

State Revenue Legislation Further Amendment Act 2009 No 51

[2009-51]



New South Wales

Status Information

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

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Authorisation

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New South Wales

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State Revenue Legislation Further Amendment Act 2009 No 51



New South Wales

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

1 Name of Act

This Act is the *State Revenue Legislation Further Amendment Act 2009*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) The following provisions commence, or are taken to have commenced, on the date indicated:
 - (a) Schedule 3—30 June 2009,
 - (b) Schedules 1.1–1.4, 1.5 [1]–[12] and [26], 5, 6, 7.3 and 7.4—1 July 2009,
 - (c) Schedule 1.5 [28]–[31]—1 October 2009.

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 Amendment of **Duties Act 1997 No 123**

1.1 Amendments relating to First Home Plus

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

Insert after section 64 (c) (iii):

- (iv) no duty was chargeable on the acquisition of the land use entitlement by the transferee because of section 78A (which relates to the First Home Plus scheme).

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

Omit section 71 (6). Insert instead:

- (6) For the purpose of determining eligibility, the ownership at any time of another residential property, or a previous application under the scheme, is to be disregarded if the other residential property owned by the purchaser or transferee is or was vested in the purchaser or transferee on trust, or as an executor under a will, or the application was made by the purchaser or transferee in his or her capacity as trustee or executor.
- (7) The fact that a purchaser or transferee under an agreement or transfer is not a first home owner does not prevent the agreement or transfer from being eligible under the scheme if:
 - (a) one or more of the purchasers or transferees under the agreement or transfer is a first home owner, and
 - (b) the total ownership share in the property to which the application relates that is being acquired by purchasers or transferees who are not first home owners does not exceed 5%.

Note—

A purchaser or transferee is not considered to be a first home owner unless both the purchaser or transferee, and his or her spouse (if any), have not owned residential property before. See subsection (2).

- (8) For the purposes of this section, a person who is, or has at any time been, the holder of a leasehold interest granted by the Commonwealth in residential property in the Australian Capital Territory is taken to own or have owned that residential property.

[3] Section 73 Ineligible persons

Omit the definition of **Australian citizen** from section 73 (7).

Insert instead:

Australian citizen has the same meaning as in the [Australian Citizenship Act 2007](#) of the Commonwealth.

[4] Section 76A Approval of application in advance of satisfaction of residence requirement

Insert after section 76A (4):

- (5) A failure to comply with the condition prescribed by this section is a tax default for the purposes of the *Taxation Administration Act 1996*.

[5] Sections 80 and 80AA

Renumber the sections as sections 78A and 78B, and renumber any cross-references in the Act accordingly.

[6] Sections 79 and 80

Insert before section 80A:

79 Reassessment of duty payable where duty concession wrongly applied

- (1) The Chief Commissioner may reassess the duty chargeable in respect of an agreement or transfer that is initially approved under the scheme if the Chief Commissioner forms the opinion that the agreement or transfer is not eligible under the scheme (because of failure to comply with the residence requirement or otherwise).
- (2) The Chief Commissioner may issue a notice of assessment, based on the reassessment, for the duty chargeable in respect of the agreement or transfer.

80 Charge on land for duty liability of applicant

- (1) Any duty liability that an applicant has under the scheme in respect of an agreement or transfer is a charge on the applicant's interest in the land that is the subject of the agreement or transfer.
- (2) An applicant has a duty liability under the scheme in respect of an agreement or transfer if the applicant is required to pay an amount of duty to the Chief Commissioner, in respect of an agreement or transfer that is initially approved under the scheme:
 - (a) under a condition of approval referred to in section 76A, or
 - (b) under a notice of assessment referred to in section 79.
- (3) The charge created by this section gives the Chief Commissioner an interest in the land and, accordingly, the Chief Commissioner may lodge a caveat in respect of the land under the *Real Property Act 1900* to protect that interest.
- (4) The caveat must be withdrawn when the amount of the duty liability has been paid.
- (5) The amount of the duty liability is the amount of duty that the applicant is

required to pay to the Chief Commissioner in respect of the relevant agreement or transfer, together with any interest or penalty tax payable.

(6) In this section:

applicant includes a former applicant.

[7] Section 80A Definitions

Insert in alphabetical order:

notice of assessment means a notice of assessment under the *Taxation Administration Act 1996*.

residence requirement—see section 76.

Explanatory note

The First Home Plus scheme confers a duty exemption or concession on eligible first home buyers.

Item [2] makes it clear that it is a strict requirement of the scheme that both the applicant, and his or her spouse, must not have owned residential property previously. A concession that allows a purchase to be treated as eligible under the scheme even though a small ownership share in a property is being acquired by a person who has previously owned residential property does not extend to the first home buyer's spouse.

Item [2] also ensures that a person who has previously held a leasehold interest in residential property in the Australian Capital Territory is treated as a person who has previously owned residential land in Australia and, accordingly, is not eligible under the scheme.

