



New South Wales

# State Revenue Legislation Amendment Bill 2012

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Duties Act 1997*:
  - (i) to limit a duty concession relating to transfers to self managed superannuation funds, and
  - (ii) to limit a duty concession relating to deceased estates, and
  - (iii) to establish a duty concession for transfers that are made in partial conformity with agreements that have already been charged with duty, and
  - (iv) to extend existing duty concessions relating to transfers between married couples and de facto partners and transfers following the break-up of marriages and de facto relationships, and
  - (v) to provide for further circumstances in which the acquisition of an interest in a private unit trust scheme or private company will be chargeable with duty, and
  - (vi) to establish a new exemption for corporate reconstruction and corporate consolidation transactions, and

- (vii) to provide for further circumstances in which a transfer of business property between family members is exempt from duty, and
- (viii) to provide for a duty exemption in respect of any Government initiative relating to the Sydney Desalination Plant, and
- (ix) to make other minor and consequential amendments,
- (b) to amend the *Land Tax Management Act 1956*:
  - (i) to ensure that the tax free threshold can be claimed in respect of land held by self managed superannuation funds that are complying superannuation funds under Commonwealth legislation, and
  - (ii) to enable a special disability trust under the *Veterans' Entitlements Act 1986* of the Commonwealth to be treated as a concessional trust for land tax purposes,
- (c) to amend the *Payroll Tax Act 2007* to clarify an exemption from payroll tax for wages paid or payable in respect of maternity leave, paternity leave or adoption leave.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

## Schedule 1      Amendment of Duties Act 1997 No 123

### Transfers to self managed superannuation funds

**Schedule 1 [5]** limits the application of a duty concession that applies to transfers to self managed superannuation funds. The amendment allows the concession to be applied in respect of a self managed superannuation fund that has not yet been confirmed as a complying superannuation fund under Commonwealth legislation only if the trustee of the fund is satisfied that the fund will be confirmed as a complying superannuation fund. A fund is confirmed as a complying superannuation fund when notice is given under the relevant Commonwealth superannuation legislation that the fund is a complying superannuation fund. The amendment also allows the Chief Commissioner of State Revenue to assess or reassess the liability to duty in respect of a transfer if satisfied that the fund was not a complying superannuation fund when a liability for duty arose.

**Schedule 1 [3] and [4]** clarify that the rules for obtaining a duty concession in relation to a transfer to a custodian of the trustee of a self managed superannuation fund are the same as the rules for obtaining a duty concession in relation to a transfer to the trustee. That is, the property transferred must be held solely for the benefit of the transferor. **Schedule 1 [2]** provides for a consequential re-numbering of provisions.

### **Deceased estates**

**Schedule 1 [6] and [8]** change a duty concession that applies to transmission applications by beneficiaries of deceased estates to prevent an avoidance practice. The amendments require a transmission application made by a beneficiary under a will (with the consent of the legal personal representative of a deceased person) to be treated as a transfer of dutiable property by the legal personal representative. This ensures that duty can be charged at an ad valorem rate if the transfer involves a variation to the trusts contained in the will. **Schedule 1 [9]** is a consequential amendment.

### **Transfers made in partial conformity with agreements**

**Schedule 1 [10]** establishes a duty concession that applies to certain transfers of dutiable property that are made in partial conformity with an agreement for the sale or transfer of dutiable property. The concession applies to a transfer if the transfer conforms with an agreement (in respect of which duty has been paid) apart from the fact that the share in the dutiable property transferred to one or more of the transferees under the transfer exceeds the share agreed to be transferred to the relevant transferee or transferees. Duty is chargeable only on the excess proportion of the dutiable value of the dutiable property, calculated by reference to the proportion by which the share transferred exceeds the share agreed to be transferred. **Schedule 1 [11]** is a consequential amendment.

### **Concessions for married couples and de facto partners**

**Schedule 1 [13]** extends to superannuation interests a provision that exempts from duty certain transfers of dutiable property that are made to a party to a marriage or de facto relationship as a consequence of the break-up of the marriage or relationship. The amendment extends the provision to transfers of superannuation interests from the trustee or custodian of the trustee of a superannuation fund to the trustee or custodian of the trustee of another superannuation fund for the purpose of providing a retirement benefit to a party to the marriage or relationship.

**Schedule 1 [15]** remakes and extends an existing duty exemption that applies to certain transfers of dutiable property used or intended to be used as the principal place of residence of a married couple or de facto partners. The existing exemption applies to a transfer of property between a married couple or de facto partners of property used or intended to be used solely as their principal place of residence. The new provision will also allow a partial exemption to be claimed where the land is used partially as a principal place of residence, and partially for other purposes. The provisions are similar to the rules that apply to the charging of land tax in respect of a principal place of residence. **Schedule 1 [12] and [14]** are consequential amendments.

### **Acquisitions of interests in landholders**

**Schedule 1 [16]** makes further provision for the circumstances in which an acquisition of an interest in a private unit trust scheme or private company will be subject to duty, so as to prevent an avoidance practice. The amendment provides that, for the purpose of determining whether an acquisition is dutiable, the land holdings of the private unit trust scheme or private company are taken to include any land holdings recently transferred to the person acquiring the interest, or an associated person. A land holding is recently transferred if it is transferred within 12 months before the acquisition. This means that those land holdings count toward the duty free threshold of \$2,000,000.

