

State Revenue Legislation Further Amendment Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Duties Act 1997* as follows:

(a) The criteria for eligibility for the First Home Plus stamp duty concession for first home buyers will be clarified in their application to vacant land by:

(i) removing the criteria relating to a required period of residency in the home after its completion and relying on the Chief Commissioner being satisfied that the applicant will build a home on the land and reside in it, and

(ii) preventing a new home buyer obtaining the concession twice (once in relation to vacant land and once in relation to an existing dwelling) by providing that a person can only receive the concession once. See Schedule 1 [2]–[5].

(b) The operation of the new Premium Property Duty (which is applicable to residential property sold for more than \$3 million) will be clarified so that where a transaction involves more than one property that is sold for over \$3 million, the premium property duty rate will only apply to that part of the consideration for each property that exceeds \$3 million. See Schedule 1 [1].

(c) The limitations on the kinds of conservation agreements under the *National Parks and Wildlife Act 1974* that qualify land for exemption from the new vendor duty will be removed, so that any conservation agreement under that Act will qualify for exemption. The exemption will also be extended to land the subject of a registered trust agreement under the *Nature Conservation Trust Act 2001*. See Schedule 1 [15] and [16].

(d) The application of certain purchaser duty provisions to the determination of dutiable value of dutiable property for the purposes of vendor duty will be clarified. See Schedule 1 [6].

(e) The vendor duty concession for sale of a former principal place of residence (under which a home owner can be treated as still living in the former residence during a period of absence of up to 6 years) will be clarified so that a home owner will not be able to count any period of deemed occupation of the former residence as a period of occupation of any other residence for vendor duty concession purposes. See Schedule 1 [25] and [26].

(f) The vendor duty concession that applies to the sale of a former principal place of residence within 6 months of ceasing to occupy the residence will be broadened so that:

(i) the Chief Commissioner will be able to extend the period of 6 months if satisfied that there is good reason for doing so, and

(ii) an owner who ceased occupation within 6 months before 1 June 2004 (the commencement of the vendor duty provisions) will get the concession if they sell within 6 months after 1 June 2004. See Schedule 1 [22] and [24].

(g) The vendor duty exemption that applies to the sale of a principal place of residence will be tightened so that the exemption will not apply unless at least 50% of the ownership interest is held by one or more natural persons who reside in the home as their principal place of residence. The Bill will

also remove a restriction that prevents the principal place of residence exemption applying where any of the vendors is not a natural person (which is made redundant by the requirement for at least 50% ownership by a natural person residing in the home). See Schedule 1 [7] and [8].

(h) The operation of the 12% increase in value test for vendor duty will be clarified so that where several interests in a single dutiable property are purchased over time and the interests are sold together, the test will be applied separately to each of the several interests. See Schedule 1 [9] and [10].

(i) The vendor duty exemption for new and substantially new buildings will be revised to:

(i) make it clear that the concession for buildings unoccupied before sale only applies where the building has never been occupied before sale, and

(ii) provide the Chief Commissioner with a discretion to allow the concession for new buildings constructed for residential purposes that have never been occupied for residential purposes before sale (even if occupied before sale for other purposes, such as display homes), and

(iii) provide that the concession only applies once (to the first sale after completion of the building), including in the case of "off the plan" sales of new buildings, and

(iv) provide certainty as to when construction of a building is completed by linking completion to the issue of a local council occupation certificate. See Schedule 1 [11].

(j) The vendor duty exemption for improved vacant land will be revised by requiring the improvements to have been made at the vendor's expense. See Schedule 1 [12].

(k) The operation of the vendor duty exemptions for transactions and entities that are the subject of exemptions and concessions for ad valorem purchaser duty will be revised to clarify their operation and provide that an exemption from vendor duty does not apply to persons selling to exempt or concessional entities. See Schedule 1 [17], [18] and [20].

