

2019

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

TREASURER

**PROPERTY ACTIVATION BILL 2019**  
**SERIAL NO. 90**

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

The Bill introduces the *Property Activation Act 2019*, a new legislative framework from 1 July 2019 to create a levy to promote the activation and occupation of land and buildings in the levy area.

The levy applies to lots of land which are either vacant land or have unoccupied ground level non-residential buildings. The levy is imposed at a rate of 2 per cent for lots which are vacant land and 1 per cent for lots with unoccupied buildings, based on the unimproved capital values of each lot.

The levy is payable by owners of land, and the Act will be a taxation law under the *Taxation Administration Act 2007*, to allow the levy to be subject to the same administrative framework as the Territory's other taxation laws.

**NOTES ON CLAUSES**

**PART 1 – PRELIMINARY MATTERS**

**Clause 1.           Short title**

This is a formal clause which provides for the citation of the Act. When passed, the Act may be referred to as the *Property Activation Act 2019*.

**Clause 2.           Commencement**

This clause provides for the commencement of the Act on 1 July 2019, which is the start of the first financial year in which the levy will apply.

### **Clause 3. Definitions**

Clause 3 contains the defined terms to be used in the *Property Activation Act 2019*.

**Activated** is signposted to the definition contained elsewhere in the Act.

**Building** means a building attached to land. This ensures that non-attached structures, such as caravans, are not buildings for the purposes of this Act. “Building” otherwise takes its ordinary meaning as referring to a substantial structure with a roof and walls, such as a house, shop, office complex, etc.

**Guidelines** is signposted to the definition contained elsewhere in the Act.

**Leviable lot** is signposted to the definition contained elsewhere in the Act.

**Levy** is signposted to the definition contained elsewhere in the Act.

**Levy area** is signposted to the definition contained elsewhere in the Act.

**Lot** is defined consistently with the *Land Title Act 2000*.

**Owner** is defined consistently with the *Land Title Act 2000*.

**Place of residence** means a building or part of a building that may lawfully be used as a place of residence and is suitable for use as a place of residence in the opinion of the Commissioner of Territory Revenue. This definition is consistent with the definition of a “home” in the *First Home Owner Grant Act 2000*.

**Return** is signposted to sections elsewhere in the Act.

**Return Period** means a financial year, or the shorter period that an owner owns a lot, to accommodate the transfer, cessation or creation of lots within a financial year.

**Suitable for occupation** is defined to mean certified under the *Building Act 1993* as suitable for occupation. The definition does not prescribe the type of occupation, and may include residential, commercial or any other kind of occupation, provided such occupation is permitted under the *Building Act 1993*.

**Unoccupied** is signposted to the definition contained elsewhere in the Act.

**Vacant land** is defined to mean a lot that does not contain a building, or part of a building, that is suitable for occupation. This requires there to be a building attached to land and with a relevant certification under the *Building Act 1993*. If a lot only contains non-building structures (such as fences), or buildings that are not attached to land (such as non-attached market stalls), or buildings which are not certified (such as incomplete construction sites), the lot will be considered vacant land.

#### **Clause 4.           Meaning of *activated***

Clause 4 prescribes the manner in which a lot may be activated. Subclause (1) provides that activation is a two-limbed test, that a lot is presented in a way that does not detract from the amenity of any part of the levy area, and is maintained to an adequate standard.

Subclause (2) provides that the guidelines are relevant to determining whether a building or lot is activated. This allows the Commissioner to provide guidance materials to property owners to further explain how activation may be achieved in practice.

Subclause (3) confirms that if an advance opinion is provided by the Commissioner confirming that action proposed by the owner of the lot constitutes activation for the purpose of the Act, the opinion is binding on the Commissioner if the proposal is implemented.

Subclause (4) provides that amenity, in the context of activation, is defined consistently with the *Planning Act 1999*.

#### **Clause 5.           Meaning of *leviable lot***

Clause 5 sets out the types of lots to which the levy may apply.

Subclause (1)(a) provides that vacant land is a leviable lot.

Subclause (1)(b) provides that lots which contain buildings, or parts of buildings, are leviable lots, if a building on the lot has public frontage, is suitable for occupation and is not a place of residence, having regard to the ground level of the building only. This subsection is intended to apply to lots where the building is not separately titled (for example, under the *Unit Titles Act 1975* or the *Unit Title Schemes Act 2009*).

Subclause (1)(c) provides that lots which are within a building or are a part of a building may be leviable lots if the lot has public frontage, is suitable for occupation and is not a place of residence. However, only lots located on the ground level are affected by the subclause. This subclause is intended to apply to lots in buildings which are separately titled, for example under the *Unit Titles Act 1975* or the *Unit Title Schemes Act 2009*.

