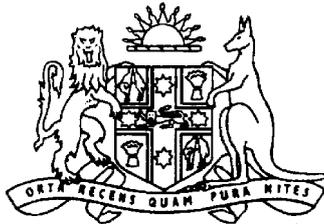


New South Wales

State Revenue Legislation Further Amendment Act 2004 No 67

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New South Wales

State Revenue Legislation Further Amendment Act 2004 No 67

Act No 67, 2004

An Act to amend the *Duties Act 1997* and other State Revenue legislation to make further provision with respect to First Home Plus, premium property duty, vendor duty, inter-jurisdictional mortgage duty, land tax and petroleum products subsidies; and for other purposes. [Assented to 6 July 2004]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *State Revenue Legislation Further Amendment Act 2004*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) The following provisions commence, or are taken to have commenced, on the dates specified:
 - (a) Schedule 1 [2]–[5]—1 July 2004,
 - (b) Schedule 1 [19]—1 September 2004,
 - (c) Schedule 2—31 December 2004.

3 Amendment of Duties Act 1997 No 123

The *Duties Act 1997* is amended as set out in Schedule 1.

4 Amendment of Land Tax Management Act 1956 No 26

The *Land Tax Management Act 1956* is amended as set out in Schedule 2.

5 Revocation of repeal

- (1) The *Petroleum Products Subsidy Act 1965* and the *Petroleum Products Subsidy Regulation 1998* are taken not to be, and never to have been, repealed by the *State Revenue Legislation Further Amendment (No 2) Act 2001*.
- (2) The *Petroleum Products Subsidy Regulation 1998* is taken not to be, and never to have been, repealed by section 10 of the *Subordinate Legislation Act 1989*, and for the purposes of that section is taken to have been published on the date of assent to this Act.

Schedule 1 Amendment of Duties Act 1997

(Section 3)

[1] Section 32A Premium rate for residential land with dutiable value exceeding \$3,000,000

Insert after section 32A (2):

- (2A) If the dutiable property subject to a dutiable transaction comprises 2 or more individual items of residential land and 1 or more of those items has a dutiable value exceeding \$3,000,000, the rate of duty chargeable on the dutiable transaction is as follows:
- (a) for each item of residential land that has a dutiable value exceeding \$3,000,000—\$150,490 plus \$7 for every \$100, or part, by which the dutiable value of the item exceeds \$3,000,000,
 - (b) for the rest of the dutiable property—the rate provided for by section 32.

[2] Section 71 Restrictions on eligibility—previous ownership of residential property or first home concession

Omit section 71 (1) and (2). Insert instead:

- (1) A purchaser or transferee under an agreement or transfer may apply under the scheme, but will be eligible only if the purchaser or transferee:
 - (a) has not at any time owned residential property in Australia (either solely or with someone else), and
 - (b) has not previously been a party to an application under the scheme that was approved by the Chief Commissioner.
- (2) If a purchaser or transferee under an agreement or transfer has a spouse, the purchaser or transferee is eligible only if the spouse of the purchaser or transferee:
 - (a) has not at any time owned residential property in Australia (either solely or with someone else), and
 - (b) has not previously been a party to an application under the scheme that was approved by the Chief Commissioner.

[3] Section 71 (6)

Insert “, or who has previously been a party to an application under the scheme that was approved by the Chief Commissioner,” after “residential property”.

[4] Section 76 Residence requirement

Omit “in accordance with the residence requirement” from section 76 (3).

Insert instead “as their principal place of residence”.

[5] Section 76 (6)

Omit the subsection.

[6] Section 158 What is the “dutiabale value” of land-related property?

Insert “(except in sections 22 and 23)” after “transferee” in section 158 (2) (d).

[7] Section 162B Principal place of residence exemption

Insert after section 162B (4):

- (5) For the purposes of the principal place of residence exemption, a vendor of land that is owned by 2 or more persons is not considered to be used and occupied by the vendor as the principal place of residence of the vendor unless the land is used and occupied as the principal place of residence of:
 - (a) at least one of the owners who is a natural person and whose ownership share is 50% or more, or
 - (b) each of 2 or more of the owners who are natural persons and whose combined ownership share is 50% or more.

[8] Section 162D Exemption applies to natural persons only

Omit the section.

[9] Section 162M What is the vendor acquisition date?

Omit “a legal or equitable interest in” wherever occurring.

