



New South Wales

# Duties Amendment (Land Rich) Act 2004 No 96

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New South Wales

## **Duties Amendment (Land Rich) Act 2004 No 96**

Act No 96, 2004

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An Act to amend the *Duties Act 1997* to make further provision with respect to the duty chargeable on certain transactions; and for other purposes. [Assented to 15 December 2004]

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

**1 Name of Act**

This Act is the *Duties Amendment (Land Rich) Act 2004*.

**2 Commencement**

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) Schedule 1 is taken to have commenced on the date the Bill for this Act is introduced in the Legislative Assembly.

**3 Amendment of Duties Act 1997 No 123**

The *Duties Act 1997* is amended as set out in Schedules 1 and 2.

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## Schedule 1 Land rich amendments

(Section 3)

**[1] Section 99 Transfer by special trust to corporation**

Omit “does not apply” from section 99 (2).

Insert instead “and Chapter 4A (Acquisition and disposal of interests in land rich landholders) do not apply”.

**[2] Section 105 Introduction and overview**

Omit the note.

**[3] Chapter 3, Part 2**

Omit the Part.

**[4] Chapter 4A**

Insert after Chapter 4:

### Chapter 4A Acquisition and disposal of interests in land rich landholders

#### Part 1 Preliminary

**163 Overview**

This Chapter charges duty on certain transactions that are not “dutiabale transactions” under Chapter 2 or “vendor duty transactions” under Chapter 4.

**Note.** Duty is chargeable under Part 2 on the acquisition by a person of an interest in a land rich landholder at the same rate as the transfer duty chargeable under Chapter 2.

Duty is chargeable under Part 3 on the disposal by a person of an interest in a land rich landholder at the same rate as the vendor duty chargeable under Chapter 4.

**163A Meaning of “landholder” and related expressions**

(1) For the purposes of this Chapter, a *landholder* is any of the following:

- (a) a private unit trust scheme,
- (b) a wholesale unit trust scheme,

(c) a private company.

**Note.** *Private unit trust scheme*, *wholesale unit trust scheme* and *private company* are defined in the Dictionary.

(2) However, for the purposes of Part 3, and any of the other provisions of this Chapter insofar as they relate to the duty chargeable under Part 3:

*public unit trust scheme* does not include a unit trust scheme registered as an imminent public unit trust scheme under this Chapter.

*wholesale unit trust scheme* does not include a unit trust scheme registered as an imminent wholesale unit trust scheme under this Chapter.

(3) Accordingly, a unit trust scheme registered as an imminent public unit trust scheme or an imminent wholesale unit trust scheme under this Chapter is a private unit trust scheme and a landholder for the purposes of Part 3 and those related provisions.

#### **163B Meaning of “land rich”**

(1) For the purposes of this Chapter, a landholder is *land rich* if:

- (a) it has land holdings in New South Wales with an unencumbered value of \$2,000,000 or more, and
- (b) its land holdings in all places, whether within or outside Australia, comprise 60% or more of the unencumbered value of all its property.

(2) In calculating the unencumbered value of the property of a landholder for the purposes of subsection (1), property of any of the following kinds is not counted:

- (a) cash, whether in Australian or other currency,
- (b) money on deposit with any person, negotiable instruments or debt securities,
- (c) loans that, according to their terms, are to be repaid on demand by the lender or within 12 months after the date of the loan,
- (d) if the landholder is a private unit trust scheme or a wholesale unit trust scheme, loans to persons who, in relation to a trustee or beneficiary of the scheme, are associated persons,
- (e) if the landholder is a private company, loans to persons who, in relation to the company or to a majority shareholder or director of the company, are associated persons,

- (f) land use entitlements,
- (g) units or shares in a linked entity of the landholder,
- (h) property consisting of an interest as a beneficiary in a discretionary trust (within the meaning of section 163U).

**Note.** *Associated person*, *land use entitlement* and *majority shareholder* are defined in the Dictionary.

- (3) In addition to subsection (2), property is not to be counted in calculating the unencumbered value of the property of a landholder for the purposes of subsection (1) if the landholder is unable to satisfy the Chief Commissioner that the property was obtained otherwise than to reduce, for the purposes of this Chapter, the ratio of its land holdings in all places, whether within or outside Australia, to the unencumbered value of all its property.

**163C What are the “land holdings” of a landholder?**

- (1) For the purposes of this Chapter, a *land holding* is an interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor or a profit à prendre. An interest in land, however:
  - (a) is not a land holding of a unit trust scheme unless the interest is held by the trustees in their capacity as trustees of the scheme, and
  - (b) is not a land holding of a private company unless the interest of the private company in the land is a beneficial interest.
- (2) This section is in aid of, but does not limit, the operation of any provision of this Chapter providing for constructive ownership of interests.

**163D What are “interests” and “significant interests” in landholders?**

- (1) For the purposes of this Chapter, a person has an *interest* in a landholder if the person has an entitlement (otherwise than as a creditor or other person to whom the landholder is liable) to a distribution of property from the landholder on a winding up of the landholder or otherwise.
- (2) A person who, by virtue of subsection (1), has an interest in a landholder has a *significant interest* in the landholder if the person, in the event of a distribution of all the property of the landholder immediately after the interest was acquired, would be entitled to:

- (a) in the case of a private unit trust scheme—20% or more of the property distributed, or
  - (b) in the case of a landholder other than a private unit trust scheme—50% or more of the property distributed.
- (3) For the purposes of Part 2 only, an interest in a landholder is not counted 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) In this section, *person* includes a landholder.

## **Part 2 Charging of duty on acquisitions of interests in land rich landholders**

### **163E When does a liability for duty arise?**

A liability for duty charged by this Part arises when a relevant acquisition is made.

### **163F What is a “relevant acquisition”?**

- (1) For the purposes of this Chapter, a person who:
- (a) acquires an interest in a land rich landholder:
    - (i) that is of itself a significant interest in the landholder, or
    - (ii) that, when aggregated with other interests in the landholder held by the person or an associated person, results in an aggregation that amounts to a significant interest in the landholder, or
    - (iii) that, when aggregated with other interests in the landholder acquired by the person or other persons under transactions that form, evidence, give effect to or arise from what is substantially one arrangement between the acquirers, results in an aggregation that amounts to a significant interest in the landholder, or
  - (b) having a significant interest, or an interest described in paragraph (a) (ii), in a land rich landholder, acquires a further interest in the landholder,
- has made a *relevant acquisition*.

- (2) However, an acquisition of an interest in a land rich landholder under an arrangement that results in the land rich landholder ceasing to be a landholder is not a relevant acquisition because of subsection (1) (a) (iii).
- (3) For the purposes of this Part, persons in their capacity as qualifying investors of a wholesale unit trust scheme are taken not to be associated persons of other qualifying investors in relation to the scheme.

**163G How may an interest be “acquired”?**

- (1) For the purposes of this Part, a person acquires an interest in a land rich landholder if the person obtains an interest, or the person’s interest increases, in the landholder regardless of how it is obtained or increased.
- (2) Without limiting subsection (1), a person may acquire an interest in a land rich landholder in the following ways:
  - (a) the purchase, gift, allotment or issue of a unit or share,
  - (b) the cancellation, redemption or surrender of a unit or share,
  - (c) the abrogation or alteration of a right for a unit or share,
  - (d) the payment of an amount owing for a unit or share.
- (3) To remove any doubt, it is declared that a person may acquire an interest in a land rich landholder without acquiring units or shares in the land rich landholder.

**163H Acquisition statements**

- (1) A person who has made a relevant acquisition must prepare a statement (an *acquisition statement*) and lodge it with the Chief Commissioner.
- (2) The acquisition statement is to be prepared in an approved form and must contain the following information:
  - (a) the name and address of the person who has acquired the interest,
  - (b) in relation to each interest acquired, the date on which it was acquired and whether it is an exempt transaction,
  - (c) if the relevant acquisition results from the aggregation of the interests of associated persons, particulars of the interests acquired by the person and any associated persons on the date of the relevant acquisition,
  - (d) particulars of the total interest of the person and any associated person in the landholder at that date,



- (e) the unencumbered value of all land holdings in New South Wales of the landholder as at the date of the relevant acquisition and as at the date of acquisition of each interest acquired in the landholder during the 3 years prior to the date of the relevant acquisition,
- (f) the unencumbered value of the property of the landholder at the date of the relevant acquisition,
- (g) the amount of duty paid under this Act or under a law of another Australian jurisdiction in respect of each earlier acquisition of an interest referred to in paragraph (e),
- (h) such other information as the Chief Commissioner may require.

**Note.** In ascertaining whether or not a liability to lodge a statement under this section exists, it is necessary to have regard to provisions of Part 4 that deal with how a person may be taken to have acquired an interest in a land rich landholder because of the interests in a linked entity.

**163I When must duty be paid?**

A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if duty is paid within 3 months after the liability to pay the duty arises.

**163J Who is liable to pay the duty?**

- (1) Duty chargeable under this Part is payable by the person who makes the relevant acquisition, except as provided by subsection (2).
- (2) If a relevant acquisition results from an aggregation of the interests of associated persons, the person who made the relevant acquisition and the associated person or persons are jointly and severally liable for payment of the duty.

**163K How duty is charged on relevant acquisitions**

- (1) If an acquisition statement does not disclose any acquisitions during the 3 years preceding the relevant acquisition, duty is chargeable, at the rate specified under section 32 of this Act for a transfer of dutiable property, on the amount calculated by multiplying the unencumbered value of all land holdings of the landholder in New South Wales (calculated at the date of acquisition of the interest acquired) by the proportion of that value represented by the interest acquired in the relevant acquisition.