(l) The vendor duty concession that applies to the sale of the principal place of residence of a person within 12 months after their death will be revised so that:

(i) the 12 months will start from the grant of probate or letters of administration (rather than the date of death), and

(ii) if probate or letters of administration were granted before 1 June 2004, the 12 months will date from 1 June 2004. See Schedule 1 [22] and [27].

(m) The operation of the vendor duty concession that applies to the sale of the principal place of residence of a deceased person following the termination of a life estate created on the death of the person will be clarified to provide that on the termination of the life estate, the executor or beneficiary has a further 12 months to sell the property. See Schedule 1 [28].

(n) A new vendor duty exemption will be created for the sale of land-related property by a mortgagee, receiver, liquidator or trustee in bankruptcy pursuant to the bona fide exercise of a power of sale. See Schedule 1 [14].

(o) The vendor duty exemption for the sale of a business will be revised to limit the exemption to the sale of land-related property pursuant to the sale of the whole of a business (not just part of a business). See Schedule 1 [13].

(p) Provision for the imposition of duty on an inter-jurisdictional mortgage will be revised so that duty will not be payable on property located in the ACT or Northern Territory (in line with the treatment of inter-jurisdictional mortgages affecting property in other States). See Schedule 1 [19].

The Bill also revokes the repeal of the *Petroleum Products Subsidy Act 1965* (see clause 5) and amends the *Land Tax Management Act 1956* to remove restrictions on a land tax exemption for land subject to a conservation agreement under the *National Parks and Wildlife Act 1974* and to extend that exemption to land the subject of a registered trust agreement under the *Nature Conservation Trust Act 2001* (see Schedule 2).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the *Duties Act 1997* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Land Tax Management Act 1956* set out in Schedule 2.

Clause 5 revokes the repeal of the *Petroleum Products Subsidy Act 1965* and the regulation under that Act.

Schedule 1 Amendment of Duties Act 1997

Schedule 1 [1] makes the amendment referred to in paragraph (b) of the Overview.

Schedule 1 [2]–[5] make the amendments referred to in paragraph (a) of the Overview.

Schedule 1 [6] makes the amendment referred to in paragraph (d) of the Overview.

Schedule 1 [7] and [8] make the amendments referred to in paragraph (g) of the Overview.

Schedule 1 [9] and [10] make the amendments referred to in paragraph (h) of the Overview.

Schedule 1 [11] makes the amendment referred to in paragraph (i) of the Overview.

Schedule 1 [12] makes the amendment referred to in paragraph (j) of the Overview.

Schedule 1 [13] makes the amendment referred to in paragraph (o) of the Overview.

Schedule 1 [14] makes the amendment referred to in paragraph (n) of the Overview.

Schedule 1 [15] and [16] make the amendments referred to in paragraph (c) of the Overview.

Schedule 1 [17], [18] and [20] make the amendments referred to in paragraph (k) of the Overview.

Schedule 1 [19] makes the amendment referred to in paragraph (p) of the Overview.

Schedule 1 [21] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [23] provides for the amendments made by the Bill (except those made by Schedule 1 [2]–[5] and [19] and Schedule 2) to have effect as if they had commenced on 1 June 2004.

Schedule 1 [22] and [24] make the amendments referred to in paragraph (f) of the Overview.

Schedule 1 [25] and [26] make the amendments referred to in paragraph (e) of the Overview.

Schedule 1 [22] and [27] make the amendments referred to in paragraph (l) of the Overview.

Schedule 1 [28] makes the amendment referred to in paragraph (m) of the Overview.

Schedule 2 Amendment of Land Tax Management Act 1956

Schedule 2 [1] removes restrictions on a land tax exemption for land subject to a conservation agreement under the *National Parks and Wildlife Act 1974* and extend that exemption to land the subject of registered trust agreement under the *Nature Conservation Trust Act 2001*.

Schedule 2 [2] provides for a proportionate reduction where only part of land is the subject of such an exemption.

Schedule 1 [3] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.