[10] Section 162O Transactions relating to multiple items or interests

Insert at the end of the section:

- (2) If a vendor duty transaction relates to separate interests in an item of land-related property, the amount if any by which the dutiable value of the land-related property on the transfer date exceeds the dutiable value of the land-related property on the vendor acquisition date is, for the purposes of this Division, to be assessed and determined separately for each of those separate interests, and duty is chargeable accordingly.

[11] Sections 162P and 162Q

Omit the sections. Insert instead:

162P Exemption for sale of new buildings

- (1) **Exemption for new buildings never occupied before sale**

An agreement for the sale or transfer, or a transfer, of land is not chargeable with vendor duty if:

- (a) it is an agreement for the sale or transfer, or a transfer, of land on which one or more buildings have been constructed by or on behalf of the vendor that are suitable for use or occupation for residential, commercial or other purposes, and
- (b) the building or buildings have never been occupied or used for any purpose prior to the first execution of the agreement or transfer or (if the Chief Commissioner is satisfied that they were constructed to be occupied or used for residential purposes) have never been occupied or used for residential purposes before that first execution, and
- (c) the Chief Commissioner is satisfied that the building or buildings are a significant improvement to the land, and
- (d) the sale or transfer is the first sale or transfer of the land since the building or buildings were completed, and
- (e) there are no other buildings on the land that are suitable for use or occupation for residential, commercial or other purposes, other than heritage buildings.

(2) **Exemption for new buildings sold within 12 months after completion**

An agreement for the sale or transfer, or a transfer, of land is not chargeable with vendor duty if:

- (a) it is an agreement for the sale or transfer, or a transfer, of land on which one or more buildings have been constructed by or on behalf of the vendor that are suitable for use or occupation for residential, commercial or other purposes, and
- (b) the building or buildings have never been occupied or used for any purpose prior to being completed, and
- (c) the Chief Commissioner is satisfied that the building or buildings are a significant improvement to the land, and
- (d) the agreement for the sale or transfer, or the transfer, of the land was first executed within 12 months after the building or buildings were completed, and
- (e) the sale or transfer is the first sale or transfer of the land since the building or buildings were completed, and
- (f) there are no other buildings on the land that are suitable for use or occupation for residential, commercial or other purposes, other than heritage buildings.

(3) **Exemption for new buildings to be constructed on subdivided lots before completion**

An agreement for the sale or transfer of land is not chargeable with vendor duty if:

- (a) it is an agreement for the sale or transfer of a lot in a plan of subdivision (including an unregistered plan of subdivision), on which a building is to be constructed before completion of the sale or transfer, and
- (b) the Chief Commissioner is satisfied that the building will be a significant improvement to the land, and
- (c) the sale or transfer is the first sale or transfer of the lot.

(4) For the purposes of this section, a building is **completed** when:

- (a) an occupation certificate under the *Environmental Planning and Assessment Act 1979* has been issued for the building, or

-
- (b) if such an occupation certificate is not required before the building can be lawfully occupied—the Chief Commissioner is satisfied that the building is ready for occupation for a purpose for which it has been constructed.

- (5) In this section:

heritage building means a building that the Chief Commissioner is satisfied has heritage significance.

162Q Exemption for sale of substantially new buildings

- (1) **Exemption for substantially new buildings not occupied between completion and sale**

An agreement for the sale or transfer, or a transfer, of land is not chargeable with vendor duty if:

- (a) it is an agreement for the sale or transfer, or a transfer, of land on which one or more substantially new buildings have been constructed by or on behalf of the vendor that are suitable for use or occupation for residential, commercial or other purposes, and
- (b) the building or buildings have not been occupied or used for any purpose after completion and prior to the first execution of the agreement or transfer, and
- (c) the Chief Commissioner is satisfied that the building or buildings are a significant improvement to the land, and
- (d) the sale or transfer is the first sale or transfer of the land since the building or buildings were completed, and
- (e) there are no other buildings on the land that are suitable for use or occupation for residential, commercial or other purposes, other than heritage buildings or unoccupied new buildings.