Items [4] and [6] make further provision for the recovery of duty payable where an agreement or transfer is wrongly assessed as eligible under the scheme. At present, if the Chief Commissioner approves an application under the scheme in anticipation of the applicant complying with the residence requirement, and the applicant fails to comply with the residence requirement, the applicant is required to pay the amount of outstanding duty that would have been payable in respect of the relevant agreement or transfer if it had not been assessed as eligible under the scheme. Item [4] provides that a failure to do so is a tax default under the *Taxation Administration Act 1996*, so that interest and penalty tax may be charged in respect of a failure to pay the amount to the Chief Commissioner. Item [6] makes it clear that the Chief Commissioner can reassess an agreement or transfer if the Chief Commissioner forms the opinion that the agreement or transfer is not eligible under the scheme (whether because of failure to comply with the residence requirement or otherwise). Any liability for outstanding duty that an applicant or former applicant has under the scheme is a charge on the applicant's interest in the land that is the subject of the agreement or transfer. The Chief Commissioner may lodge and maintain a caveat in respect of the land until the duty (and any interest or penalty tax) has been paid. Item [7] is a consequential amendment.

Item [5] renumbers existing provisions relating to the First Home Plus scheme to accommodate the new provisions relating to recovery of duty payable where an agreement or transfer is wrongly assessed as eligible under the scheme.

Item [1] ensures that, if a transfer of land is exempt from duty under the scheme, a conversion of the form of title to that land (for instance from company title to strata title) is also exempt from duty. This is consistent with the treatment of other conversions in the form of title to land.

Item [3] updates the definition of **Australian citizen** as a consequence of changes to Commonwealth legislation.

1.2 Amendments relating to landholder duty

[1] Section 99 Transfer by special trust to corporation

Omit “Chapter 4A (Acquisition of interests in land rich landholders)” from section 99 (2).

Insert instead “Chapter 4 (Acquisition of interests in landholders)”.

[2] Chapter 4

Omit Chapter 4A. Insert instead:

Chapter 4 Acquisition of interests in landholders

Part 1 Preliminary

145 Overview

This Chapter charges duty on certain transactions that are not “dutiable transactions” under Chapter 2.

Note—

Duty is chargeable under this Chapter on the acquisition by a person of a significant interest in a landholder at the same rate as the transfer duty chargeable under Chapter 2.

146 Meaning of “landholder”

- (1) For the purposes of this Chapter, a **landholder** is a unit trust scheme, a private company or a listed company that has land holdings in New South Wales with an unencumbered value of \$2,000,000 or more.
- (2) A landholder is a **private landholder** if the landholder is a private unit trust scheme or private company.
- (3) A landholder is a **public landholder** if the landholder is a public unit trust scheme or a listed company.

147 What are the “land holdings” of a landholder?

- (1) For the purposes of this Chapter, a **land holding** is an interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor, subject to this section.
- (2) An interest in land is not a land holding of a unit trust scheme unless the interest is held by the trustees in their capacity as trustees of the scheme.
- (3) An interest in land is not a land holding of a company if the company holds the land on trust, but only if the company is not a beneficiary of the trust.

- (4) This section is in aid of, but does not limit, the operation of any provision of this Chapter providing for constructive ownership of interests.

Part 2 Charging of duty on acquisitions of interests in landholders

148 When does a liability for duty arise?

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

149 What is a “relevant acquisition”?

- (1) For the purposes of this Chapter, a person makes a **relevant acquisition** if the person:
- (a) acquires an interest in a landholder:
 - (i) that is of itself a significant interest in the landholder, or
 - (ii) that, when aggregated with other interests in the landholder held by the person or an associated person, results in an aggregation that amounts to a significant interest in the landholder, or
 - (iii) that, when aggregated with other interests in the landholder acquired by the person or other persons under transactions that form, evidence, give effect to or arise from what is substantially one arrangement between the acquirers, results in an aggregation that amounts to a significant interest in the landholder, or
 - (b) having a significant interest, or an interest described in paragraph (a) (ii), in a landholder, acquires a further interest in the landholder.
- (2) However, an acquisition of an interest in a private landholder under an arrangement that results in the private landholder ceasing to be a landholder is not a relevant acquisition because of subsection (1) (a) (iii).

150 What are “interests” and “significant interests” in landholders?

- (1) For the purposes of this Chapter, a person has an **interest** in a landholder if the person has an entitlement (otherwise than as a creditor or other person to whom the landholder is liable) to a distribution of property from the landholder on a winding up of the landholder or otherwise.
- (2) A person who has an interest in a landholder has a **significant interest** in the landholder if the person, in the event of a distribution of all the property of the landholder immediately after the interest was acquired, would be entitled to:
- (a) in the case of a private landholder—50% or more of the property distributed,

or

- (b) in the case of a public landholder—90% or more of the property distributed.
- (3) An interest in a landholder that was acquired at a time when the landholder did not hold land in New South Wales is not counted during the period of 12 months after the landholder first holds land in New South Wales.
- (4) In this section, **person** includes a landholder.