### **Corporate reconstructions**

**Schedule 1 [18]** establishes a new duty exemption for transactions that are corporate reconstruction transactions or corporate consolidation transactions. The new provisions replace the existing exemptions for “top hatting” arrangements (repealed by **Schedule 1 [17]**) and for corporate reconstructions (repealed by **Schedule 1 [22]**). Currently, in order to be exempt under the corporate reconstruction provision a transaction is required to be approved by the Chief Commissioner in accordance with guidelines approved by the Treasurer. The amendments remove the requirement for the approval of guidelines and incorporate into the new provisions the matters addressed by the guidelines. The amendments also extend the provision to an acquisition of an interest in a landholder that is made as part of a corporate consolidation.

### **Transfer of business property between family members**

**Schedule 1 [19]–[21]** extend a provision that exempts from duty certain transfers, leases and assignments of primary production land, and certain transfers of shares in a share management fishery, between certain family members. Currently, the exemption applies only if the transferor, lessor or assignor is an *ancestor* of the transferee, lessee or assignee. An *ancestor* of a person includes an individual who is the person’s (or the person’s spouse’s) parent, step-parent, grand-parent, sibling, uncle or aunt (or the spouse of any such person). The amendment extends the exemption to transfers, leases and assignments where the transferor, lessor or assignor is the spouse, child, grandchild, niece or nephew of the transferee, lessee or assignee (or is the child, niece or nephew of the spouse of the transferee, lessee or assignee). A *spouse* includes a former spouse, a de facto partner and a former de facto partner.

### **Sydney Desalination Plant**

**Schedule 1 [26]** gives the Minister (with the concurrence of the Treasurer) power to grant exemptions from duty in respect of any Government initiative relating to the Sydney Desalination Plant. The exemption can be granted before or after a liability for duty arises and has effect according to its terms.

### **Other amendments**

**Schedule 1 [7]** corrects a grammatical error.

**Schedule 1 [11]** repeals a redundant exemption relating to the vesting of property under the Financial Institutions (NSW) Code (*the Code*). The Code previously applied as a law of New South Wales by operation of the *Financial Institutions (New South Wales) Act 1992*. However, that Act was repealed in 1999 by the *Financial Sector Reform (New South Wales) Act 1999* and, accordingly, the Code and the exemption no longer have any operation.

**Schedule 1 [23] and [25]** clarify that a reference to a mortgage, in an exemption that applies in relation to mortgage and asset-backed securities, extends to a charge.

**Schedule 1 [24]** is a consequential amendment.

**Schedule 1 [29]** extends the definition of *related person* that applies for the purpose of various duty concessions. The definition is extended beyond close family members to various relationships that arise because of marriage or a de facto relationship.

**Schedule 1 [27]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [28]** provides for transitional matters.

## **Schedule 2      Amendment of Land Tax Management Act 1956 No 26**

**Schedule 2 [1]** ensures that self managed superannuation funds that are complying superannuation funds under section 42A of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth are not treated as special trusts for land tax purposes. Beneficial owners of land held by such funds are generally not liable for land tax for the portion of the taxable value of the land that does not exceed the tax-free threshold set out in the *Land Tax Management Act 1956*. The amendment ensures such funds are entitled to the tax-free threshold.

**Schedule 2 [2] and [3]** enable special disability trusts within the meaning of the *Veterans' Entitlements Act 1986* of the Commonwealth to be treated as concessional trusts for land tax purposes. The effect of the amendments is that a land tax exemption can be claimed in respect of land used as a principal place of residence by the principal beneficiary of a special disability trust.

**Schedule 2 [4]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

**Schedule 2 [5]** provides for transitional matters.

## **Schedule 3      Amendment of Payroll Tax Act 2007 No 21**

**Schedule 3 [1]** clarifies a provision that exempts from payroll tax wages paid or payable in respect of 14 weeks maternity leave. The amendment provides that wages are exempt from payroll tax if they are paid or payable in respect of a period of maternity leave equivalent to 14 weeks part-time leave at a reduced rate of pay. For example, the exemption may apply to wages paid or payable for maternity leave that extends to 28 weeks at half of the part-time rate of pay that would normally apply to the employee.

**Schedule 3 [2]** provides for a similar clarification in respect of paternity leave.

**Schedule 3 [3]** enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

**Schedule 3 [4]** provides for transitional matters.

First print



New South Wales

# State Revenue Legislation Amendment Bill 2012

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New South Wales

# State Revenue Legislation Amendment Bill 2012

No. , 2012

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**A Bill for**

An Act to make miscellaneous changes to certain State revenue legislation.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>State Revenue Legislation Amendment Act 2012</i> .	3
<b>2 Commencement</b>	4
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	5 6
(2) The following provisions commence, or are taken to have commenced, on the dates indicated:	7 8
(a) Schedule 1 [17], [18] and [22]—1 July 2012,	9
(b) Schedule 3—1 July 2012.	10

