

Duties (Pensioner Duty Deferral Scheme) Determination 2026

Disallowable instrument DI2026–141

made under the

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

EXPLANATORY STATEMENT

Background

Duty is ordinarily payable at the times tabled in section 16 of the *Duties Act 1999* (the Duties Act). For example, duty becomes payable on a transfer of dutiable property when the transfer is registered with the Registrar-General under the *Land Titles Act 1925*.

Under Division 2.6A.2 of the Duties Act, the Minister may determine a scheme for deferring duty.

Pensioner Duty Deferral Scheme

The *Duties (Pensioner Duty Deferral Scheme) Determination 2026* (the Determination) continues the Pensioner Duty Deferral Scheme (PDDS) which provides the opportunity to defer the payment of duty to all pensioners acquiring a property as a principal place of residence.

Updates

The Determination commences on 1 July 2026 and replaces the *Duties (Pensioner Duty Deferral Scheme) Determination 2024*, DI2024-180.

DVA Gold Card and Service Pensions

The eligibility criteria have been expanded to include service pensions being an aged service pension, invalidity service pensions or partner service pension under the *Veterans' Entitlements Act 1986* (Cwlth) ('VE Act'); noting Part III of the VE Act explores the eligibility criteria for these service pensions.

The general eligibility criteria are outlined below:

- (1) age service pension:
 - a. a person must be a veteran;

- b. have rendered qualifying service; and
- c. reached the pension age of 60 years old.

(2) invalidity service pension

- a. a person must be a veteran;
- b. has rendered qualifying service; and
- c. is permanently incapacitated for work in accordance with a determination under section 37AA of the VE Act.

The eligibility for the partner service pension is much more varied. Generally, the person must be a member of a couple and their partner is a veteran receiving (or would receive if not for a disqualifying provision) the age service pension or the invalidity service pension. But the pension is also available in other circumstances if the veteran has passed away – refer to the Department of Veteran Affairs for further details.

The requirement for a transferee to have held a Veterans' Affairs Gold Card for a continuous period of at least one year has been removed. In this instrument, it is sufficient that one transferee held a Veterans' Affairs Gold Card on the transaction date.

Eligible home buyer

A specific definition of eligible home buyer has been included to remove any ambiguity that the concession is intended to benefit only specific individuals. An eligible home buyer must be an individual and does not include a company or any other instance where an individual acquires a property in another capacity, such as a trustee, partner in a partnership or as an agent. The concession is intended to benefit owner-occupiers. The definition of eligible transaction requires that a transferee is also an eligible home buyer. As a result, if an individual and a company sought to purchase the property as tenants in common, neither will be eligible for the concession.

An eligible home buyer must be 18 years of age. However, the Determination gives the Commissioner the discretion to accept an eligible home buyer under 18 years of age if satisfied that it is fair and reasonable to do so.

Unforeseen circumstance

A specific definition of 'unforeseen circumstance' provides further guidance on how the residence start date may be extended or the residence period may be reduced. The definition of unforeseen circumstance introduces an objective test (reasonable person) to examine 'a circumstance' or circumstances with reference to the knowledge of the eligible home buyer on the transaction date. A circumstance is unforeseen if it is a circumstance that could not have been foreseen by a reasonable person with the knowledge of the eligible home buyer on the transaction date. If a circumstance could be foreseen by a reasonable person on the transaction date, then it is not an unforeseen circumstance.

The transaction date is the relevant point in time for the assessment of whether the circumstance is unforeseen because it is the date the eligible home buyer has incurred

the duty liability. Frequently, the transaction date is the date when an agreement for the sale or transfer of land is entered (exchange of contract).

The definition of knowledge includes both actual knowledge and constructive knowledge. Actual knowledge refers to the existence of knowledge subjectively in the mind of the eligible home buyer on the facts they knew related to the circumstances in issue. The inclusion of constructive knowledge is to ensure that a person cannot be wilfully blind or ignorant to circumstances to avoid something falling into the realm of their actual knowledge to make that circumstance ‘unforeseen’. The definition of constructive knowledge is based on the definition in section 297 of the *Personal Properties Securities Act 2009* (Cwlth).

The definition of constructive knowledge includes in paragraph (a) includes general knowledge that an honest and prudent home buyer would ordinarily have when purchasing a property, whilst paragraph (b) includes the specific inquiries that ordinarily would have been made by an honest and prudent person with the specific actual knowledge of the eligible home buyer.

