

Serial 91
Stamp Duty Amendment Bill (No. 2) 2002
Ms Martin

**A BILL
for
AN ACT**

to amend the *Stamp Duty Act*



NORTHERN TERRITORY OF AUSTRALIA
STAMP DUTY AMENDMENT ACT (NO. 2) 2002

No. of 2002

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2002

AN ACT

to amend the *Stamp Duty Act*

[Assented to 2002]
[Second reading 2002]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Stamp Duty Amendment Act (No. 2) 2002*.

2. Commencement

(1) Sections 4 and 6(f) are taken to have come into operation on 20 August 2002.

(2) The remaining provisions of this Act come into operation on the day on which the Administrator's assent to this Act is declared.

3. Principal Act

The *Stamp Duty Act* is in this Act referred to as the Principal Act.

4. Repeal and substitution

Section 8B of the Principal Act is repealed and the following substituted:

"8B. Concession for first home owners

"(1) In this section –

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'Australian citizen' has the same meaning as in the *First Home Owner Grant Act*;

'built' includes relocated from land on to other land and affixed to the other land;

'first home owner concession' means a concession from the payment of duty on the instruments effecting a conveyance of land equal to the lesser of –

- (a) the total amount of duty assessed as payable on the conveyance; or
- (b) the duty payable on a conveyance of land the consideration for or unencumbered value of which is \$125 000;

'home' has the same meaning as in the *First Home Owner Grant Act*;

'permanent resident' has the same meaning as in the *First Home Owner Grant Act*;

'relevant interest' has the same meaning as in section 5(2) and (3) of the *First Home Owner Grant Act*;

'residential property' has the same meaning as in the *First Home Owner Grant Act*;

'spouse' has the same meaning as in the *First Home Owner Grant Act*.

"(2) A conveyee or, if there is more than one conveyee, all of the conveyees of a conveyance of land is or are entitled to the first home owner concession if –

- (a) the conveyee or each of the conveyees is a natural person;
- (b) the conveyee or at least one of the conveyees is an Australian citizen or a permanent resident;
- (c) the conveyee and his or her spouse have not, or all of the conveyees and their spouses have not, previously received the first home owner concession or a concession on duty under section 8B of this Act as in force before 20 August 2002;
- (d) subject to subsection (4), the conveyee and his or her spouse have not, or all of the conveyees and their spouses have not, previously had a relevant interest in a residential property that was occupied by him, her or them as his, her or their residence;

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- (e) the conveyee or all of the conveyees will acquire the whole beneficial interest in the land the subject of the conveyance;
- (f) the conveyee is not acquiring the land the subject of the conveyance, or none of the conveyees are acquiring the land the subject of the conveyance, in the capacity of a trustee; and
- (g) either –
 - (i) there is a home built on the land and the Commissioner is satisfied that the conveyee or conveyees will occupy the home as his, her or their principal place of residence within one year, or the other longer period approved by the Commissioner, after the execution of the instruments evidencing the conveyance; or
 - (ii) at the time the land was conveyed no home is built on the land and the Commissioner is satisfied that –
 - (A) a home will be built on the land within 3 years after the execution of the instruments evidencing the conveyance; and
 - (B) the conveyee or conveyees will occupy the home as his, her or their principal place of residence before –
 - (I) the expiry of the 3 year period referred to in subparagraph (A) or one year after the home is built, whichever period expires first; or
 - (II) the expiry of the other longer period approved by the Commissioner.

"(3) For the purposes of subsection (2)(c), if the Commissioner reassesses under subsection (6) the duty payable by the conveyee or conveyees because the conveyee fails or conveyees fail to occupy a home on the land as his, her or their principal place of residence within the period referred to in subsection (2)(g), the conveyee is taken, or the conveyees are taken, not to have previously received the first home owner concession.

"(4) If there is more than one conveyee and not all of the conveyees will be able to occupy a home on the land as their principal place of residence within the period referred to in subsection (2)(g), the conveyees are (subject to subsection (2)(a), (b), (c), (d), (e) and (f)) entitled to the first home owner concession if the Commissioner is satisfied that –

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- (a) at least one of the conveyees will be able to occupy a home on the land as his or her principal place of residence within the period referred to in subsection (2)(g); and
- (b) there are special reasons why the other conveyee or conveyees will not be able to occupy a home on the land as his, her or their principal place of residence within the period referred to in subsection (2)(g),

and, if so, this section applies to the conveyees as if they satisfied the entitlement criteria specified in that paragraph.

"(5) If the conveyee fails or conveyees fail to occupy a home on the land as his, her or their principal place of residence within the period referred to in subsection (2)(g) (including that paragraph as applied by subsection (4)), the conveyee or conveyees must, within 30 days after the expiry of that period, notify in writing the Commissioner of his, her or their failure to do so.

Penalty: 50 penalty units.

"(6) If a conveyee fails or conveyees fail to occupy a home on the land as his, her or their principal place of residence within the period referred to in subsection (2)(g) (including that paragraph as applied by subsection (4)), the Commissioner must amend the assessment of duty imposed on the conveyance to re-assess duty payable by the conveyee or conveyees as if the conveyee or conveyees were not eligible for the first home owner concession unless, in the opinion of the Commissioner, there are special reasons not to amend the assessment.