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- (2) If a relevant acquisition results from the aggregation of the interests of associated persons, the reference in subsection (1) to the interest acquired includes a reference to any interests acquired by associated persons on the same date.
  - (3) If an acquisition statement discloses one or more acquisitions during the 3 years preceding the relevant acquisition, duty is chargeable, at the rate specified under section 32 of this Act for a transfer of dutiable property, on the aggregate of amounts severally calculated, in the manner provided by subsection (1), in respect of each interest required to be disclosed in the statement.
  - (4) Duty payable under this section is to be reduced by the sum of the duty paid or payable under this Act in respect of the acquisition, during the 3 years preceding the relevant acquisition, by the person or any associated person of an interest in the same landholder, but only in proportion to the extent to which the duty paid or payable is attributable to the amount of the duty payable under this section.
  - (5) Duty payable under this section is to be reduced by an amount (if any) calculated in accordance with the following formula:

$$\frac{A}{B} \times C$$

where:

*A* is the unencumbered value of the land holdings in New South Wales of the landholder at the time the dutiable acquisition was made, and

*B* is the unencumbered value of all property of the landholder at that time, and

*C* is the sum of:

- (a) the duty under this Act paid or payable in respect of:
  - (i) a dutiable transaction in relation to the units or shares, or
  - (ii) a capital reduction or a rights alteration under Part 3 of Chapter 3 by which an interest in the landholder was acquired, or
  - (iii) an allotment of shares under Part 5 of Chapter 3 by which an interest in the landholder was acquired, and
- (b) any duty of a like nature so paid or payable under a law of another Australian jurisdiction.

- (6) If a relevant acquisition is made owing to the aggregation of the interests of associated persons, but the Chief Commissioner is satisfied that the associated persons acquired their respective interests independently, the Chief Commissioner may assess and charge duty on each separate acquisition without aggregating the interests of the person who made it with the interests of associated persons.
- (7) Duty is not chargeable under this section on the acquisition of an interest in a landholder that is required to be disclosed in an acquisition statement if the acquisition is an exempt transaction.
- (8) This section is subject to Part 4.
- (9) In this section:  
*exempt transaction* means an acquisition that is an exempt transaction under Part 5.

**163L Primary producers—special provisions**

- (1) No duty is chargeable under this Part in respect of a relevant acquisition if:
  - (a) the relevant acquisition is made in a landholder that is a primary producer, and
  - (b) when the acquisition is made, the landholder's land holdings in all places, whether within or outside Australia, comprise less than 80% of the unencumbered value of all its property.
- (2) However, if at any time within the period of 5 years after a relevant acquisition to which subsection (1) applies is made, the landholder in whom the acquisition is made ceases for any length of time to be a primary producer:
  - (a) the person who made the acquisition must immediately notify the Chief Commissioner:
    - (i) that the landholder has ceased to be a primary producer, and
    - (ii) of the date on which the landholder ceased to be a primary producer, and
  - (b) duty is chargeable under this Part in respect of the acquisition on the date on which the landholder ceased to be a primary producer, and
  - (c) the Chief Commissioner must make an assessment of the duty so chargeable.

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- (3) The provisions of section 163B (2) and (3) apply to the calculation of the unencumbered value of the land holdings of the primary producer under this section.
  - (4) In this section, *primary producer* means a landholder whose land holdings in all places, whether within or outside Australia, wholly or predominantly comprise land used for primary production (within the meaning of section 274).

### **Part 3 Charging of duty on disposals of interests in land rich landholders**

#### **163M When does a liability for duty arise?**

A liability for duty charged by this Part arises when a relevant disposal is made.

#### **163N What is a “relevant disposal”?**

- (1) For the purposes of this Chapter, a person who is a significant interest holder in relation to a landholder and who disposes of an interest in the land rich landholder has made a *relevant disposal*.
- (2) A person is a *significant interest holder* in relation to a landholder if the person has or has had, at any time within the period of 3 years before the disposal, a significant interest in the landholder or an interest that, when aggregated with other interests held by any associated persons, amounts to a significant interest in the landholder.
- (3) For the purposes of this Part, persons in their capacity as qualifying investors of a wholesale unit trust scheme are taken not to be associated persons of other qualifying investors in relation to the scheme.

#### **163O How may an interest be “disposed of”?**

- (1) A person who has an interest in a land rich landholder disposes of an interest in the landholder if the person ceases to have an interest in the landholder, or the person’s interest in the landholder decreases, regardless of how that happens.
- (2) Without limiting subsection (1), a person may dispose of an interest in a land rich landholder in the following ways:
  - (a) the sale, gift, allotment or issue of a unit or share,
  - (b) the cancellation, redemption or surrender of a unit or share,
  - (c) the abrogation or alteration of a right for a unit or share,

- (d) the payment of an amount owing for a unit or share.
- (3) To remove any doubt, it is declared that a person may dispose of an interest in a land rich landholder without disposing of units or shares in the land rich landholder.

**163P Disposal statements**

- (1) A person who has made a relevant disposal must prepare a statement (a *disposal statement*) and lodge it with the Chief Commissioner.
- (2) The disposal statement is to be prepared in an approved form and must contain the following information:
  - (a) the name and address of the person who has disposed of the interest,
  - (b) the date on which it was disposed of,
  - (c) particulars of the interest of the person and any associated persons in the landholder immediately before the relevant disposal,
  - (d) particulars of any other interests of the person or any associated persons in the landholder disposed of within the 3-year period before the date of the relevant disposal,
  - (e) the unencumbered value of all land holdings in New South Wales of the landholder as at the date of the relevant disposal,
  - (f) the unencumbered value of the property of the landholder at the date of the relevant disposal,
  - (g) such other information as the Chief Commissioner may require.

**Note.** In ascertaining whether or not a liability to lodge a statement under this section exists, it is necessary to have regard to provisions of Part 4 that deal with how a person may be taken to have disposed of an interest in a land rich landholder because of the interests in a linked entity. Section 163Z allows valuations prepared within 12 months before a disposal to be used in certain circumstances for the purpose of determining the unencumbered value of land holdings of a landholder at the date of the relevant disposal.

**163Q When must duty be paid?**

A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if duty is paid within 3 months after the liability to pay the duty arises.

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**163R Who is liable to pay the duty?**

Duty chargeable under this Part is payable by the person who makes the relevant disposal.

**163S How duty is charged on relevant disposals**

- (1) Duty is chargeable on a relevant disposal, at the rate specified under Chapter 4 for a dutiable transaction in respect of land-related property, on the amount calculated by multiplying the unencumbered value of all land holdings of the landholder in New South Wales by the proportion of that value represented by the interest disposed of in the relevant disposal.
- (2) Duty is not chargeable under this section on the disposal of an interest in a landholder if the disposal is an exempt transaction.
- (3) If a land holding of a landholder is an exempt land holding in relation to a particular disposal, the unencumbered value of the land holding is to be disregarded when calculating the duty chargeable on the disposal.
- (4) This section is subject to Part 4.
- (5) In this section:  
*exempt land holding* means a land holding that is an exempt land holding under Part 6.  
*exempt transaction* means a disposal that is an exempt transaction under Part 5.

## **Part 4 General principles to be applied under this Chapter**

**163T Constructive ownership of land holdings and other property: linked entities**

- (1) In addition to any interest in land or other property that it may hold in its own right, a unit trust scheme or a private company is taken, for the purposes of this Chapter, to hold an interest in land or other property held by a linked entity of the unit trust scheme or private company.
- (2) In this section, a *linked entity* of a unit trust scheme or a private company (the *principal entity*) means a person:
  - (a) who is part of a chain of persons:
    - (i) which includes the principal entity, and
    - (ii) which is comprised of one or more links, and

(iii) in which a link exists if a person would be entitled to receive not less than 20% of the unencumbered value of the property of another person if the other person were to be wound up, and

(iv) which does not include in any of the links between the person and the principal entity, a public unit trust scheme, a wholesale unit trust scheme or a company whose shares are listed on the Australian Stock Exchange or an exchange of the World Federation of Exchanges, and

(b) who is not a public unit trust scheme, a wholesale unit trust scheme or a company whose shares are listed on the Australian Stock Exchange or an exchange of the World Federation of Exchanges.

**Note.** The expressions “public unit trust scheme” and “wholesale unit trust scheme” have a different meaning in this provision from the meaning given in the Dictionary insofar as this provision relates to the duty chargeable under Part 3 (see section 163A).

(3) The value, for duty purposes, of the interest in land or other property that a unit trust scheme or a private company (being a principal entity) is taken, by subsection (1), to hold because of a holding by a linked entity is that portion of the interest’s unencumbered value to which the unit trust scheme or private company would be entitled (without regard to any liabilities of the linked entity or any other person in the ownership chain) if each entity in the chain of entities were to be wound up.

**163U Constructive ownership of land holdings and other property: discretionary trusts**

(1) A person or a member of a class of persons in whose favour, by the terms of a discretionary trust, capital the subject of the trust may be applied:

(a) in the event of the exercise of a power or discretion in favour of the person or class, or

(b) in the event that a discretion conferred under the trust is not exercised,

is, for the purposes of this section, a *beneficiary* of the trust.

(2) A beneficiary of a discretionary trust is taken to own or to be otherwise entitled to the property the subject of the trust.

(3) For the purposes of this Chapter, any property that is the subject of a discretionary trust is taken to be the subject of any other discretionary trust:

- (a) that is, or
  - (b) any trustee of which (in the capacity of trustee) is, a beneficiary of it.
- (4) Subsection (3) extends to apply to property that is the subject of a discretionary trust only by the operation of that subsection.
- (5) In this section, *person* includes a landholder.
- Note.** *Discretionary trust* is defined in the Dictionary.

**163V Effect of uncompleted agreements**

- (1) For the purposes of this Chapter, the transferor and the transferee under an uncompleted agreement for the transfer of land are taken to be separately entitled to the whole of the land.
- Note.** If duty is charged on an acquisition or disposal that relates to a land holding to which subsection (1) applies, the Chief Commissioner may defer payment of duty under section 47 of the *Taxation Administration Act 1996*.
- (2) For the purposes of this Chapter:
- (a) if a landholder has agreed to dispose of property other than land, the agreement is taken to have been completed even if it is not completed, and
  - (b) if a landholder has agreed to acquire property other than land and has not completed the agreement, the agreement is to be disregarded.