151 How may an interest be “acquired”?

- (1) For the purposes of this Chapter, a person acquires an interest in a landholder if the person obtains an interest, or the person’s interest increases, in the landholder regardless of how it is obtained or increased.
- (2) Without limiting subsection (1), a person may acquire an interest in a landholder in the following ways:
 - (a) the purchase, gift or issue of a unit or share,
 - (b) the cancellation, redemption or surrender of a unit or share,
 - (c) the abrogation or alteration of a right for a unit or share,
 - (d) the payment of an amount owing for a unit or share,
 - (e) if the person holds an interest in the landholder (whether or not as trustee for another person) and the capacity in which the person holds the interest changes (including if there is a change in the beneficial ownership of an interest held by a person as trustee).

Note—

For example, the capacity in which a person holds a unit or share in a landholder changes if the person declares a trust in respect of the unit or share.

- (3) To remove any doubt, it is declared that a person may acquire an interest in a landholder without acquiring units or shares in the landholder.

152 Acquisition statements

- (1) A person who has made a relevant acquisition must prepare a statement (an **acquisition statement**) and lodge it with the Chief Commissioner.
- (2) The acquisition statement is to be prepared in an approved form and must contain the following information:
 - (a) the name and address of the person who has acquired the interest,
 - (b) in relation to each interest acquired, the date on which it was acquired,

- (c) if the relevant acquisition results from the aggregation of the interests of associated persons, particulars of the interests acquired by the person and any associated persons on the date of the relevant acquisition,
 - (d) particulars of the total interest of the person and any associated person in the landholder at that date.
- (3) The acquisition statement must also contain the following additional information:
- (a) the unencumbered value of all land holdings and goods in New South Wales of the landholder as at the date of the relevant acquisition and, if the landholder is a private landholder, as at the date of acquisition of each interest acquired in the landholder during the statement period,
 - (b) such other information as the Chief Commissioner may require.
- (4) The additional information referred to in subsection (3) is not required in relation to any exempt acquisition.
- (5) The **statement period** is the period commencing 3 years before the date of the relevant acquisition and ending on the date of the relevant acquisition.
- (6) However, if the relevant acquisition is related to an acquisition of an interest in the landholder that was made before the start of that 3-year period (an **earlier acquisition**), the statement period is the period commencing on the date that earlier acquisition was made (or, if there is more than one, the first of them) and ending on the date of the relevant acquisition.
- (7) For the purposes of this section, a relevant acquisition is related to an earlier acquisition if it is made as a result of an arrangement entered into at the time of, or in connection with, the earlier acquisition.

Note—

In ascertaining whether or not a liability to lodge a statement under this section exists, it is necessary to have regard to provisions of Part 3 that deal with how a person may be taken to have acquired an interest in a landholder because of the interests in a linked entity.

153 When must duty be paid?

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

154 Who is liable to pay the duty?

- (1) Duty chargeable under this Part is payable by the person who makes the relevant acquisition, except as provided by subsection (2).

- (2) If a relevant acquisition results from an aggregation of the interests of associated persons, the person who made the relevant acquisition and the associated person or persons are jointly and severally liable for payment of the duty.

155 How duty is charged on relevant acquisitions—private landholders

- (1) If an acquisition statement that discloses a relevant acquisition in a private landholder does not disclose any other acquisitions during the statement period, duty is chargeable, at the general rate, on the amount calculated by multiplying the unencumbered value of all land holdings and goods of the landholder in New South Wales (calculated at the date of acquisition of the interest acquired) by the proportion of that value represented by the interest acquired in the relevant acquisition.
- (2) If a relevant acquisition results from the aggregation of the interests of associated persons, the reference in subsection (1) to the interest acquired includes a reference to any interests acquired by associated persons on the same date.
- (3) If an acquisition statement disclosing a relevant acquisition in a private landholder also discloses one or more other acquisitions during the statement period, duty is chargeable, at the general rate, on the aggregate of amounts severally calculated, in the manner provided by subsection (1), in respect of each interest required to be disclosed in the statement.
- (4) Duty payable under this section is to be reduced by the sum of the duty paid or payable under this Act in respect of an acquisition, during the statement period, by the person or any associated person of an interest in the same landholder, but only in proportion to the extent to which the duty paid or payable is attributable to the amount of the duty payable under this section.
- (5) Duty payable under this section is to be reduced by the sum of the amounts severally calculated, in accordance with the following formula, in respect of each acquisition of an interest in the landholder made by the person, or an associated person, during the statement period:

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

where:

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

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

C is the sum of:

- (a) the duty under this Act paid or payable in respect of:
 - (i) a dutiable transaction in relation to the units or shares acquired, or
 - (ii) a capital reduction or a rights alteration under Part 3 of Chapter 3 by which an interest in the landholder was acquired, or
 - (iii) an allotment of shares under Part 5 of Chapter 3 by which an interest in the landholder was acquired, and
 - (b) any duty of a like nature so paid or payable under a law of another Australian jurisdiction.
- (6) If a relevant acquisition is made owing to the aggregation of the interests of associated persons, but the Chief Commissioner is satisfied that the associated persons acquired their respective interests independently, the Chief Commissioner may assess and charge duty on each separate acquisition without aggregating the interests of the person who made it with the interests of associated persons.
- (7) Duty is not chargeable under this section on the acquisition of an interest in a landholder that is required to be disclosed in an acquisition statement if the acquisition is an exempt acquisition.
- (8) This section is subject to Part 3.