"(7) Section 97, other than subsection (1), of the *Taxation (Administration) Act* applies to and in relation to amending an assessment under subsection (6).

"(8) This section applies in relation to the acquisition of an interest in land under a Scheme set out in Schedule 5, 6 or 7 of the Housing Assistance Schemes Regulations as if –

- (a) where a person is acquiring the interest alone – the person were acquiring 100% of the land; and
- (b) where 2 or more persons are acquiring the interest – the persons were acquiring 100% of the land in the same proportions as they are acquiring the interest.

"(9) If a person is acquiring land or an interest in land in the capacity of guardian of a person under a legal disability, this section applies in relation to that acquisition, and entitlement to the first home owner concession in respect of that

acquisition is determined, as if the person under the legal disability were the conveyee of the land or interest in the land and, for that purpose –

- (a) a reference to a conveyee in this section includes a reference to the person under the legal disability; and
- (b) the person under the legal disability is taken to be the person who receives the first home owner concession (and not his or her guardian).

"(10) A person claiming the first home owner concession, and his or her spouse, must give to the Commissioner a declaration, in the approved form, providing the information relating to the claim that the Commissioner requires.

"8C. Rebate for principal place of residence

"(1) In this section –

'built' has the same meaning as in section 8B;

'home' has the same meaning as in section 8B;

'principal place of residence rebate' means a concession from the payment of duty on the instruments effecting a conveyance of land equal to the lesser of –

- (a) the total amount of duty assessed as payable on the conveyance; or
- (b) \$1 500.

"(2) A conveyee or, if there is more than one conveyee, all of the conveyees of a conveyance of land is or are entitled to the principal place of residence rebate if –

- (a) the conveyee or each of the conveyees is a natural person;
- (b) the conveyee is or the conveyees are not eligible for a first home owner concession under section 8B;
- (c) the conveyee or all of the conveyees will acquire the whole beneficial interest in the land the subject of the conveyance;
- (d) the conveyee is not acquiring the land the subject of the conveyance, or none of the conveyees are acquiring the land the subject of the conveyance, in the capacity of a trustee; and

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(e) either –

- (i) there is a home built on the land and the Commissioner is satisfied that the conveyee or conveyees will occupy the home as his, her or their principal place of residence within one year, or the other longer period approved by the Commissioner, after the execution of the instruments evidencing the conveyance; or
- (ii) at the time the land was conveyed no home is built on the land and the Commissioner is satisfied that –
 - (A) a home will be built on the land within 3 years after the execution of the instruments evidencing the conveyance; and
 - (B) the conveyee or conveyees will occupy the home as his, her or their principal place of residence before –
 - (I) the expiry of the 3 year period referred to in subsubparagraph (A) or one year after the home is built, whichever period expires first; or
 - (II) the expiry of the other longer period approved by the Commissioner.

"(3) If there is more than one conveyee and not all of the conveyees will be able to occupy a home on the land as their principal place of residence within the period referred to in subsection (2)(e), the conveyees are (subject to subsection (2)(a), (b), (c) and (d)) entitled to the first home owner concession if the Commissioner is satisfied that –

- (a) at least one of the conveyees will be able to occupy a home on the land as his or her principal place of residence within the period referred to in subsection (2)(e); and
- (b) there are special reasons why the other conveyee or conveyees will not be able to occupy a home on the land as his, her or their principal place of residence within the period referred to in subsection (2)(e),

and, if so, this section applies to the conveyees as if they satisfied the entitlement criteria specified in that paragraph.

"(4) If the conveyee fails or conveyees fail to occupy a home on the land as his, her or their principal place of residence within the period referred to in subsection (2)(e) (including that paragraph as applied by subsection (3)), the

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conveyee or conveyees must, within 30 days after the expiry of that period, notify in writing the Commissioner of his, her or their failure to do so.

Penalty: 50 penalty units.

"(5) If a conveyee fails or conveyees fail to occupy a home on the land as his, her or their principal place of residence within the period referred to in subsection (2)(e) (including that paragraph as applied by subsection (3)), the Commissioner must amend the assessment of duty imposed on the conveyance to re-assess duty payable by the conveyee or conveyees as if the conveyee or conveyees were not eligible for the principal place of residence rebate unless, in the opinion of the Commissioner, there are special reasons for not amending the assessment.

"(6) Section 97, other than subsection (1), of the *Taxation (Administration) Act* applies to and in relation to amending an assessment under subsection (5).

"(7) This section applies in relation to the acquisition of an interest in land under a Scheme set out in Schedule 5, 6 or 7 of the Housing Assistance Schemes Regulations as if –

- (a) where a person is acquiring the interest alone – the person were acquiring 100% of the land; and
- (b) where 2 or more persons are acquiring the interest – the persons were acquiring 100% of the land in the same proportions as they are acquiring the interest.