**163W Agreements for sale or conveyance of land**

- (1) If:
- (a) at the time of acquisition or disposal of an interest by any person in a land rich landholder that necessitates the lodgment of an acquisition statement or disposal statement under this Chapter, the landholder was the vendor under an uncompleted agreement for the sale or conveyance of land, and
  - (b) the agreement is subsequently completed,
- the Chief Commissioner is to assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition or disposal concerned, a land holding of the landholder.



- (2) If:
- (a) at the time of acquisition or disposal of an interest by any person in a land rich landholder that necessitates the lodgment of an acquisition statement or disposal statement under this Chapter, the landholder was the purchaser under an uncompleted agreement for the sale or conveyance of land, and
  - (b) the agreement is subsequently rescinded, annulled or otherwise terminated without completion,
- the Chief Commissioner is to assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition or disposal concerned, a land holding of the landholder.
- (3) In this section, a reference to a *landholder* includes a reference to a linked entity of the landholder.

**163X Agreements for disposal or acquisition of property other than land**

- (1) If, at the time of an acquisition or disposal of an interest by a person in a land rich landholder that necessitates the lodgment of an acquisition statement or disposal statement under this Chapter, 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 or disposal 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 is intended to be achieved in another way.
- (3) If, at the time of an acquisition or disposal of an interest by a person in a land rich landholder that necessitates the lodgment of an acquisition statement or disposal statement under this Chapter, 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 or disposal concerned, property of the landholder.
- (4) In this section, a reference to a *landholder* includes a reference to a linked entity of the landholder.

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**163Y Valuation of property**

- (1) Subject to this Chapter, the provisions of this Act for ascertaining the value of transfers chargeable with ad valorem duty extend to an acquisition statement or disposal statement under this Chapter and the value of land holdings mentioned in it.
- (2) In determining the unencumbered value of land holdings under this Chapter, any arrangement made in respect of the land holdings that has the effect of reducing the unencumbered value is to be disregarded, subject to subsection (3).
- (3) An arrangement is not to be disregarded if the Chief Commissioner is satisfied that the arrangement was not made as part of an arrangement or scheme with a collateral purpose of reducing the duty otherwise payable in relation to the relevant acquisition or relevant disposal.
- (4) In considering whether or not he or she is satisfied for the purposes of subsection (3), the Chief Commissioner may have regard to:
  - (a) the duration of the arrangement before the relevant acquisition or relevant disposal, and
  - (b) whether the arrangement has been made with an associated person, and
  - (c) whether there is any commercial efficacy to the making of the arrangement other than to reduce duty, and
  - (d) any other matters the Chief Commissioner considers relevant.

**163Z Use of valuations prepared within 12-month period before disposal**

- (1) For the purpose of determining the duty chargeable on a relevant disposal under Part 3, the unencumbered value of all land holdings of the landholder in New South Wales is to be calculated by reference to the value of those land holdings according to any relevant valuation specified in subsection (2).
- (2) A **relevant valuation** is any of the following documents prepared within 12 months before the date a liability for duty under Part 3 arises:
  - (a) an independent valuation of the land holdings of the landholder,
  - (b) a property valuation used by the landholder in preparing an annual return to be lodged under the *Corporations Act 2001* of the Commonwealth,

- (c) a financial report of the landholder, certified by an independent auditor as presenting a true and fair view of a landholder's financial position,
  - (d) any other document the Chief Commissioner considers to be appropriate for calculating the value of the land holdings of the landholder.
- (3) However, if there is more than one relevant document, the most recently prepared of those relevant documents is to be used for the purpose of determining the value of land holdings of the landholder.
- (4) This section does not apply in respect of a relevant disposal made by a person if, as a consequence of that disposal, another person has made a relevant acquisition.

**163ZA Maximisation of entitlements on distribution of property**

- (1) This section applies to any calculation, for the purposes of this Chapter, of the entitlement of a person (the *interested person*) to participate in a distribution of the property of a landholder, whether on a winding up of the landholder or otherwise.
- (2) A calculation is to be made based, firstly, on a distribution carried out in accordance with the constitution of the landholder, and with any law relevant to the distribution, as in force at the time of distribution, and the entitlement of the interested person is to be evaluated accordingly.
- (3) Next, a calculation is to be made based on a distribution carried out after the interested person, and any other person whom the interested person has power to direct with respect to such a distribution or who is, in relation to the interested person, an associated person, had exercised all powers and discretions exercisable by them by reason of having acquired an interest in the landholder concerned:
- (a) to effect or compel an alteration to the constitution of the landholder, and
  - (b) to vary the rights conferred by units or shares in the landholder, and
  - (c) to effect or compel the substitution or replacement of units or shares in the landholder with other units or shares in it, in such a manner as would maximise the value of the entitlement, and the entitlement of the interested person is to be evaluated accordingly.

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- (4) The results obtained by an evaluation of the interested person's entitlement in accordance with subsections (2) and (3) are then to be compared, and whichever evaluation results in a greater entitlement is the correct evaluation, for the purposes of this Chapter, of the entitlement, unless the Chief Commissioner, being satisfied that the application of this subsection in the particular case would be inequitable, determines otherwise.

## **Part 5 Exemptions and concessions**

### **163ZB Exempt transactions**

- (1) An acquisition or disposal by a person of an interest in a landholder is an exempt transaction:
- (a) if the interest was acquired or disposed of in the person's capacity as:
    - (i) a receiver or trustee in bankruptcy, or
    - (ii) a liquidator, or
    - (iii) an executor or administrator of the estate of a deceased person, or
  - (b) if the interest was acquired or disposed of solely as the result of the making of a compromise or arrangement under Part 5.1 of the *Corporations Act 2001* of the Commonwealth that has been approved by the court, not being a compromise or arrangement that the Chief Commissioner is satisfied was made with the intention of defeating the operation of this Chapter, or
  - (c) if the interest concerned is acquired or disposed of solely from a pro rata increase or decrease in the interests of all unit holders or shareholders, or
  - (d) if the interest was acquired or disposed of solely as the result of the distribution of the estate of a deceased person, whether effected in the ordinary course of execution of a will or codicil or administration of an intestate estate or as the result of the order of a court, made under the *Family Provision Act 1982* or otherwise, varying the application of the provisions of a will or codicil or varying the application of the rules governing the distribution of the property of an intestate estate, or
  - (e) if the interest was acquired or disposed of by the parties to a marriage that is dissolved or annulled, or in the opinion of the Chief Commissioner has broken down irretrievably, or by either of them, or by a child or children of either of

them or a trustee of such a child or children, as a result of a transfer made in accordance with:

- (i) a financial agreement made under section 90B, 90C or 90D of the *Family Law Act 1975* of the Commonwealth that, under that Act, is binding on the parties to the agreement, or
  - (ii) an order of a court made under that Act, or
- (f) an agreement that the Chief Commissioner is satisfied has been made for the purpose of dividing matrimonial property as a consequence of the dissolution, annulment or breakdown of the marriage, or
- (f) if the interest was acquired or disposed of by the parties to a domestic relationship that has, in the opinion of the Chief Commissioner, been terminated, or by either of them, or by a child or children of either of them or a trustee of such a child or children, as a result of a transfer made in accordance with:
- (i) an order of a court made under the *Property (Relationships) Act 1984*, or
  - (ii) a termination agreement within the meaning of section 44 of the *Property (Relationships) Act 1984* that has been certified in accordance with section 47 of that Act, or

**Note. Domestic relationship** (defined in the Dictionary) has the same meaning as in the *Property (Relationships) Act 1984*.

- (g) to the extent that:
- (i) for purposes of or ancillary to the acquisition or disposal of an interest referred to in paragraph (e) or (f), the acquisition or disposal consists of the transfer of a share that is matrimonial property or relationship property to a person not a party to the relevant marriage or domestic relationship, in order to comply with a requirement of or prescribed under the *Corporations Act 2001* of the Commonwealth, or
  - (ii) the acquisition or disposal consists of a declaration of trust, by the transferee of a share transferred as referred to in subparagraph (i), for the benefit of a party to the marriage or relationship, or

- 
- (h) if the land holding of the landholder comprises land used for primary production and the Chief Commissioner is satisfied that:
- (i) the land was used for primary production immediately before the acquisition or disposal, and
  - (ii) the land will continue to be used for primary production after the acquisition or disposal, and
  - (iii) the parties between whom the acquisition or disposal has occurred are persons of a class identified in guidelines approved under section 274, and
  - (iv) the acquisition or disposal satisfies such other requirements as may be contained in those guidelines, or
- (i) if the acquisition or disposal of an interest in a landholder would be chargeable with duty of \$10 under section 54 if the property being acquired or disposed of were land in New South Wales.
- (2) An acquisition or disposal by a person of an interest in a landholder is an exempt transaction if the Chief Commissioner, being satisfied that the application of this Chapter to the acquisition or disposal in the particular case would not be just and reasonable, so determines.
- (3) If:
- (a) duty was paid on the acquisition or disposal of matrimonial property by the parties to a marriage or by either of them, or by a child or children of either of them or a trustee of such a child or children, and
  - (b) the interest acquired or disposed of was acquired or disposed of as a result of a transfer made in accordance with an agreement or order referred to in subsection (1) (e) (i), (ii) or (iii), and
  - (c) the marriage has been dissolved or annulled or has broken down irretrievably,
- the person who paid the duty is entitled to a refund of it.
- (4) If:
- (a) duty was paid on the acquisition or disposal of relationship property by the parties to a domestic relationship or by either of them, or by a child or children of either of them or a trustee of such a child or children, and

- (b) the interest acquired or disposed of was acquired or disposed of as a result of a transfer made in accordance with an order or agreement referred to in subsection (1) (f) (i) or (ii), and
  - (c) the domestic relationship has been terminated, the person who paid the duty is entitled to a refund of it.
- (5) A party to a marriage or domestic relationship may provide a statement to the Chief Commissioner, in the form of a statutory declaration, to the effect that:
- (a) in the case of a marriage:
    - (i) the party intends to apply for a dissolution or an annulment of the marriage, or
    - (ii) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed, or
  - (b) in the case of a domestic relationship, the domestic relationship has been terminated.

