

Passed by both Houses



New South Wales

# State Revenue Legislation Amendment Bill 2014

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2014*



New South Wales

## **State Revenue Legislation Amendment Bill 2014**

Act No , 2014

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An Act to make miscellaneous amendments to certain State revenue legislation.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *State Revenue Legislation Amendment Act 2014*.

**2 Commencement**

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 commences on 1 July 2013, or the date of assent to this Act, whichever is the later.

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## Schedule 1 Amendment of Duties Act 1997 No 123

### [1] Section 54 Change in trustees

Omit “a special trustee or” from section 54 (3).

Insert instead “a special trustee, a trustee of a self managed superannuation fund or a”.

### [2] Section 68 Exemptions—break-up of marriages and other relationships

Omit the definitions of *matrimonial property* and *relationship property* from section 68 (5).

Insert in alphabetical order:

*matrimonial property* means property in relation to the parties to a marriage or of either of them (within the meaning of the *Family Law Act 1975* of the Commonwealth), including any property treated as property in relation to the parties or of either of them as a result of an order made under that Act.

*relationship property*:

- (a) in relation to a de facto relationship, means property in relation to the parties to the de facto relationship or of either of them (within the meaning of the *Family Law Act 1975* of the Commonwealth), including any property treated as property in relation to the parties or of either of them as a result of an order made under that Act, or
- (b) in relation to a domestic relationship, means property of the parties to the relationship or of either of them.

### [3] Section 149 What is a “relevant acquisition”?

Omit “transactions” from section 149 (1) (a) (iii).

Insert instead “acquisitions”.

### [4] Section 152 Acquisition statements

Insert “within 3 months after the relevant acquisition is made” after “Chief Commissioner” in section 152 (1).

### [5] Section 163B Exemption—break-up of marriages and other relationships

Omit the definitions of *matrimonial property* and *relationship property* from section 163B (8).

Insert in alphabetical order:

*matrimonial property* means property in relation to the parties to a marriage or of either of them (within the meaning of the *Family*

*Law Act 1975* of the Commonwealth), including any property treated as property in relation to the parties or of either of them as a result of an order made under that Act.

***relationship property:***

- (a) in relation to a de facto relationship, means property in relation to the parties to the de facto relationship or of either of them (within the meaning of the *Family Law Act 1975* of the Commonwealth), including any property treated as property in relation to the parties or of either of them as a result of an order made under that Act, or
- (b) in relation to a domestic relationship, means property of the parties to the relationship or of either of them.

**[6] Schedule 1 Savings, transitional and other provisions**

Insert after Part 39:

**Part 40 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2014**

**107 Definition**

In this Part:

***amending Act*** means the *State Revenue Legislation Amendment Act 2014*.

**108 General application of amendments**

- (1) An amendment made to Chapter 2 by the amending Act applies in respect of a dutiable transaction that occurs on or after the commencement of the amendment.
- (2) However, an amendment made to Chapter 2 by the amending Act does not apply to a transfer of dutiable property made in conformity with an agreement for sale or transfer of the dutiable property that was entered into before the commencement of the amendment.
- (3) Any other amendment made to this Act by the amending Act applies in relation to any liability for duty that arises on or after the commencement of the amendment.

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**109 Application of amendments to landholder duty**

- (1) A landholder duty amendment does not apply to an acquisition in a landholder that is made on or after the commencement of the landholder duty amendment, if the acquisition is made in conformity with an agreement for sale first executed before that commencement.
- (2) This Act applies in respect of such an acquisition as if the landholder duty amendment had not been made.
- (3) In this clause, a *landholder duty amendment* means an amendment made by the amending Act to Chapter 4.

**[7] Dictionary, clause 1**

Insert “or discretionary trust” after “public unit trust scheme” wherever occurring in paragraphs (d) and (e) of the definition of *related person*.

**[8] Dictionary, clause 2 (4) and (5)**

Insert after clause 2 (3):

- (4) A trustee of a complying superannuation fund and the trustee for another complying superannuation fund are considered to be associated persons under subclause (1) (d) only if:
  - (a) a member of the first fund who holds a significant interest in that fund is also a member of the other fund and holds a significant interest in that other fund, or
  - (b) a member of the first fund holds a significant interest in the first fund and a related person to that member (who is a member of the other fund) holds a significant interest in the other fund.
- (5) A member of a complying superannuation fund holds a *significant interest* in the fund if the member has an interest in the fund that (either alone or when aggregated with the interests in the fund held by related persons who are members of the fund) is an interest of more than 20%.

