



New South Wales

State Revenue and Other Legislation Amendment (Budget Measures) Act 2017 No 33

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New South Wales

State Revenue and Other Legislation Amendment (Budget Measures) Act 2017 No 33

Act No 33, 2017

An Act to amend State revenue and other legislation in connection with the State budget for the 2017-2018 financial year and for other purposes. [Assented to 27 June 2017]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017*.

2 Commencement

- (1) This Act commences on 1 July 2017, except as otherwise provided by this section.
- (2) Schedule 2.1 [3] and 2.2 [5] commence on a day or days to be appointed by proclamation.
- (3) Schedule 2.1 [5] is taken to have commenced on 20 June 2017.

3 Explanatory notes

The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

Schedule 1 Amendments relating to first home buyers and shared equity schemes

1.1 Duties Act 1997 No 123

[1] Section 64 Conversion of land use entitlement to different form of title

Omit “First Home—New Home” from section 64 (c) (iv).

Insert instead “First Home Buyers Assistance”.

[2] Section 65 Exemptions from duty

Insert after section 65 (24):

(25) Shared equity schemes

No duty is chargeable under this Chapter on the transfer of land, a land use entitlement or an interest in land or in a land use entitlement if:

- (a) the transferor or, if there is more than one, each of them, is an approved equity partner under an approved shared equity scheme, and
- (b) the transferee or, if there is more than one, each of them, is a home buyer under an approved shared equity scheme, and
- (c) the transfer occurs as part of the approved shared equity scheme.

[3] Chapter 2, Part 8, Division 1, heading

Omit the heading. Insert instead:

Division 1 First Home Buyers Assistance Scheme

[4] Section 69 The nature of the scheme

Omit “a new home that is”.

[5] Section 70 Commencement

Omit “1 January 2012” wherever occurring in section 70 (a) and (b).

Insert instead “1 July 2017”.

[6] Section 73A Application of eligibility criteria to joint purchasers and transferees

Omit section 73 A (2). Insert instead:

- (2) If the agreement or transfer is entered into, or occurs, under an approved shared equity scheme, it does not matter that the approved equity partners are not eligible under the scheme, as long as the other purchasers or transferees are eligible.
- (3) This section does not affect section 78B.

[7] Section 74 Eligible agreements or transfers

Omit “a new home that is” from section 74 (1).

[8] Section 74 (3) (a)

Omit “\$650,000”. Insert instead “\$800,000”.

[9] Section 78A Duty payable if application approved

Omit “\$550,000” from section 78A (1) (a). Insert instead “\$650,000”.

[10] Section 78A (2) (a)

Omit the paragraph. Insert instead:

- (a) if the property has a private dwelling built on it—at the rate of 21% of the dutiable value of the dutiable property that is the subject of the agreement or transfer, less \$136,510, or

[11] Section 78B Special concession for shared equity arrangements

Insert after section 78B (5):

- (6) This section does not apply to an agreement or transfer that is entered into, or occurs, under an approved shared equity scheme.

Note. An agreement or transfer that is entered into, or occurs, under an approved shared equity scheme is eligible under the scheme, even though not all the purchasers or transferees are eligible (see section 73A).

[12] Section 80A Definitions

Omit the definitions of *new home* and *substantially renovated home*.

[13] Section 84 Relevant dates for eligibility

Insert “and before 1 July 2017” after “1 July 2012” in section 84 (1).

[14] Section 84 (3)

Insert “and before 1 July 2017” after “1 July 2012”.

[15] Chapter 2, Part 8, Division 1B

Omit the Division.

[16] Section 281

Insert after section 280:

281 Approved shared equity schemes

- (1) The Chief Commissioner may approve a shared equity scheme for the purposes of this Act.

Note. Sections 65 and 73A, and the *Land Tax Management Act 1956*, enable certain exemptions to be claimed in respect of approved shared equity schemes.

- (2) A *shared equity scheme* means any arrangements made for the purpose of, or having the effect of, providing for:
 - (a) 2 or more persons to jointly acquire ownership of a property under an agreement for sale or transfer, and
 - (b) one or more of those persons (*home buyers*) to have the exclusive right to occupy the property after the transfer occurs, with no limitation as to time, and
 - (c) one or more of the other persons (*equity partners*) to acquire an interest in the property that includes the right to a specified share of the capital gain in respect of the property but does not include a right to occupy the property, and
 - (d) the home buyer or, if there is more than one, the home buyers jointly, to acquire not less than a 20% share in the ownership of the property, and
 - (e) the home buyer or, if there is more than one, each of them, to purchase from the equity partner or, if there is more than one, any of them, an

increased share in the ownership of the property at an amount agreed between the home buyer and the equity partner.

- (3) A shared equity scheme can be approved under this section only if the equity partner in the shared equity scheme or, if there is more than one equity partner, each of them, is an approved equity partner.
- (4) An **approved equity partner** is any of the following:
 - (a) the New South Wales Land and Housing Corporation,
 - (b) a registered community housing provider within the meaning of Part 3 of the *Community Housing Providers (Adoption of National Law) Act 2012*,
 - (c) a person who is prescribed by the regulations as an approved equity partner for the purposes of this section or who belongs to a class of persons so prescribed.
- (5) The Treasurer may issue guidelines for the approval of shared equity schemes and the Chief Commissioner is to comply with those guidelines.
- (6) The guidelines are to be published on the NSW legislation website.

[17] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule:

Part 47 Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget Measures) Act 2017

128 Definition

In this Part:

amending Act means the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017*.

129 Shared equity exemptions and First Home Buyers Assistance Scheme

- (1) A provision of Part 7 or Division 1 of Part 8 of Chapter 2, as in force immediately before its amendment by the amending Act, continues to apply in respect of the following:
 - (a) an agreement for sale or transfer entered into before 1 July 2017,
 - (b) a transfer that occurs before 1 July 2017.
- (2) A provision of Part 7 or Division 1 of Part 8 of Chapter 2, as in force immediately before its amendment, also applies to:
 - (a) an agreement for sale or transfer entered into on or after 1 July 2017 if the Chief Commissioner is satisfied that:
 - (i) the agreement concerned replaces an agreement entered into before 1 July 2017, and
 - (ii) the replaced agreement was an agreement for the purchase of the same dutiable property, and
 - (b) a transfer that occurs on or after 1 July 2017 that is made in conformity with an agreement for sale or transfer referred to in subclause (1) (a).