The Chief Commissioner is required to have regard to any such statement in exercising his or her functions under subsection (1) (e) or (f).

- (6) Subsection (5) does not limit the functions of the Chief Commissioner under section 72 of the *Taxation Administration Act 1996*.
- (7) In this section:

***land used for primary production*** has the same meaning as in section 274.

***marriage*** includes a void marriage.

***matrimonial property*** of a marriage means property of the parties to the marriage or of either of them.

***party*** to a marriage includes a person who was a party to a marriage that has been dissolved or annulled, in Australia or elsewhere.

***relationship property*** of a domestic relationship means property of the parties to the relationship or of either of them.

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**163ZC Duty concession: acquisitions securing financial accommodation**

- (1) If the person lodging an acquisition statement under this Chapter in relation to the acquisition of an interest in a land rich landholder:
  - (a) informs the Chief Commissioner at the time the statement is lodged that the acquisition is effected for the purpose of securing financial accommodation, and
  - (b) the Chief Commissioner is satisfied that the acquisition is effected for that purpose,the statement, in so far as it relates to that acquisition, is not chargeable with duty, except as provided by subsection (2).
- (2) The statement is chargeable with duty at the expiration of the period of 5 years after the date of the acquisition (or such longer period as may be determined by the Chief Commissioner in the particular case) if the interest concerned is not:
  - (a) re-acquired by the person from whom it was acquired, or
  - (b) in the case of an acquisition by way of mortgage, conveyed by the mortgagee to a third person in exercise of the mortgagee's power of sale,within that period (or that longer period).
- (3) Section 163H does not apply to the re-acquisition by a person of the interest concerned.

**163ZD Duty concession: disposals securing financial accommodation**

- (1) If the person lodging a disposal statement under this Chapter in relation to the disposal of an interest in a land rich landholder:
  - (a) informs the Chief Commissioner at the time the statement is lodged that the disposal is effected for the purpose of securing financial accommodation, and
  - (b) the Chief Commissioner is satisfied that the disposal is effected for that purpose,the statement, in so far as it relates to that disposal, is not chargeable with duty, except as provided by subsection (2).
- (2) The statement is chargeable with duty at the expiration of the period of 5 years after the date of the disposal (or such longer period as may be determined by the Chief Commissioner in the particular case) if the interest concerned is not:
  - (a) re-acquired by the person who disposed of it, or



- (b) in the case of a disposal by way of mortgage, conveyed by the mortgagee to a third person in exercise of the mortgagee's power of sale, within that period (or that longer period).
- (3) Section 163P does not apply to the disposal of the interest concerned for the purpose of its re-acquisition by the person who disposed of it.

**163ZE Concession for buy-back arrangements**

- (1) This section applies if:
  - (a) the trustee of a unit trust scheme that is a widely held trust redeems any units in the trust, and
  - (b) the redemption is done for the purpose of re-issuing or re-offering the units for sale, and
  - (c) as a result of the redemption, the scheme would, but for this section, cease to be a widely held trust because a unit holder, individually or together with any associated person, is beneficially entitled to more than 20% of the units in the trust.
- (2) For a period of 30 days beginning on and including the day on which the redemption occurs, the trust is taken to continue to be a widely held trust, but only if the trust continues to have not less than 300 unit holders none of whom, individually or together with any associated person, is beneficially entitled to more than 25% of the units of the trust.
- (3) If, at the end of that 30-day period, a unit holder, individually or together with any associated person, is beneficially entitled to more than 20% of the units in the unit trust scheme:
  - (a) the trust is taken to have ceased to be a widely held trust from the beginning of that 30-day period (as if subsection (2) had never applied), and
  - (b) the Chief Commissioner must make an assessment of the duty chargeable under this Act as if the unit trust scheme had ceased to be a widely held trust scheme at the beginning on that 30-day period, and
  - (c) a tax default occurs for the purposes of the *Taxation Administration Act 1996* if the whole of any duty assessed under paragraph (b) is not paid to the Chief Commissioner within 3 months after the assessment.

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## **Part 6 Further exemptions and concessions for disposal duty**

### **Division 1 Exempt land holdings**

#### **163ZF Vendor duty exemptions to be applied**

- (1) A land holding of a landholder is an exempt land holding in relation to a disposal if the Chief Commissioner is satisfied that, had the landholder transferred the land that is the subject of the land holding immediately before the disposal took place, the transfer of the land by the landholder would not be chargeable with duty under Chapter 4 because of the application of one or more of the following provisions:
  - (a) section 162H (Exemption for farms),
  - (b) the provisions set out in Division 4 of Part 5 of Chapter 4 (Exemptions for new and substantially new buildings),
  - (c) section 162S (Improved vacant land).
- (2) For that purpose, the provisions of this Act referred to in subsection (1) are to be applied subject to any modifications the Chief Commissioner considers necessary.
- (3) A person who makes a relevant disposal (including any associated person) is entitled to claim a particular land holding is an exempt land holding because of the application of a provision referred to in subsection (1) (b) in relation to one disposal by the person (or an associated person) only. That is, a land holding that consists of an interest in a particular parcel of land cannot be claimed to be an exempt land holding in relation to a disposal under those provisions if the land holding has been claimed to be an exempt land holding in relation to a previous disposal by the person or an associated person.

#### **163ZG Land subject to conservation instruments**

- (1) A land holding is an exempt land holding in relation to a disposal if it consists of an interest in land that the Chief Commissioner is satisfied is the subject of a conservation agreement under the *National Parks and Wildlife Act 1974*, or a trust agreement registered as referred to in section 36 of the *Nature Conservation Trust Act 2001*, being in either case an agreement that remains in force in perpetuity. These conservation agreements and registered trust agreements are referred to in this section as ***conservation instruments***.

- (2) If the land is only partly the subject of a conservation instrument then, for the purpose of charging duty under this Chapter, the unencumbered value of the land holding is to be reduced by the conservation apportionment factor.
- (3) The *conservation apportionment factor* is the proportion that the area of the land that is the subject of the conservation instrument bears to the total area of the land.

## **Division 2 Concession for land holdings that have not significantly increased in value**

### **163ZH Exemption for land holdings that have not increased in value**

In determining the duty to be charged under Part 3 of this Chapter in respect of a relevant disposal, the unencumbered value of a particular land holding of a land rich landholder is to be disregarded if the Chief Commissioner is satisfied that the unencumbered value of the land holding at the disposal date does not exceed the unencumbered value of the land holding at the disposer acquisition date.

### **163ZI Exemption for land holdings where increase in value does not exceed 12 per cent**

In determining the duty to be charged under Part 3 of this Chapter in respect of a relevant disposal, the unencumbered value of a particular land holding of a land rich landholder is to be disregarded if the Chief Commissioner is satisfied that the unencumbered value of the land holding at the disposal date exceeds the unencumbered value of the land holding at the disposer acquisition date by not more than 12 per cent of the unencumbered value of the land holding at the disposer acquisition date.

### **163ZJ Concession for increases between 12 and 15 per cent**

- (1) This section applies in respect of a relevant disposal if the Chief Commissioner is satisfied that the unencumbered value of a particular land holding of the land rich landholder on the disposal date exceeds the unencumbered value of the land holding on the disposer acquisition date by more than 12 per cent, but not more than 15 per cent, of the unencumbered value of the land holding on the disposer acquisition date.

- (2) If this section applies, the unencumbered value of the land holding at the disposal date is to be discounted, for the purpose of calculating the duty chargeable under Part 3 of this Chapter, in accordance with the following table:

<b>Increase in unencumbered value of land holding (expressed as % of unencumbered value of land holding on disposer acquisition date)</b>	<b>Discount on unencumbered value</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%

**163ZK What is the disposal date?**

For the purposes of this Division, the *disposal date*, in relation to a relevant disposal, is the date on which a liability for the duty chargeable under Part 3 arises or would, but for this Division, arise.

**163ZL What is the disposer acquisition date?**

- (1) For the purposes of this Division, the *disposer acquisition date* in relation to a particular land holding of a land rich landholder is:
- (a) the date on which the person making the relevant disposal first acquired an interest in the landholder or, if the person acquired separate interests in the landholder on separate dates, the earliest date on which the person acquired an interest in the landholder (other than an interest that has previously been disposed of by the person), or
  - (b) the date on which the landholder first acquired the land holding,
- whichever is the later.
- (2) If a person making a relevant disposal acquired an interest in the landholder 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 person is taken to have first acquired an interest in the landholder on the date on which the deceased person first acquired an interest in the landholder.

**163ZM Landholder that holds multiple interests in land**

For the purpose of applying this Division in respect of a disposal by a person in a land rich landholder:

- (a) if the land holdings of the landholder comprise interests in more than one parcel of land, this Division is to be applied separately in respect of each such parcel of land, and
- (b) if a landholder's interest in a particular parcel of land at the disposal date is different from the interest of the landholder in that land at the disposer acquisition date, the unencumbered value of the land holding at the disposer acquisition date is to be determined as if the landholder had held the same interest in the land at the disposer acquisition date as the interest held at the disposal date.

**163ZN Determination of value of land holding under this Division**

- (1) For the purposes of this Division, the unencumbered value of a land holding on a particular date is to be determined by reference to any of the following documents:
  - (a) an independent valuation of the land holding as at the relevant disposal date and the disposer acquisition date,
  - (b) any other document the Chief Commissioner considers to be appropriate for calculating the value of the land holding.
- (2) If, after the disposer acquisition date, improvements were made to land in which a landholder has an interest, the unencumbered value of the land holding at the disposer acquisition date is to be determined as if those improvements had not been made.
- (3) The Chief Commissioner may, by notice in writing, require a landholder to provide such information or evidence as the Chief Commissioner may reasonably require for the purpose of ascertaining the unencumbered value of a land holding of the landholder or the disposer acquisition date in relation to such a land holding.
- (4) The Chief Commissioner may refuse to grant an exemption under this Division if the landholder fails to comply with any such notice.
- (5) This section applies despite section 163Z.