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## Schedule 2 Amendment of Land Tax Management Act 1956 No 26

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*unit trust* means a trust in respect of which the beneficiaries of the trust are owners of units in the trust and each unit holder, or each unit holder of a particular class:

- (a) is entitled, as a beneficiary of the trust, to participate in any income or capital distributions (or both) of the trust, and
- (b) the amount or proportion of any income or capital distribution to which the unit holder is entitled is based on the number or class of units owned by the person (or both).

### [2] Section 3A Special trust—meaning

Insert after section 3A (3B) (b):

- (c) if the trust is a unit trust:
  - (i) there must be only one class of units issued, and
  - (ii) the proportion of trust capital to which a unit holder is entitled on a winding up or surrender of units must be fixed and must be the same as the proportion of income of the trust to which the unit holder is entitled.

### [3] Section 10 Land exempted from tax

Omit section 10 (1) (d). Insert instead:

- (d) land owned by or in trust for a charitable body,

### [4] Section 10 (1) (g) (ii)

Omit the subparagraph. Insert instead:

- (ii) a school registered under the *Education Act 1990*,

### [5] Section 10 (1) (g) (iv)

Omit the subparagraph. Insert instead:

- (iv) a charitable body,

### [6] Section 10 (1) (u) and (v)

Insert after section 10 (1) (t):

- (u) land that is used solely for the provision of an approved education and care service (within the meaning of the

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*Children (Education and Care Services) National Law (NSW)*), but only if:

- (i) the service is provided by an approved provider under that Law, and
  - (ii) the land is the place where children are educated or cared for by the service,
- (v) land that is used solely for the provision of an approved education and care service (within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*), but only if:
- (i) the service is a centre based education and care service within the meaning of that Act, and
  - (ii) the service is provided by an approved provider under that Act, and
  - (iii) the land is the place where children are educated or cared for by the service.

**[7] Section 10 (5)**

Insert in alphabetical order:

*charitable body* means a body corporate, society, institution or other body carried on solely for charitable or educational purposes and not for pecuniary profit.

**[8] Section 10AA Exemption for land used for primary production**

Omit section 10AA (4). Insert instead:

- (4) For the purposes of this section, land is *rural land* if:
- (a) the land is zoned rural, rural residential, non-urban or large lot residential under a planning instrument, or
  - (b) the land has another zoning under a planning instrument, and the zone is a type of rural zone under the standard instrument prescribed under section 33A (1) of the *Environmental Planning and Assessment Act 1979*, or
  - (c) the land is not within a zone under a planning instrument but the Chief Commissioner is satisfied the land is rural land.



**[9] Section 20**

Omit the section. Insert instead:

**20 Holder of limited estate taken to be owner**

- (1) The following persons are taken to be owners of land and are to be assessed for land tax accordingly:
  - (a) the owner of any freehold estate in land less than the fee-simple (a *limited estate*),
  - (b) any person entitled to an estate in the land in reversion or remainder.
- (2) For that purpose:
  - (a) the owner of the limited estate is taken to be the primary taxpayer, and
  - (b) the person entitled to an estate in the land in reversion or remainder is taken to be the secondary taxpayer, and
  - (c) there is to be deducted from the land tax payable by the secondary taxpayer in respect of the land such amount (if any) as is necessary to prevent double taxation.
- (3) If the limited estate is a life estate, the life tenant under the life estate is taken to be an owner of the land to the exclusion of any person entitled to an estate in the land in reversion or remainder, but only if:
  - (a) the life estate was created by the express terms of a will (and not by the exercise of a discretion conferred by a will), and
  - (b) the duration of the life estate is based on the life of the tenant and not the life of some other person.
- (4) This section does not apply if the limited estate is a freehold estate arising by virtue of a lease for life under a lease or an agreement for lease.

**[10] Schedule 1AA Family unit trusts—special provisions**

Omit clause 1 from the Schedule.

**[11] Schedule 1A Principal place of residence exemption**

Omit “clause” wherever occurring in clause 2 (3) and (4).

Insert instead “Schedule”.

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**[12] Schedule 1A, clause 7 Concession for change to principal place of residence**

Omit “owner, and” from clause 7 (2) (c) (ii). Insert instead “owner.”.

**[13] Schedule 1A, clause 7 (2) (d)**

Omit the paragraph.

**[14] Schedule 1A, clause 7 (3) and (3A)**

Omit clause 7 (3). Insert instead:

- (3) The principal place of residence exemption cannot be claimed for both a former residence and a new residence under this clause for more than one taxing date.
- (3A) A principal place of residence exemption that applies, by operation of this clause, to land not actually used and occupied by a person at the relevant taxing date is revoked if the person is not actually using and occupying the new residence as his or her principal place of residence by the next taxing date immediately following the relevant taxing date.

**[15] Schedule 1A, clause 7 (5)**

Omit the subclause.