[18] Dictionary

Insert in alphabetical order in clause 1:

approved equity partner has the meaning given by section 281.

approved shared equity scheme means a shared equity scheme approved by the Chief Commissioner under section 281.

Explanatory note

The proposed amendments to the *Duties Act 1997*:

- (a) rename the First Home—New Home Scheme as the First Home Buyers Assistance Scheme, and
- (b) increase (from \$650,000 to \$800,000) the dutiable value of property for which a concession may be claimed under the Scheme, and
- (c) increase (from \$550,000 to \$650,000) the dutiable value of property for which an exemption may be claimed under the Scheme, and
- (d) remove a limitation applying the Scheme to new homes, and
- (e) extend eligibility under the Scheme to certain purchasers under approved shared equity schemes, and
- (f) exempt from duty transfers of land that are made by an approved equity partner to a home owner under a shared equity scheme, and
- (g) provide for the closure of the New Home Grant Scheme, and
- (h) make other minor and consequential amendments.

1.2 First Home Owner Grant (New Homes) Act 2000 No 21

[1] Section 3 Definitions

Omit the definition of *first home owner grant cap*. Insert in alphabetical order:

eligibility cap—see section 13A.

[2] Section 7 Entitlement to grant

Insert at the end of section 7 (1) (b):

, and

- (c) the total value of the transaction does not exceed the eligibility cap for the type of first home owner grant that is available in respect of that transaction.

[3] Section 7 (1A)

Omit the subsection.

[4] Section 13AA

Insert after section 13:

13AA Types of first home owner grant that are available

- (1) The following types of first home owner grant are available under this Act in respect of an eligible transaction:
 - (a) a first home builder's grant,
 - (b) a first home purchaser's grant.
- (2) A first home builder's grant is available under this Act only for the following categories of eligible transaction:
 - (a) a comprehensive building contract to build a new home,
 - (b) the building of a new home in New South Wales by an owner builder.

- (3) A first home purchaser's grant is available under this Act for any other eligible transaction.
- (4) Only one type of first home owner grant is available for the same eligible transaction.

[5] Section 13A

Omit the section. Insert instead:

13A Eligibility cap

- (1) The total value of the eligible transaction must not exceed the eligibility cap for the type of first home owner grant that is available under this Act for that eligible transaction.
- (2) The *eligibility caps* are as follows:
 - (a) \$750,000 for a first home builder's grant,
 - (b) \$600,000 for a first home purchaser's grant.
- (3) The question of whether the total value of a transaction exceeds the amount of the eligibility cap is determined by reference to the total value of the transaction as at:
 - (a) in the case of a contract—the commencement date, or
 - (b) in the case of the building of a home by an owner builder—the date the transaction is completed.

Note. Section 20 authorises the grant to be paid before completion of an eligible transaction if the Chief Commissioner considers it appropriate.

- (4) The regulations may prescribe a different amount as the eligibility cap for any type of first home owner grant and may make provision for the eligible transactions to which the eligibility cap applies.
- (5) This section applies to the payment of a first home owner grant in respect of an eligible transaction that has a commencement date on or after 1 July 2017.

Note. For eligible transactions with a commencement date before 1 July 2017, the transitional provisions in Schedule 1 apply. They preserve the previous first home owner grant cap as it applied to those transactions.

[6] Section 13B, heading

Omit “**first home owner grant**”. Insert instead “**eligibility**”.

[7] Section 15 All interested persons to join in application

Insert after section 15 (2) (e):

- (f) in the case of a home being purchased under a contract entered into under an approved shared equity scheme within the meaning of the *Duties Act 1997*—a person who is an approved equity partner (within the meaning of that Act) under the contract.

[8] Section 20 Payment in advance, subject to statutory conditions

Omit “**first home owner grant cap**” wherever occurring in section 20 (2A) and (2B).

Insert instead “**eligibility cap**”.

[9] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule:

Part 14 Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget Measures) Act 2017

22 Changes to eligibility cap

- (1) This Act, as in force immediately before its amendment by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017* continues to apply in respect of an eligible transaction that has a commencement date that is before 1 July 2017.
- (2) This Act, as in force immediately before the amendment, also applies to an eligible transaction with a commencement date on or after 1 July 2017 if the Chief Commissioner is satisfied that:
 - (a) the contract concerned replaces a contract made before 1 July 2017, and
 - (b) the replaced contract was a contract for the purchase of the same home or a comprehensive home building contract to build the same or a substantially similar home.

Explanatory note

The proposed amendments to the *First Home Owner Grant (New Homes) Act 2000* reduce, from \$750,000 to \$600,000, the first home owner grant cap for a contract to purchase a new home. The cap of \$750,000 will still apply to a contract to build a new home, and to the building of a new home by an owner builder. The Schedule also makes other amendments that are consequent on the amendments made by the Schedule and Schedule 1.1.

1.3 Land Tax Management Act 1956 No 26

[1] Schedule 1A Principal place of residence exemption

Omit the definition of *first home owner's duty concession scheme* from clause 10A (7).

Insert instead:

first home owner's duty concession scheme means the First Home Buyers Assistance Scheme under Division 1 of Part 8 of Chapter 2 of the *Duties Act 1997* or any of the predecessors to that scheme under that Act.

[2] Schedule 1A, clause 10AA

Insert after clause 10A:

10AA Concession for first home owners who purchase under approved shared equity schemes

The principal place of residence exemption extends to land used and occupied as the principal place of residence of a natural person who owns the land, even if the land is jointly owned by any other person, if the land was acquired by the natural person under an approved shared equity scheme (within the meaning of the *Duties Act 1997*).