156 How duty is charged on relevant acquisitions—public landholders

- (1) If an acquisition statement discloses a relevant acquisition in a public landholder, the duty chargeable on the relevant acquisition is 10% of the duty that would be chargeable, at the general rate, on a transfer of all the land holdings and goods of the landholder in New South Wales (calculated as if the transfer had occurred at the date of relevant acquisition).
- (2) For that purpose, the dutiable value of the land holdings and goods is the unencumbered value of land holdings and goods at the date of the relevant acquisition.
- (3) If an acquisition disclosed in an acquisition statement is an exempt acquisition, the duty chargeable under this section is to be calculated after deducting from the dutiable value of the land holdings and goods the proportion of that value represented by the value of the interest acquired in the exempt acquisition.
- (4) If the public landholder is a widely held trust, the duty payable under this section is also to be reduced by the following amounts (if applicable):

- (a) the amount of duty under this Act paid or payable in respect of a dutiable transaction in relation to the units concerned,
 - (b) the amount of any duty of a like nature so paid or payable under a law of another Australian jurisdiction.
- (5) If duty is chargeable in respect of a relevant acquisition made by a person in a public landholder, no duty is chargeable in respect of any further acquisition made by that person in that public landholder.
- (6) This section is subject to Part 3.

157 What is the “general rate” of duty?

For the purposes of this Chapter, the **general rate** is the rate of duty specified in section 32 for a transfer of dutiable property.

Part 3 General principles to be applied under this Chapter

158 Constructive ownership of land holdings and other property: linked entities

- (1) In addition to any interest in land or other property that it may hold in its own right, a unit trust scheme, private company or listed company is taken, for the purposes of this Chapter, to hold an interest in land or other property held by a linked entity of the unit trust scheme or company.
- (2) A **linked entity** of a private unit trust scheme or a private company (the **principal entity**) means a person:
- (a) who is part of a chain of persons:
 - (i) which includes the principal entity, and
 - (ii) which is comprised of one or more links, and
 - (iii) in which a link exists if a person would be entitled to receive not less than 50% of the unencumbered value of the property of another person if the other person were to be wound up, and
 - (iv) which does not include, in any of the links between the person and the principal entity, a public unit trust scheme or a listed company, and
 - (b) who is not a public unit trust scheme or a listed company.
- (3) A **linked entity** of a public unit trust scheme or listed company (the **principal entity**) means a person who is part of a chain of persons:
- (a) which includes the principal entity, and

- (b) which is comprised of one or more links, and
 - (c) in which a link exists if a person would be entitled to receive not less than 50% of the unencumbered value of the property of another person if the other person were to be wound up.
- (4) The value, for duty purposes, of the interest in land or other property that a unit trust scheme, private company or listed company (being a principal entity) is taken, by this section, to hold because of a holding by a linked entity is that portion of the interest's unencumbered value to which the unit trust scheme or company would be entitled (without regard to any liabilities of the linked entity or any other person in the ownership chain) if each entity in the chain of entities were to be wound up.

159 Constructive ownership of land holdings and other property: discretionary trusts

- (1) A person or a member of a class of persons in whose favour, by the terms of a discretionary trust, capital the subject of the trust may be applied:
- (a) in the event of the exercise of a power or discretion in favour of the person or class, or
 - (b) in the event that a discretion conferred under the trust is not exercised,
- is, for the purposes of this section, a **beneficiary** of the trust.
- (2) A beneficiary of a discretionary trust is taken to own or to be otherwise entitled to the property the subject of the trust.
- (3) For the purposes of this Chapter, any property that is the subject of a discretionary trust is taken to be the subject of any other discretionary trust:
- (a) that is, or
 - (b) any trustee of which (in the capacity of trustee) is, a beneficiary of it.
- (4) Subsection (3) extends to apply to property that is the subject of a discretionary trust only by the operation of that subsection.
- (5) In this section, **person** includes a landholder.

Note—

Discretionary trust is defined in the Dictionary.

160 Agreements for sale or transfer of land

- (1) For the purposes of this Chapter, the transferor and the transferee under an uncompleted agreement for the sale or transfer of land are taken to be separately entitled to the whole of the land.

