



New South Wales

# State Revenue Legislation Amendment Act 2004 No 33

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Acts	2
4 Repeal of Premium Property Tax Act 1998 No 79	2
Schedule 1 Amendments to Duties Act 1997 No 123 relating to First Home Plus	3
Schedule 2 Amendments relating to land tax	12
Schedule 3 Amendments relating to premium property duty	19
Schedule 4 Amendments to Duties Act 1997 No 123 relating to vendor duty	28
Schedule 5 Miscellaneous amendments	61

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New South Wales

## **State Revenue Legislation Amendment Act 2004 No 33**

Act No 33, 2004

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An Act to make miscellaneous amendments to certain State revenue legislation;  
and for other purposes. [Assented to 24 May 2004]

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

This Act is the *State Revenue Legislation 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:
  - Section 4 and Schedule 3—1 June 2004, or the date of assent, whichever is the later
  - Schedule 1—4 April 2004
  - Schedule 2 (except Schedule 2.2 [10])—31 December 2004
  - Schedule 4—1 June 2004, or the date of assent, whichever is the later
  - Schedule 5.1 [10]—1 July 2004

**3 Amendment of Acts**

The Acts specified in Schedules 1–5 are amended as set out in those Schedules.

**4 Repeal of Premium Property Tax Act 1998 No 79**

The *Premium Property Tax Act 1998* is repealed.

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## **Schedule 1 Amendments to Duties Act 1997 No 123 relating to First Home Plus**

(Section 3)

### **[1] Section 70**

Omit the section. Insert instead:

#### **70 Commencement**

The following transactions and instruments are eligible for consideration under the scheme:

- (a) agreements for sale or transfer entered into on or after 4 April 2004,
- (b) transfers that occur on or after 4 April 2004 (other than transfers made in conformity with an agreement for sale or transfer entered into before 4 April 2004),
- (c) mortgages over land the subject of those agreements or transfers.

### **[2] Section 71**

Omit the section. Insert instead:

#### **71 Eligible persons must not have owned residential land**

- (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 has not at any time owned residential property in Australia (either solely or with someone else).
- (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 has not at any time owned residential property in Australia (either solely or with someone else).
- (3) If there is more than one purchaser or transferee under an agreement or transfer, they may apply under the scheme, but will be eligible only if all of them are eligible under subsections (1) and (2).
- (4) For the purpose of this section, a person is the *spouse* of another person if:
  - (a) they are legally married, or

- (b) they are living together as a couple in a de facto relationship.
- (5) If the Chief Commissioner is satisfied that, at the time of making an application under the scheme, a purchaser or transferee:
  - (a) is legally married but not cohabiting with the person to whom the applicant is legally married, and
  - (b) has no intention of resuming cohabitation,the person to whom the purchaser or transferee is legally married is not to be regarded as the applicant's spouse.
- (6) Despite the other provisions of this section, the Chief Commissioner may determine that the purchasers or transferees are eligible under the scheme if the Chief Commissioner is satisfied that the purchaser or transferee who has previously owned residential property is acquiring an interest in the property that is the subject of the application solely for the purpose of assisting the eligible persons under the scheme in financing the acquisition.

**[3] Section 73 Ineligible persons**

Omit section 73 (3)–(5). Insert instead:

- (3) A purchaser or transferee under an agreement or transfer who is under 16 years of age is not eligible.
- (4) Despite subsection (3), the Chief Commissioner may determine that a purchaser or transferee under 16 years of age is eligible if the Chief Commissioner is satisfied that:
  - (a) the home to which the agreement or transfer relates will be occupied by the purchaser or transferee as his or her principal place of residence in accordance with the residence requirement under section 76, and
  - (b) the application does not form part of a scheme to circumvent limitations on, or requirements affecting, eligibility under the scheme.
- (5) A purchaser or transferee under an agreement or transfer is not eligible unless the person is an Australian citizen or a permanent resident, subject to subsection (6).
- (6) If an application under the scheme is made by joint purchasers or transferees and at least one (but not all) of the applicants is

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an Australian citizen or permanent resident, the other applicant or applicants are exempted from compliance with subsection (5).

(7) In this section:

***Australian citizen*** means an Australian citizen as defined in the *Australian Citizenship Act 1948* of the Commonwealth.

***permanent resident*** means:

- (a) the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* of the Commonwealth, or
- (b) a New Zealand citizen who holds a special category visa within the meaning of section 32 of the *Migration Act 1958* of the Commonwealth.

**[4] Section 74**

Omit the section. Insert instead:

**74 Eligible agreements or transfers**

- (1) The agreement or transfer must be for the acquisition of a first home or for the acquisition of a vacant block of residential land intended to be used as the site of a first home.
- (2) The agreement or transfer must be for the whole of the property.
- (3) The dutiable value of the dutiable property that is the subject of the agreement or transfer must be less than:
  - (a) \$600,000 if the property has a private dwelling built on it, or
  - (b) \$450,000 if the property comprises a vacant block of residential land.

**Note.** The ***dutiable value*** of dutiable property is the greater of:

- (a) the consideration (if any) for the dutiable transaction (being the amount of a monetary consideration or the value of a non-monetary consideration), and
- (b) the unencumbered value of the dutiable property.

**[5] Sections 76 and 76A**

Omit section 76. Insert instead:

**76 Residence requirement**

- (1) The home must be occupied by the person or persons who are acquiring it as a principal place of residence for a continuous period of at least 6 months, with that occupation starting within 12 months (or such longer period as the Chief Commissioner may approve) after completion of the agreement or transfer. This requirement is referred to as *the residence requirement*.
- (2) The Chief Commissioner may, if satisfied there are good reasons to do so in a particular case:
  - (a) modify the residence requirement by approving a shorter period of occupation by the person or persons, or
  - (b) exempt the person or persons from the requirement to comply with the residence requirement.
- (3) In the case of an agreement or transfer for the acquisition of a vacant block of residential land, it is sufficient that the Chief Commissioner is satisfied that the vacant block is intended to be used as the site of a home to be occupied by the person or persons who are acquiring it in accordance with the residence requirement.
- (4) The residence requirement does not apply to a person who acquires an interest in the property concerned solely for the purpose of assisting the eligible persons under the scheme in financing the acquisition.
- (5) For the purpose of this section, an agreement or transfer is *completed* when a purchaser or transferee becomes entitled to possession of the home and, if the interest in the land acquired by the purchaser or transferee is registrable under a law of the State, the interest is so registered.
- (6) However, an agreement or transfer of a vacant block of residential land is not completed until the home intended to be built on the land is ready for occupation as a place of residence.

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**76A Approval of application in advance of satisfaction of residence requirement**

- (1) The Chief Commissioner may approve an application in anticipation of compliance with the residence requirement under section 76 if the Chief Commissioner is satisfied that each applicant required to comply with the residence requirement intends to occupy the home as his or her principal place of residence for a continuous period of at least 6 months, with that occupation starting within 12 months after completion of the agreement or transfer or within a longer period approved by the Chief Commissioner.
- (2) If an application is approved in anticipation of compliance with the residence requirement, the approval is given on condition that, if the residence requirement is not complied with, the applicant must within 14 days after the end of the period allowed for compliance:
  - (a) give written notice of that fact to the Chief Commissioner, and
  - (b) pay the relevant duty to the Chief Commissioner.
- (3) The *relevant duty* is the difference between the total amount of duty that would have been payable on the transactions and instruments the subject of the application, if they had not been eligible under the scheme, and the total amount of duty (if any) paid in respect of those transactions and instruments.
- (4) A person who fails to comply with the condition prescribed by this section is guilty of an offence.

Maximum penalty: 50 penalty units.

**[6] Section 77 Eligible mortgages**

Omit section 77 (3) and (4). Insert instead:

- (3) In the case of a property that has a private dwelling built on it, the amount of advances secured must not be more than the amount of the dutiable value permitted under section 74 (3)
  - (a).



- (4) In the case of a property that comprises a vacant block of residential land, the amount of advances secured must not be more than the amount of the dutiable value permitted under section 74 (3) (b), unless the amount of advances secured under the mortgage includes provision for the building of a private dwelling on the property. In such a case, the amount of advances secured must not be more than the amount of the dutiable value permitted under section 74 (3) (a).

**[7] Section 80**

Omit the section. Insert instead:

**80 Duty payable if application approved**

- (1) If an application concerning an eligible agreement or transfer is approved and the dutiable value of the dutiable property that is the subject of the agreement or transfer is not more than the following amounts, no duty is chargeable on the agreement or transfer:
- (a) \$500,000 if the property has a private dwelling built on it, or
  - (b) \$300,000 if the property comprises a vacant block of residential land.
- (2) If an application concerning an eligible agreement or transfer is approved and subsection (1) does not apply to the agreement or transfer, duty is chargeable on the agreement or transfer as follows:
- (a) if the property has a private dwelling built on it—at the rate of 22.49% of the dutiable value of the dutiable property that is the subject of the agreement or transfer, less \$112,450, or
  - (b) if the property comprises a vacant block of residential land—at the rate of 10.49% of the dutiable value of the dutiable property that is the subject of the agreement or transfer, less \$31,470.

**[8] Section 221**

Omit the section. Insert instead:

**221 Eligible mortgages under First Home Plus**

- (1) Duty is payable in accordance with the following paragraphs on an advance secured by an eligible mortgage under Division 1 of Part 8 of Chapter 2 or a mortgage in support of such an eligible mortgage, but only to the extent that the amount of the advances qualifies under section 77 (3) or (4):

- (a) if the property has a private dwelling built on it:

<b>Dutiable value of dutiable property subject to the agreement or transfer</b>	<b>Discount on duty</b>
Not more than \$500,000	100%
More than \$500,000 but not more than \$535,000	75%
More than \$535,000 but not more than \$565,000	50%
More than \$565,000 but less than \$600,000	25%

- (b) if the property comprises a vacant block of residential land:

<b>Dutiable value of dutiable property subject to the agreement or transfer</b>	<b>Discount on duty</b>
Not more than \$300,000	100%
More than \$300,000 but not more than \$350,000	75%
More than \$350,000 but not more than \$400,000	50%

<b>Dutiable value of dutiable property subject to the agreement or transfer</b>	<b>Discount on duty</b>
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More than \$400,000 but less than \$450,000	25%
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- (2) For the purpose of assessing any further advances secured by such a mortgage, duty is taken to have been paid on the amount of advances to which subsection (1) applies.

