

Duties Amendment (Land Rich) Bill 2003

Explanatory note

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

Overview of Bill

The object of this Bill is to repeal and re-enact the so-called “land rich” provisions in the *Duties Act 1997* (Parts 1 and 2 of Chapter 3) and in so doing to make the amendments that are described below.

Outline of provisions

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

Clause 2 provides that the proposed Act is taken to have commenced on the day on which this Bill is introduced into the Legislative Assembly.

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

Schedule 1 Amendments

The amendments made by the Bill to the current “land rich” provisions may be summarised as follows.

The current concept of a **private corporation** includes a private company and a private unit trust scheme. The “land rich” provisions are being extended to include wholesale unit trust schemes. The current concept of a **private corporation** is replaced with the concept of a **landholder** which includes private companies, private unit trust schemes and wholesale unit trust schemes.

(Substituted section 106)

A **private unit trust scheme** is a unit trust scheme that is not a public unit trust scheme or a wholesale unit trust scheme.

A **public unit trust scheme** means a listed trust, a widely held trust or an imminent public trust.

A **wholesale unit trust scheme** is, broadly, a unit trust scheme in which not less than 80% of the units are held by investors who are trustees of certain funds or trusts and in which each such investor holds less than 50% of the units, or a unit trust scheme which it is anticipated will become a wholesale unit trust scheme within 12 months.

The test of whether a landholder is “land rich” is changed in two respects. First, the unencumbered value of the landholder’s New South Wales land holdings is increased from \$1,000,000 to \$2,000,000. Second, the proportion of the total land holdings of a landholder to the unencumbered value of all its property is reduced from 80% to 60%. (Substituted section 106)

In calculating the unencumbered value of a landholder’s property, the current duplication of discretions vested in the Chief Commissioner of State Revenue is removed. (Substituted section 106)

The Act will now provide for the effect of uncompleted agreements for the disposal or acquisition of property other than land in addition to the current provisions for uncompleted agreements relating to transfers of land. (Proposed section 108 (2))

The constructive ownership of land and other property in the current provisions of the Act may be traced through a subsidiary of a private corporation or through a discretionary trust. These provisions, in so far as they apply to subsidiaries, are replaced with provisions that enable the ownership trail to be traced through **linked entities**. (Substituted section 109)

The Bill makes changes to the way in which **interests** in a landholder may be acquired. It replaces the requirement for the acquisition of a **majority interest**, which was an entitlement to more than 50% of the property of a private

corporation in the event of a distribution of all of the property of the private corporation, with the requirement for the acquisition of a **significant interest** in a landholder. A significant interest is an entitlement, in the event of a distribution of all of the property of the landholder, to 20% or more of the property in the case of a private unit trust scheme or 50% or more of the property in the case of a wholesale unit trust scheme or private company. (Substituted section 111)

The manner in which an interest may be acquired is updated to accord with current business practice. (Substituted section 112)

Liability for duty is incurred when a person makes a **relevant acquisition** in a landholder. A relevant acquisition is made when a person acquires:

- (a) a significant interest in a landholder, or
- (b) an interest which, when aggregated with interests of the person or associated persons, amounts to a significant interest, or
- (c) an interest which, when aggregated with other interests acquired by the person or other persons acting under transactions that comprise substantially one arrangement between the acquirers, amounts to a significant interest.

A relevant acquisition is also made when a person who has a significant interest in a landholder, or an interest which, when aggregated with interests of the person or associated persons, amounts to a significant interest, acquires a further interest in the landholder. (Substituted section 114)

Some further information concerning acquisitions will now be required to be included in acquisition statements lodged with the Chief Commissioner. (Substituted section 115)

A concession is made for primary producers. If a landholder is a primary producer when a relevant acquisition is made and the landholder's land holdings in all places, whether within or outside Australia, comprise less than 80% of the unencumbered value of all its property, no duty is chargeable in respect of the acquisition. However, duty will become chargeable if the landholder ceases to be a primary producer at any time within 5 years after the relevant acquisition is made. (Substituted section 118)

Various changes are made to the exception of interests from the land rich provisions. The exception of an acquisition comprising a transaction that is not liable for transfer duty under the general provisions of the Act is removed. Further exceptions are made in relation to intergenerational rural transfers and the acquisition of interests by certain charitable or benevolent societies or institutions. (Substituted section 119)

The current provision for the phasing-in of duty (section 122) is repealed and is not replaced.

Other provisions in Parts 1 and 2 of Chapter 3 are re-enacted without amendment, except for minor amendments or consequential amendments.

The Schedule of amendments to the Act also includes savings and transitional provisions necessitated by the amendments.