<b>Schedule 1</b>	<b>Amendment of Duties Act 1997 No 123</b>	1
<b>[1]</b>	<b>Section 18 No double duty</b>	2
	Insert after section 18 (3):	3
	<b>Note.</b> Section 64C also provides for a duty concession in respect of a transfer of dutiable property that is made in partial conformity with an agreement for the sale or transfer of the property. The concession applies if the interest in the property transferred to the transferee is not identical to the interest agreed to be transferred to the transferee under the agreement.	4 5 6 7 8 9
<b>[2]</b>	<b>Section 62A Transfers to self managed superannuation funds</b>	10
	Re-number section 62A (2) as section 62A (3A) and insert after section 62A (3).	11 12
<b>[3]</b>	<b>Section 62A (3) (b)</b>	13
	Insert “is to be held solely for the benefit of the transferor and” after “the property”.	14 15
<b>[4]</b>	<b>Section 62A (3A) (as renumbered by item [2])</b>	16
	Omit “held by the trustee of a superannuation fund is held solely for the benefit of the transferor”.	17 18
	Insert instead “is held solely for the benefit of a transferor”.	19
<b>[5]</b>	<b>Section 62A (5)–(7)</b>	20
	Insert after section 62A (4):	21
	(5) A superannuation fund that has not been confirmed as a complying superannuation fund may be treated as a complying superannuation fund for the purposes of this section only if the trustee is satisfied, at the time a liability for duty arises, that the fund will be confirmed as a complying superannuation fund.	22 23 24 25 26
	(6) A superannuation fund is <i>confirmed</i> as a complying superannuation fund when the Regulator first gives a notice to the trustee under section 40 of the <i>Superannuation Industry (Supervision) Act 1993</i> of the Commonwealth stating that the fund is a complying superannuation fund.	27 28 29 30 31
	(7) The Chief Commissioner may assess or reassess the duty chargeable in respect of a transfer or agreement to transfer if the Chief Commissioner is not satisfied that the superannuation fund was a complying superannuation fund at the time the liability for duty arose.	32 33 34 35 36

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<b>[6] Section 63 Deceased estates</b>	1
Omit section 63 (1) (b).	2
<b>[7] Section 63 (1) (c)</b>	3
Omit “to”. Insert instead “by”.	4
<b>[8] Section 63 (2A)</b>	5
Insert after section 63 (2):	6
(2A) A transmission application made by a beneficiary under a will, with the consent of the legal personal representative of a deceased person, is taken, for the purposes of this section, to be a transfer of dutiable property by the legal personal representative to the beneficiary.	7 8 9 10 11
<b>[9] Section 63 (4)</b>	12
Omit “, consent”.	13
<b>[10] Section 64C</b>	14
Insert after section 64B:	15
<b>64C Transfers made in partial conformity with agreements</b>	16
(1) The duty chargeable in respect of a transfer of dutiable property is to be calculated in accordance with this section if:	17 18
(a) the transfer is made in partial conformity with an agreement for transfer or sale of the dutiable property, and	19 20
(b) the duty chargeable in respect of the agreement has been paid.	21 22
(2) A transfer is made in partial conformity with an agreement for transfer or sale if the transfer conforms with the agreement, apart from the fact that a share in the dutiable property transferred to one or more of the transferees under the transfer exceeds the share agreed to be transferred to the relevant transferee under the agreement.	23 24 25 26 27 28
(3) Duty is to be charged only on the excess proportion of the dutiable value of the dutiable property transferred.	29 30
(4) The <i>excess proportion</i> is the proportion, or the total of the proportions, by which the share or shares in the dutiable property transferred to each transferee exceed the share or shares in the dutiable property (if any) agreed to be transferred to each transferee.	31 32 33 34 35

(5)	If a share in dutiable property is transferred to a transferee who was not a transferee under the agreement for transfer or sale, this section applies as if the share agreed to be transferred to that transferee is nil.	1 2 3 4
(6)	This section does not apply if section 18 (3) applies in respect of the transfer.	5 6
	<b>Note.</b> Example 1: An agreement provides for the transfer of dutiable property to 3 purchasers as equal tenants in common. Accordingly, the share of the dutiable property agreed to be transferred to each purchaser is one-third each. When the property is transferred, it is transferred to only 2 of the purchasers so that each purchaser acquires a one-half share. The shares transferred exceed the shares agreed to be transferred. That is, each purchaser has acquired a one-half share in the property instead of a one-third share. The excess proportion is the total of the proportions by which the shares transferred to the transferees exceed the shares agreed to be transferred. The total of (one-half minus one-third) and (one-half minus one-third) is one-third. Duty is charged on one-third of the dutiable value of the property transferred.	7 8 9 10 11 12 13 14 15 16 17 18
	Example 2: An agreement provides for the transfer of dutiable property to 2 purchasers as equal tenants in common. Accordingly, the share of the dutiable property agreed to be transferred to each purchaser is one-half each. When the property is transferred, it is transferred to 3 transferees so that each transferee acquires a one-third share. The 2 one-third shares transferred to the original purchasers under the agreement do not exceed the shares agreed to be transferred. The excess proportion is the proportion by which the share transferred to the new transferee (one-third) exceeds the share agreed to be transferred (nil). Duty is charged on one-third of the dutiable value of the property transferred.	19 20 21 22 23 24 25 26 27 28 29
[11]	<b>Section 65 Exemptions from duty</b> Omit section 65 (1) (f).	30 31
[12]	<b>Section 67 Exemptions—transfers to married couples and de facto partners</b> Omit the section.	32 33 34
[13]	<b>Section 68 Exemptions—break-up of marriages and other relationships</b> Insert after section 68 (3):	35 36
	(3A) <b>Superannuation interests</b>	37
	No duty is chargeable under this Chapter on a dutiable transaction that is a transfer of, or an agreement to transfer, dutiable property from the trustee or custodian of the trustee of a complying superannuation fund to the trustee or custodian of the trustee of another complying superannuation fund if:	38 39 40 41 42
	(a) the dutiable property is a superannuation interest (within the meaning of the <i>Family Law Act 1975</i> of the	43 44