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

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part State Revenue Legislation Amendment Act 2004—provisions consequent on changes to First Home Plus**

**Application of changes to scheme**

- (1) Division 1 of Part 8 of Chapter 2, and section 221, as in force immediately before 4 April 2004, continue to apply in respect of the following transactions or instruments:
- (a) agreements for sale or transfer entered into on or after 1 July 2000 but before 4 April 2004,
  - (b) transfers that occur on or after 1 July 2000 but before 4 April 2004,
  - (c) transfers that occur on or after 4 April 2004 that are made in conformity with an agreement for sale or transfer referred to in paragraph (a),
  - (d) mortgages over land the subject of those agreements or transfers.
- (2) Sections 71, 73 and 76, as in force immediately before 4 April 2004, continue to apply in respect of the following transactions or instruments:
- (a) agreements for sale or transfer entered into on or after 4 April 2004 but before 1 July 2004,
  - (b) transfers that occur on or after 4 April 2004 but before 1 July 2004,

- (c) transfers that occur on or after 4 April 2004 that are made in conformity with an agreement for sale or transfer referred to in paragraph (a),
  - (d) mortgages over land the subject of those agreements or transfers.
- (3) Section 76A, as inserted by the *State Revenue Legislation Amendment Act 2004*, does not apply in respect of a transaction or instrument referred to in subclause (2).

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## Schedule 2 Amendments relating to land tax

(Section 3)

### 2.1 Land Tax Act 1956 No 27

#### [1] Section 3AH Levy of land tax after 31 December 1999 and before 31 December 2004

Insert “and ending with 2003” after “commencing with 1999” wherever occurring in section 3AH (1) and (2).

#### [2] Section 3AI

Insert after section 3AH:

#### 3AI Levy of land tax after 31 December 2004

- (1) Except as provided by subsection (2), in respect of the taxable value of all the land owned by any person at midnight on 31 December in any year (commencing with 2004) there is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act, land tax for the period of 12 months commencing on 1 January in the next succeeding year and at the rates set out in Schedule 10.
- (2) In respect of the taxable value of all the land owned by a person at midnight on 31 December in any year (commencing with 2004) where:
  - (a) the owner is a company classified under section 29 of the Principal Act as a non-concessional company, or
  - (b) the land is subject to a special trust,land tax for the period of 12 months commencing on 1 January in the next succeeding year is, except as provided by section 27 (2A) of the Principal Act, to be charged, levied, collected and paid as referred to in subsection (1) at the rate of 1.4 cents for each \$1 of the taxable value.
- (3) If the total amount of land tax payable pursuant to this section by any person in any year would, but for this subsection, be less than \$100, no land tax is payable.

**[3] Schedule 10**

Insert after Schedule 9:

**Schedule 10**

(Section 3A1)

<b>Taxable value assessed under Principal Act</b>	<b>Rates of land tax payable</b>
Not more than \$400,000	0.4 cents for each \$1
More than \$400,000 but not more than \$500,000	\$1,600 plus 0.6 cents for each \$1 by which the taxable value exceeds \$400,000
More than \$500,000	\$2,200 plus 1.4 cents for each \$1 by which the taxable value exceeds \$500,000

**2.2 Land Tax Management Act 1956 No 26****[1] Section 3 Definitions**

Omit the definition of *Flat* from section 3 (1). Insert instead:

*flat* means a room or a suite of rooms (whether or not forming part of a building or a detached building):

- (a) used or occupied as a separate dwelling, or
- (b) so constructed, designed or adapted as to be capable of being used or occupied as a separate dwelling,

but does not include a single dwelling.

**[2] Section 3 (1)**

Insert in alphabetical order in section 3 (1):

*single dwelling* means a house:

- (a) used or occupied as a separate dwelling, or
- (b) so constructed, designed or adapted as to be capable of being used or occupied as a separate dwelling.

**[3] Section 3 (3)**

Insert after section 3 (2):

- (3) For the purposes of the definitions of *flat* and *single dwelling* in subsection (1), a building, or part of a building, used and occupied for residential purposes does not cease to be considered to be used and occupied as a separate dwelling merely because the building, or part of the building, is used for the purpose of another residential occupancy, if that residential occupancy may be disregarded for the purposes of the principal place of residence exemption under Schedule 1A.

**[4] Section 9C Reduction in land value for flats on mixed development land or mixed use land**

Omit “the land value of land” from section 9C (1).

Insert instead “the land value of mixed development land or mixed use land”.

**[5] Section 9C (2) (b)**

Omit “subsections (2AA)–(2AC)”.

Insert instead “subsections (2A) and (2AA)”.

**[6] Section 9C (2A)–(2AC)**

Omit the subsections. Insert instead:

- (2A) If there is no apportionment factor entered in the Register in respect of the land value of the land, the Chief Commissioner may request the Valuer-General to determine the apportionment factor in respect of the land concerned.
- (2AA) If a request is made under subsection (2A):
- (a) the Valuer-General must determine the apportionment factor concerned and enter it in the Register, and
  - (b) the allowable proportion for the flat must be determined in accordance with subsection (2) (a).
- (2AB) Apportionment factors for the purposes of this section are to be ascertained in accordance with Division 5 or Division 5A of Part 1B of the *Valuation of Land Act 1916*, as appropriate

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to the land concerned. If such an apportionment factor is expressed as a percentage, the apportionment factor is, for the purposes of this section, to be converted to a fraction.

**Note.** Divisions 5 and 5A of Part 1B of the *Valuation of Land Act 1916* allow objections to be made against the amount of an apportionment factor.

**[7] Section 9C (3) (a) and (b)**

Omit the paragraphs. Insert instead:

- (a) the flat must be used and occupied by the owner of the land (or one of the owners) as his or her principal place of residence and for no other purpose, in which connection the use of the land for the purpose of one, but not more than one, residential occupancy other than that of the owner under lease or licence from the owner may be disregarded if it is an excluded residential occupancy (within the meaning of clause 4 of Schedule 1A),

**[8] Section 9C (8)**

Insert after section 9C (7):

- (8) In this section:

*mixed development land* has the same meaning as in Division 5 of Part 1B of the *Valuation of Land Act 1916*.

*mixed use land* has the same meaning as in Division 5A of Part 1B of the *Valuation of Land Act 1916*.

**[9] Section 9D**

Insert after section 9C:

**9D Reduction in land value for other residences on mixed use land**

- (1) For the purpose of assessing land tax, the land value of mixed use land on which is situated one single dwelling is to be reduced by the allowable proportion in relation to the dwelling.
- (2) The allowable proportion for the dwelling is to be determined in accordance with whichever of the following paragraphs is applicable in the particular case:



- (a) if there is an apportionment factor entered in the Register in respect of that land value—the proportion determined by deducting that apportionment factor from 1,
  - (b) if paragraph (a) is not applicable—the proportion specified in an application for a reduction under this section as the fair and reasonable proportion of the land value of the land to be attributed to the dwelling, subject to subsections (3) and (4).
- (3) If there is no apportionment factor entered in the Register in respect of the land value of the land, the Chief Commissioner may request the Valuer-General to determine the apportionment factor in respect of the land concerned.
- (4) If a request is made under subsection (3):
  - (a) the Valuer-General must determine the apportionment factor concerned and enter it in the Register, and
  - (b) the allowable proportion for the dwelling must be determined in accordance with subsection (2) (a).
- (5) Apportionment factors for the purposes of this section are to be ascertained in accordance with Division 5A of Part 1B of the *Valuation of Land Act 1916*. If such an apportionment factor is expressed as a percentage, the apportionment factor is, for the purposes of this section, to be converted to a fraction.

**Note.** Division 5A of Part 1B of the *Valuation of Land Act 1916* allows objections to be made against the amount of an apportionment factor.
- (6) The reduction under this section applies only if the following requirements are satisfied:
  - (a) the single dwelling must be used and occupied by the owner of the land (or one of the owners) as his or her principal place of residence and for no other purpose, in which connection the use of the land for the purpose of one, but not more than one, residential occupancy other than that of the owner under lease or licence from the owner may be disregarded if it is an excluded residential occupancy (within the meaning of clause 4 of Schedule 1A),
  - (b) an owner of the land who occupies the dwelling must not be an owner merely because of being a trustee,

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- (c) the owner of the land must not be a company or company jointly with another person or other persons, except in either case a trustee company acting in its representative capacity.
  - (7) Unless the land concerned is land to which subsection (2) (a) applies, there is to be no reduction under this section unless:
    - (a) application has been made for the reduction by all the owners of the land, specifying the proportion that in their opinion is a fair and reasonable proportion of the land value of the land to be attributed to the dwelling, and
    - (b) the application is made in a form approved by the Chief Commissioner.
  - (8) For avoidance of doubt, if a reduction in the land value of land is required under this section and the land is jointly owned, then, for the purposes of section 27 (3) (a), the individual interest of each of the owners of the land (including the owner who occupies the dwelling) is to be assessed on the basis of the land value of the land as reduced under this section.
  - (9) For the purposes of applying this section in respect of land on which there is a single dwelling and a residential occupancy other than that of the owner, the use of the land for the purpose of that other residential occupancy may be disregarded if that residential occupancy may be disregarded under the principal place of residence exemption under Schedule 1A.
  - (10) This section does not apply to land to which section 9C or 21B applies.
  - (11) In this section:  
*mixed use land* has the same meaning as in Division 5A of Part 1B of the *Valuation of Land Act 1916*.

**[10] Section 62T**

Insert in Division 4A of Part 7, before section 62TA:

**62T Abolition of tax threshold from 2005 land tax year**

- (1) This Division does not apply in respect of the 2005 land tax year or any succeeding land tax year.

State Revenue Legislation Amendment Act 2004 No 33

Schedule 2 Amendments relating to land tax

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- (2) Sections 62TA and 62TB cease to apply in respect of the Valuer-General on the commencement of this section.