[3] Schedule 2 Savings and transitional provisions

Insert at the end of the Schedule:

Part 31 Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget Measures) Act 2017

61 Amendments relating to shared equity schemes

The amendments made to Schedule 1A by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017* apply to the assessment of land tax liability in respect of the 2018 land tax year and subsequent land tax years.

Explanatory note

The proposed amendments to the *Land Tax Management Act 1956* extend the principal place of residence exemption under that Act to land used and occupied by an owner under a shared equity scheme approved under the *Duties Act 1997* (as provided by Schedule 1.1 [16]). The Schedule also makes other amendments that are consequent on the amendments made by the Schedule and Schedule 1.1.

Schedule 2 Amendments relating to foreign persons

2.1 Duties Act 1997 No 123

[1] Section 104I Definitions

Insert at the end of the section:

- (2) A reference in this Chapter to a dwelling does not include a reference to a room or a suite of rooms determined by the Chief Commissioner not to be a dwelling for the purposes of this Chapter.

[2] Sections 104U (1), 137AD (1) and 157H (1)

Omit “4%” wherever occurring. Insert instead “8%”.

[3] Section 104ZJA

Insert after section 104ZJ:

104ZJA Refunds for certain Australian-based developers that are foreign persons

- (1) The Chief Commissioner must reassess and refund the whole or a proportion of surcharge purchaser duty paid on a transfer, or an agreement for the sale or transfer, of residential-related property to an Australian corporation if the Chief Commissioner is satisfied that:
 - (a) the corporation or a related body corporate of the corporation constructed a new home on the residential land to which the residential-related property relates after completion of the transfer of the property to the corporation, and
 - (b) the corporation has sold the new home to a person other than an associated person of the corporation, and
 - (c) the home was not occupied or used as a place of residence or for any other purpose at any time during the period commencing on completion of construction of the new home and ending on completion of its sale.
- (2) The amount of any refund under this section is to be determined by the Chief Commissioner, in accordance with an order made by the Treasurer for the purposes of this section and published in the Gazette.
- (3) Surcharge purchaser duty may be refunded under this section only if an application for the refund is made within 12 months after the completion of the sale of the new home to which the application relates and no later than 5 years after completion of the transfer of the residential-related property to the Australian corporation.
- (4) In this section:

Australian corporation means a corporation that is incorporated under the *Corporations Act 2001* of the Commonwealth.

new home has the same meaning as in the *First Home Owner Grant (New Homes) Act 2000*.

[4] Section 104ZK Transactions exempt from ad valorem duty under Chapter 2

Omit “extend to surcharge duty transactions” from section 104ZK (2).

Insert instead “apply in respect of surcharge purchaser duty”.

[5] Section 104ZKA

Insert after section 104ZK:

104ZKA Exemption for certain permanent residents in respect of principal place of residence

- (1) No surcharge purchaser duty is chargeable on a transfer, or an agreement for the sale or transfer, of residential-related property if each transferee under the transfer or agreement who would otherwise be liable to pay that duty is an exempt permanent resident.
- (2) A transferee under a transfer or agreement is an *exempt permanent resident* if:
 - (a) the transferee is a permanent resident when a liability for duty charged by Chapter 2 on the transfer or agreement arises (or would arise but for a concession or exemption from duty under that Chapter), and
 - (b) the Chief Commissioner is satisfied that the transferee intends to use and occupy the residential land to which the residential-related property relates as a principal place of residence in accordance with the residence requirement.
- (3) If there is more than one transferee under the transfer or agreement who is a foreign person (a *foreign transferee*) and the Chief Commissioner is satisfied that at least one, but not all, of those transferees is an exempt permanent resident:
 - (a) surcharge purchaser duty is to be reduced in proportion to the share or shares in the residential-related property transferred to foreign transferees who are exempt permanent residents, and
 - (b) none of those exempt permanent residents is liable to pay surcharge purchaser duty on the transfer or agreement.
- (4) The residential land must be used and occupied by the exempt permanent resident as his or her principal place of residence for a continuous period of at least 200 days within the first 12 months after the liability date. This requirement is referred to as *the residence requirement*.
- (5) The *liability date* is the date on which liability to surcharge purchaser duty first arose in respect of the share in the residential-related property transferred, or agreed to be transferred, to the exempt permanent resident.
- (6) If the residence requirement is not complied with in relation to the residential land, the Chief Commissioner must assess or reassess the surcharge purchaser duty chargeable on the transfer or agreement as if the exemption under this section had never applied.
- (7) A reference in this section to the use and occupation of residential land as a principal place of residence in accordance with the residence requirement includes:
 - (a) in the case of a land use entitlement, a reference to the use and occupation of the building or part of the building to which the entitlement relates, as a principal place of residence in accordance with the residence requirement, and
 - (b) in the case of a utility lot (within the meaning of the *Strata Schemes Management Act 2015*), a reference to the use of the utility lot in conjunction with a strata lot used and occupied as a principal place of residence in accordance with the residence requirement.

[6] Schedule 1 Savings, transitional and other provisions

Insert in appropriate order in Part 47 (as inserted by Schedule 1.1 [17]), with appropriate clause numbering:

Refund of surcharge purchaser duty relating to certain dwellings

- (1) The Chief Commissioner must assess or reassess the surcharge purchaser duty chargeable on a surcharge duty transaction on the basis that no surcharge purchaser duty is chargeable on the transaction if:
 - (a) a liability to pay that duty on the surcharge duty transaction arises at any time before a relevant determination is made, and
 - (b) the Chief Commissioner is satisfied that no surcharge purchaser duty would have been chargeable on the surcharge duty transaction had the determination been made before that liability arose.
- (2) In the case of a reassessment, the Chief Commissioner must refund any surcharge purchaser duty paid on the transaction if an application for the refund of the duty is made within 5 years after the initial assessment.
- (3) A *relevant determination* is a determination made under section 104I (2) (as inserted by the amending Act) before 1 January 2018 that is approved by the Treasurer for the purposes of this clause.