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

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### **Division 3      Other exemptions and concessions**

#### **163ZO    No double duty**

If a relevant disposal consists of a redemption of units in a unit trust scheme and the Chief Commissioner is satisfied that the disposal forms part of an arrangement under which any land holdings of the landholder are transferred, the duty chargeable in respect of the relevant disposal under Part 3 of this Chapter is to be reduced by the amount of duty (if any) paid under Chapter 4 in respect of the transfer of the land holdings.

#### **163ZP    Passive disposals**

- (1) A disposal by a person of an interest in a landholder is an exempt transaction if the Chief Commissioner is satisfied that the disposal is a passive disposal and does not form part of an arrangement to avoid the payment of duty under this Act.
- (2) A disposal by a person of an interest in a landholder is a *passive disposal* if:
  - (a) the disposal occurs entirely as a consequence of actions, decisions or events over which the person and any associated persons had no control, and
  - (b) the person and any associated persons do not receive any consideration or benefit as a consequence of the disposal.

#### **163ZQ    Disposals for no consideration by charities and others**

A disposal by a person of an interest in a land rich landholder is an exempt transaction if the disposal consists of the disposal of property to another person for no consideration and the Chief Commissioner is satisfied that, had the disposal been a transfer by the person of land to that other person, the other person would not be liable to pay duty on the transfer under this Act (disregarding Division 1 of Part 8 of Chapter 2 and section 278).

### **Division 4      General**

#### **163ZR    General**

- (1) This Part does not affect a determination under this Chapter as to whether a landholder is land rich.
- (2) This Part does not affect any liability for the duty chargeable under Part 2 in respect of a relevant acquisition.

## **Part 7 Registration of unit trust schemes**

### **163ZS Application for registration**

- (1) The responsible entity of a unit trust scheme may apply to the Chief Commissioner for registration of the scheme as:
  - (a) an imminent public unit trust scheme, or
  - (b) a wholesale unit trust scheme, or
  - (c) an imminent wholesale unit trust scheme.
- (2) An application must be made by the applicant in an approved form.
- (3) In considering an application for registration under this Part, the Chief Commissioner may take into account any matter he or she considers relevant.

### **163ZT Registration of imminent public unit trust scheme**

- (1) On application by the responsible entity of a unit trust scheme, the Chief Commissioner may register the unit trust scheme as an imminent public unit trust scheme if the Chief Commissioner is satisfied that the scheme meets the criteria for registration as an imminent public unit trust scheme.
- (2) The criteria for registration as an imminent public unit trust scheme are that:
  - (a) the unit trust scheme will become a listed trust or widely held trust within 12 months (or such longer period as the Chief Commissioner may determine) after the Chief Commissioner gives written notice of his or her intention to register the unit trust scheme as an imminent public unit trust scheme, and
  - (b) the units issued in the trust before the scheme becomes a listed trust or widely held trust have been or will be issued only for the purpose of the unit trust scheme becoming a listed trust or widely held trust, and
  - (c) those units are or will be the only units issued until the unit trust scheme becomes a listed trust or widely held trust.

### **163ZU Registration of wholesale unit trust schemes**

- (1) On application by the responsible entity of a unit trust scheme, the Chief Commissioner may register the unit trust scheme as a wholesale unit trust scheme if the Chief Commissioner is satisfied that the scheme meets the criteria for registration as a wholesale unit trust scheme.

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- (2) The criteria for registration as a wholesale unit trust scheme are that:
- (a) not less than 80% of the units in the unit trust scheme are held by qualifying investors, being any of the following:
    - (i) the trustee of a complying superannuation fund which has not less than 300 members,
    - (ii) the trustee of a complying approved deposit fund which has not less than 300 members,
    - (iii) the trustee of a pooled superannuation trust,
    - (iv) the trustee of a public unit trust,
    - (v) a life company if its holding of the units in the unit trust scheme is an investment of a statutory fund maintained by it under the *Life Insurance Act 1995* of the Commonwealth (and, for the purposes of this subparagraph, the holding of units by a life company by way of an investment of a statutory fund of the life company is taken to be a holding of units by the life company in a separate capacity from a holding of units by the life company by way of investment of another statutory fund of the life company),
    - (vi) a custodian for a trustee, or a trustee for a life company, referred to in any of the preceding subparagraphs in its capacity as such a custodian or trustee,
    - (vii) the trustee of another wholesale unit trust scheme,
    - (viii) the custodian or trustee for an IDPS, or investor directed portfolio service, within the meaning of the relevant ASIC policy statement, in its capacity as such a custodian or trustee, if the IDPS has not less than 300 clients or investors, none of whom (individually or together with any associated person) is beneficially entitled to more than 20% of the property to which the IDPS relates,
    - (ix) the Crown in right of the Commonwealth, a State or a Territory (including any statutory body representing the Crown in right of the Commonwealth, a State or a Territory), and
  - (b) each qualifying investor holds less than 50% of the units in the unit trust scheme or, if a qualifying investor holds units in the unit trust scheme in more than one capacity, the qualifying investor holds less than 50% of the units in each capacity.



- (3) A listed trust is not eligible for registration as a wholesale unit trust scheme.
- (4) In this section:  
*relevant ASIC policy statement* means the policy statement *PS 148: Investor Directed Portfolio Services* published by the Australian Securities and Investments Commission, or such other policy statement published by the Commission as the Chief Commissioner may from time to time approve for the purpose of this section.

**163ZV Registration of imminent wholesale unit trust schemes**

- (1) On application by the responsible entity of a unit trust scheme, the Chief Commissioner may register the unit trust scheme as an imminent wholesale unit trust scheme if the Chief Commissioner is satisfied that the scheme meets the criteria for registration as an imminent wholesale unit trust scheme.
- (2) The criteria for registration as an imminent wholesale unit trust scheme are that:
  - (a) the unit trust scheme will meet the criteria for registration as a wholesale unit trust scheme within 12 months (or such longer period as the Chief Commissioner may determine) after the Chief Commissioner gives written notice of his or her intention to register the trust as an imminent wholesale unit trust scheme, and
  - (b) the units issued in the trust before the scheme meets the criteria for registration as a wholesale unit trust scheme have been or will be issued only for the purpose of the unit trust scheme meeting those criteria, and
  - (c) those units are or will be the only units issued before the trust meets those criteria.

**163ZW Duration of registration**

- (1) Registration of a unit trust scheme under this Part takes effect on the day specified by the Chief Commissioner in respect of the scheme, which may be a day occurring before the day on which registration is granted.
- (2) Registration of a wholesale unit trust scheme remains in force until it is cancelled by the Chief Commissioner.

- (3) Unless cancelled earlier, registration of an imminent public unit trust scheme or an imminent wholesale unit trust scheme remains in force for 12 months from the date on which registration takes effect or for such further period as the Chief Commissioner may, from time to time, specify in respect of the unit trust scheme.

**163ZX Register**

- (1) The Chief Commissioner is to keep a register of unit trust schemes registered as wholesale unit trust schemes under this Part.
- (2) The following information is to be entered in the register in relation to each unit trust scheme registered as a wholesale unit trust scheme:
  - (a) the name of the unit trust scheme,
  - (b) the date of registration,
  - (c) such other information relating to the unit trust scheme as the Chief Commissioner may approve.
- (3) The register is to be kept in such form as the Chief Commissioner considers appropriate.
- (4) A copy of the register is to be made available for public inspection by publication on the website of the Office of State Revenue in the Treasury, and in such other manner as the Chief Commissioner may approve.

**163ZY Reporting requirements**

- (1) As a condition of registration under this Part, the Chief Commissioner may impose requirements on the responsible entity of the registered unit trust scheme to give the Chief Commissioner information specified by the Chief Commissioner about the unit trust scheme at the times required by the Chief Commissioner.
- (2) Requirements may be imposed under subsection (1) at the time of registration or at any subsequent time.

**163ZZ Cancellation of registration**

- (1) The Chief Commissioner may cancel the registration of a unit trust scheme at any time if the Chief Commissioner is satisfied that:
  - (a) a disqualifying circumstance within the meaning of section 163ZZA has occurred in respect of that scheme, or

- (b) the responsible entity of the unit trust scheme has contravened a condition of registration of the unit trust scheme imposed under this Part, or
  - (c) in the case of an imminent public unit trust scheme, the unit trust scheme has become a listed trust or a widely held trust, or
  - (d) in the case of an imminent wholesale unit trust scheme, the unit trust scheme is registered as a wholesale unit trust scheme.
- (2) The Chief Commissioner cancels the registration of a unit trust scheme by giving written notice of cancellation to the responsible entity of the scheme including the reasons for the cancellation.

**163ZZA Disqualifying circumstances for registered unit trust schemes**

- (1) In this section, *disqualifying circumstance* means a circumstance that causes a unit trust scheme that is registered under this Part to fail or cease to meet the relevant criteria for registration.
- (2) If a disqualifying circumstance occurs in respect of a unit trust scheme:
- (a) the responsible entity of the unit trust scheme must give the Chief Commissioner notice of the disqualifying circumstance within 28 days after it occurs, and
  - (b) the unit trust scheme is taken to have not been a public unit trust scheme or a wholesale unit trust scheme on and from the disqualification date, and
  - (c) the Chief Commissioner must make an assessment of duty chargeable under this Act in respect of any acquisition of an interest in the unit trust scheme as if the unit trust scheme had not been a wholesale unit trust scheme or a public unit trust scheme, as the case requires, on and from the disqualification date, and
  - (d) a tax default occurs for the purposes of the *Taxation Administration Act 1996* if the whole of any duty assessed under paragraph (c) is not paid to the Chief Commissioner within 3 months after the assessment.
- (3) For the purposes of this section, the *disqualification date* means:
- (a) in respect of a unit trust scheme registered under this Part as a wholesale unit trust scheme—the date on which the disqualifying circumstance occurs, and

- 
- (b) in respect of a unit trust scheme registered under this Part as an imminent public unit trust scheme or an imminent wholesale unit trust scheme—the date on which registration of the unit trust scheme under this Part first took effect.