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## Schedule 3 Amendments relating to premium property duty

(Section 3)

### 3.1 Duties Act 1997 No 123

#### [1] Sections 32A–32C

Insert after section 32:

#### **32A Premium rate for residential land with dutiable value exceeding \$3,000,000**

- (1) The rate of duty chargeable on a dutiable transaction in respect of residential land that has a dutiable value exceeding \$3,000,000 is \$150,490 plus \$7 for every \$100, or part, by which the dutiable value of the residential land exceeds \$3,000,000.
- (2) The rate of duty chargeable on a dutiable transaction in respect of residential land that has a dutiable value not exceeding \$3,000,000 is as provided for by section 32.
- (3) For the purposes of this section, *residential land* means:
  - (a) a parcel of land on which there is one single dwelling or one flat, or a parcel of land on which there is a building under construction that, when completed, will constitute one single dwelling or one flat, or
  - (b) a strata lot, if it is lawfully occupied as a separate dwelling, or suitable for lawful occupation as a separate dwelling, or
  - (c) a land use entitlement, if it confers an entitlement to occupy a building, or part of a building, as a separate dwelling, or
  - (d) a parcel of vacant land that is zoned or otherwise designated for use under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*) for residential or principally for residential purposes.
- (4) For the purpose subsection (3) (a), land does not cease to be regarded as land on which there is one single dwelling, or one flat, merely because of the use or occupation of any building on the land, or any part of a building, for the purpose of another residential occupancy, if the use of the land for the

purpose of that other residential occupancy can be disregarded as an excluded residential occupancy under Schedule 2 if the principal place of residence exemption were to apply in respect of the land (whether or not the principal place of residence exemption in fact applies in respect of the land).

**Note.** For example, if land has a single dwelling on it, and a flat occupied under licence or lease by the occupant of the single dwelling, the land is still to be regarded as land on which there is one single dwelling for the purpose of subsection (3) (a).

- (5) This section does not apply to a case in which section 32B or 32C applies.
- (6) In this section:

**flat** means a room or suite of rooms (whether or not forming part of a building or a detached building):

- (a) occupied or used as a separate dwelling, or
- (b) so constructed, designed or adapted as to be capable of being occupied or used as a separate dwelling,

but does not include a single dwelling, a strata lot or a dwelling, or portion of a building, that is occupied under a land use entitlement.

**single dwelling** means a house:

- (a) occupied or used as a separate dwelling, or
- (b) so constructed, designed or adapted as to be capable of being occupied or used as a separate dwelling,

but does not include a strata lot or a property commonly known as a shop and dwelling.

### **32B Rate for residential land used for other purposes**

- (1) If a dutiable transaction in respect of residential land has a dutiable value exceeding \$3,000,000, and the Chief Commissioner is satisfied that the residential land is used for purposes other than residential purposes, duty is to be charged at the rate of \$7 for every \$100, or part, of the premium value of the residential land.

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- (2) The *premium value* of the residential land is the amount (if any) by which the dutiable value of the residential land, when reduced by the apportionment factor, exceeds \$3,000,000.
- (3) The apportionment factor is:
- (a) if the land is mixed development land or mixed use land and there is an apportionment factor entered in the Register of Land Values in respect of the land value of the land under Division 5 or 5A of Part 1B of the *Valuation of Land Act 1916*—that apportionment factor, or
  - (b) if paragraph (a) is not applicable—such other apportionment factor as the Chief Commissioner considers fair and reasonable to reflect the use of the land for non-residential purposes, subject to subsections (4) and (5).
- (4) If there is no apportionment factor entered in the Register of Land Values in respect of the land value of the land, and the land is mixed development land or mixed use land, the Chief Commissioner may request the Valuer-General to determine the apportionment factor in respect of the land concerned.
- (5) If a request is made under subsection (4):
- (a) the Valuer-General must determine the apportionment factor concerned and enter it in the Register of Land Values under the *Valuation of Land Act 1916*, and
  - (b) that apportionment factor is to be applied in respect of the residential land.
- Note.** Divisions 5 and 5A of Part 1B of the *Valuation of Land Act 1916* allow objections to be made against the amount of an apportionment factor.
- (6) Duty is to be charged, at the rate set out in section 32, in respect of the dutiable value of the dutiable property transferred reduced by the premium value of the residential land.
- (7) In this section:
- mixed development land* has the same meaning as in Division 5 of Part 1B of the *Valuation of Land Act 1916*.

*mixed use land* has the same meaning as in Division 5A of Part 1B of the *Valuation of Land Act 1916*.

*residential land* has the same meaning as in section 32A.

**32C Rate for large parcels of vacant residential land**

- (1) If a dutiable transaction in respect of residential land that is a parcel of vacant land has a dutiable value exceeding \$3,000,000, and the area of the parcel of land exceeds 2 hectares, duty is to be charged at the rate of \$7 for every \$100, or part, of the premium value of the residential land.
- (2) The *premium value* of the residential land is the amount (if any) by which the dutiable value of the residential land, when multiplied by the apportionment factor, exceeds \$3,000,000.
- (3) The apportionment factor is the proportion that 2 hectares bears to the total area of the parcel of land in hectares.
- (4) Duty is to be charged, at the rate set out in section 32, in respect of the dutiable value of the dutiable property transferred reduced by the premium value of the residential land.
- (5) In this section:

*residential land* has the same meaning as in section 32A.

**[2] Sections 96, 97 and 98**

Omit “, or would be so exempt but for the operation of the *Premium Property Tax Act 1998*” wherever occurring from section 96 (1) (c), 97 (d) and 98 (d).

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

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part State Revenue Legislation Amendment Act 2004—provisions consequent on amendments relating to premium property duty**

**Application of amendments**

- (1) Sections 32A–32C, as inserted by the *State Revenue Legislation Amendment Act 2004*, apply in respect of any liability for duty charged by Chapter 2 that arises on or after the commencement of Schedule 3 to that Act.

**Note.** See section 12. Liability for duty on a transfer of dutiable property effected by a written instrument arises when the instrument is first executed.

- (2) The amendments made to sections 96, 97 and 98 by Schedule 3 to the *State Revenue Legislation Amendment Act 2004* do not apply in respect of the year ending on 31 December 2004.

**[4] Dictionary**

Insert in alphabetical order:

*strata lot* means a lot as defined in section 5 (1) of the *Strata Schemes (Freehold Development) Act 1973* or section 4 (1) of the *Strata Schemes (Leasehold Development) Act 1986*.

**3.2 Land Tax Management Act 1956 No 26**

**[1] Section 3 Definitions**

Omit the definition of *premium tax threshold* from section 3 (1).

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

Omit clause 2 (1). Insert instead:

- (1) Land used and occupied by the owner as the principal place of residence of the owner of the land, and for no other purpose, is exempt from taxation under this Act, in respect of the year commencing 1 January 2005 or any succeeding year, if the land is:



- (a) a parcel of residential land, or
- (b) a lot under the *Strata Schemes (Freehold Development) Act 1973* or a lot under the *Strata Schemes (Leasehold Development) Act 1986*.

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

Insert at the end of the Schedule:

**Part 16 Provisions consequent on repeal of Premium Property Tax Act 1998**

**36 Repeal of Premium Property Tax Act 1998**

- (1) The amendments made to this Act by Schedule 3 to the *State Revenue Legislation Amendment Act 2004*, and the repeal of the *Premium Property Tax Act 1998*, apply in respect of a land tax year commencing on or after 1 January 2005 and do not affect any existing liability for land tax.
- (2) This Act and the *Taxation Administration Act 1996*, as in force immediately before those amendments were made, and the *Premium Property Tax Act 1998*, as in force immediately before its repeal, continue to apply in respect of any such liability.

**3.3 Taxation Administration Act 1996 No 97**

**Section 4 Meaning of “taxation laws”**

Omit “*Premium Property Tax Act 1998*” from section 4.

**3.4 Valuation of Land Act 1916 No 2**

**[1] Part 1B, Division 5A**

Insert after Division 5 of Part 1B:

**Division 5A Apportionment factors for mixed use land**

**14BBA Owner may apply for apportionment factor for mixed use land**

- (1) The Valuer-General may ascertain an apportionment factor for the land value of mixed use land, either on his or her own

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initiative or on the application of the owner of the land or of a rating or taxing authority.

- (2) An apportionment factor ascertained by the Valuer-General under this Division is to be entered by the Valuer-General in the Register of Land Values in respect of the land value to which it relates.

**14BBB How apportionment factor is determined**

- (1) The apportionment factor is the proportion (expressed as a percentage) that the rental value of the part of that land that is occupied or used for non-residential purposes bears to the rental value of the mixed use land as a whole.
- (2) Rental values are to be ascertained in relation to a rating or taxing authority:
- (a) as at the 1 July by reference to which the land was valued for the purposes of the valuation list for that authority current at the time the land became mixed use land, and
  - (b) as at the 1 July by reference to which the land has been valued for the purposes of any subsequent valuation list for that authority.

**14BBC Apportionment factors can be objected against**

- (1) An objection under Part 3 may be made against a decision of the Valuer-General:
- (a) to ascertain an apportionment factor in respect of any land, or
  - (b) not to ascertain an apportionment factor in respect of any land, or
  - (c) as to the amount of an apportionment factor in respect of any land,
- in the same way as an objection may be made under that Part against a decision of the Valuer-General as to the valuation of any land.
- (2) An objection referred to in subsection (1) may be made on any ground that is relevant to the decision concerned.

**14BBD Apportionment factor to be reascertained in certain cases**

If the land value of land in respect of which an apportionment factor has been ascertained is altered (whether as the result of being reascertained or on objection or appeal or for the correction of a clerical error or misdescription), the Valuer-General must reascertain an apportionment factor for that land value.

**14BBE Definitions**

- (1) For the purposes of this Division, *mixed use land* means a parcel of land (other than mixed development land within the meaning of Division 5) that:
  - (a) is the site of a residence occupied or used for residential purposes, and
  - (b) is also used for non-residential purposes.
- (2) A residence is one or more buildings comprising:
  - (a) one, or more than one, flat, or
  - (b) one single dwelling.
- (3) For the purpose of this Division, land is occupied or used for a *non-residential purpose* if it is occupied or used for any purpose that is not ancillary to the use and occupation of the residence for residential purposes, such as a commercial, industrial or professional purpose.
- (4) Land occupied or used for non-residential purposes is not *mixed use land* by reason only that it is the site of a residence intended for use for the purpose of accommodating a person or persons responsible for the security or maintenance of the building or buildings.
- (5) The reference in this section to a parcel of land is a reference to a parcel of land required to be separately valued, or to land included in one valuation, pursuant to this Act.
- (6) For the purpose of applying this section in respect of land on which there is one single dwelling, the land does not cease to be regarded as land on which there is one single dwelling merely because of the use or occupation of any building on the land, or any part of a building, for the purpose of another residential occupancy, if the use of the land for the purpose of that other residential occupancy could be disregarded as an

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excluded residential occupancy under Schedule 1A to the *Land Tax Management Act 1956* if the principal place of residence exemption were to apply in respect of the land (whether or not the principal place of residence exemption in fact applies in respect of the land).