- (2) **Exemption for substantially new buildings sold within 12 months after completion**

An agreement for the sale or transfer, or a transfer, of land is not chargeable with vendor duty if:

- (a) it is an agreement for the sale or transfer, or a transfer, of land on which one or more substantially new buildings have been constructed by or on behalf of the

- vendor that are suitable for use or occupation for residential, commercial or other purposes, and
- (b) the agreement for the sale or transfer, or the transfer, of the land was first executed within 12 months after the building or buildings were completed, and
 - (c) the Chief Commissioner is satisfied that the building or buildings are a significant improvement to the land, and
 - (d) the sale or transfer is the first sale or transfer of the land since the building or buildings were completed, and
 - (e) there are no other buildings on the land that are suitable for use or occupation for residential, commercial or other purposes, other than heritage buildings or unoccupied new buildings.
- (3) For the purposes of this section, a building is **completed** when:
- (a) an occupation certificate under the *Environmental Planning and Assessment Act 1979* has been issued for the building, or
 - (b) if such an occupation certificate is not required before the building can be lawfully occupied—the Chief Commissioner is satisfied that the building is ready for occupation for a purpose for which it has been constructed.
- (4) For the purposes of this section, a building is a **substantially new building** if the Chief Commissioner is satisfied that all parts of the building have been replaced with the exception of the following:
- (a) parts of the building (if any) that have heritage significance,
 - (b) parts of the building required to be retained for structural necessity,
 - (c) major plant and equipment associated with the building.
- (5) In this section:
- heritage building** means a building that the Chief Commissioner is satisfied has heritage significance.
- unoccupied new building** means a building that has never been occupied or used for any purpose.

[12] Section 162S Improved vacant land

Omit “by or on behalf of the vendor” wherever occurring.

Insert instead “at the vendor’s expense”.

[13] Section 162T Sale of business that includes land-related property

Insert “the whole of” before “a business”.

[14] Section 162UA

Insert after section 162U:

162UA Sale by mortgagee or receiver under power of sale

An agreement for the sale or transfer, or a transfer, of land-related property is not chargeable with vendor duty if the Chief Commissioner is satisfied that the agreement or transfer is pursuant to the bona fide exercise of a power of sale by a mortgagee, receiver, liquidator or trustee in bankruptcy.

[15] Section 162V Land subject to conservation instruments

Omit section 162V (1). Insert instead:

- (1) This section applies to a vendor duty transaction if the Chief Commissioner is satisfied that the land-related property transferred is land that is wholly or partly the subject of a conservation agreement under the *National Parks and Wildlife Act 1974* or a trust agreement registered as referred to in section 36 of the *Nature Conservation Trust Act 2001*. These conservation agreements and registered trust agreements are referred to in this section as ***conservation instruments***.

[16] Section 162V (2)–(4)

Omit “conservation agreement” wherever occurring.

Insert instead “conservation instrument”.

[17] Section 162X Transactions exempt from ad valorem duty under Chapter 2

Omit section 162X (1). Insert instead:

- (1) Subject to this Division, no vendor duty is chargeable under this Chapter on a vendor duty transaction if:
 - (a) ad valorem duty is not chargeable on the transaction as a dutiable transaction under Chapter 2 because of any of the provisions of Parts 6 and 7 of Chapter 2 (other than sections 61 and 62), or
 - (b) the transaction is the subject of an exemption under any of sections 96–99, or
 - (c) the duty chargeable on the transaction under Chapter 2 is the duty chargeable under section 18 (3), or
 - (d) the transaction is a transfer in respect of which the Chief Commissioner is required by section 51 to refund ad valorem duty.

[18] Section 162Y Exemptions for charities and others under Chapter 11

Omit section 162Y (3).

[19] Section 216 Mortgages over property not wholly within New South Wales

Omit “within a Territory or” from the value of *T* in section 216 (2).

[20] Section 275

Omit the section. Insert instead:

275 Charitable and benevolent bodies

- (1) Duty under this Act (other than vendor duty) is not chargeable on a transfer, or an agreement for the sale or transfer, or a lease, of dutiable property to, or a declaration of trust over dutiable property held or to be held on trust for, or a mortgage given by or on behalf of, an exempt charitable or benevolent body.
- (2) Vendor duty is not chargeable on a transfer, or an agreement for the sale or transfer, of land-related property by, or a

declaration of trust over land-related property by, an exempt charitable or benevolent body.

(3) In this section:

exempt charitable or benevolent body means:

- (a) any society or institution for the time being approved by the Chief Commissioner for the purposes of this paragraph whose resources are, in accordance with its rules or objects, used wholly or predominantly for:
 - (i) the relief of poverty in Australia, or
 - (ii) the promotion of education in Australia, or
- (b) any society or institution that, in the opinion of the Chief Commissioner, is of a charitable or benevolent nature, or has as its primary object the promotion of the interests of Aborigines and if:
 - (i) (in the application of this definition for the purposes of subsection (1)) the dutiable transaction or instrument is for such purposes as the Chief Commissioner may approve in accordance with guidelines approved by the Treasurer, or
 - (ii) (in the application of this definition for the purposes of subsection (2)) the land-related property was used by the society or institution for such purposes as the Chief Commissioner may approve in accordance with guidelines approved by the Treasurer.