**163ZZB Meaning of “responsible entity”**

In this Part, a reference to the *responsible entity* for a unit trust scheme is, in the case of a unit trust scheme for which there is no responsible entity, a reference to the trustee of that unit trust scheme.

**[5] Chapter 5, Part 1, sections 163 and 164**

Re-number the sections as sections 164 and 164A respectively.

**[6] Section 164 (as re-numbered by this Act)**

Omit “section 164” wherever occurring. Insert instead “section 164A”.

**[7] Section 275 Charitable and benevolent bodies**

Insert after section 275 (2):

- (2A) Land rich duty is not chargeable on the acquisition or disposal of an interest in a land rich landholder by an exempt charitable or benevolent body.

**[8] Section 275 (3)**

Insert at the end of paragraph (b) (ii) of the definition of *exempt charitable or benevolent body*:

, or

- (iii) (in the application of this definition for the purposes of subsection (2A)) the land holdings of the landholder are being used or are to be used for such purposes as the Chief Commissioner may approve in accordance with guidelines approved by the Treasurer.

**[9] Section 275 (3)**

Insert in alphabetical order:

*land rich duty* means the duty chargeable under Chapter 4A.

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

Insert at the end of clause 1 (1):

*Duties Amendment (Land Rich) Act 2004*

**[11] Schedule 1, Part 20**

Insert at the end of the Schedule:

**Part 20 Provisions consequent on enactment of  
Duties Amendment (Land Rich) Act 2004**

**44 Definition**

In this Part:

*amending Act* means the *Duties Amendment (Land Rich) Act 2004*.

**45 Application of land rich acquisition and disposal provisions**

- (1) The duty charged by Chapter 4A, as inserted by the amending Act, is charged on an acquisition or disposal of an interest in a landholder (within the meaning of that Chapter) if the acquisition or disposal is made on or after the commencement of Schedule 1 to that Act, subject to this clause.
- (2) Duty under Part 3 of Chapter 4A is not chargeable on a disposal of an interest in a landholder if the disposal is made pursuant to an agreement entered into before 7 May 2004.
- (3) Despite Part 3 of Chapter 4A, a liability for duty in respect of a relevant disposal made on or after the commencement of Schedule 1 to the amending Act but before the date of assent to that Act arises on the date of assent to the amending Act. Accordingly, the 3-month period referred to in section 163Q starts on the date of assent to the amending Act.
- (4) The period of 3 years referred to in sections 163N (2) and 163P (2) (d) is taken to exclude any part of that period that occurred before the commencement of Schedule 1 to the amending Act.

**46 Continuation of obligations under Part 2 of Chapter 3**

- (1) Part 2 of Chapter 3, as in force immediately before the commencement of Schedule 1 to the amending Act, continues to apply in respect of any acquisition of an interest in a landholder made before that commencement, as if the amending Act had not been enacted.

- (2) In relation to acquisitions made on or after the commencement of Schedule 1 to the amending Act, clause 35 applies as if a reference to Part 2 of Chapter 3 or section 118 included a reference to Chapter 4A or section 163K respectively.

**47 Wholesale unit trust schemes**

- (1) A unit trust scheme that is a wholesale unit trust scheme, within the meaning of the former wholesale unit trust scheme definition, is taken to be wholesale unit trust scheme for the purposes of Chapter 4A.
- (2) Subclause (1) ceases to apply in respect of a unit trust scheme:
- (a) at the end of the transitional period, or
  - (b) on the actual registration of the unit trust scheme as a wholesale unit trust scheme under Chapter 4A, or
  - (c) on the unit trust scheme becoming a listed trust or widely held trust,
- whichever happens first.
- (3) For the purposes of this clause, the *transitional period* means the period commencing on the commencement of Schedule 1 to the amending Act and ending at the end of:
- (a) 30 June 2005, or
  - (b) such later date as may be fixed by the Chief Commissioner, by order published in the Gazette.
- (4) In this clause:
- former wholesale unit trust scheme definition* means paragraph (a) of the definition of *wholesale unit trust scheme* as in force under this Act immediately before the commencement of Schedule 1 to the amending Act.

**48 Imminent public unit trust schemes and imminent wholesale unit trust schemes**

- (1) A unit trust scheme that, immediately before the commencement of Schedule 1 to the amending Act, was a public unit trust scheme or a wholesale unit trust scheme as a consequence of the Chief Commissioner giving notice under the former concessionary provisions, is taken to be registered as an imminent public unit trust scheme, or an imminent wholesale unit trust scheme, respectively, under Chapter 4A.

- (2) Subclause (1) ceases to apply in respect of a unit trust scheme:
- (a) at the end of the period of 12 months after the commencement of this clause, or
  - (b) on the occurrence of a disqualifying circumstance (within the meaning of section 124, as in force before the commencement of Schedule 1 to the amending Act) in respect of the unit trust scheme, or
  - (c) on the actual registration of the unit trust scheme as an imminent public unit trust scheme, wholesale unit trust scheme or an imminent wholesale unit trust scheme under Chapter 4A, or
  - (d) on the unit trust scheme becoming a listed trust or widely held trust,
- whichever happens first.
- (3) Section 124, as in force before the commencement of Schedule 1 to the amending Act, continues to apply in respect of a unit trust scheme that, immediately before the commencement of Schedule 1 to the amending Act, was a public unit trust scheme or a wholesale unit trust scheme as a consequence of the Chief Commissioner giving notice under the former concessionary provisions.
- (4) In this clause:  
*former concessionary provisions* means the provisions of paragraph (c) of the definition of *public unit trust scheme*, and paragraph (b) of the definition of *wholesale unit trust scheme*, as in force immediately before the commencement of Schedule 1 to the amending Act.

**[12] Dictionary**

Omit “Part 2 of Chapter 3 (Certain transactions treated as transfers)” from the definition of *associated person*.

Insert instead “Chapter 4A (Acquisition and disposal of interests in land rich landholders)”.

**[13] Dictionary, definition of “interest in a landholder”**

Omit the definition.

**[14] Dictionary, definition of “lease”**

Omit “section 164”. Insert instead “section 164A”.

**[15] Dictionary, definition of “linked entity”**

Omit “section 109 (2)”. Insert instead “section 163T (2)”.

**[16] Dictionary**

Insert in alphabetical order:

*listed trust* means a unit trust scheme any of the units in which are listed for quotation on the Australian Stock Exchange or any exchange of the World Federation of Exchanges.

*qualifying investor*, in relation to a wholesale unit trust scheme, means a qualifying investor referred to in section 163ZU (2) (a).

*widely held trust* means a unit trust scheme which has not less than 300 unit holders none of whom, individually or together with any associated person, is beneficially entitled to more than 20% of the units in the trust.

**[17] Dictionary, definition of “public unit trust scheme”**

Omit the definition. Insert instead:

*public unit trust scheme* means any of the following unit trust schemes:

- (a) a listed trust,
- (b) a widely held trust,
- (c) a unit trust scheme registered under Part 7 of Chapter 4A as an imminent public unit trust scheme.

**[18] Dictionary, definition of “wholesale unit trust scheme”**

Omit the definition. Insert instead:

*wholesale unit trust scheme* means a unit trust scheme, not being a listed trust, that is registered under Part 7 of Chapter 4A as a wholesale unit trust scheme or as an imminent wholesale unit trust scheme.



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## Schedule 2 Other amendments

(Section 3)

**[1] Section 32C Rate for large parcels of residential land**

Omit “vacant” from section 32C (1).

**[2] Section 32C (4A)**

Insert after section 32C (4):

- (4A) This section does not apply in respect of residential land if section 32B applies to the land.

**[3] Section 49 Interim payment of duty**

Omit section 49 (2)–(6). Insert instead:

- (2) A written instrument effecting or evidencing the sale or transfer may be stamped “interim stamp only”.

**[4] Section 158 What is the “dutiable value” of land-related property?**

Omit section 158 (3). Insert instead:

- (3) For the purpose of determining under this Chapter the dutiable value of land-related property that is subject to a vendor duty transaction:
- (a) if the monetary consideration expressed to be paid or payable by the purchaser under the vendor duty transaction includes an amount payable for GST, any part of the amount payable for GST that exceeds 10% of the monetary consideration (exclusive of amounts payable for GST or vendor duty) is to be disregarded, and
  - (b) if the monetary consideration expressed to be paid or payable by the purchaser under the vendor duty transaction includes an amount payable to discharge the vendor’s liability for vendor duty, any part of the amount payable to discharge that liability that exceeds 2.25% of the monetary consideration (exclusive of an amount payable for vendor duty) is to be disregarded.

**Note.** As both vendor duty and GST are calculated by reference to the total consideration payable in respect of a transaction, subsection (3) is intended to prevent a cascading effect that is produced if the amount payable for the 2 taxes is added to the consideration payable and each tax then increases by reference to the other.

- (4) Section 25 does not apply in respect of vendor duty transactions.

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**[5] Section 162B Principal place of residence exemption**

Omit section 162B (3) (c). Insert instead:

- (c) if the vendor became an owner of the land (or the land use entitlement to which the land is subject) 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, and no other land, has been continuously used and occupied by the person for residential purposes and for no other purposes since the vendor became an owner of the land (or land use entitlement).

**[6] Section 162B (4) and (5)**

Omit the subsections.

