

### **Explanatory note**

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

#### **Overview of Bill**

The objects of this Bill are as follows:

(a) to amend the *Duties Act 1997*:

- (i) to prevent the use of duty concession on partitions of land to avoid duty on exchanges of land that are not genuinely between joint owners, and
- (ii) to extend the circumstances in which a duty concession applies in relation to deceased estates, and
- (iii) to introduce a duty concession for the enlargement of a term in land into a fee simple, and
- (iv) to introduce a duty exemption for pharmacists who incorporate, and
- (v) to allow the First Home Plus duty concession to be claimed, in certain circumstances, in respect of a purchase of land even if the land constitutes a multiple occupancy, and
- (vi) to prevent the avoidance of land rich duty by means of a declaration of trust, and
- (vii) to introduce a concession on the duty payable for registration of a motor vehicle in respect of any motor vehicle that has been modified for the purpose of use by, or transport of, a person with a disability, and
- (viii) to extend the duty exemption for charities to a person who acts as a trustee of a charity when acting in that capacity, and
- (ix) to provide that the stamping of an instrument under the Act is a tax assessment for the purposes of the *Taxation Administration Act 1996*, and
- (x) to extend provisions that relate to quoted marketable securities to stapled securities that are quoted on a stock exchange, and
- (xi) to remove obsolete and redundant provisions in the Act and make other changes by way of statute law revision,

(b) to amend the *First Home Owner Grant Act 2000*:

- (i) to allow the grant to be claimed (in certain circumstances) if a person builds a home on land owned by another, purchases a manufactured home and installs it on land owned by another or purchases land with the assistance of another person who acquires a small interest in the property, and
- (ii) to extend (from 2 years to 3 years) the period during which proceedings for an offence against the Act must be commenced,

(c) to amend the *Health Insurance Levies Act 1982* for statute law revision purposes,

(d) to amend the *Land Tax Management Act 1956*:

- (i) to clarify an exemption for non-profit associations, and
- (ii) to clarify the application of the principal place of residence exemption to land comprised of 2 or more lots or strata lots, and
- (iii) to extend a concession to land owned by one person that is comprised of multiple residential occupancies, and
- (iv) for statute law revision purposes,

(e) to amend the *Payroll Tax Act 2007*:

- (i) to clarify an exemption for charitable bodies, and
- (ii) to modify grouping provisions,

(f) to amend the *Taxation Administration Act 1996*:

- (i) to allow tax officers to disclose information obtained under taxation laws in connection with the administration of the *Fines Act 1996*, and
- (ii) to allow information obtained under taxation laws to be disclosed to the Commissioner of NSW Fire Brigades and the Commissioner of the

NSW Rural Fire Service, and

(iii) to extend (from 2 years to 3 years) the period during which proceedings for an offence against a taxation law must be commenced, and

(iv) for statute law revision purposes,

(g) to amend the *Unclaimed Money Act 1995* as a consequence of changes to Commonwealth law dealing with unclaimed superannuation benefits and for statute law revision purposes,

(h) to repeal the *Debits Tax Act 1990* (as the tax under that Act has been abolished),

(i) to repeal the *Stamp Duties Act 1920* (which was replaced by the *Duties Act 1997*) and to make provision for the final determination of duty payable in respect of leases that are chargeable with duty under that Act,

(j) to repeal the *Taxation Administration Regulation 2003* and transfer the remaining provisions of that regulation to the *Taxation Administration Act 1996*.

The Bill also makes other minor and consequential amendments and includes savings and transitional provisions.

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 Acts referred to in Schedules 1–7.

**Clause 4** repeals the *Debits Tax Act 1990*, the *Stamp Duties Act 1920* and the *Taxation Administration Regulation 2003*. The *Stamp Duties Act 1920* has been replaced by the *Duties Act 1997*. Debits tax was abolished on 1 January 2002.

**Schedules 1 and 6** include savings and transitional provisions relating to the repeal of these Acts that are explained further below. The provisions of the *Taxation Administration Regulation 2003* that remain relevant are to be transferred to the *Taxation Administration Act 1996* by **Schedule 6**.