[21] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2004

[22] Schedule 1, clause 41 (5) and (6)

Insert after clause 41 (4):

- (5) The occupation by a vendor of land to which a vendor duty transaction applies as his or her principal place of residence that ceased not more than 6 months before 1 June 2004 is, for the purposes of the application of clause 4 of Schedule 2 in respect of the transaction, to be treated as having ceased immediately before 1 June 2004.

- (6) If the vendor in respect of a vendor duty transaction is the legal personal representative of a deceased person, or a beneficiary under a will of a deceased person or on the intestacy of a deceased person, and the grant of probate or letters of administration occurred before 1 June 2004, clause 6 of Schedule 2 applies in respect of the transaction as if the grant of probate or letters of administration had occurred on 1 June 2004.

[23] Schedule 1, Part 19

Insert after Part 18:

**Part 19 Provisions consequent on enactment of
State Revenue Legislation Further
Amendment Act 2004**

43 Amendments operate from 1 June 2004

- (1) An amendment to this Act made by the *State Revenue Legislation Further Amendment Act 2004*, except an amendment referred to in section 2 (2) of that Act, is taken to have effect as if it had commenced on 1 June 2004.
- (2) A vendor duty transaction that occurred on or after 1 June 2004 in respect of which vendor duty is chargeable because of the amendments made to this Act by the *State Revenue Legislation Further Amendment Act 2004* is taken (if the vendor duty has not already been paid) to become chargeable with that duty on the date of assent to that Act.
- (3) The imposition, payment and recovery of duty under this Act before the date of assent to the *State Revenue Legislation Further Amendment Act 2004* is taken to have been validly done to the extent that it would have been validly done had the amendments made by that Act been in force at the time it was done.

[24] Schedule 2 Principal place of residence exemption—concessions and restrictions

Insert after clause 4 (3):

- (4) The Chief Commissioner may, if satisfied that there is a good reason for doing so, extend the period of 6 months referred to in subclause (1) in a particular case.

[25] Schedule 2, clause 5 (1)

Omit “the vendor is taken”.

Insert instead “the vendor is entitled (if the vendor so chooses) to be taken”.

[26] Schedule 2, clause 5 (4)

Omit the subclause. Insert instead:

- (4) Any period for which a person is taken pursuant to this clause to have continued to use and occupy a former residence as his or her principal place of residence is to be disregarded as a period of use and occupation of any other residence as the person’s principal place of residence (despite the fact that the use and occupation of the other residence during that period was use and occupation as the person’s actual principal place of residence).

[27] Schedule 2, clause 6 (2) (a)

Omit “the date of the deceased person’s death”.

Insert instead “the grant of probate or letters of administration to the legal personal representative”.

[28] Schedule 2, clause 7 (2)

Omit the subclause. Insert instead:

- (2) Subclause (1) applies to a vendor duty transaction only if:
 - (a) the vendor under the transaction is the legal personal representative of the deceased person or is a beneficiary under the will of the deceased person, or on the intestacy of the deceased person, in whom the deceased person’s interest vested after the termination (by expiry or surrender) of the life estate, and

- (b) the date on which (but for this clause) a liability for vendor duty would arise in respect of the transaction is within 12 months after the termination of the life estate.

Schedule 2 Amendment of Land Tax Management Act 1956

(Section 4)

[1] Section 10 Land exempted from tax

Omit section 10 (1) (p1). Insert instead:

- (p1) land that is the subject of a conservation agreement under the *National Parks and Wildlife Act 1974* or a trust agreement registered as referred to in section 36 of the *Nature Conservation Trust Act 2001*,

[2] Section 10 (2C)

Insert after section 10 (2B):

- (2C) Where part of any land is the subject of a conservation agreement under the *National Parks and Wildlife Act 1974* or a trust agreement registered as referred to in section 36 of the *Nature Conservation Trust Act 2001* (as referred to in subsection (1) (p1)), the land value of that land is, for the purposes of the assessment of land tax, to be reduced by an amount that bears the same proportion to that land value as the area of the part that is the subject of the agreement bears to the area of the whole of the land.

[3] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1A (1):

State Revenue Legislation Further Amendment Act 2004 (to the extent that it amends this Act)

[Second reading speech made in—

Legislative Assembly on 23 June 2004

Legislative Council on 29 June 2004]

BY AUTHORITY