**[7] Sections 162D–162DB**

Insert after section 162C:

**162D Occupier must be natural person with significant interest in the land**

- (1) The principal place of residence exemption does not apply to the use or occupation of land owned solely by one person unless the Chief Commissioner is satisfied that the land is used and occupied as a principal place of residence by that person and that the person is a natural person.
- (2) The principal place of residence exemption does not apply to the use or occupation of land owned by 2 or more persons unless the Chief Commissioner is satisfied that:
  - (a) the land is used and occupied as the principal place of residence by one or more owners of the land (an *occupying owner*), and
  - (b) the occupying owner or occupying owners are natural persons, and
  - (c) at least one of the occupying owners has a significant interest in the land or the occupying owners together have a significant interest in the land.
- (3) If land to which a vendor duty transaction relates is owned by 2 or more persons at least one of whom is an occupying owner, and the vendor in relation to the transaction is not an occupying owner, the vendor is entitled to be taken, for the purpose of the principal place of residence exemption, to use and occupy the land as a principal place of residence but only if the principal

place of residence exemption would apply if the occupying owner or owners were the vendor in relation to the transaction.

**Note.** Subsection (3) extends the principal place of residence exemption to a part owner of land (including a corporate part owner) who does not actually use and occupy the land as a principal place of residence, but only if the land is used and occupied as a principal place of residence by one or more of the other owners of the land, being natural persons who have a significant interest in the land.

- (4) For the purpose of this section, a *significant interest* in land is an ownership share, or combined ownership share, in the land of 50% or more.
- (5) If land is the subject of a land use entitlement, a reference in this section to the owner or the ownership of the land includes a reference to the owner or the ownership of the land use entitlement.

**162DA 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.

**162DB 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, a vendor is not entitled to claim the principal place of residence exemption in respect of a period of use and occupation of land if any member of the vendor's family has been granted the principal place of residence exemption in respect of that same period in relation to other land.
- (3) However, a vendor is not prevented from claiming the principal place of residence exemption in respect of land that the vendor started to use and occupy as a principal place of residence before the vendor had a spouse because the spouse has already been granted the principal place of residence exemption in relation to other land that the spouse started to use and occupy as a principal place of residence before the marriage or de facto relationship.
- (4) For the purposes of this section, 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.
- (5) 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.
- (6) 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.
- (7) 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.

**[8] Section 162L What is the transfer date?**

Omit “would, but for this Division, arise”.

Insert instead “arises or would, but for this Division, arise”.

**[9] Section 162M**

Omit the section. Insert instead:

**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 acquired the land-related property.
- (2) If a vendor acquired a beneficial interest in land-related property before acquiring a legal interest in the property, the vendor is taken to have acquired the land-related property when the vendor acquired the beneficial interest in the land-related property.

**Note.** See also section 162OA, which deals with other situations in which interests in land-related property are acquired on separate occasions.

- (3) If the property was acquired by the vendor by means of a dutiable transaction (within the meaning of Chapter 2), the vendor acquisition date is the date on which the transfer of dutiable property occurred or is taken to have occurred under Chapter 2.  
**Note.** See section 9 for an explanation of when some transfers of dutiable property are taken to have occurred.
- (4) The following are examples of how this section operates:
- (a) A vendor acquired a beneficial interest in land-related property by entering into an agreement for sale or transfer of the land-related property as purchaser or transferee, and subsequently acquired the legal interest in the land-related property by transfer. The vendor is taken to have acquired the land-related property on the date the agreement for sale or transfer was entered into.
  - (b) A vendor acquired a beneficial interest in land-related property under a trust, and subsequently acquired the legal interest in the land-related property when the trust property was transferred to the vendor. The vendor is taken to have acquired the land-related property on the date the vendor acquired the beneficial interest under the trust.
- (5) However, if the vendor acquired 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 acquired 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.

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

Omit section 162N (2) and (3). Insert instead:

- (2) The dutiable value of land-related property on the vendor acquisition date is, if the vendor acquired the land-related property on the vendor acquisition date by means of a dutiable transaction (within the meaning of Chapter 2), the dutiable value of the land-related property when it was the subject of the 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 land-related property on the vendor acquisition date (determined as if it were dutiable property in accordance with Part 2 of Chapter 2).

**[11] Section 162N (5)**

Omit “first acquired a legal or equitable interest in the land-related property”.

Insert instead “acquired the land-related property on the vendor acquisition date”.

**[12] Section 162N (6) and (7)**

Insert after section 162N (5) (before the note):

- (6) If a vendor acquires land-related property and the form or description of the vendor’s title to the land-related property changes after the acquisition (for example, because of a subdivision, or the land being brought under the *Real Property Act 1900*), that change in the vendor’s title is to be disregarded. Accordingly, the vendor acquisition date, and the dutiable value of the land-related property at that date, are to be determined as if the vendor’s title to the land had not changed (subject to subsection (7)).
- (7) To avoid doubt, if the land-related property the subject of a vendor duty transaction is part only of the land-related property acquired by the vendor on the vendor acquisition date (for instance, because it is a smaller parcel of land than the parcel acquired on the vendor acquisition date), the dutiable value of the land-related property on the vendor acquisition date is to be determined as if only the part of the land-related property the subject of the transaction were acquired by the vendor on the vendor acquisition date.

**[13] Section 162O Transactions relating to multiple items of land-related property**

Omit section 162O (2).

**[14] Section 162OA**

Insert after section 162O:

**162OA Transactions relating to separately acquired interests**

- (1) For the purposes of this Division, if a vendor acquired separate interests in land-related property the subject of a vendor duty transaction on separate occasions, the vendor is taken to have acquired the land-related property on the earliest date on which the vendor acquired any interest in the land-related property, other than an interest that has previously been disposed of by the vendor.
- (2) However, if a vendor duty transaction is a transfer, or an agreement for sale or transfer, of the entire interest of a vendor in land-related property and the vendor acquired separate interests in the land-related property on separate occasions, the amount if any by which the dutiable value of the land-related property on the transfer date exceeds the dutiable value of the land-related property on the vendor acquisition date is, for the purposes of this Division, to be assessed and determined separately as if each of those separate interests were disposed of in separate vendor duty transactions, and duty is chargeable accordingly.
- (3) The acquisition of a beneficial interest in land-related property followed by the acquisition of a legal interest in the property (such as in the situations set out in the examples in section 162M) are not acquisitions of separate interests in land-related property for the purposes of this section.

**[15] Sections 162P–162QB**

Omit sections 162P and 162Q. Insert instead:

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

**(1) Exemption for new buildings (never occupied)**

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

- (a) a vendor constructed building is situated on the land or, if the land is a strata lot, the strata lot is contained in a vendor constructed building, and

- 
- (b) the vendor constructed building or, if the land is a strata lot, the strata lot has never been occupied or used for any purpose prior to the first execution of the agreement or transfer or (if the Chief Commissioner is satisfied that the vendor constructed building was constructed to be occupied or used for residential purposes) has never been occupied or used for residential purposes before that first execution, and
  - (c) the sale or transfer is the first sale or transfer of the land since the vendor constructed building was completed.

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

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

- (a) a vendor constructed building is situated on the land or, if the land is a strata lot, the strata lot is contained in a vendor constructed building, and
- (b) the vendor constructed building or, if the land is a strata lot, the strata lot has never been occupied or used for any purpose prior to completion of the vendor constructed building, and
- (c) the agreement for the sale or transfer, or the transfer, of the land was first executed within 12 months after the vendor constructed building was completed, and
- (d) the sale or transfer is the first sale or transfer of the land since the vendor constructed building was completed.

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

An agreement for the sale or transfer of a lot in a plan of subdivision (including an unregistered plan of subdivision) is not chargeable with vendor duty if:

- (a) one or more buildings are to be constructed, by or on behalf of the vendor, on the lot before completion of the sale or transfer, and
- (b) the sale or transfer is the first sale or transfer of the lot.

**162Q Exemption for sale of substantially new buildings**

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

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



- (a) a vendor constructed building is situated on the land or, if the land is a strata lot, the strata lot is contained in a vendor constructed building, and
- (b) the vendor constructed building is a substantially new building, and
- (c) the vendor constructed building or, if the land is a strata lot, the strata lot has not been occupied or used for any purpose after the vendor constructed building was completed and prior to the first execution of the agreement or transfer, and
- (d) the sale or transfer is the first sale or transfer of the land since the vendor constructed building was completed.

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

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

- (a) a vendor constructed building is situated on the land or, if the land is a strata lot, the strata lot is contained in a vendor constructed building, and
- (b) the vendor constructed building is a substantially new building, and
- (c) the agreement for the sale or transfer, or the transfer, of the land was first executed within 12 months after the vendor constructed building was completed, and
- (d) the sale or transfer is the first sale or transfer of the land since the vendor constructed building was completed.

(3) 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.

**162QA Vendor constructed buildings must be a significant improvement to land**

This Division does not apply in respect of a vendor duty transaction unless:

- (a) the Chief Commissioner is satisfied that the building or buildings constructed, or to be constructed, by or on behalf of the vendor (the *exempt buildings*) are a significant improvement to the parcel of land on which they are situated or to be situated, and
- (b) there are no other buildings on the parcel or, at the completion of the exempt buildings, will be no other buildings on the parcel, that are suitable for use or occupation for residential, commercial or other purposes, other than heritage buildings.

**162QB Definitions**

- (1) In this Division:
  - vendor constructed building* means a building or buildings constructed by or on behalf of a vendor that are suitable for use or occupation for residential, commercial or other purposes.
- (2) For the purposes of this Division, a building is *completed* when:
  - (a) an occupation certificate under the *Environmental Planning and Assessment Act 1979* has been issued for the building or, if the agreement for sale or transfer, or transfer, relates to land that is a strata lot, for the part of the building containing the strata lot, or
  - (b) if such an occupation certificate is not required before the building can be lawfully occupied—the Chief Commissioner is satisfied that the building is ready for occupation for a purpose for which it has been constructed.

**[16] Section 162S Improved vacant land**

Insert “, or rehabilitation works,” after “remediation works” in section 162S (2) (c).

**[17] Section 162S (2A)**

Insert after section 162S (2):

- (2A) For the purposes of this section, *vacant land* includes land that the Chief Commissioner considers is substantially vacant apart from there being on that land the remnant of any building, or any other object or structure, that the Chief Commissioner is satisfied has been preserved because of its heritage significance.

