

Passed by both Houses



New South Wales

Duties Amendment (First Home Plus One) Bill 2007

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2007*



New South Wales

Duties Amendment (First Home Plus One) Bill 2007

Act No , 2007

An Act to amend the *Duties Act 1997* and the *Land Tax Management Act 1956* to extend a duty and land tax concession to shared equity arrangements between first home owners and other persons.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Duties Amendment (First Home Plus One) Act 2007*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Duties Act 1997 No 123

The *Duties Act 1997* is amended as set out in Schedule 1.

4 Amendment of Land Tax Management Act 1956 No 26

The *Land Tax Management Act 1956* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Duties Act 1997

(Section 3)

[1] Section 71 Restrictions on eligibility—previous ownership of residential property or first home concession

Omit section 71 (1)–(3). Insert instead:

- (1) A purchaser or transferee under an agreement or transfer may apply under the scheme, but will be eligible only if the purchaser or transferee is a first home owner.
- (2) A *first home owner* is an individual:
 - (a) who has not at any time owned residential property in Australia (either solely or with someone else) and has not previously been a party to an application under the scheme that was approved by the Chief Commissioner, and
 - (b) whose spouse (if any) has not at any time owned residential property in Australia (either solely or with someone else) and has not previously been a party to an application under the scheme that was approved by the Chief Commissioner.

[2] Section 71 (6)

Omit “may be disregarded if the Chief Commissioner is satisfied that”.

Insert instead “is to be disregarded if”.

[3] Section 71 (6) (b)

Omit the paragraph. Insert instead:

- (b) the ownership share in the property to which the application relates that is being acquired by purchasers or transferees who own or have owned other residential property, or have previously been a party to an application, does not exceed 5%.

[4] Section 73 Ineligible persons

Omit “is eligible or would be eligible if he or she were the purchaser” from section 73 (2) (a).

Insert instead “is a first home owner who will be occupying the home to which the agreement or transfer relates as a principal place of residence in accordance with the residence requirement under section 76”.

[5] Section 73 (2) (b)

Omit “is eligible”. Insert instead “is a first home owner”.

[6] Section 73 (6)

Omit the subsection. Insert instead:

- (6) If there is more than one purchaser or transferee under an agreement or transfer and at least one of them is a first home owner who is an Australian citizen or permanent resident, the other purchasers or transferees are exempt from compliance with subsection (5).

[7] Section 73A

Insert after section 73:

73A Application of eligibility criteria to joint purchasers and transferees

- (1) If there is more than one purchaser or transferee under an agreement or transfer, they may apply under the scheme, but the agreement or transfer will be eligible under the scheme only if all of the purchasers or transferees are eligible under the scheme.
- (2) This section is subject to section 80AA.
Note. Section 80AA allows a limited duty concession under the scheme to be claimed in respect of residential property that is purchased subject to a shared equity arrangement between a first home owner and a person who is not a first home owner.

[8] Section 76 Residence requirement

Omit “the person or persons who are” in section 76 (1).

Insert instead “the first home owner or one of the first home owners who is”.

[9] Section 76 (2) (a) and (b)

Omit “the person or persons” wherever occurring.

Insert instead “a first home owner”.

[10] Section 76 (3)

Omit “the person or persons who are acquiring it as their”.

Insert instead “the first home owner or one of the first home owners who is acquiring it as a”.

[11] Section 76 (4)

Omit the subsection.

[12] Section 77 Eligible mortgages

Omit section 77 (1). Insert instead:

- (1) A mortgage is eligible if:
 - (a) it is given to assist the financing of a purchase under an agreement or transfer that is eligible under the scheme, and
 - (b) the purchaser or purchasers under the agreement or transfer are eligible under the scheme (including if the agreement or transfer is eligible under the scheme for a shared equity concession).

[13] Section 80 Duty payable if application approved

Insert after section 80 (2):

- (3) This section does not apply in respect of an agreement or transfer that is eligible under the scheme only for a shared equity concession.

[14] Section 80AA

Insert after section 80:

80AA Special concession for shared equity arrangements

- (1) If there is more than one purchaser or transferee under an agreement or transfer, and one or more of them is a first home owner, but the agreement or transfer is not eligible under the scheme because one or more of the other purchasers or transferees is not eligible under the scheme, the agreement or transfer may still be eligible for a duty concession under the scheme (a *shared equity concession*).
- (2) In order to be eligible for a shared equity concession:
 - (a) the purchasers or transferees who are first home owners must acquire not less than a 50% share in the ownership of the property, and
 - (b) the agreement or transfer must be an agreement or transfer that would be eligible under the scheme if the first home owners were the sole purchasers or transferees under the agreement or transfer.
- (3) If an application concerning an agreement or transfer that is eligible under the scheme for a shared equity concession is approved, duty is chargeable as follows:

$$D = R \times (100\% - E) + E \times C$$

where:

D is the duty chargeable.

