

# Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2016 (No 1)

Disallowable instrument DI2016–142

made under the

***Taxation Administration Act 1999*, s 139 (Determination of amounts payable under tax laws)**

## EXPLANATORY STATEMENT

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1. This instrument is the *Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2016 (No 1)*.
2. This instrument commences on 1 July 2016.
3. As part of the 2016-17 Budget, the ACT Government announced the Disability Duty Concession Scheme (DDCS). The DDCS provides a full exemption from conveyance duty for any entity, including individuals, that purchase a home to be used as the principal place of residence for a person with disability.
4. The DDCS will encourage adults with disability to enter into long-term private accommodation arrangements, suitable for their needs. The DDCS is open to ACT residents who have qualified for an individualised funding package under the National Disability Insurance Scheme (NDIS). Individuals with long-term and permanent intellectual, physical, sensory or psychiatric disabilities that significantly reduce their level of function are NDIS participants the target for this scheme.
5. Section 139 of the *Taxation Administration Act 1999* empowers the Minister to determine amounts for taxes, duties and levies payable under a tax law, including the amount of duty payable under the *Duties Act 1999* (the Act). The DDCS has been modelled around the existing conveyance duty concession schemes made under this legislation, with amendments to the eligibility criteria.
6. An exemption from conveyance duty is currently available under the Act for the transfer of property into a Special Disability Trust, where the property is to be used as the principal place of residence for the beneficiary of the trust. However, the use of these trusts is uncommon in the ACT and there is no duty exemption for purchases for people with disability made through other means.

The DDCS addresses this and provides that no duty is payable when all relevant criteria are met, regardless of whether the property is purchased through a trust arrangement.

7. This instrument determines, for the purpose of the DDCS:
  - (a) the time limit for applications;
  - (b) the dutiable value of, and the interest in, the subject property; and
  - (c) the eligibility requirements, including,
    - (i) NDIS participation;
    - (ii) residency;
    - (iii) property ownership; and
    - (iv) previous receipt of conveyancing concession.

### **Time limit for applications**

8. Section 5 of this instrument clarifies that an application for duty exemption under the DDCS must be received by the Commissioner within:
  - (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.
9. If an application is not received within the relevant time limit required by section 5, 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*.

### **The dutiable value of, and the interest in, the subject property**

10. This instrument determines that no duty is payable if the applicant is eligible for the DDCS.
11. The total dutiable value of the subject property (which is determined by the Act) must not exceed a maximum of \$750,000. This amount aligns with the cap of the First Home Owner Grant and exceeds the median house value in the ACT. If the total dutiable value of the property being purchased exceeds \$750,000 no concession will be granted to the applicant.
12. The applicant’s name must be included on the land title with a beneficial interest of 51 per cent or more. The DDCS will not be available should the applicant obtain a beneficial interest of less than 51 per cent. This ensures that the person with disability is the majority owner of the property, and reduces the chance of exploitation of the scheme, or of the person with disability.

- (a) It is irrelevant for the purposes of DDCS how finance for the property purchase was obtained. It is however, a requirement that regardless of the funding arrangements, the person with disability must own at least 51 per cent of the property.

## **Eligibility requirements**

### ***NDIS participant***

13. The concession is only available to ACT residents who are in receipt of a NDIS Individualised Funding Package (individuals with intellectual, physical, sensory and psychiatric disabilities that have significantly reduced level of function). At commencement of the DDCS on 1 July 2016, there will be approximately 5,025 NDIS Individualised Funding Package participants in the ACT.
14. The use of the NDIS criteria ensures that the DDCS is appropriately targeted to those individuals who most benefit from access to the Scheme.
15. The ACT Revenue Office will administer the DDCS, utilising relevant information held by the applicant on their NDIS participation.
  - (a) An applicant will need to provide proof of their NDIS participation level and funding packing with their application. This information will be handled appropriately under the secrecy provisions of the *Taxation Administration Act 1999*.

### ***Residency***

16. An individual who is eligible for the DDCS must live in the purchased property as their principal place of residence, for a continuous period of at least a year. That period must commence within 1 year of completion of the transfer for the subject property – that is, within one year of settlement. For a newly constructed house, the one-year residency must commence from the date the certificate of occupancy was issued following completion of construction of the house on the purchase property.
17. The Commissioner for ACT Revenue has a discretion to extend the time for an applicant to meet the residency requirement in the event of an unforeseen circumstance (such as a health-related issue), or to approve a residency period shorter than 1 year. The Commissioner can also extend the time in which the applicant must start the residency period, or to exempt the applicant from the residency requirements.
18. The discretions in paragraph 17 can only be exercised by the Commissioner if the eligible applicant submits a written request to the Commissioner within 18 months of settlement or the date of the certificate of occupancy.
19. Section 8 (6) provides that if an applicant fails to comply with the residency requirement of one year, they must provide written notice to the Commissioner regarding that fact and repay the amount of duty (and any applicable interest and penalty tax, depending on the circumstances) that would have been chargeable if they were not eligible for the DDCS.

20. The notice required in paragraph 19 must be given to the Commissioner within 14 days after the end of the allowed residency requirements compliance period, or the date it first becomes apparent that the residency requirement will not be met (whichever comes first).

***Property ownership***

21. The DDCS is not available to applicants if, in the 2 years preceding the day of the grant, transfer, or agreement for transfer (whichever is first) of the subject property (that is, execution of the property purchase agreement), the applicant and/or their domestic partner held an interest in land other than the property being purchased under the DDCS.
22. An applicant and/or their domestic partner who had a beneficial interest in property in the preceding two years may still be eligible for the DDCS in certain circumstances. If a court order, binding financial agreement or domestic relationship agreement requires the applicant to give up that previous interest, or if the applicant and/or their domestic partner entered into an agreement to purchase a property within the two-year exclusion period of property ownership, but subsequently cancelled the agreement under the Act, the DDCS may still be available.

***Previous concession***

23. An applicant can only receive the DDCS once, and cannot have previously received the other conveyance duty concessions currently available, being the Home Buyer Concession Scheme, the Pensioner Duty Concession Scheme, and the Over 60s Home Bonus Scheme.

Authorised by the Treasurer  
Andrew Barr MLA