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	Commonwealth) of a party to a marriage or de facto relationship that:	1
	(i) has been dissolved or annulled or has, in the opinion of the Chief Commissioner, broken down irretrievably (in the case of a marriage), or	2
	(ii) has, in the opinion of the Chief Commissioner, broken down (in the case of a de facto relationship), and	3
	(b) the dutiable property is to be held solely for the purpose of providing a retirement benefit to the other party to the marriage or relationship, and	4
	(c) the transfer or agreement is effected by or in accordance with a financial agreement that is binding on the parties to the agreement, or an order of a court, under the <i>Family Law Act 1975</i> of the Commonwealth.	5
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[14]	<b>Chapter 2, Part 8, heading</b>	16
	Omit the heading. Insert instead:	17
	<b>Part 8 Other exemptions and concessions</b>	18
[15]	<b>Chapter 2, Part 8, Division 4</b>	19
	Insert after Division 3:	20
	<b>Division 4 Transfers between married couples and de facto partners</b>	21
		22
104A	<b>Meaning of “residential land”</b>	23
	(1) In this Division, <i>residential land</i> means:	24
	(a) a parcel of land on which there is:	25
	(i) one single dwelling or one flat, or	26
	(ii) one single dwelling, or one flat, and a shop, or	27
	(iii) a building under construction that, when completed, will constitute one single dwelling or one flat (or one single dwelling, or one flat, and a shop), or	28
	(b) a strata lot, if it is lawfully occupied as a separate dwelling, or suitable for lawful occupation as a separate dwelling, or	29
	(c) a land use entitlement, if it confers an entitlement to occupy a building, or part of a building, as a separate dwelling, or	30
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- (d) a parcel of vacant land that is zoned or otherwise designated for use under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*) for residential or principally residential purposes. 1  
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- (2) Land does not cease to be regarded as land on which there is one single dwelling, or one flat, merely because the land is also used or is capable of being used for the purpose of one other residential occupancy, if that residential occupancy is an excluded residential occupancy. 6  
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- (3) In this section: 11
- excluded residential occupancy*** means: 12
- (a) one room or one flat, or 13
- (b) one room and one flat, or 14
- (c) one suite of rooms (not being a flat), each room of which all occupants of the suite are entitled to occupy, or 15  
16
- (d) one suite of rooms (not being a flat), each room of which all occupants of the suite are entitled to occupy, and one room, or 17  
18  
19
- (e) 2 rooms, each of which is separately occupied. 20
- flat*** means a room or suite of rooms (whether or not forming part of a building or a detached building): 21  
22
- (a) occupied or used as a separate dwelling, or 23
- (b) so constructed, designed or adapted as to be capable of being occupied or used as a separate dwelling, 24  
25
- but does not include a single dwelling, a strata lot or a dwelling, or portion of a building, that is occupied under a land use entitlement. 26  
27  
28
- single dwelling*** means a house: 29
- (a) occupied or used as a separate dwelling, or 30
- (b) so constructed, designed or adapted as to be capable of being occupied or used as a separate dwelling, 31  
32
- but does not include a strata lot or a property commonly known as a shop and dwelling. 33  
34
- 104B Exemption—transfer of residential land** 35
- (1) No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of residential land if: 36  
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(a)	as a result of the transfer or agreement, the property is or will be held by a married couple or de facto partners as joint tenants or as tenants in common in equal shares, and	1 2 3
(b)	the residential land:	4
(i)	is land on which there is a dwelling that, when the transfer of dutiable property occurs, is used as the principal place of residence of the married couple or de facto partners, or	5 6 7 8
(ii)	is a parcel of vacant land, or land on which there is a building under construction, and the married couple or de facto partners intend to use the residential land as the site of a dwelling to be used as their principal place of residence, and	9 10 11 12 13
(c)	the residential land is used solely for residential purposes and not for any other purpose (such as a commercial, industrial or professional purpose), and	14 15 16
(d)	both the transferor and the transferee are the married couple or one of them or the de facto partners or one of them and no other person is a party to the transfer, and	17 18 19
(e)	in the case of de facto partners, the parties to the relationship have lived in the relationship for at least 2 years before the date of the transfer.	20 21 22
(2)	For the purposes of subsection (1) (c), the use of not more than one room on the land for a non-residential purpose is to be disregarded, if the use relates to a business or undertaking that is primarily conducted elsewhere.	23 24 25 26
(3)	Land may be the subject of an exemption under this section even if it is partly held by another person who is not a part of the married couple or one of the de facto partners.	27 28 29
<b>104C</b>	<b>Concession—transfer of land used as principal place of residence and for other purposes</b>	30 31
(1)	If a transfer or agreement for transfer of residential land would be exempt from duty under section 104B, but for the fact that the land has been used or is intended to be used for a purpose other than a residential purpose, the duty chargeable on the transfer or agreement is to be calculated after reducing the dutiable value of the land by the residential apportionment factor.	32 33 34 35 36 37
(2)	The residential apportionment factor is calculated by subtracting the non-residential apportionment factor from 1.	38 39

