



Western Australia

Duties Amendment (Off-the-Plan Concession and Foreign Persons Exemptions) Act 2023

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Duties Amendment (Off-the-Plan Concession and Foreign Persons Exemptions) Act 2023

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Western Australia

Duties Amendment (Off-the-Plan Concession and Foreign Persons Exemptions) Act 2023

No. 29 of 2023

An Act to amend the *Duties Act 2008*.

[Assented to 28 November 2023]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Duties Amendment (Off-the-Plan Concession and Foreign Persons Exemptions) Act 2023*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. Act amended

This Act amends the *Duties Act 2008*.

4. Section 205ZA amended

- (1) Before section 205ZA(1) insert:

(1A) In this section —

substantial refurbishment does not include minor works to a building or part of a building.

- (2) Delete section 205ZA(2)(a) and (b) and insert:

- (a) the person liable to pay foreign transfer duty on the transaction or an associate of the person intends to —
 - (i) construct or complete the construction of 10 or more dwellings on the parcel of land; or

- (ii) provide 10 or more dwellings on the parcel of land by carrying out, or completing the carrying out of, substantial refurbishment of a building, or part of a building, that is not capable of being used solely or dominantly as a place of residence;

and

(3) In section 205ZA(3):

- (a) in paragraph (a) delete “construct,” and insert:

construct —

- (b) delete paragraphs (b) and (c) and insert:

- (b) a dwelling the person or associate intends to provide by carrying out substantial refurbishment of a building, or part of a building — if all licences, approvals, registrations, exemptions and other kinds of authorisation necessary to carry out the refurbishment for that dwelling or another dwelling on the parcel of land are issued, granted or obtained; or
- (c) a dwelling the person or associate intends to complete the construction of — if that dwelling or another dwelling on the parcel of land, construction of which is completed by the person or associate, is ready for occupation as a place of residence; or
- (d) a dwelling the person or associate intends to provide by completing the carrying out of substantial refurbishment of a building, or part

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of a building — if that dwelling, or another dwelling on the parcel of land for which substantial refurbishment is completed by the person or associate, is ready for occupation as a place of residence.

5. Section 205ZB amended

Delete section 205ZB(2)(a).

6. Section 205ZO amended

(1) Before section 205ZO(1) insert:

(1A) In this section —

substantial refurbishment does not include minor works to a building or part of a building.

(2) Delete section 205ZO(1)(a) and (b) and insert:

- (a) when the acquisition occurs the residential landholder or a linked entity in respect of the landholder is entitled to a parcel of land and the landholder, linked entity or an associate of the landholder intends to —
- (i) construct or complete the construction of 10 or more dwellings on the parcel of land; or
 - (ii) provide 10 or more dwellings on the parcel of land by carrying out, or completing the carrying out of, substantial refurbishment of a building, or part of a building, that is not capable

of being used solely or dominantly as a place of residence;

and

(3) In section 205ZO(2):

(a) in paragraph (a) delete “construct,” and insert:

construct —

(b) delete paragraphs (b) and (c) and insert:

(b) a dwelling the landholder, linked entity or associate intends to provide by carrying out substantial refurbishment of a building, or part of a building — if all licences, approvals, registrations, exemptions and other kinds of authorisation necessary to carry out the refurbishment for that dwelling or another dwelling on the parcel of land are issued, granted or obtained; or

(c) a dwelling the landholder, linked entity or associate intends to complete the construction of — if that dwelling or another dwelling on the parcel of land, construction of which is completed by the landholder, linked entity or associate, is ready for occupation as a place of residence; or

(d) a dwelling the landholder, linked entity or associate intends to provide by completing the carrying out of substantial refurbishment of a building, or part of a building — if that dwelling, or another dwelling on the parcel of land for which substantial refurbishment is completed by the landholder, linked entity or

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associate, is ready for occupation as a place of residence.