Rate of surcharge purchaser duty and other surcharge duty

- (1) Section 104U (1), as amended by the amending Act, applies in respect of a surcharge duty transaction that occurs on or after the commencement of the amendment, except as otherwise provided by this clause.
- (2) Section 104U (1), as in force immediately before its amendment by the amending Act, continues to apply in respect of the following:
 - (a) any surcharge purchaser duty chargeable on the transfer of residential-related property made in conformity with an agreement for sale or transfer of the residential-related property entered into before the commencement of the amendment,
 - (b) surcharge purchaser duty chargeable on a surcharge duty transaction that results from the exercise of an option for the sale or purchase of residential-related property if the option was granted before the commencement of the amendment.
- (3) Despite subclause (2) (b), section 104U (1), as amended by the amending Act, applies in respect of any of the following surcharge duty transactions occurring on or after the commencement of the amendment:
 - (a) a transaction that is taken by section 9B (as applied by section 104O) to be the transfer of an option,
 - (b) a transaction that results from the exercise of an option that is taken by section 9B (as applied by section 104O) to have been transferred.
- (4) Section 104U (1), as amended by the amending Act, applies in respect of a call option assignment (within the meaning of Part 2 of Chapter 3) made on or after the commencement of the amendment.
- (5) Section 137AD (1), as amended by the amending Act, applies in respect of an allotment of shares or an issue of units made on or after the commencement of the amendment.

- (6) Section 157H (1), as amended by the amending Act, applies in respect of a relevant acquisition (within the meaning of Chapter 4) occurring on or after the commencement of the amendment.

Refund of surcharge purchaser duty for Australian-based developers

Section 104ZJA, as inserted by the amending Act, extends to a transfer, or an agreement for the sale or transfer, of residential-related property to an Australian corporation (within the meaning of that section) that occurs before the commencement of that section.

Exemption from surcharge purchaser duty for certain permanent residents

Section 104ZKA, as inserted by the amending Act, applies in respect of a transfer, or an agreement for the sale or transfer, of residential-related property that occurs on or after the commencement of that section.

Explanatory note

Item [1] of the proposed amendments to the *Duties Act 1997* enables the Chief Commissioner to determine that a room or suite of rooms is not a dwelling for the purposes of determining additional duty (surcharge purchaser duty and other forms of duty) chargeable on transactions involving the acquisition by foreign persons of interests in residential land in New South Wales.

Item [2] increases from 4% to 8% the additional duty (surcharge purchaser duty and other duty) that is imposed on such transactions.

Item [3] provides for refunds of surcharge purchaser duty paid on transfers, or agreements for the sale or transfer, of residential-related property to Australian corporations that construct and sell new homes on the residential land concerned.

Item [5] exempts certain foreign persons who are permanent residents (including New Zealand citizens holding special category visas under the *Migration Act 1958* of the Commonwealth) from liability to pay surcharge purchaser duty on transfers, or agreements for the sale or transfer, of residential-related property. The exemption will apply to such a permanent resident if the resident uses and occupies the residential land concerned as a principal place of residence for at least 200 days within the first 12 months after the liability to pay surcharge purchaser duty first arises on the property transferred.

Item [4] makes an amendment in the nature of statute law revision.

Item [6] inserts savings and transitional provisions that are consequent on the amendments made by items [1]–[3] and [5].

2.2 Land Tax Act 1956 No 27

[1] Section 5A Levy of surcharge land tax on residential land owned by foreign persons—2017 and subsequent land tax years

Omit section 5A (2). Insert instead:

- (2) In respect of the taxable value of all the residential land owned by the foreign person at midnight on 31 December in any year (commencing with 2016), surcharge land tax is to be charged, levied, collected and paid under the provisions of the Principal Act and in the manner prescribed under that Act for the period of 12 months commencing on 1 January in the next succeeding year at the rate of:
- (a) in the case of all residential land owned by the foreign person at midnight on 31 December 2016—0.75% of that taxable value as assessed under the Principal Act, and
 - (b) in the case of all residential land owned by the foreign person at midnight on 31 December in any other year (commencing with 2017)—2% of that taxable value as assessed under the Principal Act.

[2] Section 5A (4) (g)

Omit the paragraph. Insert instead:

- (g) the person is exempt from liability to pay surcharge land tax in respect of the land for a land tax year because the land is the principal place of residence of the foreign person (and accordingly sections 9C and 9D of the Principal Act operate to reduce the land value of the land if it is the principal place of residence of the person) only if the person is eligible for the exemption under section 5B,

[3] Section 5A (6)

Insert “and sections 5B and 5C” after “section”.

[4] Section 5B

Insert after section 5A:

5B Surcharge land tax—residence requirement applying to principal place of residence exemption

- (1) A person is eligible for an exemption from liability to pay surcharge land tax in respect of residential land for a land tax year because the land is the principal place of residence of the person only if:
 - (a) the person is a permanent resident at midnight on 31 December of the previous year, and
 - (b) the Chief Commissioner is satisfied that, during the land tax year, the person intends to use and occupy the land as the principal place of residence of the person in accordance with the residence requirement, and
 - (c) the person lodges a declaration with a land tax return required to be furnished under section 12 of the Principal Act for the land tax year to the effect that the person has that intention.
- (2) The person must use and occupy the land as the person’s principal place of residence for a continuous period of 200 days in the land tax year. This requirement is referred to as *the residence requirement*.
- (3) If the residence requirement is not complied with by the person, surcharge land tax liability is to be assessed or reassessed as if the person’s exemption from liability to pay surcharge land tax for the land tax year had never applied.
- (4) The failure of the person to comply with the residence requirement is taken to be a tax default for the purposes of Part 5 of the *Taxation Administration Act 1996*.
- (5) Any interest that is payable on the tax default in accordance with Part 5 of the *Taxation Administration Act 1996* accrues on the amount of surcharge land tax assessable to the person for the period commencing on the last day allowed for furnishing the land tax return for the land tax year and ending on the day when the assessment or reassessment referred to in subsection (3) is made.

