Andrew Barr MLA

ACT Government

Chief Minister
Treasurer
Minister for Social Inclusion and Equality
Minister for Tourism and Special Events
Minister for Trade, Industry and Investment
Member for Kurrajong

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
CANBERRA ACT 2601

Dear Mrs Jones

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) in *Scrutiny Report 47* of 28 July 2020, sought clarification of the retrospective operation of *Taxation Administration (Owner Occupier Duty) COVID-19 Exemption Scheme Determination 2020* ('DI2020-205').

The Committee notes that the explanatory statement has no discussion on the issue of non-prejudicial retrospectivity.

I thank the Committee for its consideration of DI2020-205 and provide the following comments in response, as requested.

The Owner Occupier Duty Exemption Scheme ('Scheme') came into effect on 4 June 2020. It provides relief to owner-occupiers from having to pay stamp duty on the purchase of prescribed new homes for agreements entered into during the period 4 June 2020 to 30 June 2021.

Under the Scheme, no duty is payable for purchases of vacant single residential blocks and off the plan unit (including apartments and townhouses) valued at up to $500,000. For off the plan unit purchases valued between $500,000 and $750,000, a duty exemption of $11,400 will apply.

DI2020-205 exempts new home buyers from paying a substantial amount of stamp duty on their property purchases (up to a total of $11,400). The operation of DI2020-205 is to support housing affordability and to stimulate demand for residential housing, thereby supporting jobs for the residential construction sector, which has been significantly impacted by COVID-19.

DI2020-205 is taken to have commenced on 4 June 2020, to align with the announcement of the initiative. The retrospective commencement of DI2020-205 ensures that eligible buyers did not delay their property purchase decision.

Section 76 (1) of the *Legislation Act 2001* provides that a statutory instrument may commence retrospectively provided it is non-prejudicial, that it does not operate to the disadvantage of a person by adversely affecting the person's rights or imposing liabilities on the person.

Based on the above, I can confirm that the retrospective operation of DI2020-205 is non-prejudicial as it promotes a purpose which will be of overall benefit to the ACT community.

In addition to DI2020-205, I note two other disallowable instruments with retrospective operation have been notified as part of the COVID-19 Construction Sector Recovery Package:

- *Planning and Development (Remission of Lease Variation Charges—Construction Sector Recovery) Determination 2020* ('DI2020-224'); and
- *Planning and Development (Lease Variation Charge Deferred Payment Scheme) Determination 2020* ('DI2020-225').

DI2020-224 provides for a remission of 50% of the lease variation charge ('LVC') payable for developments requiring a lease variation, provided that construction commences on or before 31 March 2021 and that the LVC is deferred from 25 June 2020 until 23 December 2020. DI2020-225 includes a threshold of $1 for LVC subject to the remission, a consequential amendment to allow small developments to access the remission.

The explanatory statements for both instruments include discussions of their retrospectivity. For avoidance of doubt, the retrospective operation of both instruments is non-prejudicial as the remission removes costs associated with development on the land, and the lower threshold ensures small scale developments are not excluded from the remission.

I trust that this response addresses the Committee's concerns.

Yours sincerely

Andrew Barr MLA
Treasurer