(7) In this section:

**flat** means a room or a suite of rooms:

- (a) occupied or used as a separate dwelling, or
- (b) so constructed, designed or adapted as to be capable of being occupied or used as a separate dwelling,

but does not include a single dwelling, a strata lot or a dwelling, or a portion of a building, under company title that is rated in accordance with section 547 of the *Local Government Act 1993*.

**single dwelling** means a house:

- (a) occupied or used as a separate dwelling, or
- (b) so constructed, designed or adapted as to be capable of being occupied or used as a separate dwelling,

but does not include a strata lot or a property commonly known as a shop and dwelling.

**strata lot** means a lot as defined in section 5 (1) of the *Strata Schemes (Freehold Development) Act 1973* or section 4 (1) of the *Strata Schemes (Leasehold Development) Act 1986*.

## [2] Section 85 Functions

Omit “, the *Land Tax Management Act 1956* and the *Premium Property Tax Act 1998*” from section 85 (1) (a).

Insert instead “and the *Land Tax Management Act 1956*”.

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## Schedule 4 Amendments to Duties Act 1997 No 123 relating to vendor duty

(Section 3)

### [1] Section 8 Imposition of duty on certain transactions concerning dutiable property

Insert at the end of the section:

**Note.** Some of the above dutiable transactions are also chargeable with vendor duty under Chapter 4. That Chapter charges additional duty on dutiable transactions concerning land-related property.

### [2] Section 13 Who is liable to pay the duty?

Insert at the end of the section:

**Note.** If the dutiable transaction concerns land-related property (as defined in Chapter 4) the vendor will also be liable to pay vendor duty under Chapter 4.

### [3] Chapter 4

Insert after Chapter 3:

## Chapter 4 Transactions concerning land-related property—vendor duty

### Part 1 Introduction and overview

#### 145 Introduction

- (1) This Chapter charges duty on certain dutiable transactions in respect of land-related property.
- (2) The duty charged by this Chapter is additional to any duty charged by Chapter 2.
- (3) The duty charged by this Chapter is referred to as *vendor duty*.

#### 146 Transactions on which vendor duty is charged

- (1) Vendor duty is chargeable on the following:
  - (a) a transfer of land-related property,
  - (b) the following transactions:

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- (i) an agreement for the sale or transfer of land-related property,
  - (ii) a declaration of trust over land-related property.
- (2) Such a transfer or transaction is a **vendor duty transaction** for the purposes of this Act.

**Note.** The above listed transfers and transactions are all also dutiable transactions under Chapter 2 (see section 8). Generally speaking, the purchaser is liable to pay duty on those transactions under Chapter 2. If the dutiable property to which the transaction relates is land-related property (see section 149 for definition), then the vendor or transferor is also liable to pay duty in respect of the transaction under this Chapter.

- (3) In this Chapter:

**declaration of trust** has the same meaning as in Chapter 2.

**transfer** has the same meaning as in Chapter 2.

**Note.** See section 8 for definitions of the above expressions.

#### **147 Imposition of vendor duty on transactions that are not transfers**

- (1) The duty charged by this Chapter on a vendor duty transaction referred to in section 146 (1) (b) is to be charged as if each such vendor duty transaction were a transfer of land-related property.
- (2) Accordingly, for the purpose of charging duty under this Chapter, in relation to a vendor duty transaction specified in Column 1 of the following Table:
  - (a) the property specified opposite the vendor duty transaction in Column 2 is taken to be the land-related property transferred (and a reference in this Act to land-related property transferred includes a reference to such property), and
  - (b) the person specified opposite the vendor duty transaction in Column 3 is taken to be the vendor of the land-related property (and a reference in this Act to a vendor includes a reference to such a person), and
  - (c) the transfer of the land-related property is taken to have occurred at the time specified opposite the vendor duty transaction in Column 4 (and a reference in this Act to the time at which a transfer occurs includes a reference to such a time).

**Table**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Vendor duty transaction</b>	<b>Property transferred</b>	<b>Vendor</b>	<b>When transfer occurs</b>
agreement for sale or transfer	the land-related property agreed to be sold or transferred	the vendor or transferor	when the agreement is entered into
declaration of trust	the land-related property vested or to be vested in the declarant	the person declaring the trust	when the declaration is made

**148 What form must a vendor duty transaction take?**

It is immaterial whether or not a vendor duty transaction is effected by a written instrument or by any other means, including electronic means.

**149 What is “land-related property”?**

*Land-related property* is any of the following:

- (a) land in New South Wales,
- (b) a land use entitlement,
- (c) an interest in any land-related property referred to in paragraph (a) or (b), except to the extent that:
  - (i) it arises as a consequence of the ownership of a unit in a unit trust scheme and is not a land use entitlement, or
  - (ii) it is, or is attributable to, an option over land-related property.

**150 When does a liability for vendor duty arise?**

- (1) A liability for vendor duty arises when a transfer of land-related property occurs.

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- (2) However, if a transfer of land-related property is effected by a written instrument, liability for vendor duty arises when the instrument is first executed.

**151 Who is liable to pay vendor duty?**

- (1) The person liable to pay vendor duty is the vendor or transferor, unless this Chapter requires another person to pay the duty.
- (2) A reference in this Act to the *vendor*, in relation to a vendor duty transaction, includes a reference to the transferor.

**152 The liability of joint tenants**

For the purpose of assessing vendor duty, joint tenants of land-related property are taken to hold the property as tenants in common in equal shares.

**153 When must vendor duty be paid?**

- (1) A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if vendor duty is paid within the lodgment period for vendor duty.
- (2) For the purposes of this Chapter, the *lodgment period for vendor duty* is:
- (a) in the case of an agreement for sale or transfer of land-related property for consideration, and any transfer in completion of such an agreement, the period commencing when the liability for vendor duty first arises and ending on the settlement of the agreement or transfer, and
- (b) in any other case, the period commencing when a liability for vendor duty first arises and ending 3 months after the liability for vendor duty first arises.

**154 Necessity for written instrument or written statement**

- (1) If a vendor duty transaction that is liable to ad valorem duty under this Chapter is not effected by a written instrument, the vendor must make a written statement in an approved form.
- (2) The written statement must be made before the end of the lodgment period for vendor duty.



- (3) If a vendor duty transaction is completed or evidenced by a written instrument before the end of the lodgment period for vendor duty, the requirement to lodge a statement and pay duty in respect of the statement may be satisfied by the lodgment of and payment of duty on the written instrument before the end of that lodgment period.

**155 Lodging written instrument or written statement with Chief Commissioner**

A vendor who is liable to pay vendor duty in respect of a vendor duty transaction must, within the lodgment period for vendor duty, lodge with the Chief Commissioner:

- (a) the written instrument that effects the vendor duty transaction or, if there is more than one such written instrument, each one of them, or
- (b) the written statement made in compliance with section 154.

**156 No double duty**

- (1) If a vendor duty transaction is effected by more than one instrument, one instrument is to be stamped with the vendor duty payable on the dutiable transaction and each other instrument is not chargeable with vendor duty.

**Note.** *Instrument* includes a written statement.

- (2) Vendor duty is not chargeable in respect of a transfer of land-related property made in conformity with an agreement for the sale or transfer of the land-related property if the vendor duty chargeable in respect of the agreement has been paid.

**Note.** Part 6 requires an instrument that effects a vendor duty transaction that is not chargeable with duty under this section to be stamped in a manner that indicates it is not chargeable with duty.

**157 What is the rate of vendor duty?**

Vendor duty is charged on the dutiable value of the land-related property subject to the dutiable transaction at the relevant rate set out in Part 3.

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## **Part 2      Dutiable value**

### **158    What is the “dutiable value” of land-related property?**

- (1) Part 2 of Chapter 2 applies, subject to this Part and to any other necessary modifications, in respect of vendor duty transactions and vendor duty in the same way as it applies in respect of dutiable transactions and the duty chargeable under Chapter 2.
- (2) For the purposes of this Chapter, references in Part 2 of Chapter 2 are to be read as follows:
  - (a) a reference to a dutiable transaction is to be read as a reference to a vendor duty transaction,
  - (b) a reference to dutiable property is to be read as a reference to land-related property,
  - (c) a reference to duty chargeable under Chapter 2 is to be read as a reference to vendor duty,
  - (d) a reference to a transferee is to be read as a reference to a vendor,
  - (e) a reference to ad valorem duty is to be read as a reference to ad valorem vendor duty,
  - (f) a reference to a particular provision of that Chapter is to be read as a reference to the corresponding provision of this Chapter.
- (3) For the purpose of determining under this Chapter the dutiable value of land-related property that is subject to a vendor duty transaction, the amount of any monetary consideration expressed to be paid or payable by the purchaser to discharge the vendor’s liability for vendor duty in respect of the transaction (not exceeding the vendor’s actual liability for vendor duty in respect of the transaction) is to be disregarded.

### **159    Apportionment—land-related property and other property**

If a dutiable transaction relates to land-related property and other property (whether or not dutiable property) that is not land-related property, it is chargeable with vendor duty only to the extent that it relates to land-related property.

### **Part 3 Rate of vendor duty**

#### **160 General rate**

- (1) The rate of vendor duty chargeable on a vendor duty transaction is 2.25% of the dutiable value of the land-related property.
- (2) This rate applies unless other provision is made by this Chapter.

### **Part 4 Cancelled agreements and transfers**

#### **161 Cancelled agreements**

- (1) An agreement for sale or transfer that is cancelled is not liable to vendor duty under this Chapter if the Chief Commissioner is satisfied that the agreement has been rescinded, annulled or otherwise terminated without completion.
- (2) If vendor duty has been paid on an agreement that is not liable to vendor duty under this Chapter because of this section, the Chief Commissioner must reassess and refund the duty if an application for a refund is made within:
  - (a) 5 years after the initial assessment, or
  - (b) 12 months after the agreement is rescinded, annulled or otherwise terminated without completion,whichever is later.

#### **162 Cancelled transfers**

- (1) A transfer of land-related property that is effected by a written instrument is not liable to vendor duty under this Chapter if the Chief Commissioner is satisfied that the transfer instrument has been cancelled or abandoned and the land-related property has not been transferred.
- (2) If vendor duty has been paid on a transfer of land-related property that is not liable to vendor duty under this Chapter because of this section, the Chief Commissioner must reassess and refund the duty if an application for a refund is made within 5 years of the initial assessment.