"(8) If a person is acquiring land or an interest in land in the capacity of guardian of a person under a legal disability, this section applies in relation to that acquisition, and entitlement to the principal place of residence rebate in respect of that acquisition is determined, as if the person under the legal disability were the conveyee of the land or interest in the land and, for that purpose a reference to a conveyee in this section includes a reference to the person under the legal disability.

"(9) A person claiming the principal place of residence rebate must give to the Commissioner a declaration, in the approved form, providing the information relating to the claim that the Commissioner requires."

5. New sections

The Principal Act is amended by inserting after section 8F the following:

"8G. Refund of duty paid on certain matrimonial property settlements

"(1) In this section –

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'matrimonial property' means dutiable property that belongs to the parties to a marriage or to either of them.

"(2) If duty imposed on an instrument effecting a conveyance of matrimonial property from a person to his or her spouse or former spouse has been paid under this Act and, within 12 months after the property is conveyed, orders that relate to the distribution of the matrimonial property between the person and his or her spouse that are consistent with the terms of the conveyance are made under Part VIII of the *Family Law Act 1975* of the Commonwealth and sealed by the Family Court, the Commissioner must refund to the person who paid the duty an amount equal to the duty paid."

"(3) A refund of stamp duty allowed under this section does not apply to instruments executed before the day on which the Administrator's assent to the *Stamp Duty Amendment Act (No. 2) 2002* is declared.

'8H. Meaning of 'managed investment scheme conveyance'

"(1) In this section –

'custodian' means a corporation appointed under section 601FB of the Corporations Act 2001 to hold the property of a registered scheme as agent for the responsible entity of the registered scheme;

'registered scheme' has the same meaning as in the Corporations Act 2001;

'responsible entity' has the same meaning as in the Corporations Act 2001;

'scheme property' means the dutiable property or marketable securities of a registered scheme held by a person as the responsible entity of the registered scheme or as a custodian for the responsible entity of the registered scheme.

"(2) Each of the following transactions is a managed investment scheme conveyance:

- (a) a conveyance of dutiable property or a marketable security from a person as vendor to the custodian for a responsible entity of a registered scheme, where –
 - (i) the conveyance is made pursuant to an agreement for the conveyance of the dutiable property or marketable security between the person as vendor and the responsible entity as purchaser;
 - (ii) the dutiable property or marketable security is acquired by the responsible entity as scheme property; and
 - (iii) the agreement has been stamped with ad valorem duty;

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- (b) a conveyance of dutiable property or a marketable security that is either from the responsible entity of a registered scheme to the custodian for that responsible entity or from the custodian of a responsible entity of a registered scheme to that responsible entity, where –
 - (i) the dutiable property or marketable security is scheme property of that registered scheme; and
 - (ii) the conveyance is not part of an arrangement under which –
 - (A) the scheme property or an interest in the scheme property ceases to be scheme property; or
 - (B) the members of the registered scheme do not have the same trust interest in the scheme property after the conveyance of that property as they had immediately before the arrangement was entered into; or
- (c) a conveyance of dutiable property or a marketable security that is scheme property which is a consequence of the retirement of the responsible entity or custodian of a registered scheme or the appointment of a new responsible entity or custodian of the registered scheme, where the Commissioner is satisfied that –
 - (i) the only interest acquired by a person in relation to the property as a result of the conveyance is an interest acquired by the replacement or new responsible entity or custodian; and
 - (ii) the replacement or new responsible entity or custodian acquired that interest only because of its appointment as the responsible entity or custodian for the registered scheme."

6. Schedule 1

Schedule 1 to the Principal Act is amended –

- (a) by omitting from item 5(1) "or (7)" and substituting ", (7) or (8)";
- (b) by inserting after item 5(7) the following:
 - "(8) Managed investment
scheme conveyance \$20.00";
- (c) by inserting in item 6 "(other than the *Land Title Act*)" after "statute";
- (d) by omitting from item 9 "or \$9 000, whichever is the lesser";

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(e) by inserting after item 9 the following:

"9A. *Special Hiring Arrangement* An amount equal to 1.8% of the total amount paid or payable to the lender in relation to the arrangement or \$9 000, whichever is the lesser";

(f) by omitting from item 12 "*Lease of the land in the Territory*" and substituting "*Lease that is a lease of land in the Territory or a franchise arrangement*"; and

(g) by omitting item 18(3) and (4).

7. Schedule 2

Schedule 2 to the Principal Act is amended –

(a) by inserting after item 7 the following:

"8. Transfer of property for the purposes of a compulsory transfer of business under Part 4, Division 3 of the *Financial Sector (Transfer of Business) Act 1999* of the Commonwealth.";

(b) by omitting item 27; and

(c) by omitting item 33B and substituting the following:

"33B. Grant of an estate in fee simple or other lesser estate in land from the Crown other than –

(a) a grant of an estate in fee simple or lesser estate after the surrender of a convertible Crown lease held over the same land the subject of the grant where –

(i) the grantee was not the person who surrendered the convertible Crown lease; and

(ii) the grant is or, in the opinion of the Commissioner, amounts to or has the effect as if it were a transfer of the estate in the land; or

(b) a grant of an estate in fee simple or convertible Crown lease for which monetary consideration is given or agreed to be given."