

State Revenue Legislation Further Amendment Bill 2003

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* as follows:

- (i) to impose transfer duty on the statutory vesting of land,
- (ii) to clarify anti-avoidance provisions that prevent the value of property being artificially reduced for duty purposes,
- (iii) to limit the discretion of the Chief Commissioner of State Revenue to exclude the value of goods from the dutiable value of dutiable property when assessing duty on transfers of dutiable property,
- (iv) to impose transfer duty on lease premiums,
- (v) to prevent the avoidance of duty by the execution of several successive leases, some or all of which provide for a rental of less than the dutiable threshold of \$20,000 per year, if the combined leases would be subject to duty or greater duty,
- (vi) to clarify that security interests in land are not liable to mortgage duty,
- (vii) to specify circumstances in which a mortgage ceases to be a collateral mortgage and thereby ceases to qualify for payment of concessional duty under the Act,
- (viii) to make amendments by way of statute law revision,

(b) to amend the *Fines Act 1996* in connection with the transfer of the functions of the Infringement Processing Bureau to the Office of State Revenue,

(c) to amend the *First Home Owner Grant Act 2000* as follows:

- (i) to allow more than one grant to be paid in cases where multiple homes are purchased by or built for separate purchasers under a single contract or where multiple homes on a single parcel of land will be separately occupied,
- (ii) to ensure that the first home owner grant is not payable when a part owner of a home increases his or her interest in the property,
- (iii) to change the residency requirements relating to the grant,
- (iv) to remove the requirement that the interest in land acquired by a purchaser under a terms contract be registered before the grant is paid,
- (v) to remove the requirement that the NSW Land and Housing Corporation be a party to applications involving share ownership schemes,

(d) to amend the *Land Tax Management Act 1956* to re-enact and revise the principal place of residence exemption, and for other purposes,

(e) to amend the *Pay-roll Tax Act 1971* to tax wages that are paid in respect of services performed partly outside the State that are not liable for payroll tax under another law,

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

- (i) to enable the recovery of taxes payable under State revenue laws from directors and former directors of corporations in certain circumstances,
- (ii) to clarify the decisions that are subject to review by the Administrative Decisions Tribunal,

(iii) to reinstate certain provisions as to the disclosure of information obtained under or in relation to a taxation law,
(g) to amend the *Unclaimed Money Act 1995* to increase the minimum amount of unclaimed money or unclaimed superannuation benefits required to be returned or reported to the Chief Commissioner of State Revenue.

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 specified in Schedules 1–7.

Schedule 1 Amendment of Duties Act 1997

Transfer duty

Schedule 1 [2] imposes transfer duty on a statutory vesting of land in New South Wales. **Schedule 1 [3]** inserts section 8A which specifies, but not exhaustively, various circumstances in which a statutory vesting occurs. **Schedule 1 [4]** makes a consequential amendment. **Schedule 1 [10]** exempts from duty the vesting of dutiable property in a legal personal representative of a deceased person.

Schedule 1 [6] replaces section 24. The substituted section clarifies that arrangements made for a collateral purpose of reducing the amount of duty otherwise payable are to be disregarded.

Schedule 1 [7] limits the Chief Commissioner's discretion to exclude the value of goods from the dutiable value of property when assessing duty on transfers of property. The discretion is excluded if the goods are used in connection with a business in respect of which the goodwill of the business is, or is part of, the dutiable property.

Lease duty

Schedule 1 [14] imposes duty, at the rate applicable to the transfer of dutiable property, on the premium paid or payable for a lease. **Schedule 1 [12]** exempts from this provision a premium paid on a lease of premises in a retirement village.

Schedule 1 [13] and [17] make consequential amendments.

Schedule 1 [18] provides for the aggregation of leases that have been split to bring them under the threshold exemption of a total rent cost of not more than \$20,000 per annum. For the purpose of calculating lease duty, it is proposed to aggregate leases between the same or associated persons over the same property for consecutive terms, or terms that are not more than 3 months apart.

Schedule 1 [15] and [16] make consequential amendments.

Mortgage duty

Schedule 1 [19] clarifies that security interests in land are not liable to mortgage duty.

Schedule 1 [22] re-addresses the circumstances in which a collateral mortgage forming part of a package of securities that applies to land in New South Wales and land in other Australian jurisdictions is chargeable with duty when an advance or a further advance is made. **Schedule 1 [26]** contains a transitional provision that applies this amendment to existing mortgages if an advance or a further advance is made after the commencement of the amendment. **Schedule 1 [20] and [21]** make consequential amendments.