For example, if an eligible home buyer has unique circumstances or requirements that would cause an honest and prudent person to conduct certain or additional inquiries to be satisfied in that situation, then those inquiries are assumed to have occurred. The eligible home buyer is deemed to constructively to have actual knowledge of the circumstance or circumstances from those inquiries.

Eligible properties

There are two types of eligible property for the PDDS: homes, and vacant land. Homes may be new (including off the plan residential units) or established.

Eligible transactions

A transaction is deemed an eligible transaction if the eligibility requirements specified in the Determination are met, including that the transaction date is on or after 1 July 2026. These eligibility requirements are:

Pensioner requirement

To be eligible for a duty deferral under the Determination, a transferee must be a prescribed pensioner which, for the purposes of the Determination, means a person who, on the transaction date:

- (a) was in receipt of a Services Australia age pension or Department of Veterans’ Affairs age pension equivalent; or
- (b) was in receipt of a Services Australia disability support pension and was 50 years of age or older; or
- (c) has held a Department of Veterans’ Affairs Gold Card; or
- (d) received a service pension.

Residence requirements

At least one eligible home buyer of the eligible property (being a pensioner or their domestic partner) must occupy the property as their principal place of residence continuously for a period of at least one year. That period must commence within one year of completion of the transfer for an eligible home, or the date that the certificate of occupancy that is issued following completion of construction of a home for vacant land. Some exemptions apply to the residence requirements.

The domestic partner of a transferee can only fulfil the residence requirements if they are a transferee themselves; that is, they are named in the grant, transfer or agreement and they hold a relevant interest in the property.

A principal place of residence is defined as the home a person primarily occupies, on an ongoing and permanent basis, as their settled or usual home. However, an occupation that is transient, temporary, unlawful or of a passing nature, is not sufficient to establish occupation as a principal place of residence.

The Determination gives the Commissioner the discretion to extend the time for a transferee to meet the residence requirements, to approve a residence period shorter than one year, or to exempt the transferee from the residence requirements, in the event of unforeseen circumstances.

Examples of circumstances that do not meet the criteria of being an unforeseen circumstance are below.

Example 1 – foreseen circumstances (finance and construction)

Bob and Jane purchased a vacant block of land in Canberra to build a home. After 12 months their house plans were approved and construction commenced, although there were delays during construction.

Bob and Jane were unable to maintain their mortgage repayments with interest rate rises, increased construction costs and delays. They decided to sell the property and requested an exemption from the residency requirement.

A foreseeable circumstance when purchasing a property, and claiming a concession with residency requirements, extends to the circumstances relevant to the transaction and the purchase of the property. It is foreseeable, when taking out a mortgage, that repayments may vary over time. It is also foreseeable, when constructing a house or undertaking building works, that construction may be delayed or that construction costs may increase.

The fact that Bob and Jane experienced more than one foreseeable circumstance does not alter the character of those circumstances so as to make them unforeseen.

The Commissioner would decline Bob and Jane's request for an exemption from the residence period.

Example 2 – foreseen circumstance (medical appointments)

Rachel purchased an eligible property and claimed the concession. However, Rachel had a pre-existing medical condition that required travel to Sydney from time to time for medical treatment.

Rachel was aware of the requirement to travel for treatment. It is a circumstance that a reasonable person should consider when deciding to purchase a property and claim a duty concession with residency requirements attached.

If Rachel applied to vary the residence period or the residence start date due to her medical condition or treatment, the Commissioner would decline Rachel's application.

Example 3 – foreseen circumstance (caring responsibilities)

Charlotte's father had a medical condition, and it was likely that he would require full time care in the future.

After relocating to Canberra for work Charlotte purchased an eligible property, claimed the concession and commenced living in the property from settlement. During Charlotte's 12-month residence period her father requires full time care. Charlotte returns to the family home in NSW to provide full time care for father. While this decision may be reasonable and appropriate for Charlotte's personal and family circumstances, it does not make it an unforeseen circumstance that prevents Charlotte from occupying her property in Canberra.

If Charlotte were to request a reduction in, or an exemption from, the residence period or requirement due to her father's health decline, claiming that it was sudden and unexpected, the Commissioner would decline Charlotte's application.

