means the occupants of the dwelling on the parcel who meet the combined annual gross income requirements in sections 4 (c).

*market rent* means rent that would be charged by the lessor of a dwelling on a parcel of land if it was rented by a willing lessor to a willing tenant—

- (a) dealing with each other at arm’s length; and
- (b) each of whom had acted knowledgeably, sensibly and without compulsion.

\*Name amended under Legislation Act, s 60

**Residential Tenancies Act** means the *Residential Tenancies Act 1997*.

**residential tenancy agreement**—see the Residential Tenancies Act, section 6A.

**tenancy agreement**—see the Act, section 7.

**year** means a period of 12 months beginning on 1 May.

#### **4 Eligibility criteria for owners—Act, s 13A (5) (a)**

For the Act, section 13A (5) (a), an owner of a parcel of land must satisfy all of the following criteria to be eligible for an exemption under the Act, section 13A:

- (a) The owner must give the commissioner—
  - (i) a copy of the following within 14 days of a parcel of land being rented:
    - (A) the agreement mentioned in the Act, section 13A (1) (a);
    - (B) the tenancy agreement for each rented dwelling on the parcel of land; and
  - (ii) any other information if the commissioner—
    - (A) reasonably requires the information to determine the owner’s eligibility for the exemption; and
    - (B) asks the owner to give the commissioner the information.
- (b) The rent payable under the tenancy agreement for the parcel of land must be less than 75% of the current market rent for that dwelling on the parcel of land.
- (c) The combined annual gross income of the eligible tenant/s of each dwelling on the parcel of land must be less than or equal to either of the following:
  - (i) \$100,000 a year; or
  - (ii) the combined applicable amounts set out in Table 1  
whichever is the greater.

**Table 1—Combined annual gross income limits**

<b>column 1 item</b>	<b>column 2 household member</b>	<b>column 3 yearly income limit – before 1 May 2023</b>	<b>column 4 yearly income limit – on or after 1 May 2023</b>
1	First adult	\$54 643	\$58 905
2	First sole parent	\$57 474	\$61 957
3	Each additional adult	\$20 905	\$22 536
4	Each child	\$18 127	\$19 541

## **5 Eligibility criteria if tenant information changes—Act, s 13A (5) (a)**

- (1) This section applies if—
  - (a) the owner of a parcel of land has previously been granted an exemption under the Act, section 13A; and
  - (b) the parcel of land is rented under a residential tenancy agreement;
  - (c) the owner satisfies the criteria mentioned in section 4 (a) and (b); and
  - (d) the tenant is asked to give information needed to assess the combined annual gross income for a year in accordance with the standard residential tenancy terms, clause 110; and
  - (e) either—
    - (i) the tenant does not give the information needed to assess the combined annual gross income for a year; or
    - (ii) the information given by the tenant shows that the combined annual gross income for a year exceeds the amount determined under section 4 (c).
- (2) Notwithstanding section 4 (c), the owner will satisfy the criteria to be eligible for an exemption under the Act, section 13A if the commissioner is satisfied that all reasonable steps have been taken to ensure that the parcel is rented to an eligible tenant including—
  - (a) as soon as reasonably practicable after a circumstance mentioned in section 5 (1) (d), the tenant is given a notice to vacate in accordance with the standard residential tenancy terms, clause 111 or clause 112 as applicable; and
  - (b) if the tenant does not vacate the premises in accordance with the notice to vacate—as soon as reasonably practicable, an application is made for a termination and possession order under the Residential Tenancies Act, section 47.
- (3) In this section:

*standard residential tenancy terms*—see the Residential Tenancies Act, dictionary.

*termination and possession order*—see the Residential Tenancies Act, dictionary.

## **6 Maximum number of parcels—Act, s 13A (5) (b) (i)**

- (1) For the Act, section 13A (5) (b) (i), the total number of parcels of land entitled to an exemption under the Act, section 13A is 250.
- (2) In calculating the total number of parcels of land for subsection (1), and any parcel of land exempted from land tax under the Act, section 13A must be included in the total, regardless of whether the parcel of land is currently exempt from land tax under that section.

**7 Revocation**

This instrument revokes the *Land Tax (Affordable Community Housing) Determination 2023* (DI2023-34).

**8 Transitional**

For parcels of land subject to a residential tenancy agreement entered into before the commencement of this instrument, the *Land Tax (Affordable Community Housing) Determination 2021* (DI2021-18) continues to apply.

Andrew Barr MLA  
Treasurer

15 April 2023