[5] Section 5C

Insert before section 6:

5C Surcharge land tax—Australian-based developers

- (1) An Australian corporation is exempt from liability to pay any, or a proportion of, surcharge land tax for a land tax year in respect of residential land owned

by the corporation at midnight on 31 December of the previous year (the **taxing date**) if the Chief Commissioner is satisfied of the following (the **relevant criteria**):

- (a) the corporation or a related body corporate of the corporation has constructed a new home on the residential land,
 - (b) after the taxing date, the corporation sold the new home to a person other than an associated person of the corporation,
 - (c) the home was not occupied or used as a place of residence or for any other purpose at any time during the period commencing on completion of the construction of the new home and ending on completion of its sale.
- (2) The Chief Commissioner must reassess and refund the whole or a proportion of the surcharge land tax paid by an Australian corporation for a land tax year in respect of residential land owned by the corporation at midnight on 31 December of the previous year if the Chief Commissioner is satisfied that the relevant criteria are met in relation to the residential land.
- (3) The extent to which an Australian corporation is exempt from liability to pay surcharge land tax, or the amount of any refund, under this section is to be determined by the Chief Commissioner, in accordance with an order made by the Treasurer for the purposes of this section and published in the Gazette.
- (4) An exemption or refund under this section is available only if an application for the exemption or refund is made within 12 months after completion of the sale of the new home and no later than:
- (a) if completion of the transfer of the residential land to the Australian corporation concerned occurred before 21 June 2016—21 June 2021, or
 - (b) in any other case—5 years after completion of the transfer of the residential land to the Australian corporation concerned.
- (5) In this section:

Australian corporation means a corporation that is incorporated under the *Corporations Act 2001* of the Commonwealth.

new home has the same meaning as in the *First Home Owner Grant (New Homes) Act 2000*.

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

transfer includes an assignment and an exchange.

Explanatory note

Item [1] of the proposed amendments to the *Land Tax Act 1956* increases from 0.75% to 2% the surcharge land tax rate applying in respect of residential land owned by a foreign person on 31 December in a year. The new land tax rate will take effect on 31 December 2017 for the 2018 land tax year.

Items [2] and [4] extend the principal place of residence exemption (currently available as an exemption from land tax only), so that it will be available as an exemption from surcharge land tax to foreign persons who are permanent residents (including New Zealand citizens holding special category visas under the *Migration Act 1958* of the Commonwealth). The exemption will apply to such a permanent resident if the resident uses and occupies the residential land concerned as a principal place of residence for at least 200 days in the land tax year concerned.

Item [5] provides for an exemption from, or refund of, surcharge land tax for Australian corporations that sell new homes they have constructed on the residential land concerned.

Item [3] makes an amendment consequent on items [4] and [5].

2.3 Land Tax Management Act 1956 No 26

[1] Section 12 Taxpayer to furnish returns

Omit section 12 (1B) (b). Insert instead:

- (b) set out, or be accompanied by, any information, as to the following, that may be required to complete the return:
 - (i) the person's land ownership,
 - (ii) the eligibility of the land for an exemption from land tax or for a reduction in the taxable value of the land.

[2] Schedule 2 Savings and transitional provisions

Insert after clause 61 (as inserted by Schedule 1.3):

62 Amendments to Land Tax Act 1956

- (1) The amendments made to the *Land Tax Act 1956* by Schedule 2.2 [2] and [4] to the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017* apply to the assessment of land tax liability in respect of the 2018 land tax year and subsequent tax years.
- (2) The amendment made to the *Land Tax Act 1956* by Schedule 2.2 [5] to the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017* apply to the assessment of land tax liability in respect of the 2017 land tax year and subsequent tax years.

Explanatory note

Item [1] of the proposed amendments to the *Land Tax Management Act 1956* is consequent on the amendment made in relation to the principal place of residence exemption by Schedule 2.2 [4].

Item [2] inserts savings and transitional provisions that are consequent on the amendments made by Schedule 2.2 [2], [4] and [5].

Schedule 3 Amendments to the Duties Act 1997 No 123 relating to off the plan purchases

[1] Section 49A Purchases “off the plan”

Insert after section 49A (1):

- (1A) This section applies in relation to an off the plan purchaser agreement only if the Chief Commissioner is satisfied, when assessing liability for duty after the agreement is lodged for stamping, that the purchaser or transferee under the agreement (or, if there is more than one purchaser or transferee, at least one of them) intends to use and occupy the residence to which the agreement relates as a principal place of residence in accordance with the residence requirement.
- (1B) The residence must be used and occupied by the purchaser or transferee (or, if there is more than one purchaser or transferee, at least one of them) as the purchaser or transferee’s principal place of residence for a continuous period of at least 6 months, with occupation commencing no later than 12 months (or such longer period as the Chief Commissioner may approve) after completion of the sale or transfer. This requirement is referred to as *the residence requirement*.
- (1C) If the residence requirement is not complied with in relation to the residence, this section is taken never to have applied in relation to the off the plan purchase agreement, including for the purposes of the *Taxation Administration Act 1996*.

[2] Schedule 1 Savings, transitional and other provisions

Insert in appropriate order in Part 47 (as inserted by Schedule 1.1 [17]), with appropriate clause numbering:

Purchases “off the plan”

Section 49A, as in force immediately before its amendment by the amending Act, continues to apply to an off the plan purchase agreement entered into before the commencement of that amendment.

Explanatory note

Item [1] of the proposed amendments to the *Duties Act 1997* limits a provision that defers liability for duty (for up to 12 months) on an agreement for the sale “off the plan” of land on which a residence is to be erected. In particular, liability for duty under the provision is to be deferred only if the Chief Commissioner is satisfied that the purchaser intends to use and occupy the residence as a principal place of residence, starting no later than 12 months after the sale is completed, for at least 6 months (*the residence requirement*). If the purchaser does not meet the residence requirement, the purchaser will be liable to pay interest and penalty tax, backdated to the date of the agreement.

Item [2] is a savings provision.

Schedule 4 Amendments to Duties Act 1997 No 123 relating to insurance duty

[1] **Section 230 What is “general insurance”?**

Insert “or 5A” after “Part 5” in section 230 (2).

[2] **Section 233 Types of general insurance**

Omit section 233 (3). Insert instead:

- (3) ***Type C insurance*** is crop insurance or livestock insurance.