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## **Part 5 Vendor duty exemptions and concessions**

### **Division 1 Principal place of residence exemption**

#### **162A Definitions**

- (1) In this Division:

*flat* means a room or suite of rooms (whether or not forming part of a building or a detached building):

- (a) occupied or used as a separate dwelling, or
- (b) so constructed, designed or adapted as to be capable of being occupied or used as a separate dwelling,

but does not include a single dwelling, a strata lot or a dwelling, or portion of a building, that is occupied under a land use entitlement.

*single dwelling* means a house:

- (a) occupied or used as a separate dwelling, or
- (b) so constructed, designed or adapted as to be capable of being occupied or used as a separate dwelling,

but does not include a strata lot or a property commonly known as a shop and dwelling.

*principal place of residence* of a person means the one place of residence that is, among the one or more places of residence of the person within and outside Australia, the principal place of residence of the person.

*residential land*—see section 162C.

- (2) For the purposes of this Division, a reference to the vendor, in relation to a vendor duty transaction, is a reference to any one or more of them.

#### **162B Principal place of residence exemption**

- (1) A vendor duty transaction is not chargeable with vendor duty in relation to land to which the principal place of residence exemption applies.
- (2) Subject to this Division, the *principal place of residence exemption* applies to land used and occupied by the vendor as

the principal place of residence of the vendor, and for no other purpose, if the land:

- (a) is a parcel of residential land, or
  - (b) is a strata lot, or
  - (c) is assessed as if it were a strata lot under section 21A or 21B of the *Land Tax Management Act 1956*.
- (3) For the purpose of this Chapter, land is not used and occupied as the principal place of residence of a person unless:
- (a) the land, and no other land, has been continuously used and occupied by the person for residential purposes and for no other purposes for a period of at least 2 years ending immediately before the date on which, but for this Division, a liability for vendor duty would arise, or
  - (b) the land has been used and occupied by the person for residential purposes and for no other purposes for a total period of at least 3 years in the 5 years ending immediately before the date on which, but for this Division, a liability for vendor duty would arise and during those 3 years no other land was used and occupied by the person for residential purposes, or
  - (c) if the vendor became an owner of the land less than 2 years before the date on which, but for this Division, a liability for vendor duty would arise, the Chief Commissioner is satisfied that the land has been used and occupied by the person as the person's principal place of residence since the vendor became an owner of the land.
- (4) Despite any other provision of this Act, the principal place of residence exemption is also taken to apply to any land used and occupied as a principal place of residence if the Chief Commissioner is satisfied that it is fair and reasonable for the exemption to apply in the particular case.

**162C Residential land—meaning**

- (1) In this Division, *residential land* means land that is used and occupied for residential purposes and for no other purpose, that use and occupation being use and occupation of a building or buildings designed, constructed or adapted for residential purposes, other than a building or buildings:

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- (a) comprised of lots within a strata plan or residential units, or
  - (b) containing (out of the total of all rooms in the building or buildings) occupancies other than that of the vendor, or
  - (c) from any part of which income is derived.
- (2) Land does not cease to be used and occupied as provided by subsection (1) by reason of there being on that land any building or improvement that is used or occupied for a purpose ancillary to the purposes for which the building is, or the buildings are, designed, constructed or adapted.
- (3) In this section:

*residential unit* has the meaning given by the *Land Tax Management Act 1956*.

**Note.** Schedule 2 allows one residential occupancy to be disregarded in applying the principal place of residence exemption. It also allows the use of land for purposes ancillary to a business conducted at a different place to be disregarded in certain circumstances.

**162D Exemption applies to natural persons only**

This Division does not apply in respect of a vendor duty transaction if the vendor, or any one of them, is not a natural person.

**162E Other restrictions and concessions in applying exemption**

Schedule 2 has effect.

**162F Calculation of duty**

If a vendor duty transaction is not chargeable with vendor duty in relation to land as a consequence of this Division, no vendor duty is chargeable on the land-related property transferred that:

- (a) is the land to which the principal place of residence exemption applies, or
- (b) is a land use entitlement in respect of the land to which the principal place of residence exemption applies, or
- (c) is an interest in land referred to in paragraph (a) or (b).

**162G Apportionment for land partly used as a principal place of residence**

- (1) This section applies in respect of land to which a vendor duty transaction relates if the Chief Commissioner is satisfied that:
  - (a) the land is used and occupied by the vendor as the principal place of residence of the vendor, and
  - (b) the principal place of residence exemption under this Act would apply in respect of the land, had the land not been used for purposes other than residential purposes.
- (2) For the purpose of charging vendor duty, the dutiable value of land-related property transferred by the vendor duty transaction (being land to which this section applies, a land use entitlement in respect of land to which this section applies or an interest in land to which this section applies) is to be reduced by the exempt proportion for the land.
- (3) The *exempt proportion* for the land is:
  - (a) if the dwelling used and occupied by the vendor as a principal place of residence is a single dwelling—the proportion determined by deducting the apportionment factor from 1, or
  - (b) if the dwelling used and occupied by the vendor as a principal place of residence is a flat—the proportion determined in accordance with the following formula:
$$(1 - \text{the apportionment factor}) \times \frac{\text{floor area of the flat}}{\text{total floor area of all flats on the land}}$$
  - (c) in any other case—such proportion as the Chief Commissioner considers fair and reasonable in the particular case.
- (4) For the purpose of subsection (3) (a) and (b), *the apportionment factor* is:
  - (a) if there is an apportionment factor entered in the Register of Land Values in respect of the land value of the land under Division 5 or 5A of Part 1B of the *Valuation of Land Act 1916*—that apportionment factor (expressed as a fraction), or

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- (b) if paragraph (a) is not applicable—such other apportionment factor as the Chief Commissioner considers fair and reasonable in the circumstances, subject to subsections (5) and (6).
- (5) If the land concerned is mixed development land or mixed use land and there is no apportionment factor entered in the Register of Land Values in respect of the land value of the land under the *Valuation of Land Act 1916*, the Chief Commissioner may request the Valuer-General to determine the apportionment factor in respect of the land concerned.
- (6) If a request is made under subsection (5):
- (a) the Valuer-General must determine the apportionment factor concerned and enter it in the Register of Land Values under the *Valuation of Land Act 1916*, and
- (b) that apportionment factor is to be applied in respect of the land.
- Note.** Divisions 5 and 5A of Part 1B of the *Valuation of Land Act 1916* allow objections to be made against the amount of an apportionment factor.
- (7) For the purpose of applying this section in respect of land on which there is a residential occupancy other than that of the vendor, the use of the land for the purpose of that other residential occupancy may be disregarded if that residential occupancy is an excluded residential occupancy under Schedule 2.
- (8) In this section:
- mixed development land*** has the same meaning as in Division 5 of Part 1B of the *Valuation of Land Act 1916*.
- mixed use land*** has the same meaning as in Division 5A of Part 1B of the *Valuation of Land Act 1916*.

## **Division 2 Exemption for farms**

### **162H Exemption for farms**

- (1) A vendor duty transaction is not chargeable with vendor duty in relation to land to which the farm exemption applies.
- (2) The farm exemption applies to land used for primary production in the course of carrying on a business of primary production:



- (a) for a continuous period of at least 2 years ending immediately before the date on which, but for this Division, a liability for vendor duty would arise, or
  - (b) for a total period of at least 3 years in the 5 years ending immediately before the date on which, but for this Division, a liability for vendor duty would arise, or
  - (c) in any other case, for such other period as the Chief Commissioner may allow.
- (3) If a vendor duty transaction is not chargeable with vendor duty in relation to land as a consequence of this Division, no vendor duty is chargeable on the land-related property transferred that:
- (a) is the land to which the farm exemption applies, or
  - (b) is a land use entitlement in respect of the land to which the farm exemption applies, or
  - (c) is an interest in land referred to in paragraph (a) or (b).

**Division 3 Exemptions and concessions where sale price does not significantly exceed purchase price**

**162I Exemption for land-related property sold at a loss**

A vendor duty transaction is not chargeable with vendor duty in relation to land-related property if the Chief Commissioner is satisfied the dutiable value of the land-related property on the transfer date does not exceed the dutiable value of the land-related property on the vendor acquisition date.

**162J Exemption for land-related property sold for increased price of less than 12 per cent**

A vendor duty transaction is not chargeable with vendor duty in relation to land-related property if the Chief Commissioner is satisfied that 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 by not more than 12 per cent of the dutiable value of the land-related property on the vendor acquisition date.

**162K Concession for increases between 12 and 15 per cent**

- (1) This section applies in respect of a vendor duty transaction relating to land-related property if the Chief Commissioner is satisfied that 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 by more than 12 per cent, but not more than 15 per cent, of the dutiable value of the land-related property on the vendor acquisition date.
- (2) If this section applies, the vendor duty payable in relation to the vendor duty transaction is to be discounted in accordance with the following table:

<b>Increase in dutiable value of land-related property (expressed as % of dutiable value on vendor acquisition date)</b>	<b>Discount on duty</b>
More than 12% but not more than 13%	75%
More than 13% but not more than 14%	50%
More than 14% but not more than 15%	25%

**162L What is the transfer date?**

For the purposes of this Division, the *transfer date*, in relation to a vendor duty transaction, is the date on which a liability for vendor duty would, but for this Division, arise.

**162M What is the vendor acquisition date?**

- (1) For the purposes of this Division, the *vendor acquisition date*, in relation to a vendor duty transaction, is the date on which the vendor first acquired a legal or equitable interest in the land-related property that is the subject of the vendor duty transaction.
- (2) If the vendor acquired a legal or equitable interest in the land-related property as the legal personal representative of a deceased person, as a beneficiary under a will of a deceased person or as a result of the intestacy of a deceased person, the vendor acquisition date is taken to be the date on which the deceased person first acquired a legal or equitable interest in

the land-related property. A reference in this Division to the vendor, in relation to the acquisition of such land-related property, is to be read as a reference to the deceased person.

