



COMMISSIONER'S PRACTICE

DA 10.0

DUTIES – CONDITIONAL AGREEMENTS – TIMBER PEST PRE-PURCHASE REPORTS (WHITE ANT CERTIFICATES)

This Commissioner's practice outlines the assessment practice in relation to agreements for the transfer of dutiable property that are conditional on the receiving of a pre-purchase report relating to timber pest presence or damage.

Background

Section 87(1) of the *Duties Act 2008* ('Duties Act') defines a *conditional agreement* as an agreement for the transfer of dutiable property where:

- (a) completion of the agreement is conditional on the happening of one or more of the events described in section 87(2) and specified in an instrument effecting or evidencing the agreement; and
- (b) the parties to the agreement do not have control over the happening of the event, except to the extent that they are required under the agreement to use their best endeavours to secure the happening of the event; and
- (c) no other person who is related to a party to the agreement has control over the happening of the event.

Section 87(2)(c) of the Duties Act defines an event as including:

"the obtaining by the purchaser under the agreement of a satisfactory building inspection, geotechnical or environmental report from a third party in relation to the property the subject of the agreement".

Commissioner's Practice

1. Many agreements for the transfer of real property include conditions such as the obtaining of a 'Timber Pest Pre-Purchase Report', a 'White Ant Clearance Certificate', or similar. Such a report would fit within the definition of an event as set out in section 87(2)(c). However, as the parties to the agreement have control over the obtaining of the report, the condition does not qualify the agreement as a *conditional agreement*.
2. While the condition referred to in paragraph 1 does not qualify the agreement as a *conditional agreement*, the agreement may contain other conditions (e.g. subject to finance, subject to authorisation of the payment of a first home owner grant) that do qualify it as a conditional agreement.

Date of Effect

This Commissioner's Practice takes effect from 1 July 2008.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

1 July 2008

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
DA 10.0	1 July 2008	1 July 2008	3 January 2015