Note. Crop insurance and livestock insurance are exempt from duty under Part 5, and are not types of general insurance, if the insurance is effected or renewed on or after 1 January 2018.

[3] **Section 259 What insurance is exempt from duty?**

Insert after section 259 (1) (m):

- (n) lenders mortgage insurance, being insurance taken out by a lender against loss arising from a default by a mortgagor, if the premium in relation to the insurance is paid on or after 1 July 2017,
- (o) crop insurance that is effected or renewed on or after 1 January 2018,
- (p) livestock insurance that is effected or renewed on or after 1 January 2018.

[4] **Chapter 8, Part 5A**

Insert after Part 5:

Part 5A Exemptions for small business

259A Meaning of “small business”

For the purposes of this Part, a person is a ***small business***:

- (a) if the person is a CGT small business entity (within the meaning of section 152-10 (1AA) of the *Income Tax Assessment Act 1997* of the Commonwealth) for the income year in which the insurance is effected or renewed, or
- (b) in any other circumstances prescribed by the regulations.

259B Exemptions for small business

- (1) The following insurances are exempt from duty under this Chapter, if the insured person is a small business:
 - (a) commercial vehicle insurance, being motor vehicle insurance (within the meaning of section 233 (2A) (a)) for a motor vehicle that is used primarily for business purposes,
 - (b) commercial aviation insurance, being aviation insurance (within the meaning of section 233 (2A) (b)) for an aircraft that is used primarily for business purposes,
 - (c) occupational indemnity insurance, being insurance covering liability arising out of the provision by a person of professional services or other services (other than insurance providing medical indemnity cover within the meaning of the *Medical Indemnity Act 2002* of the Commonwealth),

- (d) product and public liability insurance, being insurance covering liability for personal injury or property damage occurring in connection with a business or arising out of the products or services of a business.
- (2) Subject to the regulations (if any), an exemption under this section applies only to contracts of insurance effected or renewed on or after 1 January 2018.
- (3) An exemption under this section is referred to in this Part as a ***small business exemption***.

259C Insurer to obtain small business declaration

- (1) A small business exemption does not apply to a contract of insurance unless the insurer obtains from the person who effects or renews the contract of insurance a small business declaration.
- (2) A ***small business declaration*** is a declaration by the person, in writing, to the effect that the person is a small business at the time that the contract of insurance is effected or renewed.
- (3) A person must not provide a small business declaration to an insurer knowing that it is false or misleading in a material particular.
Maximum penalty: 100 penalty units.
- (4) In this section, an ***insurer*** includes an agent or employee of an insurer.

259D Liability of insured person for wrongly claiming exemption

- (1) An insurer who is liable to pay the duty under this Chapter on a contract of insurance with the insured may require a person who wrongly claims a small business exemption in respect of the contract of insurance to pay the insurer an amount equal to the duty, together with any interest or penalty tax payable.
- (2) The requirement is duly made if it is contained in a written request that is given to the person and that specifies the amount of duty.
- (3) If the amount is not paid, the insurer may recover it as a debt.
- (4) A person wrongly claims a small business exemption if the person provides the insurer with a small business declaration in respect of the contract of insurance and the person is not a small business at the time the insurance is effected or renewed.
- (5) It does not matter whether or not the declaration was made dishonestly.
- (6) In this section:
small business declaration has the same meaning as it has in section 259C.

[5] Dictionary

Insert in alphabetical order in clause 1:

crop insurance means insurance covering:

- (a) loss due to the destruction of, or physical damage to, any pasturage or any crop of grain, fruit, vegetables or other plants, where the destruction or damage occurs while the pasturage or crop is being grown, or
- (b) loss due to the destruction of, or physical damage to, the product of any such pasturage or crop, where the destruction or damage occurs while the product of the pasturage or crop is being stored or transported, but only if the contract by which the insurance is effected also effects insurance covering the loss referred to in paragraph (a).

livestock insurance means insurance covering:

- (a) loss due to the death of, or physical damage to, any animal, whether domesticated or wild, or
- (b) loss due to the death of, or physical damage to, any genetic material of any such animal, or
- (c) loss due to the theft of any such animal or genetic material.

Explanatory note

Item [3] of the proposed amendments to the *Duties Act 1997* exempts certain insurances from duty. Lender's mortgage insurance is exempt if the premium for the insurance is paid on or after 1 July 2017. Crop insurance and livestock insurance are exempt if they are effected or renewed on or after 1 January 2018.

Item [4] exempts certain insurances effected on or after 1 January 2018 from duty if the insured person is a small business. The insurances concerned are commercial vehicle insurance, commercial aviation insurance, occupational indemnity insurance and product and public liability insurance.

Item [1] makes a consequential amendment.

Items [2] and [5] make amendments in the nature of statute law revision.

Schedule 5 Amendments relating to UrbanGrowth NSW

5.1 Government Sector Employment Act 2013 No 40

Schedule 1 Public Service agencies

Insert in appropriate order in Part 2:

UrbanGrowth NSW Development Corporation Staff Agency	Chief Executive of the UrbanGrowth NSW Development Corporation	Department of Premier and Cabinet. The Minister administering the <i>Growth Centres (Development Corporations) Act 1974</i> (so far as it relates to the UrbanGrowth NSW Development Corporation) is to exercise the employer functions of the Government in relation to the Chief Executive.
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Explanatory note

The proposed amendment to the *Government Sector Employment Act 2013* establishes the UrbanGrowth NSW Development Corporation Staff Agency as a Public Service executive agency related to the Department of Premier and Cabinet. The head of the agency is the Chief Executive of the UrbanGrowth NSW Development Corporation.

5.2 Growth Centres (Development Corporations) Act 1974 No 49

[1] Section 18 Development corporation may enter into contracts

Insert “; or on any other land with the consent of the owner of that land” after “and that person” in section 18 (3).

[2] Schedule 1 Growth centres and development corporations

Insert at the end of Column 2 in the matter relating to UrbanGrowth NSW Development Corporation:

The land outlined in red on the map entitled “The Bays Growth Centre”, published on the website of the UrbanGrowth NSW Development Corporation.