**Clause 5** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

#### **Schedule 1 Amendment of Duties Act 1997**

##### **Partitions of land**

At present the *Duties Act 1997* provides for a duty concession on a transfer of land that is jointly owned where the land is transferred to one or more of the joint owners (referred to as a partition). **Schedule 1 [3]** provides that the concession does not apply in cases where the Chief Commissioner of State Revenue is satisfied that the partition is part of a scheme to avoid duty on an exchange of land between parties who are not joint owners.

##### **Concessions for deceased estates**

At present, the *Duties Act 1997* provides for a duty concession on a transfer of dutiable property by the legal personal representative of a deceased person if the transfer is made under and in conformity with the trusts contained in the will of the deceased person or arising on intestacy. Duty on such a transfer is charged at a flat rate of \$10, rather than ad valorem. **Schedule 1 [8] and [9]** extend this concession to the following cases:

(a) an appropriation of the property of the deceased person in or towards satisfaction of a beneficiary's entitlement under the trusts contained in the will of the deceased person or arising on intestacy,

(b) a transfer of dutiable property of a deceased person to a beneficiary of the estate by agreement between 2 or more beneficiaries to vary the trusts contained in the will or arising on intestacy.

In the second case, the concession will only apply to that part of the dutiable value of the property transferred which is dutiable property to which the beneficiary was entitled under the will or on intestacy. Ad valorem duty will remain chargeable on the transfer to the extent that it varies the trusts contained in the will or arising on intestacy.

**Schedule 1 [6] and [7]** are consequential amendments.

#### **Enlargement of term in land into fee simple**

Under section 134 of the *Conveyancing Act 1919* a term in land of not less than 300 years may be enlarged (or converted) in certain circumstances to an estate in fee simple in the land. Under the *Duties Act 1997*, such an enlargement of a term in land is chargeable with duty in the same way as a transfer of the land.

**Schedule 1 [11]** provides that such an enlargement is chargeable with duty of \$10 if ad valorem duty was paid on the transaction by which the term in land was acquired and the Chief Commissioner of State Revenue is satisfied that the term in land was not granted, and subsequently enlarged, for the purpose of avoiding duty.

#### **Incorporation of pharmacists**

Under the *Pharmacy Practice Act 2006* it is permissible for a pharmacy business to be carried on by a pharmacists' body corporate. Previously, a corporation was prohibited from having a pecuniary interest in the business of a pharmacist (under section 25 of the *Pharmacy Act 1964*).

**Schedule 1 [13]** provides for a duty exemption for any currently practising pharmacist, or partnership of pharmacists, that becomes a body corporate. A transfer of dutiable property of the pharmacist or partnership to the incorporated body will be exempt from duty. This is similar to the exemption that applies to lawyers who incorporate.

#### **First Home Plus**

The First Home Plus scheme under the *Duties Act 1997* allows first home owners to obtain a duty exemption or concession when they build or purchase their first home. At present, the scheme requires that an application for a concession under the Act relate to the whole property.

**Schedule 1 [15] and [16]** will allow an application to be made under the scheme where the property concerned is a parcel of land on which 2 or more homes are built or are to be built, if the Chief Commissioner of State Revenue is satisfied that the first home owner will be entitled to occupy the home that the first home owner is acquiring to the exclusion of the persons who occupy other homes on the land.

#### **Acquisition of interests in land rich landholders**

An acquisition of an interest in a land rich landholder (a company or unit trust with significant land holdings) is chargeable with duty under the *Duties Act 1997* in a similar manner to a purchase of land.

**Schedule 1 [23]** extends the situations in which an acquisition will be dutiable under the land rich duty provisions. The amendment provides that a change in the capacity in which the person holds an interest in a land rich landholder is to be regarded as an acquisition of an interest in a land rich landholder. An example is if a person who holds a unit or share in a land rich landholder declares a trust in respect of the unit or share. This amendment is intended as an anti-avoidance measure.

**Schedule 1 [33]** is a related amendment to ensure that an exemption provision does not operate to permit the practice of using declarations of trust to avoid land rich duty.