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<p>(3) The non-residential apportionment factor is:</p> <p style="padding-left: 20px;">(a) if the land is mixed development land or mixed use land and there is an apportionment factor entered in the Register of Land Values in respect of the land value of the land under Division 5 or 5A of Part 1B of the <i>Valuation of Land Act 1916</i>—that apportionment factor, or</p> <p style="padding-left: 20px;">(b) if paragraph (a) is not applicable—such other apportionment factor as the Chief Commissioner considers fair and reasonable to reflect the use of the land for non-residential purposes, subject to subsections (4) and (5).</p> <p>(4) If there is no apportionment factor entered in the Register of Land Values in respect of the land value of the land, and the land is mixed development land or mixed use land, the Chief Commissioner may request the Valuer-General to determine the apportionment factor in respect of the land concerned.</p> <p>(5) If a request is made under subsection (4):</p> <p style="padding-left: 20px;">(a) the Valuer-General must determine the apportionment factor concerned and enter it in the Register of Land Values under the <i>Valuation of Land Act 1916</i>, and</p> <p style="padding-left: 20px;">(b) that apportionment factor is to be applied as the non-residential apportionment factor in respect of the residential land.</p> <p><b>Note.</b> Divisions 5 and 5A of Part 1B of the <i>Valuation of Land Act 1916</i> allow objections to be made against the amount of the apportionment factor.</p> <p>(6) Duty on the transfer or agreement is to be charged at the general rate provided for by section 32. Sections 32A–32C do not apply.</p> <p>(7) In this section:</p> <p style="padding-left: 20px;"><b><i>mixed development land</i></b> has the same meaning as in Division 5 of Part 1B of the <i>Valuation of Land Act 1916</i>.</p> <p style="padding-left: 20px;"><b><i>mixed use land</i></b> has the same meaning as in Division 5A of Part 1B of the <i>Valuation of Land Act 1916</i>.</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p>
<p><b>[16] Section 159A</b></p> <p style="padding-left: 20px;">Insert after section 159:</p> <p><b>159A Inclusion of land holdings recently transferred</b></p> <p style="padding-left: 20px;">(1) For the purposes of determining whether a person who acquires an interest in a private unit trust scheme or private company makes a relevant acquisition, the land holdings of the unit trust</p>	<p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p>

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	scheme or company are taken to include any land holdings of the unit trust scheme or company, or of a linked entity of the unit trust scheme or company, that were recently transferred:	1
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		3
	(a) to the person, or	4
	(b) to a person who is an associated person when the acquisition occurs and was an associated person when the transfer of the land holding occurred.	5
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	(2) A land holding is <i>recently transferred</i> if it is transferred within 12 months before the acquisition is made.	8
		9
	(3) The duty payable under this Chapter in respect of the acquisition is to be reduced by the amount of ad valorem duty (if any) paid in respect of the transfer under Chapter 2.	10
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		12
<b>[17]</b>	<b>Section 163C Exemption for “top hatting” arrangements</b>	13
	Omit the section.	14
<b>[18]</b>	<b>Chapter 11, Part 1</b>	15
	Insert before section 274:	16
	<b>Part 1 Corporate reconstructions and consolidations</b>	17
		18
<b>273A</b>	<b>Definitions</b>	19
	(1) In this Part:	20
	<i>corporate consolidation transaction</i> —see section 273D.	21
	<i>corporate group</i> —see section 273E.	22
	<i>corporate reconstruction transaction</i> —see section 273C.	23
	<i>corporation</i> includes a unit trust scheme.	24
	<i>security</i> , of a corporation, means:	25
	(a) in the case of a corporation other than a unit trust scheme, an issued share of the corporation, or	26
		27
	(b) in the case of a unit trust scheme, a unit issued under the scheme.	28
		29
	(2) A reference in this Part to anything done by or held by a unit trust scheme (including any voting control held by a unit trust scheme) is a reference to anything done by or held by a trustee of the unit trust scheme as trustee of that unit trust scheme.	30
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<b>273B</b>	<b>Exemption for corporate reconstruction and corporate consolidation transactions</b>	1
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(1)	Duty under this Act is not chargeable on a transaction if the Chief Commissioner is satisfied, on application by a party to the transaction, that:	3
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(a)	the transaction is a corporate reconstruction transaction, and	6
		7
(b)	the transaction, or the series of transactions of which the transaction is a part, is undertaken for the purpose of either or both of the following:	8
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		10
(i)	changing the structure of a corporate group,	11
(ii)	changing the holding of assets within a corporate group, and	12
		13
(c)	the transaction, or the series of transactions of which the transaction is a part:	14
		15
(i)	is not undertaken for a purpose of avoiding or reducing duty under this Act on another transaction, and	16
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(ii)	is not undertaken for the sole or dominant purpose of avoiding or reducing a liability for tax, other than duty under this Act, under a law of an Australian jurisdiction.	19
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(2)	Duty under this Act is not chargeable on a transaction if the Chief Commissioner is satisfied, on application by a party to the transaction, that the transaction is a corporate consolidation transaction.	23
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<b>273C</b>	<b>Corporate reconstruction transaction</b>	27
	For the purposes of this Part, a <i>corporate reconstruction transaction</i> means:	28
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(a)	a transfer, or agreement for sale or transfer, of dutiable property between corporations that are members of the same corporate group, or	30
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(b)	a surrender of an interest in land by a corporation to a corporation who is a member of the same corporate group, or	33
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(c)	a vesting of dutiable property if the dutiable property was held, immediately before the vesting, and continues to be held, immediately after the vesting, by corporations who are members of the same corporate group, or	36
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- (d) an acquisition of an interest in a landholder (within the meaning of Chapter 4) by a corporation if the interest is acquired from another corporation who is a member of the same corporate group, or 1  
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- (e) an application to register a motor vehicle as a result of a transfer of the vehicle between corporations who are members of the same corporate group. 5  
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**273D Corporate consolidation transaction** 8