**162N Determining the dutiable value of land-related property for the purposes of this Division**

- (1) The dutiable value of land-related property on the transfer date is the dutiable value of the land-related property determined in accordance with this Chapter.
- (2) The dutiable value of land-related property on the vendor acquisition date is, if the vendor first acquired a legal or equitable interest in the land-related property by means of a dutiable transaction, the dutiable value of the land-related property when it was the subject of that dutiable transaction (determined in accordance with Part 2 of Chapter 2).
- (3) In any other case, the dutiable value of the land-related property on the vendor acquisition date is the unencumbered value of the dutiable property (within the meaning of section 23) on the vendor acquisition date (determined in accordance with Part 2 of Chapter 2).
- (4) If, after the vendor acquisition date, improvements were made to land-related property, the unencumbered value of the land-related property on the vendor acquisition date is to be determined as if those improvements had not been made.
- (5) If the Chief Commissioner is satisfied that GST is payable in respect of a vendor duty transaction, and that the transaction by which the vendor first acquired a legal or equitable interest in the land-related property was not the subject of GST, the dutiable value of the land-related property on the vendor acquisition date is to be increased, for the purposes of this Division only, by 10%.

**Note.** Section 305 allows the Chief Commissioner to require the vendor to obtain a declaration as to the value of property.

**162O Transactions relating to multiple items**

If a vendor duty transaction relates to more than one item of land-related property, this Division is to be applied as if each item were the subject of a separate vendor duty transaction.

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**Division 4 Exemptions for new and substantially new buildings**

**162P Exemption for sale of new buildings**

- (1) 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 there is a new building, constructed by or on behalf of the vendor, that is unoccupied and suitable for use or occupation for residential, commercial or other purposes, and
  - (b) there are no other buildings on the land, other than unoccupied new buildings or heritage buildings, that are suitable for use or occupation for residential, commercial or other purposes.
- (2) An agreement for the sale or transfer of land is not chargeable with vendor duty if it is an agreement for the sale or transfer of a lot in an unregistered plan of subdivision, on which a new building is to be erected or developed before completion of the sale or transfer.
- (3) 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 there is a new building, constructed by or on behalf of the vendor, 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 of the completion of the construction of the new building, and
  - (c) there are no other buildings on the land, other than new buildings or heritage buildings, that are suitable for use or occupation for residential, commercial or other purposes.
- (4) This section applies in respect of land on which there is a new building or buildings, or on which a new building or buildings are to be erected or developed, only if the Chief Commissioner is satisfied that the new building or buildings are a significant improvement to the land.

- (5) For the purpose of this section, a *new building* is a building that, prior to the completion of the building works carried out by or on behalf of the vendor, had not been used or occupied for residential, commercial or other purposes.
- (6) A building is *unoccupied* if the building has not previously been occupied or used for residential, commercial or other purposes.
- (7) 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) 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 there is a substantially new building, constructed by or on behalf of the vendor, that is an unoccupied building and suitable for use or occupation for residential, commercial or other purposes, and
  - (b) there are no other buildings on the land, other than unoccupied new buildings, unoccupied substantially new buildings and heritage buildings, that are suitable for use or occupation for residential, commercial or other purposes.
- (2) 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 there is a substantially new building, constructed by or on behalf of the vendor, suitable for use or occupation for residential, commercial or other purposes, and
  - (b) the agreement for the sale or transfer, or the transfer, of land was first executed within 12 months of the completion of the construction of the substantially new building, and
  - (c) there are no other buildings on the land, other than new buildings, substantially new buildings or heritage buildings, that are suitable for use or occupation for residential, commercial or other purposes.

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- (3) This section applies in respect of land on which there is a substantially new building or buildings only if the Chief Commissioner is satisfied that the substantially new building or buildings are a significant improvement to the land.
  - (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) A building is *unoccupied* if the building has not previously been occupied or used for residential, commercial or other purposes.
  - (6) In this section:

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

*new building* has the same meaning as in section 162P.

## **Division 5      Other exemptions**

### **162R    Exemption for subdivision of principal place of residence or farm**

- (1) An agreement for the sale or transfer, or a transfer, of a lot in a deposited plan is not chargeable with vendor duty if:
  - (a) the vendor or, if there is more than one vendor, one of them, is the subdivider in relation to the lot, and
  - (b) the land comprising all the lots in the deposited plan was:
    - (i) land to which the principal place of residence exemption would have applied under this Chapter had the vendor transferred the land immediately before it was subdivided, or
    - (ii) land to which the farm exemption would have applied under this Chapter had that vendor

transferred the land immediately before it was subdivided.

(2) In this section:

*subdivider*, in relation to a lot in a deposited plan, means the person who, immediately before the registration of the plan, owned all the land comprising the lots in the plan.

**162S Improved vacant land**

- (1) An agreement for the sale or transfer, or a transfer, of vacant land is not chargeable with vendor duty if the Chief Commissioner is satisfied that the vendor is the owner of the land and, after becoming the owner of the land, the vendor substantially improved the land.
- (2) For the purposes of this section, a vendor *substantially improves* vacant land if:
  - (a) the land is re-zoned under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*) that relates to the land on an application made to the consent authority by the vendor, or
  - (b) two or more of the following apply:
    - (i) water and sewerage services are provided to the land by or on behalf of the vendor,
    - (ii) stormwater drainage services are provided to the land by or on behalf of the vendor,
    - (iii) transport infrastructure is provided to the land by or on behalf of the vendor in accordance with a requirement made by or under a development consent granted in respect of the land,
    - (iv) conservation works are carried out in respect of the land by or on behalf of the vendor in accordance with a requirement made by or under a development consent granted in respect of the land,
    - (v) recreation and community services are provided by or on behalf of the vendor in accordance with a requirement made by or under a development consent granted in respect of the land,

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- (vi) development consent for the subdivision of the land is granted as a consequence of an application made to the consent authority by the vendor or a subdivision in respect of the land is registered by the vendor, or
  - (c) remediation works required by or under a development consent granted in respect of the land are carried out in respect of the land by or on behalf of the vendor.
- (3) In this section:
- consent authority* has the same meaning as in the *Environmental Planning and Assessment Act 1979*.
- development consent* has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**162T Sale of business that includes land-related property**

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:

- (a) the agreement or transfer forms part of an arrangement for the sale of a business under which both land-related property and other dutiable property connected with the business (including business assets) are transferred to a transferee, and
- (b) the dutiable value of the land-related property comprises less than 60% of the total dutiable value of the land-related property and other dutiable property.

**162U Compulsory acquisitions**

No vendor duty is chargeable on a vendor duty transaction that gives effect to an acquisition of land by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

**162V Land subject to conservation agreement**

- (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 entered into under the *National Parks and Wildlife Act 1974* and the primary purpose of the



agreement is the maintenance of threatened species, populations or ecological communities (within the meaning of that Act) to assist their preservation.

- (2) No vendor duty is chargeable in relation to the land-related property transferred if it is land that is wholly the subject of a conservation agreement referred to in subsection (1).
- (3) If the land-related property transferred is land that is partly the subject of a conservation agreement referred to in subsection (1) then, for the purpose of charging vendor duty on the transaction, the dutiable value of the land-related property transferred is to be reduced by the conservation apportionment factor.
- (4) The conservation apportionment factor is the proportion that the area of the land that is the subject of the conservation agreement bears to the total area of the land transferred.

**162W Applications under Real Property Act 1900**

- (1) A possessory application under the *Real Property Act 1900* is not chargeable with vendor duty.
- (2) An application to bring land under the *Real Property Act 1900* is not chargeable with vendor duty.

**162X Transactions exempt from ad valorem duty under Chapter 2**

- (1) Subject to this Division, no vendor duty is chargeable under this Chapter on a vendor duty transaction if ad valorem duty is not chargeable on the transaction as a dutiable transaction under Chapter 2.
- (2) Subsection (1) does not apply if ad valorem duty is not chargeable on the transaction under Chapter 2 because of the provisions of Division 1 of Part 8 of that Chapter (which relates to First Home Plus).

**162Y Exemptions for charities and others under Chapter 11**

- (1) Subject to this Division, Chapter 11 applies in respect of vendor duty transactions in the same way as it applies to dutiable transactions.
- (2) For that purpose, a reference in Chapter 11 to a dutiable transaction includes a vendor duty transaction and a reference to dutiable property includes land-related property.

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- (3) Section 275 applies to a transfer, or an agreement for the sale or transfer, of land-related property by a society or institution referred to in that section in the same way as it applies to a transfer, or an agreement for the sale or transfer, of dutiable property to a society or institution referred to in that section.
  - (4) The reference to duty in section 278 does not include vendor duty.

**Note.** Section 278 exempts certain public housing tenants from duty on the purchase of land. That exemption does not extend to the vendor of the land.

**162Z Exemptions for gifts of land-related property to charities and others**

- (1) No vendor duty is chargeable on a transfer of land-related property, for no consideration, if the transferee is not liable to pay duty in respect of the transfer under this Act.
- (2) Subject to subsection (1), a vendor duty transaction is not exempt from vendor duty under Chapter 11 merely because the transferee is not liable to pay duty on the transaction under that Chapter.

**Note.** For example, a gift of land to a charity will be exempt because the charity is exempt from duty on the transfer under Chapter 11. However, in the case of a sale of land to a charity, the vendor will still be liable to pay vendor duty under this Chapter.

- (3) Subsection (1) does not extend to a transfer of land-related property in respect of which the transferee is not liable to pay duty because of Division 1 of Part 8 of Chapter 2 (which relates to First Home Plus) or section 278.

## **Part 6 Stamping and enforcement**

**162ZA Application of Chapter 12**

- (1) Subject to this Part and to any other necessary modifications, Chapter 12 applies in respect of vendor duty transactions in the same way as it applies to dutiable transactions.
- (2) For that purpose, a reference in that Chapter to a dutiable transaction includes a vendor duty transaction and a reference to dutiable property includes land-related property.

**162ZB Stamping and endorsement of vendor duty transactions**

- (1) If an instrument that effects or evidences a dutiable transaction that is also a vendor duty transaction is stamped under this Act to indicate payment of duty, it must be stamped in a manner approved by the Chief Commissioner to indicate the type of duty (that is, purchaser duty or vendor duty) that has been paid.
- (2) If an instrument that effects or evidences a dutiable transaction that is also a vendor duty transaction is endorsed under this Act to indicate payment of duty, it must be endorsed in a manner approved by the Chief Commissioner to indicate the type of duty (that is, purchaser duty or vendor duty) that has been paid.  
**Note.** See section 289A, which allows stamping to occur by means of an endorsement.
- (3) An instrument that effects or evidences a dutiable transaction that is also a vendor duty transaction is not duly stamped unless it is stamped or endorsed in accordance with this section.

