



New South Wales

# State Revenue Legislation Amendment Act 2009 No 46

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Duties Act 1997 No 123	3
Schedule 2 Amendment of First Home Owner Grant Act 2000 No 21	8

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New South Wales

# **State Revenue Legislation Amendment Act 2009 No 46**

Act No 46, 2009

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An Act to amend certain State revenue legislation in connection with the Budget for the year 2009–2010. [Assented to 26 June 2009]

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

**1 Name of Act**

This Act is the *State Revenue Legislation Amendment Act 2009*.

**2 Commencement**

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 commences, or is taken to have commenced, on 1 July 2009.

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## **Schedule 1      Amendment of Duties Act 1997 No 123**

### **[1] Chapter 2, Part 8, Division 1A**

Insert after Division 1:

### **Division 1A      NSW Housing Construction Acceleration Plan (Budget 2009–10)**

#### **87A      Nature of the scheme**

The scheme established by this Division is intended to provide a reduction in duty in respect of the purchase or construction of new homes by persons who are not eligible for an exemption or reduction under the First Home Plus scheme in Division 1 or a grant under the *First Home Owner Grant Act 2000*.

#### **87B      Relevant dates for eligibility**

- (1) The following agreements or transfers are eligible for consideration under the scheme:
  - (a) agreements for sale or transfer of dutiable property entered into on or after 1 July 2009 and before 1 January 2010,
  - (b) transfers of dutiable property that occur on or after 1 July 2009 and before 1 January 2010 (other than transfers made in conformity with an agreement for sale or transfer entered into before 1 July 2009).
- (2) An agreement for the sale or transfer of dutiable property is not eligible if:
  - (a) it replaces an agreement made before 1 July 2009, and
  - (b) the replaced agreement was an agreement for the sale or transfer of substantially the same dutiable property.

#### **87C      Agreements or transfers must be for acquisition of new home**

- (1) An agreement for the sale or transfer of dutiable property is eligible under the scheme if:
  - (a) it is an agreement for the acquisition of a new home that is complete and ready for occupation, or
  - (b) it is an agreement for the sale or transfer of land on which a new home is to be built before completion of the sale or transfer (an *off the plan purchase agreement*).
- (2) A transfer is eligible under the scheme if the transfer is for the acquisition of a new home that is complete and ready for occupation.

- (3) For the purposes of this Division, a ***new home*** is a home that has not been previously occupied or sold as a place of residence, and includes a substantially renovated home.
- (4) An off the plan purchase agreement is eligible only if the agreement states that the sale or transfer must be completed before 30 June 2011 or, in any other case, the agreement is completed before 30 June 2011 or by such later date as the Chief Commissioner may allow for delay caused by circumstances beyond the control of the parties.
- (5) In any case, the agreement or transfer must be for the whole of the land or, if the land is a parcel of land on which 2 or more homes are built, or are being built, for that part of the land that is an exclusive occupancy.
- (6) For the purposes of this section, land is an ***exclusive occupancy*** only if the Chief Commissioner is satisfied that the person acquiring the land will be entitled to occupy a home that is built, or being built, on the land as a place of residence to the exclusion of other persons who occupy or are to occupy the other home or homes built or being built on the parcel of land.
- (7) The Chief Commissioner may approve an application in relation to an off the plan purchase agreement in anticipation of compliance with the eligibility requirements of this section.

**87D Restrictions on eligibility**

- (1) An agreement or transfer is not eligible if:
  - (a) the agreement or transfer is eligible under the First Home Plus scheme in Division 1, or
  - (b) the transferee, or any of the transferees, is eligible for or has been paid a grant under the *First Home Owner Grant Act 2000* in respect of the purchase or construction of the new home on the land.
- (2) An agreement or transfer is not eligible if the new home, or the land on which the new home is located or to be built, is intended to be used, or made available for use, for any purpose that is not ancillary to the use and occupation of the land for residential purposes (such as a commercial, industrial or professional purpose).
- (3) However, an agreement for the purchase, or a transfer, of a farming property on which there is a new home or on which a new home is to be constructed is not excluded.