- (1) For the purposes of this Part, a *corporate consolidation transaction* means an acquisition of an interest in a landholder (within the meaning of Chapter 4) that: 9  
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  - (a) is made to interpose a corporation (*the head corporation*) between another corporation (*the affected corporation*) and the holders of the affected corporation's securities, and 12  
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  - (b) is an acquisition of securities of: 15
    - (i) the affected corporation by the head corporation for which the only consideration given by the head corporation is the issue or transfer of its securities to the person from whom the affected corporation's securities were acquired, or 16  
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    - (ii) the head corporation by a holder of securities of the affected corporation. 21  
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- (2) An acquisition of an interest in a landholder is not a corporate consolidation transaction if, immediately before the acquisition, the head corporation held dutiable property or a vehicle or an interest in a corporation. 23  
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- (3) An acquisition of an interest in a landholder is not a corporate consolidation transaction unless, immediately after the issue or transfer of the head corporation's securities: 27  
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  - (a) each person who holds those securities (*a security holder*) is a person who held securities of the affected corporation immediately before the securities of the affected corporation were acquired by the head corporation, and 30  
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  - (b) the proportion of those securities held by each security holder is the same as proportion of the securities of the affected corporation held by each security holder before the issue or transfer. 34  
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**273E Meaning of "corporate group"** 38

- (1) For the purposes of this Part, a *corporate group* consists of a parent corporation and its subsidiaries. 39  
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|-------------|---|-------------------------------------|
| (2)         | A corporation is the <i>parent corporation</i> of another corporation (which is the <i>subsidiary</i> of the first corporation) if the first corporation, directly or indirectly:   | 1<br>2<br>3                         |
| (a)         | holds at least 90% of the securities of the other corporation, and  | 4<br>5                              |
| (b)         | holds voting control over the other corporation.  | 6                                   |
| (3)         | The first corporation holds <i>voting control</i> over the other corporation if the first corporation has the ability to cast, or control the casting of, at least 90% of the maximum number of votes that may be cast at a general meeting of that corporation (other than votes to which a person is entitled under the provisions of a debenture or trust deed securing the issue of a debenture). | 7<br>8<br>9<br>10<br>11<br>12<br>13 |
| (4)         | The corporate group for a corporation, all of the securities of which are stapled to the securities of one or more other corporations, includes all of those other corporations and their subsidiaries.   | 14<br>15<br>16<br>17                |
| (5)         | A corporation that is a unit trust scheme is taken to be a member of a corporate group for the purposes of a corporate reconstruction transaction if the transaction is between the trustee of the unit trust scheme, acting as trustee of the scheme, and another corporation that is a member of the same corporate group as the unit trust scheme.   | 18<br>19<br>20<br>21<br>22<br>23    |
| (6)         | A corporation is not a member of a corporate group for the purposes of a corporate reconstruction transaction if the corporation is acting in the capacity of trustee of:   | 24<br>25<br>26                      |
| (a)         | a unit trust scheme that is not a member of the same corporate group as the other party to the transaction, or  | 27<br>28                            |
| (b)         | a discretionary trust, or   | 29                                  |
| (c)         | a trust (not being a unit trust scheme) for any person who is not a member of the corporate group.  | 30<br>31                            |
| <b>273F</b> | <b>Applications for exemptions</b>  | 32                                  |
| (1)         | An application for an exemption from duty for a corporate reconstruction transaction or a corporate consolidation transaction is to be made to the Chief Commissioner:  | 33<br>34<br>35                      |
| (a)         | in the approved form, and   | 36                                  |
| (b)         | before the date of the transaction or no later than 5 years after the date of assessment of the transaction.  | 37<br>38                            |
| (2)         | An exemption may be granted with or without conditions.   | 39                                  |
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- (3) It is a condition of every exemption granted in relation to an application made before the date of the relevant transaction that the applicant must notify the Chief Commissioner in writing as soon as practicable if there is any material change on or before that date in the matters disclosed in the application.

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  - (4) The Chief Commissioner must reassess any duty charged on a transaction if an exemption is granted after the date of assessment of the transaction.

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  - (5) The Chief Commissioner may revoke an exemption for a corporate reconstruction transaction if the Chief Commissioner is satisfied, because of new information not disclosed in the application for exemption, that the exemption should not have been granted.

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  - (6) The Chief Commissioner must assess the liability for duty on a corporate reconstruction transaction for which an exemption is revoked and each member (at the date of the transaction) of the corporate group to which the transaction relates is jointly and severally liable to pay the duty chargeable on the transaction.