General

Schedule 1 [24] exempts a joint government enterprise that has the function of allocating funds for water savings projects from all duty chargeable under the Act.

Schedule 1 [25] enables the making of regulations of a savings or transitional nature as a consequence of the amendments made to the Act.

Statute law revision

Schedule 1 [1] clarifies the nature of a court order by which dutiable property may be vested and be liable to transfer duty.

Schedule 1 [5] and [27] clarify the mechanism by which various forms required for the purposes of the Act are approved by the Chief Commissioner.

Schedule 1 [8] and [9] make amendments to create consistency of language in relation to cancelled agreements.

Schedule 1 [11] and [23] replace references to provisions of Acts that have been repealed.

Schedule 2 Amendment of Fines Act 1996

Transfer of functions of Infringement Processing Bureau to Office of State Revenue

The State Debt Recovery Office and the Infringement Processing Bureau within NSW Police became part of the Office of State Revenue on 1 October 2003.

Those agencies were involved in the recovery of amounts payable under penalty notices issued for breaches of Acts and regulations.

Schedule 2 [1] enables certain persons employed in the Office of State Revenue to issue and deal with penalty notices.

Schedule 2 [2] expands the functions expressed to be exercised by the State Debt Recovery Office to enable that Office to enter into arrangements for the collection and recovery of money payable under penalty notices and the issuing of courtesy letters.

Schedule 2 [3] enables the making of regulations of a savings or transitional nature as a consequence of the amendments made to the Act.

Schedule 2 [4] inserts transitional provisions into the Act. Proposed clause 11 of Schedule 3 adds the Treasurer and the Director of the State Debt Recovery Office as parties to service agreements in force as at 1 October 2003 that were entered into by the Infringement Processing Bureau for the recovery of penalties payable under penalty notices. Proposed clause 12 of Schedule 3 translates references in instruments relating to the Infringement Processing Bureau into references to the Office of State Revenue or the State Debt Recovery Office, as the case requires.

Schedule 3 Amendment of First Home Owner Grant Act 2000

Acquisition of fractional interests

Schedule 3 [4] makes it clear that an applicant cannot obtain a grant under the Act on the transfer of a fractional interest in a home.

Multiple occupancy contracts and multiple occupancy land

Schedule 3 [3] inserts proposed sections 6A and 6B into the Act. Proposed section 6A applies to the purchase or construction of multiple occupancy residences for separate homebuyers under one contract. A person will be eligible under the Act if each home comprises an exclusive occupancy, that is, each homebuyer will occupy the home as a place of residence to the exclusion of those who purchase other homes, or for whom other homes are built, under the contract. Proposed section 6B gives eligibility to the purchase or building of a home on a parcel of land on which there is another home, or other homes, if each home purchased or built is an exclusive occupancy. **Schedule 3 [1] and [8]** make consequential amendments.

Schedule 3 [8] provides, among other things, that the New South Wales Land and Housing Corporation is not an interested person who is required to join in the making of an application under the Act.

Purchasers under terms contracts

Schedule 3 [2] and [7] allow a purchaser under a terms contract to retain a grant under the Act even though the transaction is not completed by the registration of a transfer. **Schedule 3 [1]** defines *terms contract*.

The residency test

Schedule 3 [5], [6] and [9] introduce a period-based residency requirement.

They require the home to be occupied as the principal place of residence for 6 consecutive months to commence at any time within 12 months after completion of the eligible transaction in order to receive the grant.

Savings and transitional provisions

Schedule 3 [10] and [11] make savings and transitional provisions as a consequence of the amendments made by the Schedule.

Schedule 4 Amendment of Land Tax Management Act 1956

Trust created by will

Schedule 4 [2] restores the exemption provided to a deceased estate for the first tax year following the death of the owner of the land or, where the land has not been distributed pursuant to the will by the expiration of that time, for such longer period as may be approved by the Chief Commissioner.

Principal place of residence

Schedule 4 [5] and [11] repeal and replace the exemption granted under the Act for a person's principal place of residence. In particular, changes are made which:

(a) allow an owner to claim the exemption for 2 residences where the owner has bought a new residence and is in the process of selling the existing residence, but the sale has not been completed at the taxing date (31 December), and

(b) remove certain restrictions for the current exemption for land on which a new family residence is being built or an existing residence is being refurbished, and

(c) allow an exempt principal residence to be used for incidental business purposes, including the use of one room (such as a home office or workshop), if the business is primarily conducted elsewhere, and

(d) extend the existing concession to include circumstances where an owner is absent from the home for extended periods but resumes occupation within 6 years, and

(e) allow each family, including dependents under 18, a concession for only one property, except when buying a new principal residence and selling their existing residence.