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**87E Cap on dutiable value of transaction**

The dutiable value of the dutiable property that is the subject of the agreement or transfer must not exceed \$600,000.

**87F Duty payable if application approved**

- (1) If an application concerning an eligible agreement or transfer is approved, the amount of ad valorem duty chargeable on the agreement or transfer is to be reduced by 50%.
- (2) If an eligible agreement or transfer is aggregated with other dutiable transactions, and treated as a single dutiable transaction under section 25, the 50% reduction is to be applied only to the ad valorem duty that would be chargeable (in the absence of aggregation) on the approved agreement or transfer.

**87G Making of applications**

- (1) An application under this Division is to be made to the Chief Commissioner in an approved form.
- (2) The Chief Commissioner may at any time (whether before or after the approval of an application) require the applicant or applicants to provide such further information as the Chief Commissioner may consider necessary for the proper administration of the scheme.

**87H Reassessment of duty payable where duty concession wrongly applied**

- (1) The Chief Commissioner may reassess the duty chargeable in respect of an agreement or transfer that is initially approved under the scheme if the Chief Commissioner forms the opinion that the agreement or transfer is not eligible under the scheme, including in a case where approval was given in anticipation of compliance with any eligibility requirements that have not been met.
- (2) The Chief Commissioner may issue a notice of assessment, based on the reassessment, for the duty chargeable in respect of the agreement or transfer.

**87I Charge on land for duty liability of applicant**

- (1) Any duty liability that an applicant has under the scheme in respect of an agreement or transfer is a charge on the applicant's interest in the land that is the subject of the agreement or transfer.

- (2) An applicant has a duty liability under the scheme in respect of an agreement or transfer if the applicant is required to pay an amount of duty to the Chief Commissioner, in respect of an agreement or transfer that is initially approved under the scheme, under a notice of assessment referred to in section 87H.
- (3) The charge created by this section gives the Chief Commissioner an interest in the land and, accordingly, the Chief Commissioner may lodge a caveat in respect of the land under the *Real Property Act 1900* to protect that interest.
- (4) The caveat must be withdrawn when the amount of the duty liability has been paid.
- (5) The amount of the duty liability is the amount of duty that the applicant is required to pay to the Chief Commissioner in respect of the relevant agreement or transfer, together with any interest or penalty tax payable.
- (6) In this section:  
*applicant* includes a former applicant.

**87J Definitions**

- (1) In this Division:  
*home* means a building (affixed to land) that:
  - (a) may lawfully be used as a place of residence, and
  - (b) is, in the Chief Commissioner's opinion, a suitable building for use as a place of residence.*new home*—see section 87C.
- (2) For the purposes of this Division, a home is a *substantially renovated home* if:
  - (a) the home is new residential premises within the meaning of section 40-75 (1) (b) of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, and
  - (b) the home, as renovated, has not been previously occupied or sold as a place of residence.

**[2] Section 270B**

Insert after section 270A:

**270B Exemption for caravans**

- (1) Duty under this Chapter is not chargeable on an application to register a motor vehicle if the motor vehicle is a caravan.

(2) In this section:

*caravan* means a trailer (within the meaning of the *Road Transport (Vehicle Registration) Act 1997*), including a camper trailer, that is permanently fitted for human habitation in connection with a journey.

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

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2009*

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## **Schedule 2 Amendment of First Home Owner Grant Act 2000 No 21**

**[1] Section 18C NSW new home buyers supplement**

Omit “10 November 2009” wherever occurring in section 18C (2), (3) (a), (4) (a) and (5) (a).

Insert instead “30 June 2010”.

**[2] Section 18C (3) (b)**

Omit “10 May 2011” wherever occurring.

Insert instead “the required completion date”.

**[3] Section 18C (7)**

Insert in alphabetical order:

*required completion date* means:

- (a) for a contract made on or after 11 November 2008 and on or before 10 November 2009, 10 May 2011, or
- (b) for a contract made after 10 November 2009 and on or before 30 June 2010, 31 December 2011.

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

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2009*

[Agreement in principle speech made in Legislative Assembly on 16 June 2009  
Second reading speech made in Legislative Council on 23 June 2009]

BY AUTHORITY