Note—

If duty is charged on an acquisition that relates to a land holding to which subsection (1) applies, the Chief Commissioner may defer payment of duty under section 47 of the [Taxation Administration Act 1996](#).

- (2) If:

- (a) at the time of acquisition of an interest by any person in a landholder that necessitates the lodgment of an acquisition statement under this Chapter, the landholder was the vendor under an uncompleted agreement for the sale or transfer of land, and

- (b) the agreement is subsequently completed,

the Chief Commissioner is to assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a land holding of the landholder.

- (3) If:

- (a) at the time of acquisition of an interest by any person in a landholder that necessitates the lodgment of an acquisition statement under this Chapter, the landholder was the purchaser under an uncompleted agreement for the sale or transfer of land, and

- (b) the agreement is subsequently rescinded, annulled or otherwise terminated without completion,

the Chief Commissioner is to assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a land holding of the landholder.

- (4) In this section, a reference to a **landholder** includes a reference to a linked entity of the landholder.

161 Agreements for sale or issue of shares or units in landholder

- (1) For the purposes of this Chapter, if an agreement is made to purchase or issue a share or unit in a landholder, then, on and from completion of the agreement:

- (a) the purchaser or person to whom the unit or share is to be issued is taken to have an entitlement to a distribution of property from the landholder on a winding up of the landholder (as if the purchase or interest acquired by the

person were registered on completion), and

- (b) in the case of an agreement to purchase a share or unit, the registered interest of the vendor in the unit or share is to be disregarded.

Note—

Accordingly, the purchaser or person to whom a share or unit is issued under an agreement for the sale or issue of a share or unit in a landholder acquires an interest in the landholder when the agreement is completed.

- (2) For the purposes of subsection (1), an agreement is taken to be completed when the necessary transfer or title documents are delivered to the person acquiring the interest, or the consideration for the purchase or issue is paid, whichever first occurs.
- (3) This section does not apply in respect of shares or units in a landholder which is a listed company or a listed trust.

162 Valuation of property

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

163 Maximisation of entitlements on distribution of property

- (1) This section applies to any calculation, for the purposes of this Chapter, of the entitlement of a person (the ***interested person***) to participate in a distribution of the property of a landholder, whether on a winding up of the landholder or otherwise.
- (2) A calculation is to be made based, firstly, on a distribution carried out in accordance with the constitution of the landholder, and with any law relevant to the distribution, as in force at the time of distribution, and the entitlement of the interested person is to be evaluated accordingly.
- (3) Next, a calculation is to be made based on a distribution carried out after the interested person, and any other person whom the interested person has power to direct with respect to such a distribution or who is, in relation to the interested person, an associated person, had exercised all powers and discretions exercisable by them by reason of having acquired an interest in the landholder concerned:
 - (a) to effect or compel an alteration to the constitution of the landholder, and
 - (b) to vary the rights conferred by units or shares in the landholder, and
 - (c) to effect or compel the substitution or replacement of units or shares in the landholder with other units or shares in it,in such a manner as would maximise the value of the entitlement, and the entitlement of the interested person is to be evaluated accordingly.
- (4) The results obtained by an evaluation of the interested person's entitlement in accordance with subsections (2) and (3) are then to be compared, and whichever evaluation results in a greater entitlement is the correct evaluation, for the purposes of this Chapter, of the entitlement, unless the Chief Commissioner, being satisfied that the application of this subsection in the particular case would be inequitable, determines otherwise.

Part 4 Exemptions and concessions

163A General exemptions

An acquisition by a person of an interest in a landholder is an exempt acquisition:

- (a) if the interest was acquired in the person's capacity as:
 - (i) a receiver or trustee in bankruptcy, or
 - (ii) a liquidator, or

- (iii) an executor or administrator of the estate of a deceased person, or
- (b) if the interest was acquired solely as the result of the making of a compromise or arrangement under Part 5.1 of the *Corporations Act 2001* of the Commonwealth that has been approved by a court, not being a compromise or arrangement that the Chief Commissioner is satisfied was made with the intention of defeating the operation of this Chapter, or
- (c) if the interest concerned is acquired solely from a pro rata increase or decrease in the interests of all unit holders or shareholders, or
- (d) if the interest was acquired solely as the result of the distribution of the estate of a deceased person, whether effected in the ordinary course of execution of a will or codicil or administration of an intestate estate or as the result of the order of a court, made under Chapter 3 of the *Succession Act 2006* or otherwise, varying the application of the provisions of a will or codicil or varying the application of the rules governing the distribution of the property of an intestate estate, or
- (e) if the land holding of the landholder comprises land used for primary production and the Chief Commissioner is satisfied that, had the landholder transferred the land to the person acquiring an interest as a result of the acquisition immediately before that acquisition, the transfer of the land would not be chargeable with duty under this Act because of the application of section 274, or
- (f) if the acquisition of an interest in a landholder would be chargeable with duty of \$50 under section 54 or 54A if the property being acquired were land in New South Wales and the Chief Commissioner is satisfied that the acquisition is not part of a scheme to avoid duty under this Chapter, or
- (g) if the interest concerned was acquired before the landholder held land in New South Wales, or
- (h) if the interest concerned is an interest in a private unit trust scheme acquired before 10 June 1987, or
- (i) if the interest concerned is an interest in a private company acquired before 21 November 1986, or
- (j) if the interest concerned is an interest in a private landholder acquired before 1 July 2009 and, at the time of its acquisition, the private landholder was not a land rich landholder within the meaning of Chapter 4A (as in force before its repeal by the *State Revenue Legislation Further Amendment Act 2009*), or
- (k) if the interest concerned is an interest in a public landholder acquired before 1 July 2009.