The provisions are now set out in proposed Schedule 1A. **Schedule 4 [1], [3], [6], [7], [9] and [10]** make consequential amendments.

Exemption from land tax

Schedule 4 [4] grants an exemption from land tax in respect of the land of a joint government enterprise that has the function of allocating funds for water savings projects.

Land used for two or more exempt purposes

Schedule 4 [8] inserts, by way of statute law revision, a new section 10A. The substituted section makes it clear that if land is used for more than one purpose and each of those purposes is an exempt purpose, the land is exempt from taxation.

Savings and transitional provisions

Schedule 4 [12] and [13] make savings and transitional provisions as a consequence of the amendments made by the Schedule.

Schedule 5 Amendment of Pay-roll Tax Act 1971

Wages liable to pay-roll tax

Schedule 5 [1] closes a loophole that allows the avoidance of tax on wages paid outside Australia to an employee who provides services in two or more States.

Exemption from pay-roll tax

Schedule 5 [2] grants an exemption from pay-roll tax in respect of the wages paid by a joint government enterprise that has the function of allocating funds for water savings projects.

Recovery of pay-roll tax from directors and former directors of corporations

Schedule 5 [3] repeals Part 5A of the Act as a consequence of the inclusion of corresponding provisions on behalf of taxation Acts in the *Taxation Administration Act 1996*.

Savings and transitional provisions

Schedule 5 [4] enables the making of regulations of a savings and transitional nature as a consequence of the amendments made by the Schedule. **Schedule 5 [5]** preserves matters commenced under Part 5A before its repeal.

Schedule 6 Amendment of Taxation Administration Act 1996

Acceptance of money or return not necessarily an assessment

Schedule 6 [1] makes a minor amendment to make it clear that the acceptance of money or a return does not of itself constitute an assessment.

Recovery of tax from directors and former directors of corporations

Schedule 6 [3] inserts a new Division 2 into Part 7 of the Act. The new Division (containing sections 47A–47E) applies the provisions relating to so-called “Phoenix companies” that are contained, for example, in the *Pay-roll Tax Act 1971* and sections 222AOA–222AOE of the *Income Tax Assessment Act 1936* of the Commonwealth, to all the revenue laws to which the *Taxation Administration Act 1996* applies. Phoenix companies are companies that are wound up by the directors to avoid paying debts, which may include State taxes. The same directors may immediately start up another company to carry on the same sort of business. **Schedule 6 [2]** makes a consequential amendment.

Disclosures of information

Schedule 6 [6] reinstates the Commissioner of Police and the Commissioner of Vocational Training as authorised recipients of information obtained under or in the administration of a taxation law. **Schedule 6 [5]** makes a consequential amendment.

Schedule 6 [7] extends the prohibition on secondary disclosures of information to ensure that information obtained under or in the administration of a taxation law cannot be further disclosed without the consent of the Chief Commissioner.

Review of decisions by the Administrative Decisions Tribunal

Schedule 6 [8] creates consistency with the *Administrative Decisions Tribunal Act 1997* by providing that the decisions of the Chief Commissioner that are subject to review under that Act are decisions within the meaning of that Act.

Minor amendments

Schedule 6 [4] deletes an obsolete provision.

Schedule 6 [9] and [10] extend the power of the Chief Commissioner to use amounts that would otherwise be required to be paid to a person to offset a tax liability of the person.

Savings and transitional provisions

Schedule 6 [11] and [12] make savings and transitional provisions as a consequence of the amendments made by the Schedule.

Schedule 7 Amendment of Unclaimed Money Act 1995

Increase in minimum amount required to be returned as unclaimed money

Schedule 7 [1] and [2] increase, from \$20 to \$100, the minimum amount required to be returned to the Office of State Revenue by a business in its unclaimed money return.

Schedule 7 [3] requires the publication of all amounts of unclaimed

superannuation benefits paid to the Chief Commissioner under the Act.

Savings and transitional provisions

Schedule 7 [4] and [5] make savings and transitional provisions as a consequence of the amendments made by the Schedule.