

# Taxation Administration (Amounts Payable—Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme) Determination 2015 (No 3)

## Disallowable instrument DI2015-93

made under the

*Taxation Administration Act 1999*, s139 (Determination of amounts payable under tax laws)

## EXPLANATORY STATEMENT

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### Introduction

1. On 28 October 2014, the ACT Government announced the Loose-fill Asbestos Insulation Eradication Scheme under which it has offered to buy all homes in the ACT affected by loose-fill asbestos (Mr Fluffy) insulation. Under the Scheme, the ACT Government will acquire, demolish and safely dispose of all affected homes, remediate affected blocks and then resell them to defray overall scheme costs.
2. One of the elements of the Scheme announced on 28 October 2014 is a stamp duty waiver. This was given effect as the Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme in *Taxation Administration (Amounts Payable—Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme) Determination 2015 (No 2)*, which set out eligibility criteria, the concession amount, other conditions and time limits for applications.
3. Eligible homeowners who surrender an affected block under the buyback programs are entitled to a concession on stamp duty on a purchase of a residential dwelling in the Territory. The value of the concession will be capped at the value of duty that would have been payable on a property of the value determined in the valuation of the affected block under the buyback program.
4. This instrument is the *Taxation Administration (Amounts Payable—Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme) Determination 2015 (No 3)*.
5. This instrument revokes DI2015-39, in order to:
  - (i) allow the stamp duty concession to be granted in relation to the purchase by an affected homeowner of a new home, where the contract for the new home was completed after 18 February 2014; and
  - (ii) provide the Head of the Asbestos Response Taskforce with the discretion to decide whether a person who purchased a Mr Fluffy property after 18 February 2014 other than in the specific

circumstances already identified, is nevertheless eligible for the stamp duty concession.

6. This instrument commences on the day after its notification.
7. The *Taxation Administration Act 1999* (the TAA) deals with the administration of various tax laws relating to the imposition of certain taxes, duties and fees. These tax laws are specified in section 4 of the TAA. Section 139 of the TAA empowers the Minister to determine amounts payable for taxes, duties and fees, and the method by which an amount is to be calculated.
8. One of the specified tax laws is the *Duties Act 1999* (the Act). Chapter 2 of the Act deals with the imposition of duty on the grant of a Crown lease and the transfer or agreement for the transfer of a Crown lease which are subject to duty. Section 12 of the Act states that the duty is payable by the transferee (that is, the eligible home buyer), and section 5 of the Act states that the duty is payable to the Territory.
9. This instrument determines, for the purposes of the Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme:
  - (a) the eligibility criteria;
  - (b) the value of the concession;
  - (c) the conditions;
  - (d) the time limit for applications.

## **Eligibility**

10. The existing criteria provide that a person is eligible for the concession stamp duty if the person:
  - (a) was the owner of an affected block prior to 18 February 2014 (including joint tenants and tenants in common)
  - (b) was the owner of an affected block after 18 February 2014 as a result of a contract of sale exchanged prior to 18 February 2014
  - (c) became the owner of an affected block after 18 February 2014 as a beneficiary of a deceased estate, or
  - (d) became the owner of an affected block after 18 February 2014 as a result of a binding financial agreement or orders made under the *Family Law Act 1975* (Cth) or the *Domestic Relationships Act 1994*.
11. Eligibility has been broadened to add in an additional category of eligible person that is determined by the Head of the Taskforce. A person who has acquired an affected block after 18 February 2014 in circumstances other than those outlined above may still be an eligible applicant if the Head of Taskforce, on considering submissions from the person, is satisfied that the person was an innocent purchaser for value. This submission process is intended to take account of circumstances that mean that the person had limited knowledge of the presence and implications of the presence of loose-fill asbestos on the premises.

## Application

12. The application of the instrument has also been amended in section 3 (2) (b) of the instrument so that the concession is available on a sale agreement that was entered before 18 February 2014 but not settled until after that date.

## Retrospective application

13. The changes that are made by this instrument are applied retrospectively so that the expanded eligibility in the new instrument apply to all applications for concessional duty under this concession scheme regardless of when those applications were made. The retrospective application is non-prejudicial as it has a beneficial effect on eligibility.

## Amount

14. The value of the stamp duty concession and related conditions remain unchanged.
15. The value of the stamp duty concession is the value of duty that would have been payable on a property of the value determined in the valuation of the affected block under the buyback program.
16. If the value of the new dwelling exceeds the assessed value of the affected block, the person will be liable to pay the stamp duty on the assessed value of the new dwelling, less the amount available under the concession. The following example is provided to explain how this works:

Denise has an affected block which she surrenders under the buyback program. The agreed surrender sum for the block is \$500,000. Stamp duty payable on that amount is \$15,800. If Denise buys a new home for a purchase price of \$600,000, the stamp duty on that amount is \$20,800. Denise may present her concession to the value of \$15,800 and pay the additional \$5,000.

**Note: Duty amounts are provided as an example only as rates are subject to change from year to year.**

17. No credit or refund is available should the value of the new dwelling be less than the assessed value of the affected block.
18. Clause 4 (16) defines the “surrender sum” as the amount paid to the lessee “less \$1000”. The reason for this is that the amount paid to the lessee as part of the buyback includes \$1000 in addition to the valuation of the affected lease to assist the lessee in meeting their legal costs.

## Conditions

19. Section 8(3) has been amended to clarify that only one buyback concession amount may be granted in relation to each affected lease that is surrendered. This means that either the new residential property must be in the same name or names as the affected lease, or the applicant must satisfy the Commissioner that they have authority to use the concession. The applicant could do this by either:
  - (a) producing evidence of the consent of all other joint tenants or tenants in common of the affected block at the date of surrender for the applicant to the use of the concession on the new purchase, or
  - (b) producing orders from a court that authorise the use of the stamp duty concession notwithstanding the absence of consent from all other joint tenants or tenants in common of the relevant affected block at the date of surrender.
20. The stamp duty concession under this scheme cannot be used with any other concession scheme.

### **Time limits for applications**

21. The time limits and related conditions for applications remain unchanged.
22. Section 9 of this instrument clarifies that an application for concessional duty under the scheme must be received by the Commissioner:
  - (a) for a grant, transfer or an agreement for the transfer of a lease, within 90 days; or
  - (b) for an ‘off the plan’ purchase, if one of the events in section 16A(1) of the Act happens, the concession application must be received within 14 days of the first such event. Otherwise, it must be received within 1 year of the grant, transfer, or agreement for the transfer of the lease.
23. If an application is not received within the relevant time limit required by section 9, the Commissioner may accept the late application if it is considered fair and reasonable to do so. Following acceptance of the late application, the Commissioner may reassess the duty liability in accordance with section 9 of the *Taxation Administration Act 1999*.

Authorised by the Treasurer  
Andrew Barr MLA