



Australian Capital Territory

Duties (Personal Relationship Agreements) Amendment Act 2002

2002 No 14

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Australian Capital Territory

Duties (Personal Relationship Agreements) Amendment Act 2002

2002 No 14

An Act to amend the *Duties Act 1999*

*Notified under the Legislation Act 2001 on 23 May 2002
(see www.legislation.act.gov.au)*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Duties (Personal Relationship Agreements) Amendment Act 2002*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

3 Act amended

This Act amends the *Duties Act 1999*.

**4 No double duty
New section 17 (7)**

insert

(7) This section does not apply to a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, 90C or 90D that is binding on the parties under that Act, or to a domestic relationship agreement or termination agreement under the *Domestic Relationships Act 1994*, if:

- (a) the agreement provides for a transfer of dutiable property; and
- (b) the transfer is not exempt from duty under section 74B (Transfers relating to certain personal relationships).

**5 Transfers related to certain personal relationships
Section 72, heading**

substitute

72 Transfer to spouse of interest in principal place of residence

6 Section 72 (1)

omit

7 Section 72 (2)

omit

(2) Duty

substitute

Duty

8 New sections 74A and 74B

insert

74A Financial and other agreements

No duty is chargeable under this chapter on—

- (a) a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, 90C or 90D that is binding on the parties under that Act; or
- (b) a domestic relationship agreement, or a termination agreement, under the *Domestic Relationships Act 1994*.

74B Transfers relating to certain personal relationships

- (1) No duty is chargeable under this chapter on a transfer of dutiable property under—
 - (a) an order of a court under the *Family Law Act 1975* (Cwlth) or the *Married Persons' Property Act 1986*; or
 - (b) any other order of a court for the distribution of property consequent on the end of the relationship between spouses.
- (2) No duty is chargeable under this chapter on a transfer of dutiable property under a financial agreement made under the *Family Law*

Act 1975 (Cwlth), section 90B, 90C or 90D that is binding on the parties under that Act, if—

- (a) the commissioner is satisfied that the transfer is consequent on the dissolution, annulment or irretrievable breakdown of a marriage; and
 - (b) the property is matrimonial property; and
 - (c) the transfer is:
 - (i) to the parties to the marriage, or to either of them; or
 - (ii) to a child or children of either of them, or to a person in trust for the child or children.
- (3) No duty is chargeable under this chapter on a transfer of dutiable property under a domestic relationship agreement, or a termination agreement, under the *Domestic Relationships Act 1994*, if—
- (a) the agreement is in writing and signed by each party; and
 - (b) the agreement is endorsed with, or accompanied by, the certificates mentioned in that Act, section 33 (1) (d) for each party; and
- Note* The certificates relate to independent legal advice about the agreement.
- (c) the commissioner is satisfied that the transfer is consequent on the end of the domestic relationship between the parties; and
 - (d) the property is relationship property; and
 - (e) the transfer is—
 - (i) to the parties to the relationship, or to either of them; or
 - (ii) to a child or children of either of them, or to a person in trust for the child or children.
- (4) For subsection (2) (a), in deciding whether a transfer is consequent on the irretrievable breakdown of a marriage, the commissioner

must have regard to any statutory declaration made by a party to the marriage to the effect that—

- (a) the party intends to apply for dissolution or annulment of the marriage; or
 - (b) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed.
- (5) For subsection (3) (c), in deciding whether a transfer under a domestic relationship agreement is consequent on the end of a relationship, the commissioner must have regard to any statutory declaration made by a party to the relationship to the effect that the relationship has ended.
- (6) Subsections (4) and (5) do not limit the commissioner's powers under the *Taxation Administration Act 1999*, section 82 (Power to require information, instruments or records or attendance for examination).
- (7) For this section:

child means a person under 18 years old.

9 Ch 3 transactions—concessional duty

Section 91 (1) (c) to (f)

substitute

- (c) made by operation of law on the bankruptcy of a person or the winding-up of a company.

10 New part 3.7

insert

Part 3.7 Exemptions—chapter 3 transactions

115H Exempt transactions relating to certain personal relationships

- (1) No duty is chargeable on a chapter 3 transaction made under—
 - (a) an order of a court under the *Family Law Act 1975* (Cwlth) or the *Married Persons' Property Act 1986*; or
 - (b) any other order of a court for the distribution of property consequent on the end of the relationship between spouses.
- (2) No duty is chargeable on a chapter 3 transaction made under a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, 90C or 90D that is binding on the parties under that Act, if—
 - (a) the commissioner is satisfied that the transaction is consequent on the dissolution, annulment or irretrievable breakdown of a marriage; and
 - (b) the property that is the subject of the transaction is matrimonial property; and
 - (c) the parties to the transaction are—
 - (i) the parties to the marriage, or either of them; or
 - (ii) a child or children of either of them, or a trustee for the child or children.
- (3) No duty is chargeable on a chapter 3 transaction made under a domestic relationship agreement, or a termination agreement, under the *Domestic Relationships Act 1994*, if—

-
- (a) the agreement is in writing and signed by each party; and
 - (b) the agreement is endorsed with, or accompanied by, the certificates mentioned in that Act, section 33 (1) (d) for each party; and

Note The certificates relate to independent legal advice about the agreement.