163B Exemption—break-up of marriages and other relationships

- (1) An acquisition by a person of an interest in a landholder is an exempt acquisition:
- (a) if the interest was acquired by the parties to a marriage that is dissolved or annulled, or in the opinion of the Chief Commissioner has broken down irretrievably, or by either of them, or by a child or children of either of them or a trustee of such a child or children, as a result of a transfer made in accordance with:
 - (i) a financial agreement made under section 90B, 90C or 90D of the *Family Law Act 1975* of the Commonwealth that, under that Act, is binding on the parties to the agreement, or
 - (ii) an order of a court made under that Act, or
 - (iii) an agreement that the Chief Commissioner is satisfied has been made for the purpose of dividing matrimonial property as a consequence of the dissolution, annulment or breakdown of the marriage, or
 - (b) if the interest was acquired by the parties to a de facto relationship that has, in the opinion of the Chief Commissioner, broken down irretrievably, or by either of them, or by a child or children of either of them or a trustee of such a child or children, as a result of a transfer made in accordance with:
 - (i) a financial agreement made under section 90UB, 90UC or 90UD of the *Family Law Act 1975* of the Commonwealth that, under that Act, is binding on the parties to the agreement, or
 - (ii) an order of a court made under that Act, or
 - (c) if the interest was acquired by the parties to a domestic relationship that has, in the opinion of the Chief Commissioner, been terminated, or by either of them, or by a child or children of either of them or a trustee of such a child or children, as a result of a transfer made in accordance with:
 - (i) an order of a court made under the *Property (Relationships) Act 1984*, or
 - (ii) a termination agreement within the meaning of section 44 of the *Property (Relationships) Act 1984* that has been certified in accordance with section 47 of that Act, or

Note—

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

- (d) to the extent that:

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

(2) If:

- (a) duty was paid on the acquisition of matrimonial property by the parties to a marriage or by either of them, or by a child or children of either of them or a trustee of such a child or children, and
- (b) the interest acquired was acquired as a result of a transfer made in accordance with an agreement or order referred to in subsection (1) (a), and
- (c) the marriage has been dissolved or annulled or has broken down irretrievably,

the person who paid the duty is entitled to a refund of it.

(3) If:

- (a) duty was paid on the acquisition of relationship property by the parties to a de facto relationship or by either of them, or by a child or children of either of them or a trustee of such a child or children, and
- (b) the interest acquired was acquired as a result of a transfer made in accordance with an agreement or order referred to in subsection (1) (b), and
- (c) the de facto relationship has broken down,

the person who paid the duty is entitled to a refund of it.

(4) If:

- (a) duty was paid on the acquisition of relationship property by the parties to a domestic relationship or by either of them, or by a child or children of either of them or a trustee of such a child or children, and
- (b) the interest acquired was acquired as a result of a transfer made in accordance with an order or agreement referred to in subsection (1) (c), and
- (c) the domestic relationship has been terminated,

the person who paid the duty is entitled to a refund of it.

- (5) A party to a marriage, de facto relationship or domestic relationship may provide a statement to the Chief Commissioner, in the form of a statutory declaration, to the effect that:
- (a) in the case of a marriage:
- (i) the party intends to apply for a dissolution or an annulment of the marriage, or
- (ii) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed, or
- (b) in the case of a de facto relationship or domestic relationship, the relationship has broken down or been terminated.
- (6) The Chief Commissioner is required to have regard to any such statement in exercising his or her functions under this section.
- (7) Subsection (6) does not limit the functions of the Chief Commissioner under section 72 of the *Taxation Administration Act 1996*.
- (8) In this section:

marriage includes a void marriage.

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

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

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

163C Exemption for “top hatting” arrangements

- (1) An acquisition by a person of an interest in a landholder is an exempt acquisition if the Chief Commissioner is satisfied that:
- (a) the acquisition is made for the purpose of giving effect to a scheme that would qualify as a roll-over under Subdivision 124-Q of the *Income Tax Assessment Act 1997* of the Commonwealth, and
- (b) when the scheme is completed, the interposed trust will be a public unit trust scheme or a landholder, and
- (c) the acquisition is not part of a scheme a purpose of which is to minimise

duty otherwise payable under this Act.