7. Section 205ZP amended

Delete section 205ZP(1)(a) and (b) and insert:

- (a) when the acquisition occurs, the residential landholder or a linked entity in respect of the landholder is entitled to a parcel of land and the landholder, linked entity or an associate of the landholder intends to subdivide or complete subdividing the parcel of land for the purpose of a person constructing 10 or more dwellings on the land; and

8. Chapter 6A inserted

After section 266D insert:

Chapter 6A — Off-the-plan concession for transfer duty and foreign transfer duty

266E. Terms used

In this Chapter —

cancelled transaction has the meaning given in section 107(1);

community titles (building) scheme has the meaning given in the *Community Titles Act 2018* section 11(7);

concessional off-the-plan agreement means —

- (a) a concessional pre-construction agreement; or
- (b) a concessional under construction agreement;

concessional pre-construction agreement has the meaning given in section 266F;

concessional under construction agreement has the meaning given in section 266FA;

concession amount, for a concessional off-the-plan agreement, means the concession amount for the agreement determined under sections 266L to 266N;

concession day, in relation to a concessional off-the-plan agreement, has the meaning given in section 266H;

dutiable value has the meaning given in section 9;

lot —

- (a) in relation to a strata scheme — means a lot in a strata scheme as defined in the *Strata Titles Act 1985* section 3(1); or
- (b) in relation to a community titles (building) scheme — has the meaning given in the *Community Titles Act 2018* section 3(1);

multi-tiered scheme means a strata scheme or a community titles (building) scheme, other than a strata scheme or community titles (building) scheme in which no part of a floor of a lot or part of a lot in a building forms or joins the ceiling of another lot or part of a lot in a building;

new residential unit or apartment has the meaning given in section 266G(1) and (2);

Off-the-Plan Duty Rebate Scheme means the administrative scheme for the payment of rebates on duty known as the Off-the-Plan Duty Rebate Scheme;

replacement transaction, in relation to a cancelled transaction, has the meaning given in section 107(1);

strata scheme has the meaning given in the *Strata Titles Act 1985* section 9;

subsale transaction, in relation to a cancelled transaction, has the meaning given in section 107(1);

unadjusted duty amount, in relation to a concessional off-the-plan agreement, has the meaning given in section 266I.

266F. Concessional pre-construction agreement

- (1) An agreement for the transfer of dutiable property is a *concessional pre-construction agreement* if the agreement is —
 - (a) an agreement for the purchase, from the owner of land to be subdivided by the registration of a multi-tiered scheme or an amendment of a multi-tiered scheme, of a lot in the scheme on which there will be a new residential unit or apartment; and
 - (b) entered into before development for the subdivision commences; and
 - (c) entered into in the period beginning on 23 October 2019 and ending on 30 June 2025.
- (2) An agreement (the *new agreement*) for the transfer of dutiable property is also a *concessional pre-construction agreement* if the new agreement is —
 - (a) an agreement for the purchase, from the owner of land to be subdivided by the registration of a multi-tiered scheme or an amendment of a multi-tiered scheme, of a lot in the scheme on which there will be a new residential unit or apartment; and
 - (b) substantially similar in effect to an earlier cancelled transaction that —
 - (i) was a concessional pre-construction agreement under subsection (1); and

- (ii) was between all of the same parties as the parties to the new agreement, except that the seller was different;
 - and
 - (c) entered into after development for the subdivision commences, but before development for the subdivision is completed.
- (3) Despite subsections (1) and (2), an agreement (the ***relevant agreement***) to which either of those subsections applies is not a ***concessional pre-construction agreement*** —
- (a) if a rebate has been paid in relation to the relevant agreement under the Off-the-Plan Duty Rebate Scheme; or
 - (b) if —
 - (i) development for the subdivision of the land by the registration of the multi-tiered scheme, or the amendment of the multi-tiered scheme, is completed before 31 August 2023; and
 - (ii) the eligibility criteria for payment of a rebate under the Off-the-Plan Duty Rebate Scheme are not satisfied in relation to the relevant agreement;
- or
- (c) if the relevant agreement is a replacement transaction in relation to a cancelled transaction; or
 - (d) if the relevant agreement is a subsale transaction in relation to a cancelled transaction that was a concessional pre-construction agreement; or