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**Part 2 Other exemptions** 19

**[19] Section 274 Transfer of certain business property between family members** 20  
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Omit “an ancestor” wherever occurring in section 274 (1) and (2). 22

Insert instead “a member of the family”. 23

**[20] Section 274 (2) (b)** 24

Omit “ancestor”. Insert instead “member of the family of the transferee”. 25

**[21] Section 274 (6)** 26

Omit the definition of *ancestor*. Insert instead: 27

*member*, of a transferee’s family, means each of the following persons: 28  
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- (a) the transferee’s spouse, 30
- (b) a parent of the transferee or the transferee’s spouse, 31
- (c) a grandparent of the transferee or the transferee’s spouse, 32
- (d) a brother, sister, nephew, niece, uncle or aunt of the transferee or the transferee’s spouse, 33  
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- (e) a child or grandchild of the transferee or the transferee’s spouse, 35  
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	(f) the spouse of anyone mentioned in paragraph (b), (c), (d) or (e).	1
	<i>spouse</i> includes a former spouse, a de facto partner and a former de facto partner.	2
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<b>[22]</b>	<b>Section 281 Corporate reconstructions</b>	5
	Omit the section.	6
<b>[23]</b>	<b>Section 282 Mortgage-backed securities</b>	7
	Insert after section 282 (4) (before the note):	8
	(5) In this section, and in the definitions of <i>mortgage-backed security</i> and <i>pool of mortgages</i> in the Dictionary, a reference to a mortgage includes a reference to a charge.	9
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<b>[24]</b>	<b>Section 282, note</b>	12
	Omit “ <i>Mortgage, mortgage-backed</i> ”. Insert instead “ <i>Mortgage-backed</i> ”.	13
<b>[25]</b>	<b>Section 284 Asset-backed securities</b>	14
	Insert at the end of the section:	15
	(2) In this section, <i>mortgage</i> includes a charge.	16
<b>[26]</b>	<b>Section 315</b>	17
	Insert after section 314:	18
<b>315</b>	<b>Duty exemption relating to Sydney Desalination Plant</b>	19
	(1) The Minister may, by order in writing, direct that duty is not payable by a person or body (including the Crown) in relation to any transaction, or class of transactions, specified in the order that is entered into (or proposed to be entered into) or that otherwise occurs in connection with any Government initiative relating to the Sydney Desalination Plant.	20
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	(2) An order under this section may be made only with the concurrence of the Treasurer.	26
		27
	(3) An order under this section may be made before or after the liability to pay the duty concerned arises.	28
		29
	(4) An order has effect according to its terms.	30
	(5) The Minister must give a copy of an order under this section to the Chief Commissioner.	31
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(6)	In this section:	1
	<i>transaction</i> includes any transfer of dutiable property (within the meaning of Chapter 2), acquisition of an interest in a landholder (within the meaning of Chapter 4) or other matter in respect of which, but for this section, a liability for duty would arise under this Act.	2 3 4 5 6
[27]	<b>Schedule 1 Savings, transitional and other provisions</b>	7
	Insert at the end of clause 1 (1):	8
	<i>State Revenue Legislation Amendment Act 2012</i>	9
	Any Act that amends this Act	10
[28]	<b>Schedule 1, Part 37</b>	11
	Insert after Part 36:	12
	<b>Part 37 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2012</b>	13 14 15
95	<b>Definition</b>	16
	In this Part:	17
	<i>amending Act</i> means the <i>State Revenue Legislation Amendment Act 2012</i> .	18 19
96	<b>Transfers to self managed superannuation funds (section 62A)</b>	20
	The amendments made to section 62A by the amending Act apply in respect of transfers or agreements to transfer that occur on or after the commencement of those amendments.	21 22 23
97	<b>Deceased estates (section 63)</b>	24
	The amendments made to section 63 by the amending Act apply to any transmission application made on or after the commencement of those amendments, even if consent of the legal personal representative concerned was given before that commencement.	25 26 27 28 29
98	<b>Transfers made in partial conformity with agreements (section 64C)</b>	30 31
	Section 64C, as inserted by the amending Act, extends to transfers occurring after the commencement of that section that	32 33

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	are made in partial conformity with agreements entered into before the commencement of that section.	1 2
<b>99</b>	<b>Transfers of superannuation interests (section 68)</b>	3
	The amendment made to section 68 by the amending Act applies to dutiable transactions occurring on or after the commencement of that amendment.	4 5 6
<b>100</b>	<b>Transfers between married couple and de facto partners (Division 4, Part 8, Chapter 2)</b>	7 8
	(1) The provisions of Division 4 of Part 8 of Chapter 2, as inserted by the amending Act, apply to transfers of dutiable property that occur on or after the commencement of that Division, other than transfers that are made in conformity with an agreement entered into before that commencement.	9 10 11 12 13
	(2) Section 67, as in force before its repeal by the amending Act, continues to apply to transfers occurring after the commencement of Division 4 of Part 8 of Chapter 2 that are made in conformity with an agreement entered into before that commencement.	14 15 16 17
<b>101</b>	<b>Inclusion of land holdings recently transferred (section 159A)</b>	18
	(1) Section 159A, as inserted by the amending Act, applies to any acquisition of an interest in a unit trust scheme, private company or listed company made on or after the commencement of that section.	19 20 21 22
	(2) However, a reference in section 159A to any period before an interest in a unit trust scheme or company is acquired excludes any part of that period occurring before the commencement of that section.	23 24 25 26
<b>102</b>	<b>Corporate reconstructions and consolidations (Chapter 11)</b>	27
	(1) Part 1 of Chapter 11, as inserted by the amending Act, applies to transactions occurring on or after 1 July 2012, other than pre-approved transactions that occur before 1 January 2013.	28 29 30
	(2) Section 281, as in force immediately before its repeal by the amending Act, continues to apply:	31 32
	(a) to pre-approved transactions that occur on or after 1 July 2012 and before 1 January 2013, and	33 34
	(b) to transactions that occur before 1 July 2012.	35
	(3) For the purposes of this clause, a <i>pre-approved transaction</i> is a transaction approved in advance by the Chief Commissioner under section 281 (as in force before its repeal).	36 37 38