Note—

A roll-over involves a scheme for interposing a unit trust scheme (whether a new or existing unit trust scheme) between persons who have an ownership interest in 2 or more unit trust schemes, or in one or more companies and one or more unit trust schemes, and the unit trust schemes or companies in which they have an ownership interest. The interests of the unit holders or shareholders are stapled together to form stapled securities and the interposed unit trust becomes the owner of all the stapled interests.

- (2) An acquisition by a person for the purposes of a scheme referred to in Subdivision 124-Q of the *Income Tax Assessment Act 1997* of the Commonwealth ceases to be an exempt acquisition if:
 - (a) the interposed trust is not a public unit trust scheme or a landholder when the scheme is completed, or
 - (b) the interposed trust ceases to be a public unit trust scheme or a landholder at any time within 12 months after the scheme is completed.
- (3) If an acquisition ceases to be an exempt acquisition:
 - (a) duty is chargeable under this Chapter in respect of the acquisition as if the acquisition had never been an exempt acquisition, and
 - (b) the person who made the acquisition must lodge an acquisition statement or a revised acquisition statement with the Chief Commissioner to reflect the fact that the acquisition has ceased to be an exempt acquisition, and
 - (c) a tax default does not occur for the purposes of the *Taxation Administration Act 1996* if the duty (if any) chargeable under this Chapter as a result of the acquisition ceasing to be an exempt acquisition is paid within 3 months after the acquisition ceases to be an exempt acquisition.

- (4) In this section:

interposed trust, in relation to a scheme, has the same meaning as it has in section 124-1045 of the *Income Tax Assessment Act 1997* of the Commonwealth.

163D Concession for primary producers—continuation of land rich requirement

- (1) Duty is chargeable under this Chapter in respect of an acquisition of an interest in a primary producer only if, when the acquisition is made, the primary producer is land rich.
- (2) For the purposes of this section, a **primary producer** is a landholder whose land holdings in all places, whether within or outside Australia, wholly or

predominantly comprise land used for primary production or land that would be considered to be land used for primary production if it were land in New South Wales.

- (3) A primary producer is **land rich** if:
- (a) it has land holdings in New South Wales with an unencumbered value of \$2,000,000 or more, and
 - (b) its land holdings in all places, whether within or outside Australia, comprise 80% or more of the unencumbered value of all its property.
- (4) If at any time within the period of 5 years after an acquisition of an interest in a primary producer is made, the landholder in whom the acquisition is made ceases for any length of time to be a primary producer:
- (a) the person who made the acquisition must immediately notify the Chief Commissioner:
 - (i) that the landholder has ceased to be a primary producer, and
 - (ii) of the date on which the landholder ceased to be a primary producer, and
 - (b) duty is chargeable under this Chapter in respect of the acquisition on the date on which the landholder ceased to be a primary producer, and
 - (c) the Chief Commissioner must make an assessment of the duty so chargeable.
- (5) Property is not to be counted in calculating the unencumbered value of the property of a primary producer for the purposes of this section if the primary producer is unable to satisfy the Chief Commissioner that the property was obtained otherwise than to reduce, for the purposes of this Chapter, the ratio of its land holdings in all places, whether within or outside Australia, to the unencumbered value of all its property.

163E Concession for acquisitions securing financial accommodation

- (1) If the person lodging an acquisition statement under this Chapter in relation to the acquisition of an interest in a landholder:
- (a) informs the Chief Commissioner at the time the statement is lodged that the acquisition is effected for the purpose of securing financial accommodation, and
 - (b) the Chief Commissioner is satisfied that the acquisition is effected for that purpose,

the statement, in so far as it relates to that acquisition, is not chargeable with duty, except as provided by subsection (2).

- (2) The statement is chargeable with duty at the expiration of the period of 5 years after the date of the acquisition (or such longer period as may be determined by the Chief Commissioner in the particular case) if the interest concerned is not:
 - (a) re-acquired by the person from whom it was acquired, or
 - (b) in the case of an acquisition by way of mortgage, conveyed by the mortgagee to a third person in exercise of the mortgagee's power of sale, within that period (or that longer period).
- (3) A person is not required to lodge an acquisition statement with the Chief Commissioner in respect of a re-acquisition by the person of the interest concerned.

163F Concession for redemption and re-issue arrangements

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

- (c) a tax default occurs for the purposes of the *Taxation Administration Act 1996* if the whole of any duty assessed under paragraph (b) is not paid to the Chief Commissioner within 3 months after the assessment.

163G Significant holdings in goods

If the Chief Commissioner is satisfied that the unencumbered value of all goods in New South Wales of a landholder comprises not less than 90% of the total unencumbered value of all land holdings and goods in New South Wales of a landholder, the Chief Commissioner may disregard the value of the goods in determining the duty chargeable under this Chapter.