- (e) if —
 - (i) the relevant agreement is between all of the same parties as the parties to, and is substantially similar in effect to, an earlier cancelled transaction; and
 - (ii) in the opinion of the Commissioner, the sole or dominant purpose of any party in entering into the relevant agreement is to obtain a rebate, or a higher amount of rebate, under the Off-the-Plan Duty Rebate Scheme;

or

- (f) if the relevant agreement is substantially similar in effect to an earlier cancelled transaction that —
 - (i) was between all of the same parties as the parties to the relevant agreement, except that the seller was different; and
 - (ii) was entered into before 23 October 2019.
- (4) For the purposes of subsection (3)(b)(ii), the eligibility criteria for payment of a rebate under the Off-the-Plan Duty Rebate Scheme are taken to be the criteria set out in the application form entitled “Form FDA49 — Off-the-Plan Rebate: Pre-construction Contract” as published on the Commissioner’s website on 31 August 2023.
- (5) The Commissioner must ensure that the form referred to in subsection (4) remains published on the Commissioner’s website.

266FA. Concessional under construction agreement

- (1) An agreement for the transfer of dutiable property is a ***concessional under construction agreement*** if the agreement is —
 - (a) an agreement for the purchase, from the owner of land to be subdivided by the registration of a multi-tiered scheme or an amendment of a multi-tiered scheme, of a lot in the scheme on which there will be a new residential unit or apartment; and
 - (b) entered into after development for the subdivision commences, but before development for the subdivision is completed; and
 - (c) entered into in the period beginning on 31 August 2023 and ending on 30 June 2025.
- (2) An agreement (the ***new agreement***) for the transfer of dutiable property is also a ***concessional under construction agreement*** if —
 - (a) subsection (1)(a) and (b) apply to the new agreement; and
 - (b) the new agreement is substantially similar in effect to an earlier cancelled transaction that —
 - (i) was a concessional under construction agreement under subsection (1); and
 - (ii) was between all of the same parties as the parties to the new agreement, except that the seller was different.
- (3) Despite subsections (1) and (2), an agreement (the ***relevant agreement***) to which either of those subsections applies is not a ***concessional under construction agreement*** if the relevant agreement is —

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- (a) a concessional pre-construction agreement to which section 266F(2) applies; or
- (b) a replacement transaction in relation to a cancelled transaction; or
- (c) a subsale transaction in relation to a cancelled transaction that was a concessional off-the-plan agreement; or
- (d) substantially similar in effect to an earlier cancelled transaction that —
 - (i) was between all of the same parties as the parties to the relevant agreement, except that the seller was different; and
 - (ii) was entered into before 31 August 2023.

266G. New residential unit or apartment

- (1) For the purposes of sections 266F(1)(a) and (2)(a) and 266FA(1)(a), a ***new residential unit or apartment*** is a building, or part of a building, that —
 - (a) may lawfully be used as a place of residence; and
 - (b) in the Commissioner’s opinion, is suitable to be used as a place of residence; and
 - (c) is intended to be used solely or dominantly as a place of residence; and
 - (d) is not an existing building or part of an existing building.
- (2) Despite subsection (1), a building or part of a building is not a ***new residential unit or apartment*** if it is —
 - (a) intended to be used as a hotel, motel, hostel, lodging house, boarding house or serviced apartment; or
 - (b) of a prescribed class.

- (3) For the purposes of subsection (1)(d), an **existing building** is a building that has already been constructed when development for the subdivision referred to in section 266F(1)(a) or (2)(a) or 266FA(1)(a) (as the case requires) commences, whether or not refurbishment of the building is undertaken as part of that development.

266H. Concession day for agreement

- (1) The **concession day** for a concessional off-the-plan agreement is —
- (a) if subsection (2) does not apply — the day on which the agreement is entered into; or
 - (b) if subsection (2) applies — the day on which the cancelled transaction referred to in subsection (2) is entered into.
- (2) This subsection applies to a concessional off-the-plan agreement (the **new agreement**) if the new agreement is substantially similar in effect to an earlier cancelled transaction that —
- (a) was —
 - (i) if the new agreement is a concessional pre-construction agreement — a concessional pre-construction agreement under section 266F(1); or
 - (ii) if the new agreement is a concessional under construction agreement — a concessional under construction agreement under section 266FA(1);
- and
- (b) was between all of the same parties as the parties to the new agreement, except that the seller was different.

- (3) If there is more than 1 cancelled transaction of the kind referred to in subsection (2) in relation to a concessional off-the-plan agreement, the reference in subsection (1)(b) to the cancelled transaction is a reference to the earliest of those cancelled transactions.