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State Revenue Legislation Amendment Bill 2012

Schedule 1      Amendment of Duties Act 1997 No 123

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(4)	An approval given in advance by the Chief Commissioner under section 281 ceases to have effect if the relevant transaction does not occur before 1 January 2013.	1 2 3
(5)	Any condition imposed on an approval given by the Chief Commissioner under section 281 that requires parties to a transaction to remain members of the same corporate group ceases to have effect on 1 July 2012.	4 5 6 7
<b>103</b>	<b>Transfers of property between family members (section 274)</b>	8
(1)	The amendments made to section 274 by the amending Act apply in respect of transactions entered into on or after the commencement of those amendments, other than any transfer of land made in conformity with an agreement for the sale or transfer of land entered into before that commencement.	9 10 11 12 13
(2)	Section 274, as in force immediately before the commencement of those amendments, continues to apply in respect of transfers made in conformity with agreements entered into before that commencement.	14 15 16 17
<b>104</b>	<b>Definition of “related person”</b>	18
	The amendment made by the amending Act to the definition of <i>related person</i> applies in relation to any liability for duty arising on or after the commencement of that amendment.	19 20 21
<b>[29]</b>	<b>Dictionary, clause 1</b>	22
	Omit paragraph (a) of the definition of <i>related person</i> . Insert instead:	23
(a)	natural persons are related persons if:	24
(i)	one is the spouse or de facto partner of the other, or	25
(ii)	one is the parent, brother or sister of the other, or	26
(iii)	one is the spouse, or de facto partner, of a parent, child, brother or sister of the other,	27 28

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<b>Schedule 2</b>	<b>Amendment of Land Tax Management Act 1956 No 26</b>	1
		2
<b>[1]</b>	<b>Section 3A Special trust—meaning</b>	3
	Insert “or 42A” after “section 42” in section 3A (5) (a) (i).	4
<b>[2]</b>	<b>Section 3B Concessional trust—meaning</b>	5
	Insert “or section 52ZZZW of the <i>Veterans’ Entitlements Act 1986</i> of the Commonwealth” after “Commonwealth” in section 3B (3) (a).	6
		7
<b>[3]</b>	<b>Section 3B (3) (b)</b>	8
	Insert “or section 52ZZZWA of the <i>Veterans’ Entitlements Act 1986</i> of the Commonwealth” after “Commonwealth”.	9
		10
<b>[4]</b>	<b>Schedule 2 Savings and transitional provisions</b>	11
	Insert at the end of clause 1A (1):	12
	<i>State Revenue Legislation Amendment Act 2012</i>	13
	Any Act that amends this Act	14
<b>[5]</b>	<b>Schedule 2, Part 26</b>	15
	Insert after Part 25:	16
	<b>Part 26 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2012</b>	17
		18
		19
	<b>53 Amendment relating to special trusts</b>	20
	The amendment made to section 3A by the <i>State Revenue Legislation Amendment Act 2012</i> is taken to apply to the assessment of land tax liability in respect of the 2000 land tax year and subsequent land tax years.	21
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	<b>54 Amendments relating to concessional trusts</b>	25
	The amendments made to section 3B by the <i>State Revenue Legislation Amendment Act 2012</i> are taken to apply to the assessment of land tax liability in respect of the 2011 land tax year and subsequent land tax years.	26
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<b>Schedule 3</b>	<b>Amendment of Payroll Tax Act 2007</b>	1
	<b>No 21</b>	2
<b>[1] Section 53 Maternity and adoption leave</b>		3
Omit section 53 (4). Insert instead:		4
(4) In subsection (3):		5
(a) a reference to 14 weeks maternity leave or 14 weeks adoption leave includes a reference to an equivalent period of leave at a reduced rate of pay, and		6
		7
		8
(b) a reference to wages paid or payable in respect of a period of leave is a reference to the total wages that would normally have been paid or payable for that period of leave.		9
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<b>Note.</b> For a part-time employee, the exemption may apply to wages paid or payable for maternity leave or adoption leave that extends to 28 weeks at half of the part-time rate of pay that would normally apply to the employee.		13
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<b>[2] Schedule 2 NSW specific provisions</b>		17
Omit clause 13A (4). Insert instead:		18
(4) In subclause (3):		19
(a) a reference to 14 weeks paternity leave includes a reference to an equivalent period of leave at a reduced rate of pay, and		20
		21
		22
(b) a reference to wages paid or payable in respect of a period of leave is a reference to the total wages that would normally have been paid or payable for that period of leave.		23
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<b>Note.</b> For a part-time employee, the exemption may apply to wages paid or payable for paternity leave that extends to 28 weeks at half of the part-time rate of pay that would normally apply to the employee.		27
		28
		29
<b>[3] Schedule 3 Savings, transitional and other provisions</b>		30
Insert at the end of clause 1 (1):		31
<i>State Revenue Legislation Amendment Act 2012</i>		32
Any Act that amends this Act		33

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<b>[4] Schedule 3, Part 8</b>	1
Insert after Part 7:	2
<b>Part 8 Provision consequent on enactment of State Revenue Legislation Amendment Act 2012</b>	3 4 5
<b>22 Maternity, adoption and paternity leave</b>	6
The amendments made to this Act by the <i>State Revenue Legislation Amendment Act 2012</i> have effect in respect of wages paid or payable on or after 1 July 2012.	7 8 9