The land outlined in red on the map entitled “Parramatta North Growth Centre”, published on the website of the UrbanGrowth NSW Development Corporation.

[3] Schedule 6 Savings, transitional and other provisions

Insert after Part 5:

Part 6 Transfer of certain Landcom staff and assets, rights and liabilities to development corporations and Department of Planning and Environment

Division 1 Transfer of Landcom staff

22 Transfer of Landcom staff

- (1) The Premier may, by order in writing, transfer to the UrbanGrowth NSW Development Corporation Staff Agency any person who is:

- (a) employed by Landcom, and
 - (b) designated by the UrbanGrowth NSW Development Corporation as a person who is required for the purposes of enabling the UrbanGrowth NSW Development Corporation to exercise its functions.
- (2) The Minister for Planning may, by order in writing, transfer to the Department of Planning and Environment any person who is:
- (a) employed by Landcom, and
 - (b) designated by the Secretary of the Department of Planning and Environment as a person who is required for the purposes of enabling a development corporation (other than the UrbanGrowth NSW Development Corporation) to exercise its functions.
- (3) A transfer under this clause does not require the consent of the transferred employee.
- (4) An order under this clause may only be made within the period of 12 months after the commencement of this Part.
- (5) In this Division, *transferred employee* means an employee of Landcom who is the subject of an order under this Division.

23 Terms and conditions of employment of transferred employees

- (1) The employment of a transferred employee in the Public Service agency to which the employee is transferred under this Division is to be on the same terms and conditions in relation to the following matters as applied in respect of the employee immediately before the transfer:
- (a) salary,
 - (b) hours of work,
 - (c) leave,
 - (d) allowances,
 - (e) termination and redundancy.
- (2) Those terms and conditions cannot be varied during the transition period, except by agreement with the employee.
- (3) The *transition period* for a transferred employee is:
- (a) for a person employed by Landcom under a contract of employment as a senior manager—the remainder of the person's current term of employment as specified in the contract or, if the term ends during the period of 12 months after the transfer, the period specified by the relevant employer (being a period ending not later than 12 months after the transfer), and
 - (b) for any other person employed by Landcom—the period of 2 years after the transfer.
- (4) In subclause (3) (a), *relevant employer* means:
- (a) in relation to a Landcom employee transferred to the UrbanGrowth NSW Development Corporation Staff Agency—the Chief Executive of the UrbanGrowth NSW Development Corporation, or
 - (b) in relation to a Landcom employee transferred to the Department of Planning and Environment—the Secretary of that Department.

24 Leave entitlements for transferred employees

- (1) A transferred employee:
 - (a) retains any rights to annual leave, extended or long service leave, sick leave, or other forms of leave, accrued or accruing immediately before the transfer, and
 - (b) is not entitled to receive any payment or other benefit (including in the nature of severance pay or redundancy or other compensation) merely because the person ceases to be employed by Landcom, and
 - (c) is not entitled to claim, both under this Act or any other Act, dual benefits of the same kind for the same period of service.
- (2) Without limiting subclause (1), a transferred employee is not, despite any other provision of this or any other Act, entitled to elect, because of that transfer, to be paid the money value of any extended or annual leave that the person accrued in the employment of Landcom.
- (3) Landcom is taken to be a government sector agency for the purposes of Part 2 of Schedule 2 to the *Government Sector Employment Regulation 2014* in respect of the calculation of a transferred employee's extended leave entitlement.

Division 2 Transfer of Landcom assets, rights and liabilities

25 Definitions

In this Division:

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

responsible Minister means:

- (a) in relation to a transfer of assets, rights or liabilities to the UrbanGrowth NSW Development Corporation—the Premier, or
- (b) in relation to a transfer of assets, rights or liabilities to any other development corporation—the Minister for Planning.

transferee means:

- (a) in relation to a transfer of assets, rights or liabilities to the UrbanGrowth NSW Development Corporation—the UrbanGrowth NSW Development Corporation, or
- (b) in relation to a transfer of assets, rights or liabilities to any other development corporation—that development corporation.

transferor means Landcom.

26 Transfer of Landcom assets, rights and liabilities

- (1) The Premier may, by order in writing, transfer to the UrbanGrowth NSW Development Corporation the assets, rights and liabilities of Landcom that are specified or referred to in the order.
- (2) The Minister for Planning may, by order in writing, transfer to a development corporation (other than the UrbanGrowth NSW Development Corporation) the assets, rights and liabilities of Landcom that are specified or referred to in the order.

- (3) An order under this clause may be made on such terms and conditions as are specified in the order.
- (4) An order under this clause may only be made within the period of 12 months after the commencement of this Part.

27 Vesting of undertaking in transferee

- (1) The following provisions have effect with respect to any transfer under this Division:
 - (a) the assets of the transferor vest in the transferee by virtue of this clause and without the need for any further conveyance, transfer, assignment or assurance,
 - (b) the rights or liabilities of the transferor become, by virtue of this clause, the rights or liabilities of the transferee,
 - (c) all proceedings relating to the assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
 - (d) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities before the transfer by, to or in respect of the transferor or a predecessor of the transferor is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
 - (e) the transferee has all the entitlements and obligations of the transferor in relation to those assets, rights and liabilities that the transferor would have had but for the transfer, whether or not those entitlements and obligations were actual or potential at the time of the transfer,
 - (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to the regulations) to be read as, or as including, a reference to the transferee.
- (2) The operation of this Division is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
 - (d) as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required.
- (4) A transfer is subject to the terms and conditions of the order by which it is effected.

28 No compensation payable

No compensation is payable to any person or body in connection with the transfer of any asset, right or liability by operation of this Division, except to the extent (if any) to which the order giving rise to the transfer so provides.

29 Transfer of interests in land

- (1) An order may transfer an interest in respect of land vested in the transferor without transferring the whole of the interests of the transferor in that land.
- (2) If the interest transferred is not a separate interest, the order operates to create the interest transferred in the terms specified in the order.

30 Date of vesting

A transfer of assets, rights or liabilities takes effect on the date specified in the order that gives rise to the transfer.