R is the duty that would be chargeable on the dutiable value of the property if this Subdivision did not apply in respect of the agreement or transfer.

E is the ownership share in the property of the first home owner or owners, expressed as a percentage.

C is the duty (if any) that would be chargeable under section 80 on the agreement or transfer if that section applied in respect of the agreement or transfer.

- (4) Despite anything to the contrary in this section, an agreement or transfer under which one or more of the purchasers or transferees is a company is not eligible under the scheme for a shared equity concession if the Chief Commissioner is satisfied that the application relating to that agreement or transfer should not be approved for any good reason.
- (5) To avoid doubt, a reference in this Subdivision (except section 80) to an application that has been approved under the scheme includes an application that has been approved under the scheme because of eligibility for a shared equity concession.

[15] Section 80A Definitions

Insert in alphabetical order:

first home owner has the meaning given by section 71.

shared equity concession has the meaning given by section 80AA.

[16] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Duties Amendment (First Home Plus One) Act 2007

[17] **Schedule 1, Part 26**

Insert after Part 25:

**Part 26 Provisions consequent on enactment of
Duties Amendment (First Home Plus One)
Act 2007**

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- (1) The First Home Plus amendments apply in respect of the following:
 - (a) agreements for sale or transfer entered into on or after 1 May 2007,
 - (b) transfers that occur on or after 1 May 2007 (except where made in conformity with an agreement for sale or transfer entered into before 1 May 2007),
 - (c) mortgages over land the subject of those agreements or transfers.
- (2) Accordingly, a shared equity concession under Subdivision 1 of Division 1 of Part 8 of Chapter 2 applies only in respect of the agreements, transfers and mortgages referred to in subclause (1), despite section 70.
- (3) Anything done or omitted to be done on or after 1 May 2007 and before the date of assent to the *Duties Amendment (First Home Plus One) Act 2007* that would have been validly done or omitted if the First Home Plus amendments had been in force at the time that it was done or omitted is taken to have been validly done or omitted.
- (4) For the purposes of this clause, the *First Home Plus amendments* means the amendments made to Subdivision 1 of Division 1 of Part 8 of Chapter 2 by the *Duties Amendment (First Home Plus One) Act 2007*.

Schedule 2 Amendment of Land Tax Management Act 1956

(Section 4)

[1] Schedule 1A Principal place of residence exemption

Insert after clause 10:

10A Concession for first home owners who purchase under shared equity arrangements

- (1) 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 a disqualified person, if:
 - (a) the agreement or transfer under which the land was acquired by the natural person was eligible under the First Home Plus scheme for a shared equity concession, and
 - (b) an application in respect of the agreement or transfer under the First Home Plus scheme is approved by the Chief Commissioner.
- (2) For the purposes of this clause, a *disqualified person* means:
 - (a) a company, other than a trustee company acting in its representative capacity or a company acting in its capacity as trustee of a concessional trust, or
 - (b) a person who is a trustee acting in the person's capacity as trustee of a special trust.

Note. Under clause 11, the principal place of residence exemption cannot be claimed in respect of land that is jointly owned by a disqualified person except in specified circumstances. This clause provides for a further exception to that general principle.
- (3) However, the principal place of residence exemption does not extend to a disqualified person or to the interest of a disqualified person in the land, and clause 2 (3) does not apply to the disqualified person.
- (4) Accordingly, a disqualified person who jointly owns the land is liable to be assessed for taxation under this Act in respect of the land, as provided for by section 27, exclusive of the interest of any joint owner who is exempt from taxation under the principal place of residence exemption or under clause 2 (3).

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- (5) This clause ceases to apply in respect of land, and is taken never to have applied, if the Chief Commissioner revokes his or her approval under the First Home Plus scheme of the application in respect of the agreement or transfer concerned.
- (6) This clause applies despite clause 11.
- (7) In this clause:
First Home Plus scheme means the provisions of Subdivision 1 of Division 1 of Part 8 of Chapter 2 of the *Duties Act 1997*.

[2] Schedule 2 Savings and transitional provisions

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

Duties Amendment (First Home Plus One) Act 2007 (to the extent that it amends this Act)

[3] Schedule 2, Part 21

Insert after Part 20:

Part 21 Provisions consequent on enactment of Duties Amendment (First Home Plus One) Act 2007

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The amendments made to this Act by the *Duties Amendment (First Home Plus One) Act 2007* apply in respect of a land tax year commencing on or after 1 January 2008 and do not affect any liability for land tax in respect of a land tax year commencing before that date.