**[18] Section 162S (3)**

Insert in alphabetical order:

**rehabilitation works** means works carried out for the purpose of filling in, levelling, or contouring of land that has been damaged or adversely affected by a previous use (such as prospecting or mining).

**remediation works** means works carried out for the purpose of removing, reducing or containing a substance found in or under the land, if the substance is at a concentration above the concentration at which the substance is normally present in or under land in the same locality and it presents a risk of harm to human health or any other aspect of the environment.

**[19] Section 162U**

Omit the section. Insert instead:

**162U Compulsory acquisitions and dedications of land**

- (1) No vendor duty is chargeable on a vendor duty transaction that gives effect to an acquisition of land (by agreement or compulsory process) if the *Land Acquisition (Just Terms Compensation) Act 1991* applies to the acquisition.

**Note.** Section 5 of the *Land Acquisition (Just Terms Compensation) Act 1991* provides that that Act applies to the acquisition of land by an authority of the State which is authorised to acquire land by compulsory process. The Act does not apply to an acquisition if the land is available for public sale and is acquired by agreement.

- (2) No vendor duty is chargeable on a vendor duty transaction that gives effect to a dedication of land required by a consent authority under section 94 or 94F of the *Environmental Planning and Assessment Act 1979*.
- (3) Without limiting subsection (2), an agreement for the sale or transfer, or transfer, of land is not chargeable with vendor duty if the Chief Commissioner is satisfied that the land is intended to be used for affordable housing (within the meaning of the *Environmental Planning and Assessment Act 1979*) and the transaction is an approved transaction.
- (4) For the purposes of this section, an **approved transaction** is a transaction, or a transaction of a class, approved in writing for the purposes of this section by the Minister administering Part 4 of the *Environmental Planning and Assessment Act 1979* after consultation with the Treasurer.

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**[20] Section 162V Land subject to conservation instruments**

Omit “or a trust agreement registered as referred to in section 36 of the *Nature Conservation Trust Act 2001*” from section 162V (1).

Insert instead “, or a trust agreement registered as referred to in section 36 of the *Nature Conservation Trust Act 2001*, being in either case an agreement that remains in force in perpetuity”.

**[21] Section 162ZCA**

Insert after section 162ZC:

**162ZCA Interim payment of duty**

- (1) If the full dutiable value of land-related property subject to an agreement for sale or transfer cannot, in the Chief Commissioner’s opinion, be immediately ascertained, the Chief Commissioner may make an assessment by way of estimate under section 11 (2) of the *Taxation Administration Act 1996*.
- (2) A written instrument effecting or evidencing the sale or transfer may be stamped “interim stamp only”.

**[22] Section 176 Interim stamping of lease instrument**

Omit section 176 (3).

**[23] Section 275 Charitable and benevolent bodies**

Insert after section 275 (1):

- (1A) Duty under section 58 (Establishment of a trust relating to unidentified property and non-dutiable property) is not chargeable on an instrument that declares a trust over property held or to be held on trust for an exempt charitable or benevolent body.

**[24] Section 275 (2)**

Omit “over land-related property by”.

Insert instead “over land-related property held or to be held on trust for”.

**[25] Section 275 (3)**

Insert “or (1A)” after “subsection (1)” in paragraph (b) (i) of the definition of *exempt charitable or benevolent body*.

**[26] Section 275 (3)**

Insert “or, in the case of a declaration of trust, is to be used” after “was used” in paragraph (b) (ii) of the definition of *exempt charitable or benevolent body*.

**[27] Section 275A**

Insert after section 275:

**275A Partial exemption for certain transactions by charitable and benevolent bodies**

- (1) If the Chief Commissioner is satisfied, in relation to a transfer, or an agreement for the sale or transfer, of land to a charitable or benevolent body, or a declaration of trust over land held or to be held on trust for a charitable or benevolent body, that the land is used or to be used partly for an exempt purpose, the dutiable value of the land is, for the purpose of charging duty under Chapter 2, to be reduced by the portion of that dutiable value that is referable to the portion of the land used or to be used for an exempt purpose.
- (2) If the Chief Commissioner is satisfied, in relation to a transfer, or an agreement for the sale or transfer, of land by a charitable or benevolent body, or a declaration of trust over land held or to be held on trust for a charitable or benevolent body, that the land was used or, in the case of a declaration of trust, is to be used partly for an exempt purpose, the dutiable value of the land is, for the purpose of charging duty under Chapter 4, to be reduced by the portion of that dutiable value that is referable to the portion of the land used or to be used for an exempt purpose.
- (3) If the Chief Commissioner is satisfied, in relation to a lease to a charitable or benevolent body, that the land the subject of the lease is to be used partly for an exempt purpose, the cost of the lease is, for the purpose of charging duty under Chapter 5, to be reduced by the portion of that cost that is referable to the portion of the land to be used for an exempt purpose.
- (4) If the Chief Commissioner is satisfied, in relation to a mortgage given by or on behalf of a charitable or benevolent body, that the land the subject of the mortgage is used or to be used partly for an exempt purpose, the amount secured by the mortgage is, for the purpose of charging duty under Chapter 7, to be reduced by the proportion of the amount secured that is referable to the portion of the land used or to be used for an exempt purpose.
- (5) If the Chief Commissioner is satisfied, in relation to an acquisition or disposal of an interest in a land rich landholder by a charitable or benevolent body, that any of the land holdings of the landholder are used or to be used for an exempt purpose, the unencumbered value of that land holding is to be disregarded when calculating the duty chargeable on the acquisition or disposal under Chapter 4A.

- (6) This section does not limit section 275.
- (7) In this section:
  - charitable or benevolent body* means any society or institution that, in the opinion of the Chief Commissioner, is of a charitable or benevolent nature, or has as its primary object the promotion of the interests of Aborigines.
  - exempt purpose* means a purpose approved by the Chief Commissioner under section 275.

**[28] Section 288A**

Insert after section 288:

**288A Reassessment following interim payment of duty**

- (1) If an instrument that is chargeable with duty or that effects or evidences a dutiable transaction is marked “interim stamp only” in accordance with this Act, the Chief Commissioner must, when the relevant value of the instrument has been ascertained, reassess the duty payable in respect of the instrument.
- (2) If no further duty is payable, the interim stamp is to be cancelled and any amount paid in excess of the amount assessed is to be refunded.
- (3) If further duty is payable, liability for the further duty arises when the notice of assessment issues, despite any other provision of this Act.
- (4) On payment of the balance of the duty (and any interest or penalty tax), the instrument is to be stamped with the amount of the balance and marked to indicate that duty has been duly paid.
- (5) For the purposes of this section, the *relevant value* of an instrument means:
  - (a) in the case of a lease instrument marked “interim stamp only” under Chapter 5, the full cost of the lease, and
  - (b) in any other case, the full dutiable value of the dutiable transaction effected or evidenced by the instrument.

**Note.** A reference in this section to a dutiable transaction includes a vendor duty transaction (see Part 6 of Chapter 4).

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

Insert after clause 39 (2):

- (3) Sections 32A–32C do not apply in respect of a dutiable transaction that results from the exercise of an option for the sale or purchase of dutiable property, if the option was granted before 7 May 2004.
- (4) The imposition, payment and recovery of duty under this Act before the commencement of subclause (3) is taken to have been validly done to the extent that it would have been validly done had subclause (3) been in force at the time that it was done.

**[30] Schedule 2, heading**

Omit “and restrictions”.

**[31] Schedule 2, clause 3**

Omit “if the business is primarily conducted elsewhere” from clause 3 (1).

**[32] Schedule 2, clause 5**

Omit “clause 10” from clause 5 (5). Insert instead “section 162DB”.

**[33] Schedule 2, clauses 9 and 10**

Insert after clause 8:

**9 Concession for construction of new residence**

- (1) If the Chief Commissioner is satisfied, in relation to land to which a vendor duty transaction relates, that the vendor was unable to use and occupy the land as a principal place of residence for part of the PPR qualification period because, during that part of the period, the vendor’s residence was being constructed on that land, the vendor is taken, for the purpose of the principal place of residence exemption, to have used and occupied the land as a principal place of residence during the period in which he or she was so unable to use and occupy that land as a principal place of residence.
- (2) This clause applies only if the Chief Commissioner is satisfied that:
  - (a) the vendor actually used and occupied the land, and no other land, as a principal place of residence for a continuous period of at least 6 months starting after completion of the vendor’s residence, and

- 
- (b) no income was derived from the use or occupation of the land during any part of the PPR qualification period.

- (3) In this clause:

*liability date* in relation to a vendor duty transaction means the date on which, but for this clause, a liability for vendor duty would arise in respect of the transaction.

*PPR qualification period* means:

- (a) if the vendor became an owner of the land less than 2 years before the liability date, the period during which the vendor has been an owner of the land, and
- (b) in any other case, the period of 2 years ending immediately before the liability date.

#### **10 Concession for persons under legal disability**

- (1) If the vendor in respect of a vendor duty transaction is the guardian of a person under a legal disability (the *protected person*), and the transaction relates to land used and occupied by the protected person as his or her principal place of residence, the following provisions apply:

- (a) the use and occupation of the land by the protected person is taken, for the purpose of the principal place of residence exemption, to be the use and occupation of the land by the vendor,
- (b) the principal place of residence exemption applies in respect of the vendor duty transaction in the same way as it would apply if the protected person were the vendor in relation to the transaction.

- (2) Section 162D does not apply in respect of a vendor duty transaction if this clause applies.

- (3) In this clause:

*guardian* of a person under a legal disability includes a trustee who holds property on trust for the person under an instrument of trust or by order or direction of a court or tribunal.

#### **[34] Schedule 2, Part 3**

Omit the Part.



**[35] Dictionary**

Insert in alphabetical order:

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

[Second reading speech made in—  
Legislative Assembly on 10 November 2004  
Legislative Council on 8 December 2004]

BY AUTHORITY