Australian Capital Territory

Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2026

Disallowable instrument DI2026–160

made under the

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

EXPLANATORY STATEMENT

The *Taxation Administration Act 1999* (the TA Act) 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 TA Act. Section 139 of the TA Act empowers the Minister to determine amounts payable for taxes, duties and fees, and the method by which an amount is to be calculated.

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, and section 5 of the Act states that a liability for duty is a debt due to the Territory.

Disability Duty Concession Scheme

The Disability Duty Concession Scheme (DDCS) provides a full concession from conveyance duty for any entity, including individuals, purchasing a home to be used as the principal place of residence for a person with disability.

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. NDIS participants are the target of this scheme.

The DDCS will encourage adults with a disability on the NDIS to obtain long term private accommodation arrangements, suitable for their needs. The DDCS has been modelled around other conveyance duty concession schemes made under this legislation, with amendments to the eligibility criteria.

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An exemption from conveyance duty is 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 provides an alternative duty concession which can apply even if the property is not transferred into a Special Disability Trust, provided that all relevant criteria set out in the *Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2026* (Instrument) are met.

This instrument replaces the *Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2025*, DI2025–147, commencing on 1 July 2026.

This instrument determines, for the purposes of the DDCS:

- the types of eligible property;
- the determination of amounts;
- the eligibility requirements, including NDIS participation, property ownership and residency.

Updates

The Instrument has been updated to remove the property threshold for the DDCS. As a result, duty is not payable irrespective of the dutiable value of the property, if the criterion for an 'eligible transaction' has been met.

Property relinquished
An update has been made to improve the clarity for when prior legal and equitable interests in land are relinquished. Eligible home buyers prior property interests are only excluded if they have been or are required to relinquish that interest under either a: sealed court order, financial agreement or relationship agreement or termination agreement. The sealed court orders or agreements must be made before the transaction date. A court order is sealed if it bears the seal of the court, which may be a stamp or other impression. A sealed court order provides evidence that the document was issued by the court. The operation of the provision is considered unchanged.

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.

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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.

Application of DDCS

This instrument applies to grants, transfers or agreements for sale or transfer of eligible property with a transaction date on or after 1 July 2026. The transaction date is the date that liability for duty arises under section 11 of the Act; that is, when the transaction is first executed.

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Eligible properties

The DDCS is available for ACT property including new homes, established homes and vacant land.

Duty rates and capped benefit

From 1 July 2026, the benefit for from the DDCS is uncapped. There is no requirement that the dutiable value of the property to be purchased is less than a certain amount. An eligible transaction will be subject to nil duty.

From 1 July 2025 to 30 June 2026, the benefit for the DDCS was capped at $1,020,000 with a duty concession capped at $35,238.

Eligible transactions

A transaction is deemed eligible for the DDCS if the eligibility requirements specified in the instrument are met.

NDIS participation

The concession is only available to ACT residents who are in receipt of a NDIS Individualised Funding Package (individuals with intellectual, physical, sensory, or psychiatric disabilities that have significantly reduced level of function).

The use of the NDIS criteria ensures that the DDCS is appropriately targeted to those individuals who most benefit from access to the Scheme.

The ACT Revenue Office administers the DDCS, utilising relevant information held by the applicant on their NDIS participation. Proof of an eligible NDIS participant funding package may be requested by the ACT Revenue Office after registration of the transaction. This information will be handled appropriately under the secrecy provisions of the TA Act as well as with any relevant requirements in the *Information Privacy Act 2014* and the *Health Records (Privacy and Access) Act 1997*.

Property requirements

A transaction is not eligible for the DDCS if, in the 2 years preceding the transaction date of the eligible transaction, the eligible home buyer or the eligible home buyer's domestic partner held an interest in land other than the eligible property. An interest in land is not limited to a particular geographical location, such as, land in the ACT.

A legal or equitable interest in land is an 'exempt interest' if a person has relinquished, or is required to relinquish, the interest prior to the transaction date under: a sealed order of a court; a financial agreement under sections 90B-D or 90UB-UD of the *Family Law Act 1975* (Cwlth); or a domestic relationship agreement or termination agreement ('court orders or agreements').

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The court orders or agreements must be made before the transaction date. A court order must be 'sealed', by the court to be an order of a court for this instrument. A court order is sealed if it bears the seal of the court, which may be a stamp or other impression. A sealed court order provides evidence that the document was issued by the court. If the property subject of the court order is to be sold, it must be sold after the court order is sealed to be 'relinquished' under an order of a court.

The following examples are *not* an allowed interest.

- A person enters into a contract to sell a property. A week later they receive a sealed court order that states they must dispose of that property. The disposal of the property was voluntary, and possibly in contemplation of a court order. This is because when the court order was made, the legal and equitable interest in the property had already been relinquished and therefore there was no interest per se for the person to relinquish under a court order.

- A person enters into a contract to purchase a property and claims the HBC before they have received sealed court orders requiring the relinquishment of their prior property interest. On the transaction date, being the date they entered into a contract to purchase the new property, they had a legal and equitable interest in land that was not the eligible property being purchased.