266I. Unadjusted duty amount for agreement

The *unadjusted duty amount* for a concessional off-the-plan agreement is —

- (a) if foreign transfer duty is not payable on the agreement — the amount of transfer duty that would be payable on the agreement if it were not a concessional off-the-plan agreement; or
- (b) if foreign transfer duty is payable on the agreement — the total amount of transfer duty and foreign transfer duty that would be payable on the agreement if it were not a concessional off-the-plan agreement.

266J. Determining when development for subdivision of land commences and is completed

- (1) This section applies in determining for the purposes of this Chapter when development for the subdivision of land by the registration of a multi-tiered scheme, or an amendment of a multi-tiered scheme, commences and is completed.
- (2) Development commences when relevant construction works commence on the land.
- (3) In subsection (2) —
relevant construction works —
 - (a) means excavation or works associated with the construction of a building or structure that is necessary for the subdivision; but

- (b) does not include excavation or works consisting of —
 - (i) demolishing an existing building or structure; or
 - (ii) clearing a site for development; or
 - (iii) installing temporary fencing or structures, transportable buildings or advertising materials.
- (4) Development is completed when the land is subdivided by registration of the multi-tiered scheme, or the amendment of the multi-tiered scheme, under the *Strata Titles Act 1985* section 11 or the *Community Titles Act 2018* section 14 (as the case requires).

266K. Reduction of duty on concessional off-the-plan agreement

- (1) The amount of transfer duty and (if applicable) foreign transfer duty payable on a concessional off-the-plan agreement is to be reduced by the concession amount for the agreement in accordance with this section.
- (2) If foreign transfer duty is not payable on the agreement, the amount of transfer duty payable on the agreement is to be reduced by the concession amount.
- (3) If foreign transfer duty is payable on the agreement, the duty payable is to be reduced as follows —
 - (a) first, the amount of transfer duty payable on the agreement is to be reduced by the concession amount, or by so much of the concession amount as is necessary to reduce the amount of transfer duty payable to zero;
 - (b) second, if there is a remainder of the concession amount after the amount of transfer duty payable is reduced to zero — the foreign

transfer duty payable on the agreement is to be reduced by the remainder.

266L. Concession amount

- (1) Subject to sections 266M(2) and 266N(2)(b), the concession amount for a concessional pre-construction agreement is the lesser of the following —
 - (a) \$50 000;
 - (b) an amount calculated by —
 - (i) determining the applicable concession percentage under the Table according to the concession day of the agreement and the dutiable value of the agreement; and
 - (ii) multiplying that percentage by the unadjusted duty amount for the agreement.

Table

Item	Concession day	Dutiable value	Concession percentage (%)
1.	23 October 2019 to 23 October 2021	Any dutiable value	75
2.	24 October 2021 to 31 May 2022	Any dutiable value	50
3.	1 June 2022 to 10 May 2023	\$500 000 or less	100
4.	1 June 2022 to 10 May 2023	More than \$500 000 but less than \$600 000	X calculated under subsection (2)

Item	Concession day	Dutiable value	Concession percentage (%)
5.	1 June 2022 to 10 May 2023	\$600 000 or more	50
6.	11 May 2023 to 30 June 2025	\$650 000 or less	100
7.	11 May 2023 to 30 June 2025	More than \$650 000 but less than \$750 000	Y calculated under subsection (3)
8.	11 May 2023 to 30 June 2025	\$750 000 or more	50

- (2) The calculation for the purposes of item 4 in the Table to subsection (1) is as follows —

$$X = 100 - \left(\frac{V - 500\,000}{100} \times 0.05 \right)$$

where —

V is the dutiable value of the concessional pre-construction agreement.

- (3) The calculation for the purposes of item 7 in the Table to subsection (1) is as follows —

$$Y = 100 - \left(\frac{V - 650\,000}{100} \times 0.05 \right)$$

where —

V is the dutiable value of the concessional pre-construction agreement.

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- (4) Subject to sections 266M(2) and 266N(2)(b), the concession amount for a concessional under construction agreement is the lesser of the following —
- (a) \$50 000;
 - (b) an amount calculated by —
 - (i) determining the applicable concession percentage under the Table according to the dutiable value of the agreement; and
 - (ii) multiplying that percentage by the unadjusted duty amount for the agreement.