**162ZC Stamping of vendor duty transactions not chargeable with duty**

- (1) If a vendor duty transaction is not chargeable with vendor duty, an instrument that effects or evidences the vendor duty transaction must be stamped in a manner approved by the Chief Commissioner to indicate that it is not chargeable with vendor duty.
- (2) If a vendor duty transaction is not chargeable with purchaser duty, an instrument that effects or evidences the transaction must be stamped in a manner approved by the Chief Commissioner to indicate that it is not chargeable with purchaser duty.  
**Note.** See section 301, which prevents registration of an instrument that effects or evidences a vendor duty transaction unless it has been stamped or endorsed in a manner that indicates that purchaser duty has been paid or is not chargeable, and that vendor duty has been paid or is not chargeable.

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**162ZD What is purchaser duty?**

For the purposes of this Part, *purchaser duty* is the duty (if any) payable in respect of a dutiable transaction under Chapter 2.

**162ZE Duplicates or counterparts**

The duty chargeable under section 271 in respect of a duplicate or counterpart of an instrument is not payable in respect of any duplicate or counterpart of an instrument that effects or evidences a vendor duty transaction.

**[4] Section 288 Stamping of instruments**

Insert at the end of section 288:

**Note.** In relation to vendor duty transactions, see Part 6 of Chapter 4.

**[5] Section 293 Reassessments—failed instruments**

Omit the note at the end of the section. Insert instead:

**Note.** See Part 5 of Chapter 2 for refunds of duty under Chapter 2 on failed instruments and Part 4 of Chapter 4 for refunds of vendor duty on failed instruments.

**[6] Section 301 Registration of transactions and instruments**

Insert at the end of the section:

- (2) In the case of a dutiable transaction that is also a vendor duty transaction, the transaction or instrument referred to in subsection (1) must be stamped or endorsed, in accordance with Chapter 4, in a manner that indicates:
  - (a) that purchaser duty has been paid in respect of the transaction or that the transaction is not chargeable with purchaser duty, and
  - (b) that vendor duty has been paid in respect of the transaction or that the transaction is not chargeable with vendor duty.

**Note.** See Part 6 of Chapter 4.

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

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part State Revenue Legislation Amendment Act 2004—provisions consequent on introduction of vendor duty**

**Application of vendor duty**

- (1) The duty charged by Chapter 4, as inserted by the *State Revenue Legislation Amendment Act 2004*, is charged on vendor duty transactions that occur on or after the commencement of Schedule 4 to that Act, except as provided by this Part.
- (2) It does not matter that the vendor acquired an equitable or legal interest in the land-related property the subject of the vendor duty transaction before that commencement.
- (3) Vendor duty is not chargeable in respect of a transfer of land-related property made in conformity with an agreement for sale or transfer of the land-related property first executed before the commencement of Schedule 4 to the *State Revenue Legislation Amendment Act 2004*.
- (4) Vendor duty is not chargeable in respect of a vendor duty transaction that results from the exercise of an option for the sale or purchase of land-related property, if the option was granted before the date the Bill for the *State Revenue Legislation Amendment Act 2004* was introduced in the Legislative Assembly.
- (5) Section 25, insofar as it allows the aggregation of vendor duty transactions for the purpose of Chapter 4, does not apply to a vendor duty transaction that occurred before the commencement of Schedule 4 to the *State Revenue Legislation Amendment Act 2004*.

**Note.** See Part 2 of Chapter 4, which allows vendor duty transactions to be aggregated under that Chapter in the same manner as they can be aggregated under Chapter 2.

**Application of exemptions from vendor duty**

- (1) A reference in Chapter 4 and Schedule 2 to the use or occupation of a building or land extends to any use or

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occupation occurring before the commencement of that Chapter (as inserted by the *State Revenue Legislation Amendment Act 2004*).

- (2) A reference in Chapter 4 to any works carried out by or on behalf of the vendor in respect of a vendor duty transaction extends to works carried out by or on behalf of the vendor before the commencement of that Chapter (as inserted by the *State Revenue Legislation Amendment Act 2004*).
- (3) A reference in Division 4 of Part 5 of Chapter 4 to the completion of construction of a new building or a substantially new building is, if construction was completed within 12 months before the commencement of Chapter 4, taken to be a reference to the date of commencement of Chapter 4 (as inserted by the *State Revenue Legislation Amendment Act 2004*).
- (4) A reference in clause 6 of Schedule 2, as inserted by the *State Revenue Legislation Amendment Act 2004*, to the date of the death of a deceased person is, if the person died before the commencement of that Schedule, taken to be a reference to the date of commencement of that Schedule.

**[8] Schedule 2**

Insert after Schedule 1:

**Schedule 2 Principal place of residence exemption—concessions and restrictions**

(Section 162E)

**Part 1 Preliminary**

**1 Definitions**

- (1) In this Schedule:

*excluded residential occupancy*—see clause 2.

*principal place of residence exemption* means the principal place of residence exemption referred to in Division 1 of Part 5 of Chapter 4.

- (2) Expressions used in this Schedule have the same meaning as they have in Division 1 of Part 5 of Chapter 4.

## **Part 2 Concessions**

### **2 Concession for land on which there is one other residential occupancy**

- (1) For the purposes of the principal place of residence exemption, if a building or buildings used or occupied for residential purposes contains or contain a residential occupancy other than that of the vendor, the use of the building or buildings for the purpose of that other residential occupancy may be disregarded if:
- (a) the residential occupancy is an excluded residential occupancy, and
  - (b) the building contains or buildings contain (out of a total of all rooms in the building or buildings) not more than one of those excluded residential occupancies (not including the occupancy of the vendor).
- (2) For the purpose of this Schedule, each of the following residential occupancies is an ***excluded residential occupancy***:
- (a) one room,
  - (b) one suite of rooms (not being a flat) each room of which all occupants of the suite are entitled to occupy,
  - (c) one flat,
  - (d) one suite of rooms (not being a flat) each room of which all occupants of the suite are entitled to occupy, and one room,
  - (e) one flat and one room,
  - (f) 2 rooms, each of which is separately occupied.
- (3) Accordingly, land does not cease to be residential land for the purposes of the principal place of residence exemption merely because there is on the land one, but not more than one, such excluded residential occupancy, even if income is derived from the residential occupancy.

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**3 Concession for land used for incidental business purposes**

- (1) For the purposes of the principal place of residence exemption, if land is used and occupied by a person primarily for residential purposes but not more than one room is used primarily for business purposes, the use of the land for the purpose of the business may be disregarded if the business is primarily conducted elsewhere.
- (2) Subsection (1) applies even if income is derived from the use of the land for that purpose.
- (3) Except as provided by subclause (2), nothing in this clause affects, or is affected by, section 162C.

**4 Concession for sale of former principal place of residence**

- (1) If the Chief Commissioner is satisfied that land to which a vendor duty transaction relates has been occupied by the vendor as his or her principal place of residence for a period ending within 6 months before the liability date, that use and occupation is taken, for the purpose of the principal place of residence exemption, to have continued until the liability date.
- (2) The *liability date*, in respect of a vendor duty transaction, is the date on which, but for this clause, a liability for vendor duty would arise in respect of the transaction.
- (3) This clause applies in respect of land only if the Chief Commissioner is satisfied that no income has been derived from the use or occupation of the land since the actual use or occupation of the land by the vendor ceased.

**5 Concession for absences from former residence**

- (1) If the Chief Commissioner is satisfied that:
  - (a) land to which a vendor duty transaction relates (*the former residence*) has been used and occupied by the vendor as his or her principal place of residence for a continuous period of at least 2 years, and
  - (b) that period of use and occupation ended no more than 6 years before the vendor duty transaction occurred,

the vendor is taken, for the purpose of the principal place of residence exemption, to have continued to use and occupy the former residence as his or her principal place of residence during the period after that actual use and occupation ended.



- (2) The maximum period for which the vendor may be taken, under this clause, to continue to use and occupy the former residence as a principal place of residence is 6 years starting at the end of the most recent actual occupation period of at least 2 years.
- (3) An *actual occupation period* is a period during which the former residence was actually used and occupied by the vendor as a principal place of residence, and does not include any period for which the vendor may be taken, under clause 4 or this clause, to have used and occupied the former residence as a principal place of residence.
- (4) Despite the other provisions of this clause, the use or occupation of land by a person is not taken to continue during any period in respect of which the person used or occupied other land as a principal place of residence, if a vendor duty transaction in relation to that other land is not chargeable with vendor duty as a consequence of that person's use and occupation of the other land as a principal place of residence.
- (5) This clause is subject to clause 10 (which limits members of a family to one principal place of residence exemption).

## **6 Concession on death of resident**

- (1) 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 transaction relates to land that was used and occupied by the deceased person as his or her principal place of residence immediately before his or her death, the following provisions apply:
  - (a) the use and occupation of the land by the deceased person is taken to have continued, for the purpose of the principal place of residence exemption, as if the deceased person had not died,
  - (b) the principal place of residence exemption applies in respect of a vendor duty transaction relating to the land in the same way as it would apply if the deceased person were the vendor in relation to the transaction.

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- (2) Subclause (1) operates only until whichever of the following happens first:
- (a) a period of 12 months expires after the date of the deceased person's death,
  - (b) the deceased person's interest in the land vests in any person (other than the legal personal representative of the deceased person or beneficiary under a will of the deceased person or on intestacy of the deceased person).
- (3) For the purposes of this section, if the deceased person is a registered proprietor under the *Real Property Act 1900* in respect of his or her interest in the land, the deceased person's interest in the land is taken to vest in another person when that other person is registered as the proprietor of that interest under that Act.

## **7 Concession for life estates following death of resident**

- (1) If a person who owns land dies and the land is used and occupied by another person pursuant to a life estate created by the will of the deceased person, the following provisions apply:
- (a) the use and occupation of the land by the deceased person is taken to continue, for the purpose of the principal place of residence exemption, as if the deceased person had not died,
  - (b) the principal place of residence exemption applies in respect of a vendor duty transaction relating to the land in the same way as it would apply if the deceased person were the vendor in relation to the transaction.
- (2) Subclause (1) operates only until a period of 12 months expires after the termination of the life estate or, if the deceased person's interest in the land vests in another person after the termination of the life estate but before the end of that 12 month period, until the interest vests in that other person.
- (3) For the purposes of this section, if the deceased person is a registered proprietor under the *Real Property Act 1900* in respect of his or her interest in the land, the deceased person's interest in the land is taken to vest in another person when that other person is registered as the proprietor of that interest under that Act.