#### **Modifications to vehicles**

**Schedule 1 [37]** introduces a duty concession in respect of the duty chargeable on an application to register a motor vehicle. The amendment allows the value of any modifications to the vehicle that have been made to a vehicle to enable a person with a disability to drive the vehicle or to enable someone else to use the vehicle to transport a person with a disability to be disregarded in determining the dutiable

value of the motor vehicle.

**Schedule 1 [36]** is a consequential amendment.

#### **Exemptions for charities**

**Schedule 1 [43]** extends the duty exemption that applies to charities to persons acting in their capacity as a trustee for a charity.

**Schedule 1 [41] and [48]** make it clear that the charity exemption extends to any body established for charitable purposes (including a body corporate).

#### **Stamping of documents**

**Schedule 1 [53]** clarifies the interaction between the assessment provisions under the *Duties Act 1997* and the *Taxation Administration Act 1996*. The amendment provides that the stamping of a document is taken to constitute an assessment under the *Taxation Administration Act 1996* and that the stamped instrument is a notice of assessment (unless a separate notice is issued). This means that the period for making an objection to the assessment will start to run from the date the stamped instrument is given to the taxpayer.

#### **Extension of meaning of “quoted” securities**

**Schedule 1 [60]** extends the meaning of “quoted”, to shares, units in a unit trust scheme or interests in shares or units that comprise a stapled security that is quoted on a stock exchange. Accordingly, those securities will be considered to be a quoted marketable security (and not subject to duty under Chapter 2) if transferred. The amendment also clarifies that a reference to a quoted security can include a reference to a security that is not a marketable security (accordingly it is not necessary for the security to have a nexus with New South Wales, in the manner required of marketable securities).

Other amendments make the use of the expression “quoted” more consistent in the Act. (See **Schedule 1 [14], [25] and [59]**.)

#### **Removal of obsolete provisions**

The amendments remove provisions in the Act that are now obsolete. These provisions relate to:

(a) vendor duty and duty on the disposal of interests in land rich landholders (**Schedule 1 [1], [2], [17]–[22], [24], [26]–[32], [34], [35], [38]–[40], [42], [45], [47], [49], [52], [54], [57] and [58]**), and

(b) use of adhesive stamps (**Schedule 1 [50] and [51]**), and

(c) duty on hire of goods (**Schedule 1 [58]**).

**Schedule 1 [4] and [5]** are consequential amendments.

#### **Other amendments**

**Schedule 1 [10]** clarifies the application of an exemption where ad valorem duty has previously been paid.

**Schedule 1 [12]** updates a reference to the *Legal Profession Act 1987* (which has been replaced by the *Legal Profession Act 2004*).

**Schedule 1 [44] and [46]** update a provision as a consequence of the abolition of the general duty on leases and its replacement with a more limited duty on leases (leases in respect of which a premium is paid or agreed to be paid).

**Schedule 1 [55]** enables savings and transitional regulations to be made as a consequence of the amendments.

**Schedule 1 [56]** provides for savings and transitional matters, including by providing for the final determination of the duty chargeable under the *Stamp Duties Act 1920* in connection with leases entered into before the *Duties Act 1997* took effect.

**Schedule 1 [61]** updates a reference to the Newcastle stock exchange.

#### **Schedule 2 Amendment of First Home Owner Grant Act 2000**

##### **Grant for building of home on land owned by another or purchase of manufactured home**

**Schedule 2 [3]** allows the first home owner grant to be claimed, in certain

circumstances, in the following situations:

- (a) where a person builds a home on land owned by another (and has the permission of the owner of the land to occupy it, or a right to occupy it, after completion), including where the home is attached to another dwelling,
- (b) where a person purchases a manufactured home and installs it on land owned by another but which the person has a right to occupy under a lease, licence or other arrangement.

**Schedule 2 [4]** removes the requirement for the owner of the land to be a party to the first home owner grant application in circumstances referred to above.

The new provisions replace current provisions of the Act that give the Chief Commissioner of State Revenue a discretion to approve a grant (in cases where land is not owned by the applicant) in particular cases. (See **Schedule 2 [1] and [2].**)

#### **Small interest holders**

**Schedule 2 [5]** will allow a person to qualify for the grant even if a small interest in the land is held by another person or persons (up to a 5% ownership share) and the other person or persons have previously owned land (for example, where a parent of the applicant takes a small share in the land in order to assist with financing).