31 Consideration for vesting

The responsible Minister may, by order in writing, specify the consideration on which a transfer under this Division is made and the value or values at which assets, rights or liabilities are transferred.

32 State taxes not chargeable

- (1) State tax is not chargeable in respect of:
 - (a) a transfer of any assets, rights or liabilities by operation of this Division, or
 - (b) anything certified by the responsible Minister as having been done in consequence of such a transfer (for example, the transfer or conveyance of an interest in land).
- (2) In this clause, *State tax* means application or registration fees, duty or any other tax, fee or charge imposed by any legislation or other law of the State.

33 Confirmation of vesting

- (1) The responsible Minister may, by notice in writing, confirm a transfer of particular assets, rights or liabilities by operation of this Division.
- (2) Such a notice is conclusive evidence of that transfer.

Explanatory note

Item [1] of the proposed amendments to the *Growth Centres (Development) Corporation Act 1974* makes it clear that a development corporation can enter into a contract for construction on any land with the consent of the owner of the land.

Item [2] adds 2 new areas of land to the UrbanGrowth NSW Development Corporation growth centre.

Item [3] enables the transfer of Landcom staff to the UrbanGrowth NSW Development Corporation Staff Agency (a Public Service executive agency) or to the Department of Planning and Environment and enables Landcom assets, rights and liabilities to be transferred to a development corporation.

Schedule 6 Amendments to the Education Act 1990 No 8 relating to non-government schools financial assistance

Section 83BA

Insert after section 83B:

83BA Debt recovery arrangements relating to Commonwealth funding for schools

- (1) If, in accordance with the Commonwealth Act, the State pays financial assistance to the relevant body for a school, the payment of the financial assistance is taken to be an arrangement between the relevant body and the State.
- (2) It is a term of any such arrangement between a relevant body and the State that if:
 - (a) the Commonwealth Minister makes a determination under section 110 (1) (a) of the Commonwealth Act that the State pay to the Commonwealth a specified amount, and
 - (b) the determination is made as a result of:
 - (i) non-compliance or a breach (as referred to in section 108 of the Commonwealth Act) by the relevant body, or
 - (ii) a payment (as referred to in section 109 (1), (2), (3) (a) or (4) of the Commonwealth Act) that was paid to the State for the relevant body,the amount specified by the Commonwealth Minister in the determination is taken to be a debt due by the relevant body to the State and may be recovered by the State in a court of competent jurisdiction.
- (3) A debt due by a relevant body to the State under this section is payable within 7 days after the date of the determination by the Commonwealth Minister.
- (4) If a debt is due by a relevant body to the State under this section in relation to financial assistance for a school and the approval of the relevant body under Part 6 of the Commonwealth Act is no longer in force in relation to that school, the State may recover the debt from the person who held the approval immediately before it ceased to be in force.
- (5) If a debt is due by a relevant body to the State under this section, the State may assign to the Commonwealth the right to recover the debt.
- (6) A debt due by a relevant body to the State under this section is enforceable whether or not:
 - (a) any school operated by the relevant body remains open, or
 - (b) the relevant body has been, or is being, compulsorily wound up, or
 - (c) the determination referred to in subsection (2) was made before the commencement of this section, or
 - (d) the financial assistance referred to in subsection (1) was spent by the relevant body before:
 - (i) the determination referred to in subsection (2) was made, or
 - (ii) the commencement of this section.

- (7) In this section:
- approved authority***, ***block grant authority*** and ***non-government representative body*** have the same meanings as in section 6 of the Commonwealth Act.
- Commonwealth Act*** means the *Australian Education Act 2013* of the Commonwealth.
- Commonwealth Minister*** means the Minister administering the Commonwealth Act.
- relevant body*** for a school means the approved authority, block grant authority or non-government representative body for the school.

Explanatory note The proposed amendment to the *Education Act 1990* enables the State to recover or assign to the Commonwealth a debt owed by the State to the Commonwealth in relation to financial assistance provided by the Commonwealth to a non-government school.

Schedule 7 Amendments to the Greater Sydney Commission Act 2015 No 57 relating to district commissioners

[1] Schedule 3 Sydney planning panels

Omit “, one of whom is to be a District Commissioner” from clause 2 (1) (a).

[2] Schedule 3, clause 2

Omit clause 2 (4). Insert instead:

- (4) One of the State members of a Sydney planning panel is to be appointed by the Minister as chairperson of the panel. The Minister is required to obtain the concurrence of the Local Government and Shires Association of New South Wales to the appointment unless:
 - (a) the Association fails to notify its concurrence or refusal to concur within 21 days of being requested to do so by the Minister, or
 - (b) the Association has refused to concur in 2 different persons proposed by the Minister for appointment.
- (4A) The same person may be appointed as a member (including as the chairperson) of different Sydney planning panels.

[3] Schedule 3, clause 4

Omit the clause.

[4] Schedule 3, clause 12 (1) (c)

Omit “or the Commission”.

[5] Schedule 4 Savings, transitional and other provisions

Insert at the end of the Schedule:

Part 2 Provision consequent on State Revenue and Other Legislation Amendment (Budget Measures) Act 2017

2 Replacement of District Commissioners as chairpersons of Sydney planning panels

- (1) In this clause:
amending Act means the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2017*.
- (2) A District Commissioner ceases to be a member of a Sydney planning panel on the appointment by the Minister, after the commencement of the amendments made to Schedule 3 by the amending Act, of a State member as chairperson of the panel.

- (3) A matter pending before the panel on the appointment of the chairperson may continue to be dealt with by the panel with the chairperson as a member and chairperson of the panel instead of the District Commissioner. Anything done by the District Commissioner in relation to that matter before that appointment is taken to have been done by the chairperson.

Explanatory note The proposed amendments to the *Greater Sydney Commission Act 2015* remove the provision that a District Commissioner of the Greater Sydney Commission is to be a State member and chairperson of a Sydney planning panel.

[Second reading speech made in—
Legislative Assembly on 20 June 2017
Legislative Council on 22 June 2017]