The property interests of a eligible home buyer's domestic partner, who is a spouse, is excluded where there has been a dissolution, annulment or irretrievable breakdown of the domestic relationship. This only applies if the transferee is not cohabitating with the spouse and there is no likelihood of cohabitation being resumed.

Exceptions also apply if:

- the other property interest arises from a will. That is where the eligible home buyer has acquired an interest as an executor or trustee in another property which is not the subject of the purchase for eligible transaction; or

- if the eligible home buyer had entered an agreement to purchase the property and subsequently cancelled (rescinded) the agreement to purchase that property.

51 per cent requirement

The eligible NDIS participant's name must be included on the land title with a legal and beneficial interest of 51 per cent or more. The DDCS will not be available if the eligible NDIS participant obtains an interest of less than 51 per cent. This ensures that the NDIS participant is the majority owner of the property, and reduces the chance of exploitation of the DDCS, or of the person with disability.

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.

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Residence requirements

The eligible NDIS participant must own and 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 a home, or the date that the certificate of occupancy that is issued following completion of construction of a home for vacant land.

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, when the occupation is transient, temporary, unlawful or of a passing nature, this is not sufficient to establish occupation as a principal place of residence.

Extend or amend the residence period

This Instrument gives the Commissioner the discretion to extend the time for a transferee to meet the residence requirement, to approve a residence period shorter than 1 year, or to exempt the transferee from the residence requirements, in the event of unforeseen circumstances.

The discretion to amend the residence requirements can only be exercised where a written request is made within 18 months 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.

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.

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Example 2 – foreseen circumstance (employment – mandatory posting as condition of employment)

The Australian Defence Force may relocate service members at any time, subject to service requirements.

Henry was employed by the Australian Defence Force and was posted to another location shortly after purchasing a home and claiming the concession.

Henry requested a shorter residence period, or an exemption from the residence requirement, due to his mandatory relocation. Henry submitted it was an unforeseen circumstance because he had expected his posting in Canberra for a longer period.

At the time that Henry claimed the duty concession with a residency requirement, he had actual or constructive knowledge that, as a condition of his employment he could be relocated at any time, subject to the operational needs of his employer.

The Commissioner would decline Henry's application on the basis that relocation was a foreseeable circumstance of his employment. The timing of the relocation may have been unexpected, but that does not make it an unforeseen circumstance.

Example 3 – foreseen circumstance (employment – expression of interest)

Olivia was an employee of the Department of Foreign Affairs and Trade (DFAT) and had submitted an expression of interest for an overseas posting.

After renting for some time Olivia decided to purchase a property and claim the concession. After signing the contract to purchase a townhouse, DFAT offered Olivia a three year overseas posting which she accepted.

Olivia requested either a delay to the commencement of her residence period or, alternatively, an exemption from the residence period due to an unforeseen circumstance.

The posting was a foreseeable outcome of having submitted an expression of interest for a posting.

The Commissioner would decline Olivia's application for an exemption from, or delay in commencing, the residence period on the basis that is not unforeseen.

Example 4 – 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.

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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 5 – 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 6 – 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.

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Previous concessions

An applicant for the DDCS cannot have previously received a concession under the DDCS, the Home Buyer Concession Scheme, the Over 60s Home Bonus Scheme (which ended on 31 December 2016) or the Pensioner Duty Concession Scheme.

Failure to comply with requirements

If a transaction ceases to be eligible for the DDCS—for example, because an eligible NDIS participant failed to meet the residence period— this instrument 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 it first becomes apparent that the requirement will not be complied with (whichever comes first).

If the transaction ceases to be an eligible transaction, it will become liable duty on the transaction date. In other words, the transferee will become liable to pay the Territory the amount of duty that would have been payable on the eligible transaction if the transaction had not been eligible for the DDCS.

If the transferee ceases to be eligible for DDCS, the transferee will be liable for duty. A requirement 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 Act. 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 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. The unpaid tax can include penalty tax if a purchaser failed to meet the criteria for an 'eligible transaction' under section 6 of the instrument 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.

Duty rates

From 1 July 2026, the benefit from the DDCS is uncapped. There is no requirement that the dutiable value of the property to be purchased is less than a certain amount. An eligible transaction by an eligible home buyer will be subject to nil duty.

For the period 1 July 2025 to 30 June 2026, the benefit for the DDCS had a property price cap of $1,020,000, with a duty reduction capped at $35,238.

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Application for the DDCS

An application under the DDCS may be made at the time the transferee lodges the transfer of the property with the registrar-general of Land Titles. In practice, a transferee would usually declare their eligibility and claim the DDCS concession code on the transfer instrument at the time of lodgement.

If an application is not made within this timeframe, the transferee may apply to the Commissioner for an extension of time to submit a late application. In applying to the Commissioner, the transferee must specify the grounds on which an extension is sought and must submit the application for an extension of time within 12 months of the lodgement of the transfer of the eligible property.

Revocation

Section 12 of this instrument revokes DI2025–147.

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