



## **COMMISSIONER'S PRACTICE DA 23.0**

### **DUTIES – LANDHOLDER DUTY – RELATED PERSONS**

#### **Commissioner's Practice History**

<b>Commissioner's Practice</b>	<b>Issued</b>	<b>Dates of effect</b>	
		<b>From</b>	<b>To</b>
DA 23.0	15 July 2011	1 July 2008	15 December 2016

This Commissioner's practice outlines the factors the Commissioner will consider when determining if persons or entities are related persons within the meaning of section 162(1)(h) or (i) of the *Duties Act 2008* ("Duties Act").

#### **Background**

Chapter 3 of the Duties Act imposes duty in respect of a relevant acquisition of an interest in an entity that is a landholder.

Sections 163 and 164 of the Duties Act define when an acquisition by a person of an interest in an entity is a relevant acquisition. For the purpose of determining if an acquisition is a relevant acquisition, consideration is given to any interest in the entity that is held by a person related to the person making the acquisition.

Section 162(1) of the Duties Act lists the persons or entities that are related persons for the purposes of sections 163 and 164 of the Duties Act.

Paragraph (h) of section 162(1) provides that persons or entities that acquire interests in a landholder by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions, are related persons.

Paragraph (i) of section 162(1) provides that persons or entities that acquire interests in a landholder by virtue of acquisitions that arise from those persons or entities acting in concert with each other, are related persons.

### Substantially One Transaction or One Series of Transactions

When determining whether acquisitions form or arise from substantially one transaction or one series of transactions, guidance can be drawn from several decisions of the Australian Courts.

#### *Essential unity of transactions*

In *Jeffrey v Commissioner of Stamps (SA)* (1980) 23 SASR 398; 10 ATR 638 Jacobs J considered that for two or more acquisitions to form or arise from substantially one transaction or series of transactions they require “some essential unity, some oneness, some unifying factor.”

#### *Interdependence of transactions*

“Interdependence of transactions” refers to the circumstance where a person will not acquire an item of property without also acquiring a second item of property. Similarly, if one person will not complete a transaction without another person completing a different transaction, the transactions are considered to be interdependent.

#### *No requirement for purchasers or vendors to be the same*

If there are other factors present to suggest the acquisitions arise from substantially one transaction or one series of transactions, it is not necessary for the vendors or the purchasers to be the same, or related, persons.

#### Acting in Concert

The phrase “acting in concert” is not defined in the Duties Act. At common law, the phrase is generally interpreted as involving knowing conduct, the result of communication between the parties, and not merely actions occurring contemporaneously: *Tillmanns Butcheries Pty Ltd v Australian Meat Industry Employees’ Union* (1979) 42 FLR 331.

In *Adsteam Building Industries Pty Ltd v Queensland Cement and Lime Company Ltd (No 4)* [1985] 1 Qd R 127 McPherson J held that it was not possible for persons to act in concert unless there was at least an understanding between them as to their common purpose or object.

The understanding can be informal and unenforceable, and may be inferred from the circumstances surrounding the transaction and from what the parties have done as well as by direct evidence: *Bank of Western Australia v Ocean Trawlers Pty Ltd and Others* (1995) 16 ACSR 501.

#### Application of Other Commissioner’s Practices

Commissioner’s Practice DA 2 sets out the practice to be followed when determining whether persons who acquire interests in a landholder under a public float or public offering are not related persons for the purposes of sections 163 and 164 of the Duties Act.

Commissioner's Practice DA 24 outlines the factors the Commissioner will consider in deciding whether to exercise his discretion under section 162(2) of the Duties Act to determine whether any persons (apart from related corporations) are not related, for the purposes of determining if a relevant acquisition has occurred.

## **Commissioner's Practice**

### *Substantially One Transaction or One Series of Transactions*

1. Factors relevant to determining whether acquisitions together form or arise from substantially one transaction or one series of transactions include, but are not limited to:
  - 1.1 the existence of any agreement, arrangement or understanding between any of the persons relating to the acquisitions or employment of the interests in the landholder;
  - 1.2 the extent to which one acquisition was dependent upon another acquisition, whether expressly stated or not;
  - 1.3 the extent to which the acquisitions were negotiated independently or not;
  - 1.4 the extent to which the persons from whom the interests were acquired are the same or related persons or entities;
  - 1.5 whether the interests were used together before the acquisitions;
  - 1.6 whether the interests being acquired are to be used interdependently and for a common purpose; and
  - 1.7 whether any interests previously held by the acquirers are or were used interdependently and for a common purpose.

### *Acting in Concert*

2. When considering if persons or entities are related persons under section 162(1)(i) of the Duties Act as a result of them acting in concert, the Commissioner will consider the extent to which there was an understanding between the persons or entities relating to the acquisitions of the interests in the landholder by reference to:
  - 2.1 the circumstances surrounding the transaction;
  - 2.2 the persons' actions;
  - 2.3 any communications between the persons; and
  - 2.4 other facts and circumstances considered appropriate by the Commissioner.

3. The Commissioner will consider two or more persons or entities to be acting in concert where there is direct or indirect communication between the parties which shows an understanding (either in writing or orally) between those parties as to a common purpose or object relating to the acquisitions of the interests in the landholder.
4. Persons or entities may be acting in concert with each other in respect of the acquisitions of their interests in the landholder even if they have acquired, and will employ, their interests independently and not for a common purpose.

**Date of Effect**

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

Bill Sullivan  
COMMISSIONER OF STATE REVENUE

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