Table

Item	Dutiable value	Concession percentage (%)
1.	\$650 000 or less	75
2.	More than \$650 000 but less than \$750 000	Z calculated under subsection (5)
3.	\$750 000 or more	37.5

- (5) The calculation for the purposes of item 2 in the Table to subsection (4) is as follows —

$$Z = 75 - \left(\frac{V - 650\,000}{100} \times 0.0375 \right)$$

where —

V is the dutiable value of the concessional under construction agreement.

266M. Concession amount for concessional off-the-plan agreement relating to 2 or more properties

- (1) This section applies to a concessional off-the-plan agreement that is an agreement for the purchase of 2 or more lots (the *relevant properties*) in a multi-tiered scheme, on each of which there will be a new residential unit or apartment.
- (2) The concession amount for the concessional off-the-plan agreement is the total of the concession amounts for each of the relevant properties determined under subsection (3).
- (3) The concession amounts for the relevant properties are determined as follows —
 - (a) first, apportion the dutiable value of the concessional off-the-plan agreement between each of the relevant properties as decided by the Commissioner;
 - (b) second, apportion the unadjusted duty amount for the agreement between each of the relevant properties according to the proportion that the dutiable value apportioned to that relevant property under paragraph (a) bears to the dutiable value of the agreement;
 - (c) third, determine a concession amount for each of the relevant properties under section 266L as if —
 - (i) that relevant property were the subject of a separate concessional pre-construction agreement or concessional under construction agreement (whichever is relevant); and

- (ii) the dutiable value of that agreement were the amount apportioned to that relevant property under paragraph (a); and
- (iii) the unadjusted duty amount for that agreement were the amount apportioned to that relevant property under paragraph (b).

266N. Aggregation of transactions

- (1) Subsection (2) applies if under section 37 —
 - (a) 2 or more concessional off-the-plan agreements are aggregated and treated as a single dutiable transaction; or
 - (b) 1 or more concessional off-the-plan agreements and 1 or more other dutiable transactions are aggregated and treated as a single dutiable transaction.
- (2) In determining the duty payable on the aggregated transactions —
 - (a) first, under section 37, determine and apportion between the aggregated transactions the amount of transfer duty that would be payable on the aggregated transactions if none of the transactions were a concessional off-the-plan agreement;
 - (b) second, determine a concession amount under section 266L (or, if applicable, sections 266L and 266M) for each of the concessional off-the-plan agreements, treated as a separate transaction, as if the unadjusted duty amount for the agreement were —
 - (i) if foreign transfer duty is not payable on the agreement — the amount (the

apportioned transfer duty amount) of transfer duty apportioned to the agreement as referred to in paragraph (a); or

- (ii) if foreign transfer duty is payable on the agreement — the total of the apportioned transfer duty amount and the amount of foreign transfer duty that would be payable on the agreement if it were not a concessional off-the-plan agreement;
 - (c) third, for each of the concessional off-the-plan agreements, reduce in accordance with section 266K the amount of transfer duty and (if applicable) foreign transfer duty payable by the concession amount for that agreement determined under paragraph (b), as if the amount of transfer duty payable on the agreement were the apportioned transfer duty amount.
- (3) A concessional off-the-plan agreement is not an exempt transaction for the purposes of section 37(3)(c) solely because the transfer duty payable on the agreement is reduced to zero under this Chapter.

266O. Application for off-the-plan concession

- (1) An application for assessment or reassessment of the liability to duty of a concessional off-the-plan agreement under this Chapter must be made in the approved form no later than 12 months after the day on which the agreement is completed.

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- (2) For the purposes of this Chapter, the Taxation Administration Act section 17 applies as if —
- (a) despite subsection (1) of that section, a taxpayer is not entitled to apply for a reassessment of the liability to duty of a concessional off-the-plan agreement under this Chapter more than 12 months after the day on which the agreement is completed; and
 - (b) despite subsection (4) of that section, the Commissioner can make a reassessment of the liability to duty of a concessional off-the-plan agreement under this Chapter on an application by a taxpayer only if the application was made within that time.