Subclause (2) ensures that lots which are common property are not leviable lots.

Subclause (3) defines public frontage to mean any frontage to a street or other such area, including arcades within a building and other pathways or public corridors usually open to or used by the public.

## **Clause 6.           Meaning of *unoccupied***

Clause 6 sets out the circumstances in which a lot will be considered unoccupied. Subclause (1) provides that the lot will be considered unoccupied if less than 50 per cent of the occupiable area on the lot is both used and occupied, having regard to the purpose for which the lot, and buildings on the lot, are designed. Occupation in this context refers to physical use and actual occupancy of the occupiable areas of the building, rather than mere notional or passive uses of a building.

This ensures that where a lot contains a building that is partitioned, or where multiple buildings exist on a single lot, the occupied areas must amount, in aggregate, to at least 50 per cent of the total occupiable area of the building, or the building will be considered unoccupied.

Subclauses (2) and (3) set out the method for determining the occupiable area of the lot.

Subclause (2) applies for lots that contain a building which is not divided into more than one title. The subclause provides that the occupiable area of the lot is the aggregate of each building, or part of a building, on the lot that is suitable for exclusive possession, having regard to the ground level of the building(s) only and excluding any area that is a place of residence.

Subclause (3) applies for lots that are within a building or part of a building which are separately titled, provided the lot is located at ground level. The subclause provides that the occupiable area of the lot is the area of the lot that is suitable for exclusive possession.

An area that is suitable for exclusive possession refers to the lettable area of a building or lot, having regard to aspects such as the design and configuration of the building and any fixtures. This term would include all partitioned private leasing spaces, but not include areas such as public walkways or shared public areas in a building.

For example, if a single storey, ground level shopping centre on a single lot is configured with several distinct lettable areas for retail shops, connected by a public pedestrian arcade, the occupiable area would be the sum of the floor spaces of the retail shops not including the walkway. The shopping centre would be considered unoccupied if less than 50 per cent of the area of those shops together (by floor space) is occupied in the manner set out in subclause (1).

Subclause (4) confirms that leasing arrangements are not relevant to determining occupancy under the Act. This is to clarify that occupation looks to the actual use and physical occupation of lots, irrespective of any tenancy or other possession arrangements. That is, occupancy for this Act would not be realised by a mere right to occupy.

Subclause (5) contains an anti-avoidance provision which allows the Commissioner to disregard a superficial occupation if it does not result in actual physical occupancy as required to meet the objective of the Act.

**Clause 7. Relationship with *Taxation Administration Act 2007***

This clause signposts to section 5 of the *Taxation Administration Act 2007*, as amended by Part 7 of this Bill. Section 5 of the *Taxation Administration Act 2007* is amended to include the *Property Activation Act 2019* as a taxation law.

**Clause 8. Application of Act**

Subclause (1) applies the Act to an area defined by regulations.

Subclause (2) ensures land zoned PS (Public Open Space) under a planning scheme as defined in the *Planning Act 1999* is not subject to the Act.

**Clause 9. Act binds Crown**

The Crown will be bound by the new *Property Activation Act 2019*.

**Clause 10. Imposition of levy**

Clause 10 prescribes the lots to which the levy applies.

Subclause (1) provides the levy applies to vacant land and is calculated daily for each day in each return period the lot is not activated.

Subclause (2) provides the levy applies to leviable lots which are not vacant land, provided the lot is both unoccupied and not activated, calculated daily.

Subclause (3) provides the owner of the lot at the time the levy is calculated under this section will be the person liable to pay the levy, when that liability is created under clause 11 and payable under clause 12.

**Clause 11. Amount of levy**

Clause 11 sets out the amount of the levy per return period.

Subclause (1) prescribes the formula for calculating the levy. Although the levy is payable annually (or earlier in the case of a transfer or cessation of a lot), the levy is calculated on a daily basis

for each day the lot meets the criteria in clause 10. This ensures the levy takes into account any changes to the lot during a return period, such as the lot becoming or ceasing to be unoccupied or activated.

The annual rate of the levy is 2 per cent of the lot's unimproved capital value, UCV, for vacant land and 1 per cent for other lots. UCV is defined consistently with the *Valuation of Land Act 1963*. That Act contains provisions dealing with the method of determining the UCV of a lot, including which UCV is appropriate to use on a given day.

Subclause (2) provides an exemption from the levy for a period during which the levy is imposed if the period begins and ends with a period of occupation, and those periods in total span less than 120 days per return period. The exemption does not apply to vacant land, as occupation is only relevant to lots with, or within, buildings that are suitable for occupation.