**[16] Schedule 1A, clause 8 (1)**

Omit the subclause. Insert instead:

- (1) A person is taken, for the purpose of the principal place of residence exemption, to continue to use and occupy land formerly used and occupied by the person as a principal place of residence (a *former residence*), after the person ceases to so use and occupy the former residence, if the Chief Commissioner is satisfied that:
  - (a) the person used and occupied the former residence as a principal place of residence for a continuous period of at least 6 months, and
  - (b) the person does not own any other land used and occupied by the person as a principal place of residence.

**[17] Schedule 1A, clause 11 (5A)**

Insert after clause 11 (5):

- (5A) To avoid doubt, land that is taken to be owned by more than one person under this Act is taken, for the purposes of this clause, to be jointly owned by them.

**Note.** See, for example, sections 20 and 25.

**[18] Schedule 1A, clause 11 (6), note**

Insert “Section 20 provides for circumstances in which a life tenant is taken to be the owner of land, to the exclusion of another owner (including a company).” before “Section 21A”.

**[19] Schedule 2 Savings and transitional provisions**

Insert after Part 26:

**Part 27 Provisions consequent on enactment of  
State Revenue Legislation Amendment Act  
2014**

**55 General application of amendments**

The amendments made to this Act by the *State Revenue Legislation Amendment Act 2014* apply to the assessment of land tax liability in respect of the 2014 land tax year and subsequent land tax years.

**56 Amendments relating to child care services**

Section 10 (1) (u) and (v), as inserted by the *State Revenue Legislation Amendment Act 2014*, extend to the assessment of land tax liability in respect of the 2013 land tax year.

**57 Fixed trusts**

A unit trust that satisfies the relevant criteria referred to in section 3A, as amended by the *State Revenue Legislation Amendment Act 2014*, by the end of 30 June 2013 is taken to be a fixed trust under section 3A (3) in relation to the 2013 land tax year.

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## **Schedule 3      Amendment of Taxation Administration Act 1996 No 97**

### **[1] Section 47A Definitions**

Omit the definition of *assessment amount*. Insert instead:

*corporate tax liability* means:

- (a) the amount of tax that a corporation has been assessed as being liable to pay, as set out in a notice of assessment issued to the corporation, and
- (b) any interest or penalty tax payable in respect of an amount referred to in paragraph (a).

### **[2] Section 47A, definition of “special arrangement”**

Omit “an assessment amount”. Insert instead “a corporate tax liability”.

### **[3] Section 47B Liability of directors and former directors of corporation for failure to pay corporate tax liability**

Omit “an assessment amount” and “the assessment amount” wherever occurring in section 47B (1) and (3)–(5).

Insert instead “a corporate tax liability” and “the corporate tax liability” respectively.

### **[4] Section 47B (2) and (2A)**

Omit section 47B (2). Insert instead:

- (2) A *compliance notice* is a notice that advises a director or former director of a corporation that he or she will be liable to pay a corporate tax liability of the corporation if the failure to pay the corporate tax liability is not rectified before the end of a period specified in the notice (the *compliance period*).
- (2A) The compliance period is to be a period of not less than 21 days from the date the notice is served on the director or former director.

### **[5] Section 47B (3)**

Insert “before the end of the compliance period” after “if”.

### **[6] Section 47B (4)**

Omit “within the period specified in the compliance notice”.

Insert instead “before the end of the compliance period”.

**[7] Section 47B (4A)**

Insert after section 47B (4):

- (4A) The Chief Commissioner is to issue to the director or former director a notice of assessment of the tax liability of the director or former director under this Division.

**[8] Sections 47C and 47D**

Omit “an assessment amount” and “the assessment amount” wherever occurring.

Insert instead “a corporate tax liability” and “the corporate tax liability” respectively.

**[9] Section 47E**

Omit the section. Insert instead:

**47E Defences**

In proceedings for the recovery of a corporate tax liability from a director or former director of a corporation under this Division, it is a defence to the recovery of the corporate tax liability from the director or former director if the director or former director establishes that:

- (a) the director or former director took all reasonable steps that were possible in the circumstances to ensure that the corporation rectified the failure to pay the corporate tax liability before the end of the compliance period for the compliance notice served on the director or former director, or
- (b) the director or former director was unable, because of illness or for some other similar good reason, to take steps to ensure that the corporation rectified the failure to pay the corporate tax liability before the end of the compliance period for the compliance notice served on the director or former director.

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**[10] Schedule 1 Savings, transitional and other provisions**

Insert after Part 9:

**Part 10 Provisions arising from enactment of State Revenue Legislation Amendment Act 2014**

**39 Director's liabilities**

Division 2 of Part 7, as in force immediately before the commencement of the amendments made by the *State Revenue Legislation Amendment Act 2014*, continues to apply to a compliance notice issued before that commencement.