9. Schedule 3 Division 12 inserted

At the end of Schedule 3 insert:

Division 12 — Provisions for *Duties Amendment (Off-the-Plan Concession and Foreign Persons Exemptions) Act 2023*

75. Terms used

In this Division —

commencement day means the day on which the *Duties Amendment (Off-the-Plan Concession and Foreign Persons Exemptions) Act 2023* section 3 comes into operation.

76. Provisions relating to amendments to Chapter 3A

(1) In this clause —

amended exemption provisions means sections 205ZA, 205ZB, 205ZO and 205ZP, as amended by the *Duties*

Amendment (Off-the-Plan Concession and Foreign Persons Exemptions) Act 2023 sections 4 to 7;

relevant exempt transaction or acquisition means a foreign dutiable transaction or an acquisition that meets the requirements for an exemption under an amended exemption provision if the transaction or acquisition occurs —

- (a) on or after 1 January 2023; or
 - (b) before 1 January 2023 if —
 - (i) in the case of a transaction to which section 205ZA applies — the requirement in section 205ZA(2)(c) becomes satisfied on or after that day; or
 - (ii) in the case of a transaction to which section 205ZB applies — the requirement in section 205ZB(2)(c) becomes satisfied on or after that day; or
 - (iii) in the case of an acquisition to which section 205ZO applies — the requirement in section 205ZO(1)(c) becomes satisfied on or after that day; or
 - (iv) in the case of an acquisition to which section 205ZP applies — the requirement in section 205ZP(1)(c) becomes satisfied on or after that day.
- (2) The amended exemption provisions apply to the imposition of duty on a relevant exempt transaction or acquisition, even if the transaction or acquisition occurred before commencement day.
- (3) If an assessment of duty payable on a relevant transaction or acquisition was made before commencement day, the Commissioner may, on application or on the Commissioner's own initiative, reassess the duty payable on the transaction or acquisition in accordance with the amended exemption provisions.

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- (4) Despite whichever of sections 205ZA(5), 205ZB(3), 205ZO(4) and 205ZP(2) is applicable, an application for reassessment referred to in subclause (3) may be made in the approved form on or before the later of the following —
 - (a) the day on or before which the application would, but for this subclause, be required to be made under section 205ZA(5), 205ZB(3), 205ZO(4) or 205ZP(2) (whichever is applicable);
 - (b) the last day of the period of 12 months beginning on commencement day.
- (5) Subclauses (3) and (4) apply despite the Taxation Administration Act section 17.
- (6) For the purposes of this clause, when an acquisition occurs is to be determined under section 176 as applied by section 205ZE(1).

77. Provisions relating to Chapter 6A

- (1) If a term used in this clause is given a meaning in section 266E, it has the same meaning in this clause.
- (2) Chapter 6A applies to the imposition of duty on a concessional pre-construction agreement even if the agreement was entered into in the period beginning on 23 October 2019 and ending immediately before commencement day.

Notes for this subclause:

1. An agreement entered into before 23 October 2019 is not a concessional pre-construction agreement under section 266F.
2. Under section 266F(3), certain agreements are excluded from being concessional pre-construction agreements, including —
 - (a) agreements in relation to which a rebate has been paid under the Off-the-Plan Duty Rebate Scheme (see section 266F(3)(a)); and

- (b) agreements that were not eligible for a rebate under the Off-the-Plan Duty Rebate Scheme where development for the relevant subdivision of land is completed before 31 August 2023 (see section 266F(3)(b)).
- (3) Chapter 6A applies to the imposition of duty on a concessional under construction agreement even if the agreement was entered into in the period beginning on 31 August 2023 and ending immediately before commencement day.

Note for this subclause:

An agreement entered into before 31 August 2023 is not a concessional under construction agreement under section 266FA.

- (4) If an assessment of duty payable on a concessional off-the-plan agreement was made before commencement day, the Commissioner may, on application or on the Commissioner's own initiative, reassess the duty payable on the agreement in accordance with Chapter 6A.
- (5) Despite section 266O, an application for reassessment referred to in subclause (4) may be made in the approved form on or before the later of the following —
 - (a) the last day of the period that applies under section 266O(1);
 - (b) the last day of the period of 12 months beginning on commencement day.
- (6) Subclauses (4) and (5) apply despite the Taxation Administration Act section 17.

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