This exemption essentially provides a grace period to owners who temporarily leave a property unoccupied, for example to allow for a fit-out period between tenancies, for short periods within a return period. For that reason, it does not apply to periods that begin or end with activation or the end of a return period.

## **Clause 12. Payment of levy**

Subclause (1) provides that the owner of a lot at the end of each financial year is required to pay the levy within 30 days after the end of the financial year. As the levy is calculated daily, the owner at the end of the financial year would only be required to pay the levy in respect of the continuous period in that financial year during which they owned the lot, with any prior transfers dealt with under subclause (2)(a) and cessation of lots under (2)(b).

Subclause (2)(a) provides that where an owner transfers a property during a return period, the transferor is required to pay the levy within 30 days after the transfer is registered, for the days in the financial year prior to the transfer during which they owned the lot. Together with subclause (1), this provides that in the case of a transfer, each owner is only liable for the periods during which they owned the lot.

This is consistent with the formula at clause 11, and the imposition of the levy at clause 10.

Subclause (2)(b) applies in circumstances where lots cease to exist. Lots may cease to exist for reasons including a subdivision or consolidation of lots. Where there is a cessation of a lot, the former owner of the ceased lot is required to pay the levy within 30 days after the cessation of the lot.

Subclause (3) clarifies that the liability to pay the levy arises from the other provisions of the Act and is not dependent on an assessment by the Commissioner.

### **Clause 13. Annual return**

Clause 13(1) provides that owners of leviable property at 30 June must lodge a return in respect of the return period.

Subclause (2) provides that the return must be lodged within 30 days after 30 June each financial year, while subclause (3) sets out the requisite particulars of the return.

Subclause (4) contains a general requirement for a return to include all information necessary for the Commissioner to assess the owner's liability to pay the levy. Such information may include supporting evidence to substantiate the nature or degree of occupation or activation, if relevant.

### **Clause 14. Return on transfer of lot**

Clause 14(1) provides that where an owner transfers a lot, the transferor must lodge a return if the lot was a leviable lot at any point in the return period. Subclause (2) provides that the return must be lodged within 30 days after the transfer is registered. Subclause (3) specifies the content of the return.

### **Clause 15. Return on cessation of lot**

Clause 15(1) provides that where a lot ceases to exist, such as due to a subdivision or consolidation of lots, the owner immediately prior to the cessation must lodge a return if the lot was a leviable lot at any point in the return period. Subclause (2) provides that the return must be lodged within 30 days after the cessation. Subclause (3) specifies the content of the return.

### **Clause 16. Overriding statutory charge**



Clause 16 provides that a failure to pay the levy by the due date in relation to a lot becomes a charge over the lot, unless the lot has been transferred to a new owner prior to the due date. The Commissioner has the ability to apply for registration of the charge as an overriding statutory charge as defined in section 4 of the *Land Title Act 2000*.

#### **Clause 17. Opinion about proposal to activate**

Clause 17 provides that an owner of a lot may apply for an advance opinion from the Commissioner in respect of a proposal to activate a lot. An opinion will provide certainty for property owners that their proposed action will, or will not, constitute activation for the purpose of this Act prior to incurring expense.

#### **Clause 18. Guidelines**

The clause provides that the Commissioner may issue either general or specific guidelines in respect of how a lot may be activated for this Act. Such guidelines are relevant to the meaning of activation.

#### **Clause 19. Regulations**

Clause 19 provides the Administrator with a general power to make regulations under this Act.

#### **Clause 20. Initial return**

Clause 20 requires owners of leviable lots to lodge an initial return within 30 days of 1 July 2019 stating the matters at subclause (1), effective at 1 July 2019. This is to facilitate the provision of initial information regarding land types and uses for the administration of the levy.

#### **Clause 21. Grace period**

Clause 21 provides a transitional relief period for owners of vacant land and unoccupied lots who activate their lots by 30 September 2019. Owners who activate in this period will be exempted from the levy for the period from 1 July 2019 to the date of first activation. Owners who receive this exemption are only exempted from the liability to pay the levy. Other requirements, such as the requirement to lodge returns, are not affected by this exemption.

**Clause 22.        Act Amended**

Clause 22 provides that the Act amended by this Part is the *Taxation Administration Act 2007*.

**Clause 23.        Section 3A amended (Taxation law)**

Clause 23 amends the *Taxation Administration Act 2007* to include the *Property Activation Act 2019* as a taxation law, so as to apply the provisions of the *Taxation Administration Act 2007* to that Act.

**Clause 24.        Repeal of Part**

Clause 24 provides that this Part is repealed on the day after it commences.