- (c) the commissioner is satisfied that the transaction is consequent on the end of the domestic relationship between the parties; and
 - (d) the property that is the subject of the transaction is relationship property; and
 - (e) the parties to the transaction are—
 - (i) the parties to the relationship, or either of them; or
 - (ii) a child or children of either of them, or a trustee for the child or children.
- (4) For subsection (2) (a), in deciding whether a transaction is consequent on the irretrievable breakdown of a marriage, the commissioner must have regard to any statutory declaration made by a party to the marriage to the effect that—
- (a) the party intends to apply for dissolution or annulment of the marriage; or
 - (b) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed.
- (5) For subsection (3) (c), in deciding whether a transaction under a domestic relationship agreement is consequent on the end of a relationship, the commissioner must have regard to any statutory declaration made by a party to the relationship to the effect that the relationship has ended.
- (6) Subsections (4) and (5) do not limit the commissioner's powers under the *Taxation Administration Act 1999*, section 82 (Power to

require information, instruments or records or attendance for examination).

(7) For this section:

child means a person under 18 years old.

Note For exemptions under pt 3.6, see s 115G.

11 Vehicles transferred under certain court orders and agreements

Section 213

substitute

213 Vehicle registration transfers relating to certain personal relationships

- (1) No duty is chargeable under this chapter on an application to transfer the registration of a motor vehicle following a transfer of property in the vehicle to the applicant under—
 - (a) an order of a court under the *Family Law Act 1975* (Cwlth) or the *Married Persons' Property Act 1986*; or
 - (b) any other order of a court for the distribution of property consequent on the end of the relationship between spouses.
- (2) No duty is chargeable under this chapter on an application to transfer the registration of a motor vehicle following a transfer of property in the vehicle to the applicant under a financial agreement made under the *Family Law Act 1975* (Cwlth), section 90B, 90C or 90D that is binding on the parties under that Act, if—
 - (a) the commissioner is satisfied that the transfer is consequent on the dissolution, annulment or irretrievable breakdown of a marriage; and
 - (b) the vehicle is matrimonial property; and
 - (c) the transfer is—

- (i) to the parties to the marriage, or to either of them; or
 - (ii) to a child or children of either of them, or to a person in trust for the child or children.
- (3) No duty is chargeable under this chapter on an application to transfer the registration of a motor vehicle following a transfer of property in the vehicle to the applicant under a domestic relationship agreement, or a termination agreement, under the *Domestic Relationships Act 1994*, if—
 - (a) the agreement is in writing and signed by each party; and
 - (b) the agreement is endorsed with, or accompanied by, the certificates mentioned in that Act, section 33 (1) (d) for each party; and

Note The certificates relate to independent legal advice about the agreement.

 - (c) the commissioner is satisfied that the transfer is consequent on the end of the relationship between the parties; and
 - (d) the vehicle is relationship property; and
 - (e) the transfer is—
 - (i) to the parties to the relationship, or to either of them; or
 - (ii) to a child or children of either of them, or to a person in trust for the child or children.
- (4) For subsection (2) (a), in deciding whether a transfer is consequent on the irretrievable breakdown of a marriage, the commissioner must have regard to any statutory declaration made by a party to the marriage to the effect that—
 - (a) the party intends to apply for dissolution or annulment of the marriage; or
 - (b) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed.

- (5) For subsection (3) (c), in deciding whether a transfer under a domestic relationship agreement is consequent on the end of a relationship, the commissioner must have regard to any statutory declaration made by a party to the relationship to the effect that the relationship has ended.
- (6) Subsections (4) and (5) do not limit the commissioner's powers under the *Taxation Administration Act 1999*, section 82 (Power to require information, instruments or records or attendance for examination).
- (7) For this section:
child means a person under 18 years old.

12 Objections and review of decisions

New section 252 (1) (ca), (cb), (cc) and (cd)

insert

- (ca) under section 74B (2) (a) that a transfer is not consequent on the dissolution, annulment or irretrievable breakdown of a marriage; or
- (cb) under section 74B (3) (c) that a transfer is not consequent on the end of a domestic relationship; or
- (cc) under section 115H (2) (a) that a transaction is not consequent on the dissolution, annulment or irretrievable breakdown of a marriage; or
- (cd) under section 115H (3) (c) that a transaction is not consequent on the end of a domestic relationship; or

13 New section 252 (1) (oa) and (ob)

insert

- (oa) under section 213 (2) (a) that a transfer is not consequent on the dissolution, annulment or irretrievable breakdown of a marriage; or
- (ob) under section 213 (3) (c) that a transfer is not consequent on the end of a domestic relationship; or

14 Section 252 (1)

renumber paragraphs when Act next republished under Legislation Act 2001

15 Dictionary, new definitions of *marriage* and *matrimonial property*

insert

marriage includes a void marriage.

matrimonial property, of a marriage, means property of the parties to the marriage or of either of them.

16 Dictionary, new definition of *party*

insert

party, to a marriage, includes a person who was a party to a marriage that has been dissolved or annulled, in Australia or elsewhere.

17 Dictionary, new definition of *relationship property*

insert

relationship property, of a domestic relationship, means property of the parties to the relationship or of either of them.

Endnote

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

[Presentation speech made in Assembly on 9 May 2002]

I certify that the above is a true copy of the Duties (Personal Relationship Agreements) Amendment Bill 2002 which was passed by the Legislative Assembly on 16 May 2002.

Clerk of the Legislative Assembly

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