#### **Proceedings for offences**

**Schedule 2 [6]** extends, from 2 to 3 years, the period during which proceedings for an offence under the Act must be taken.

#### **Savings and transitional provisions**

**Schedule 2 [7]** enables savings and transitional regulations to be made as a consequence of the amendments.

**Schedule 2 [8]** provides for other savings and transitional matters.

#### **Schedule 3 Amendment of Health Insurance Levies**

##### **Act 1982**

**Schedule 3** makes an amendment to the description of family membership plans in the *Health Insurance Levies Act 1982*. The amendment removes the need to make regulations that define what is meant by “dependant” by utilising a definition under Commonwealth health insurance legislation.

#### **Schedule 4 Amendment of Land Tax Management**

##### **Act 1956**

#### **Principal place of residence exemption**

**Schedule 4 [15]** clarifies the application of the principal place of residence exemption to land comprised of 2 or more lots or 2 or more strata lots. In order to qualify for the exemption:

- (a) the lots must be adjoining or, in the case of strata lots, must have adjoining walls or floors, and
- (b) the lots must be owned by the same person or, if any of the lots are jointly owned, the lots must all be jointly owned by the same persons, and
- (c) the lots must be the site of, or comprise, a single residence.

The rules will not prevent a part of the land from being used for the purpose of an occupancy in addition to that of the owner if it is permitted under the existing rules relating to the principal place of residence exemption (see clause 4 of Schedule 1A to the Act). However, the additional residential occupancy must be located on a lot that is also used and occupied by the owner of the land for residential purposes. (See **Schedule 4 [13].**)

The rules will not prevent a strata lot that is ancillary to a residence (such as one used as a garage) from being claimed as being subject to the principal place of residence exemption.

**Schedule 4 [10]–[12]** are ancillary amendments.

#### **Concession for multiple-occupancy land**

**Schedule 4 [14]** will allow a land tax concession to be applied in respect of land owned by one person that does comprise more than one residential occupancy. (This

may include land that is excluded from the principal place of residence exemption by the amendments referred to above). The concession, which is similar to the concession that applies to mixed use land, will allow land tax to be assessed on the basis of that proportion of the land that is used for a separate residential occupation to that of the owner.

#### **Land exempted from tax**

The *Land Tax Management Act 1956* contains a land tax exemption for land that is the site of a building used and owned by a non-profit association for the purposes of that association. **Schedule 4 [9]** clarifies that, if the building contains strata lots, each strata lot is to be regarded as separate premises for the purposes of the exemption (and the exemption applies if the premises are used and owned by a non-profit association for the purposes of that association).

#### **Other amendments**

**Schedule 4 [1] and [3]–[7]** remove the general distinction in the *Land Tax Management Act 1956* between flats and single dwellings. The distinction is only relevant to the mixed use land concession in sections 9C and 9D (where it is preserved). The amendments ensure that the concession for additional residential occupancies under the principal place of residence exemption is capable of applying to any flat that is a separate dwelling from a person's principal place of residence.

**Schedule 4 [2]** simplifies an existing provision (including by rectifying a formatting error).

**Schedule 4 [8]** removes a redundant cross-reference.

**Schedule 4 [16]** enables savings and transitional regulations to be made as a consequence of the amendments.

**Schedule 4 [17]** provides for the application of the amendments in respect of the next land tax year to commence on or after the commencement of the amendments.

#### **Schedule 5 Amendment of Payroll Tax Act 2007**

##### **Exemption for charitable bodies**

**Schedule 5 [1]** clarifies an exemption from payroll tax that currently applies to wages paid by any non-profit organisation that has a wholly charitable, benevolent, philanthropic or patriotic purpose so that it applies to wages paid by a non-profit organisation that has as its sole or dominant purpose a charitable, benevolent, philanthropic or patriotic purpose. The amendment does not affect the existing requirement that the wages must be paid or payable for work of a kind ordinarily performed in connection with the religious, charitable, benevolent, philanthropic or patriotic purpose and to a person engaged exclusively in that kind of work.