## **8 Concession for couples who separate**

- (1) If the Chief Commissioner is satisfied that a person who uses and occupies land as his or her principal place of residence is the former spouse of the vendor in respect of a vendor duty transaction:
  - (a) the use and occupation of the land by the former spouse is taken, for the purpose of the principal place of residence exemption, to be the use and occupation of the land by the vendor, and
  - (b) the principal place of residence exemption applies in respect of a vendor duty transaction relating to the land in the same way as it would apply if the former spouse were the vendor in relation to the transaction.
- (2) For the purposes of this clause, a person is the *former spouse* of another person if the Chief Commissioner is satisfied that:
  - (a) the person is or was legally married to the other person and the marriage that has been dissolved or annulled, or in the opinion of the Chief Commissioner, has broken down irretrievably, or
  - (b) the person was in a de facto relationship with the other person and the Chief Commissioner is satisfied that the relationship has been terminated.
- (3) This clause does not prevent the principal place of residence exemption applying in respect of land actually used and occupied by the vendor as a principal place of residence even though other land is used and occupied as a principal place of residence by the vendor's former spouse.

## **Part 3 Restrictions**

### **9 Trustees**

The principal place of residence exemption does not apply to land if the person using and occupying the land as a principal place of residence is an owner of the land by reason of being a trustee.

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**10 Only one principal place of residence for all members of same family**

- (1) For the purposes of the principal place of residence exemption, only one place of residence may be treated as the principal place of residence of all members of the same family.
- (2) Accordingly, if a vendor duty transaction is not chargeable with vendor duty in relation to land because of the use or occupation of the land by the vendor as a principal place of residence, the use or occupation of any other land by the vendor or any member of the vendor's family during the period of 2 years ending on the date on which, but for this Schedule, a liability for vendor duty would arise in respect of the vendor duty transaction, is to be disregarded.
- (3) For the purposes of this clause, a *family* consists of the following:
  - (a) a person and his or her spouse (if any),
  - (b) any dependent child or dependent step-child of the person and his or her spouse (or of either of them) who ordinarily resides with the person or his or her spouse.
- (4) A person is the *spouse* of another person if:
  - (a) they are legally married, or
  - (b) they are living together as a couple in a de facto relationship.
- (5) However, if the Chief Commissioner is satisfied that a person:
  - (a) is legally married to another person but not cohabiting with that other person, and
  - (b) has no intention of resuming cohabitation with that other person,the person is not to be regarded as the spouse of that other person and if a dependent child or dependent step-child of the person has a joint interest in the principal place of residence of the spouse, that interest is to be disregarded.
- (6) A person who is the child or step-child of another person is a *dependent child* or a *dependent step-child* if the person is under 18 years of age and is not legally married.

**[9] Dictionary**

Insert in alphabetical order:

*land-related property* has the meaning given by section 149.

*vendor duty transaction* has the meaning given by section 146.

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## Schedule 5 Miscellaneous amendments

(Section 3)

### 5.1 Duties Act 1997 No 123

#### [1] Section 108 Effect of uncompleted agreements

Insert at the end of section 108 (2):

**Note.** A refund may be payable in relation to the rescission, annulment or other termination of an agreement referred to in subsection (2) (a) or the completion of an agreement referred to in subsection (2) (b)—see section 122A.

#### [2] Section 109 Constructive ownership of land holdings and other property: linked entities

Omit section 109 (2) (a) (iv).

#### [3] Section 111 What are “interests” and “significant interests” in landholders?

Omit section 111 (3). Insert instead:

- (3) An interest in a landholder is not counted for the purposes of this section if the interest concerned:
  - (a) is an interest in a unit trust scheme acquired before 10 June 1987, or
  - (b) is an interest in a private company acquired before 21 November 1986, or
  - (c) was acquired at a time when the landholder did not hold land in New South Wales.

#### [4] Section 114 What is a “relevant acquisition”?

Insert “of other qualifying investors in relation to the scheme” after “associated persons” in section 114 (3).

#### [5] Section 119 Exemptions

Insert at the end of section 119 (1) (i) (ii):

- , or
- (j) if the acquisition is a transfer of dutiable property in respect of which duty of \$10 is chargeable under section 54.

**[6] Section 122A**

Insert after section 122:

**122A Agreements for disposal or acquisition of property other than land**

- (1) If, at the time of an acquisition of an interest by a person in a land rich landholder that necessitates the lodgment of an acquisition statement under Division 3, the landholder had agreed to dispose of property other than land, and the agreement has subsequently been rescinded, annulled or otherwise terminated without completion, the Chief Commissioner is to assess or reassess the statement as though the property the subject of the agreement was, at the time of the acquisition concerned, property of the landholder.
- (2) Subsection (1) does not apply unless the Chief Commissioner is satisfied that the rescission, annulment or other termination of the agreement is not part of a scheme or arrangement under which the object of the agreement has been or may be achieved in another way.
- (3) If, at the time of an acquisition of an interest by a person in a land rich landholder that necessitates the lodgment of an acquisition statement under Division 3, the landholder had agreed to acquire property other than land, and the agreement is subsequently completed, the Chief Commissioner is to assess or reassess the statement as though the property the subject of the agreement was, at the time of the acquisition concerned, property of the landholder.
- (4) In this section, a reference to a *landholder* includes a reference to a linked entity of the landholder.

**[7] Section 179 Exemptions**

Omit “lessee, or” from section 179 (2) (b). Insert instead “lessee.”.

**[8] Section 179 (2) (c)**

Omit the paragraph.

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**[9] Section 179 (5)**

Insert after section 179 (4):

- (5) For the purpose of applying the exemption provided for by this section, the cost of a lease is taken to include the amount of any premium paid or payable in respect of that lease (despite section 166 (2)).

**[10] Section 278**

Omit section 278. Insert instead:

**278 Department of Housing and Aboriginal Housing Office tenants**

- (1) Duty under this Act is not chargeable on an agreement for the sale or transfer, or a transfer, of land, or a mortgage executed to finance or assist the purchase of that land (but only to the extent to which the amount secured by the mortgage is to finance or assist that purchase), or a mortgage in support of that mortgage, if the purchaser or borrower, or at least one of the purchasers or borrowers:
  - (a) is, at the date of the transaction or the date of the first execution of the instrument, an eligible tenant, and
  - (b) will obtain not less than 25% of the beneficial ownership of the land, and
  - (c) intends to occupy the land as his or her principal place of residence.
- (2) For the purposes of this section, a person is an *eligible tenant* if the person:
  - (a) is a tenant of the Department of Housing, or
  - (b) is a tenant under the Community Tenancy Scheme administered within that Department, or
  - (c) is a tenant of the Aboriginal Housing Office.
- (3) This section applies in respect of an agreement for sale or transfer, or a transfer, of land in respect of which an eligible tenant obtains less than 100% of the beneficial ownership of the land only if:
  - (a) the other purchasers are natural persons, and
  - (b) the Chief Commissioner is satisfied that each of those other purchasers is a member of the eligible tenant's



family or a person who is genuinely assisting the eligible tenant to acquire the land as his or her principal place of residence.

- (4) For the purpose of subsection (3), the New South Wales Land and Housing Corporation is not considered to be a purchaser.
- (5) The exemption conferred by this section is conditional on the eligible tenant occupying the land concerned as his or her principal place of residence for a continuous period of at least 6 months, with that occupation starting within 12 months (or such longer period as the Chief Commissioner may approve) after completion of the agreement for sale or transfer, or transfer, of the land. This requirement is referred to as *the residence requirement*.
- (6) The Chief Commissioner may, if satisfied that there are good reasons to do so in a particular case:
  - (a) modify the residence requirement by approving a shorter period of occupation by an eligible tenant, or
  - (b) exempt an eligible tenant from compliance with the residence requirement.
- (7) If an eligible tenant fails to comply with the residence requirement, the eligible tenant must, within 14 days after the end of the period for compliance:
  - (a) give written notice of that fact to the Chief Commissioner, and
  - (b) pay to the Chief Commissioner the duty that would have been payable on the transactions or instruments concerned if they had not been exempt from duty under this section.
- (8) A person who fails to comply with subsection (7) is guilty of an offence.  
Maximum penalty: 50 penalty units.
- (9) For the purposes of this section, a person is a member of an eligible tenant's *family* if:
  - (a) one is the spouse or de facto partner of the other, or
  - (b) the relationship between them is that of parent and child, brothers, sisters, or brother and sister.

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

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2004*

**[12] Schedule 1**

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provisions consequent on miscellaneous amendments made by State Revenue Legislation Amendment Act 2004**

**Exemption for lease instruments**

- (1) Section 179 (5), as inserted by the *State Revenue Legislation Amendment Act 2004*, is taken to have effect as if it had commenced on 1 January 2004.
- (2) A lease instrument first executed on or after 1 January 2004 and before the date of assent to the *State Revenue Legislation Amendment Act 2004* in respect of which duty is chargeable because of section 179 (5) is taken (if the duty has not already been paid) to become liable to such duty on the date of assent to that Act (despite section 169 (1)).
- (3) The imposition, payment and recovery of duty under this Act before the date of assent to the *State Revenue Legislation Amendment Act 2004* is taken to have been validly done to the extent that it would have been validly done had section 179 (5) been in force at the time that it was done.

**[13] Dictionary**

Insert “(within the meaning of the *Corporations Act 2001* of the Commonwealth)” after “subsidiary” in the definition of *associated person*.

**[14] Dictionary, definitions of “error transaction”, “private corporation”, “residential mortgage” and “tenement”**

Omit the definitions.

**[15] Dictionary**

Omit the definition of *interest* in a land-rich corporation. Insert instead:  
*interest* in a landholder has the meaning given by section 111.

**5.2 Land Tax Management Act 1956 No 26**

**Schedule 2 Savings and transitional provisions**

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

*State Revenue Legislation Amendment Act 2004*

**5.3 Valuation of Land Act 1916 No 2**

**[1] Section 27 Where lands are to be separately valued**

Insert “or tax” after “rate” wherever occurring in section 27 (4).

**[2] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2004*

[Second reading speech made in—  
Legislative Assembly on 7 May 2004  
Legislative Council on 12 May 2004]

BY AUTHORITY