Example 4 – constructive knowledge

Liam was interstate when he signed a contract to purchase an eligible property as his new family home and did not undertake an in-person inspection of the property. Shortly after settlement, Liam moved into the property and formed the view that it did not fit the needs of his family and decided to sell the property.

Liam submitted a written request that the residence period be shortened to five months, the period he occupied the property, on the basis that the property was not suitable for his family.

Liam had the opportunity to inspect the eligible property in person, or conduct due diligence by other means, to determine whether it was suitable for his circumstances. A reasonable person would have inspected the property, made enquiries or other arrangements to determine whether it was suitable before entering into a contract to purchase it. These are inquiries that ordinarily would be made by an honest and prudent person in that situation. Liam is taken to have constructive knowledge of the relevant circumstances, because a person cannot rely on wilful blindness to create a circumstance that is unforeseen to them personally merely because it is not within their actual knowledge.

Liam has constructive knowledge of the size of the property, and a reasonable person would have considered whether the property was suitable. It was therefore a foreseeable circumstance.

The Commissioner would decline an application to shorten the residence period to five months.

The Commissioner can exercise discretion in relation to residence requirements only where a written request to exercise them is made within 18 months of completion of the transfer for a home, or the date that the certificate of occupancy that is issued following completion of construction of a home for vacant land.

Failure to comply with requirements

If a transaction ceases to be an eligible transaction—for example, a pensioner failed to meet the residence period—the Determination requires written notice of that fact to be provided to the Commissioner. The notice should advise about the failure to meet the requirement. Notice must be given within 14 days after the end of the period allowed for compliance with the requirement or the date the transferee first becomes aware that the requirement will not be complied with (whichever comes first).

If the transaction ceases to be an eligible transaction, the duty deferred will become payable.

As the transferee is liable duty from the transaction date, a liability to pay the duty arises from 14 days after the transfer is registered with the registrar-general under section 16 (1) ‘Table 16 Items 1 and 3’ of the *Duties Act 1999*. A tax default arises if the tax is not paid within 14 days and penalty tax applies under sections 31 (1), (2), or (4) of the *Taxation Administration Act 1999* (TA Act), unless the Commissioner is satisfied that section 31 (5) applies, such as taking reasonable care to comply with a tax law. Interest also applies to a tax default and is calculated daily under section 25 (1) of the TA Act. Interest therefore is imposed from the 15th day after the transfer is registered with the registrar-general until the purchaser pays the unpaid tax. This can include penalty tax if a purchaser failed to meet the criteria for an ‘eligible transaction’ under section 4 of the Determination and by definition includes the residence period requirements.

If a transferee gives notice to the Commissioner within 14 days of either the end any period for compliance with a requirement (such as residency periods) or the date the transferee first becomes aware the transaction is not eligible the Commissioner may remit penalty tax and interest associated with the tax default.

The TA Act also provides a range of offences which may apply, such as for the avoidance of tax and failing to notify the Commissioner.

Conditions of Duty Deferral

A duty deferral arrangement determined under Division 2.6A.2 of the Duties Act may be subject to conditions—refer to section 75AG (3) and section 75AJ of the Duties Act.

The Determination sets conditions on duty deferrals:

Application

An eligible person must apply to the Commissioner for the deferred payment of duty—refer to section 75AH of the Duties Act. The application must be made at the same time the instrument of transfer for the property is lodged with the registrar-general under the *Land Titles Act 1925*.

Interest

Interest at the market rate (determined under section 26 of the TA Act) will be payable on the deferred amount of duty for as long as the amount of duty remains unpaid.

Payment of deferred amount

The deferred duty and any interest that accrues must be paid when:

- (a) the property is transferred to any other person; or
- (b) the interest in the property held by the ‘pensioner’ for the purposes of the transaction, is transferred to:
 - (i) another transferee; or
 - (ii) an administrator or executor of the estate of the pensioner (includes a transfer by transmission application); or
 - (iii) any other person.

Any duty payable is a debt owing to the Territory and is a first charge on the interest in the property held by an owner and takes priority over other interests – see section 5 of the Duties Act and section 56H of the TA Act.

Operation

Duty deferrals approved under the Determination (and its conditions of approval) will continue to apply should the Determination cease until the duty amount deferred and any accrued interest is paid in full. Similarly, the Determination does not affect the operation of deferrals granted under previous instruments for the operation of the Pensioner Duty Deferral Scheme.

Revocation

Section 9 of the Determination revokes DI2024-180.