##### **Grouping provisions**

**Schedule 5 [2]** removes a provision that may require a trustee company to be grouped together, for payroll tax purposes, with other companies in which it has an interest as trustee, as if the companies were related bodies corporate under the *Corporations Act 2001* of the Commonwealth. Although it will still be possible for a trustee company to be grouped with another company in which it holds an interest under other provisions of the *Payroll Tax Act 2007* (such as those relating to commonly controlled businesses), it will no longer be required to treat the companies as related bodies corporate. As a result, the Chief Commissioner of State Revenue will have a discretion to exclude persons from the group in appropriate cases.

**Schedule 5 [3]** modifies the grouping provisions in the *Payroll Tax Act 2007* so that when 2 or more members of a group, when considered together, have a controlling interest in a business, all the members of the group and the person or persons who carry on the business will together constitute a group.

##### **Other amendments**

**Schedule 5 [4] and [5]** correct the various formulae used for calculating annual payroll tax liability to recognise that leap years will contain an extra day to other years. **Schedule 5 [7]** ensures that the changes extend to the financial year

commencing 1 July 2007 (as it straddles a leap year).

**Schedule 5 [6]** facilitates the making of savings and transitional regulations as a consequence of the amendments.

#### **Schedule 6 Amendment of Taxation Administration Act 1996**

##### **Disclosure of information**

**Schedule 6 [5]** allows tax officers to disclose information obtained under taxation laws in connection with the administration or execution of the *Fines Act 1996*.

**Schedule 6 [4]** is a consequential amendment.

**Schedule 6 [7]** allows tax officers to disclose information obtained under taxation laws to the Commissioner of NSW Fire Brigades and the Commissioner of the NSW Rural Fire Service. **Schedule 6 [6]** is a consequential amendment.

##### **Extension of time for commencement of proceedings**

**Schedule 6 [9]** extends, from 2 to 3 years, the period during which proceedings may be taken for an offence under a taxation law. Transitional arrangements in **Schedule 6 [11]** make it clear that the extension does not apply to offences alleged to have been committed before the change.

##### **Recognised revenue laws for the purpose of reciprocal enforcement arrangements**

**Schedule 6 [2] and [12]** transfer, from the regulations under the *Taxation Administration Act 1996* to the Act, the list of revenue laws of other jurisdictions that are recognised for the purpose of reciprocal enforcement arrangements under the Act. The list is also updated. Under the proposed amendment in **Schedule 6 [3]**, it will be possible to directly amend the list of recognised revenue laws by proclamation of the Governor published in the Gazette.

##### **Other amendments**

**Schedule 6 [1]** updates the definition of “taxation laws”, so that references to Acts that are repealed or proposed to be repealed are omitted.

**Schedule 6 [8]** omits a redundant cross-reference from a section.

**Schedule 6 [10]** enables savings and transitional regulations to be made as a consequence of the amendments.

**Schedule 6 [11]** provides for other transitional matters. These include provisions that make it clear that the repeal of the *Debits Tax Act 1990* and the *Stamp Duties Act 1920* does not affect any liability for tax under those Acts that arose before the repeal.

#### **Schedule 7 Amendment of Unclaimed Money Act 1995**

##### **Extension of Commonwealth laws relating to unclaimed money to superannuation providers**

**Schedule 7 [1]–[10], [12] and [13]** make amendments that are consequential on the extension of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* of the Commonwealth to all superannuation benefits other than those provided by public sector superannuation schemes. The amendments remove provisions that require unclaimed superannuation benefits to be paid to the Chief Commissioner of State Revenue. Existing arrangements will continue for NSW public sector superannuation schemes.

**Schedule 7 [16]** provides that the new arrangements are taken to have effect from 1 July 2007.

**Schedule 7 [17]** makes a consequential amendment to the long title.

##### **Other amendments**

**Schedule 7 [11] and [14]** are statute law revision amendments that clarify that certain arrangements under the *Taxation Administration Act 1996* do not apply in respect of the *Unclaimed Money Act 1995*.

**Schedule 7 [15]** enables savings and transitional regulations to be made as a consequence of the amendments.