163H Discretion to grant exemption or concession

- (1) The Chief Commissioner may, if satisfied that the application of this Chapter to an acquisition in a particular case would not be just and reasonable:
- (a) grant a full exemption in respect of the acquisition, or
 - (b) grant a partial exemption in respect of the acquisition.
- (2) If the Chief Commissioner grants a full exemption in respect of the acquisition, the acquisition is an exempt acquisition.
- (3) If the Chief Commissioner grants a partial exemption in respect of the acquisition, the Chief Commissioner may make any reduction in the duty chargeable in respect of the acquisition that the Chief Commissioner considers just and reasonable in the circumstances.

Part 5 Interpretation

163I Meaning of expressions used in this Chapter

In this Chapter:

acquisition statement—see section 152.

exempt acquisition means:

- (a) an exempt acquisition under Part 4, or
- (b) an acquisition of an interest in a landholder that is not chargeable with duty because of Chapter 11.

landholder has the meaning given by section 146.

private landholder—see section 146.

public landholder—see section 146.

statement period—see section 152.

Note—

Other expressions are defined in the Dictionary.

163J Meaning of “associated person”

Without limiting the meaning of **associated person** in the Dictionary, a public company and a subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of a public company are taken to be associated persons for the purposes of this Chapter.

163K Goods of a landholder

(1) In this Chapter:

goods does not include the following:

- (a) goods that are stock-in-trade,
- (b) materials held for use in manufacture,
- (c) goods under manufacture,
- (d) goods held or used in connection with land used for primary production,
- (e) livestock,
- (f) a registered motor vehicle,
- (g) a ship or vessel.

(2) For the purposes of this Chapter, goods are considered to be goods of a landholder if the landholder has any interest in the goods, other than an interest as mortgagee, chargee or other secured creditor.

163L Meaning of “unit trust scheme”

Without limiting the meaning of **unit trust scheme** in the Dictionary, the following are taken to be unit trust schemes for the purposes of this Chapter:

- (a) a managed investment scheme,
- (b) any sub-trust of a unit trust scheme (as defined in the Dictionary) or a managed investment scheme.

[3] Section 275 Charitable and benevolent bodies

Omit “Land rich duty” from section 275 (2A).

Insert instead “Landholder duty”.

[4] Section 275 (2A)

Omit “land rich landholder”. Insert instead “landholder”.

[5] Section 275 (3)

Omit the definition of **land rich duty**. Insert instead:

landholder duty means the duty chargeable under Chapter 4.

[6] Section 275A Partial exemption for certain transactions by charitable and benevolent bodies

Omit “land rich” from section 275A (5).

[7] Section 275A (5)

Omit “Chapter 4A”. Insert instead “Chapter 4”.

[8] Section 281 Corporate reconstructions

Omit section 281 (1) and (2). Insert instead:

- (1) Duty under this Act is not chargeable on a corporate reconstruction transaction approved by the Chief Commissioner in accordance with guidelines approved by the Treasurer.
- (2) For the purposes of this section, a **corporate reconstruction transaction** means:
 - (a) a transfer, or agreement for sale or transfer, of dutiable property between corporations that are members of the same group, or
 - (b) a surrender of an interest in land by a corporation to a corporation who is a member of the same group, or
 - (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 group, or
 - (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 group, or
 - (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 group.

[9] Dictionary

Insert at the start of the Dictionary, before the definitions:

1 Definitions

In this Act:

[10] Dictionary, definitions of “associated person”, “linked entity”, “private unit trust scheme”, “public unit trust scheme”, “related person” and “widely held trust”

Omit the definitions. Insert instead:

associated person—see clause 2.

linked entity of a unit trust scheme or company has the meaning given by section 158.

private unit trust scheme means a unit trust scheme that is not a public unit trust scheme.

public unit trust scheme means a listed trust or a widely held trust.

related person means a person who is related to another person in accordance with any of the following provisions:

- (a) natural persons are related persons if:
 - (i) one is the spouse or de facto partner of the other, or
 - (ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister,
- (b) companies are related persons if they are related bodies corporate,
- (c) a natural person and a private company are related persons if the natural person is a majority shareholder or director of the company or of another private company that is a related body corporate,
- (d) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee,
- (e) a private company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee.

widely held trust—see clause 3.

[11] Dictionary

Insert in alphabetical order:

listed company means a company any of the shares of which are quoted on the Australian Stock Exchange or any exchange of the World Federation of Exchanges.

[12] Dictionary, definitions of “qualifying investor” and “wholesale unit trust scheme”

Omit the definitions.

[13] Dictionary, clauses 2 and 3

Insert at the end of the Dictionary:

2 Meaning of “associated person”

- (1) For the purposes of this Act, an **associated person** means a person who is associated with another person in accordance with the following provisions:
- (a) persons are associated persons if they are related persons,
 - (b) natural persons are associated persons if they are partners in a partnership to which the *Partnership Act 1892* applies,
 - (c) companies are associated persons if the same person has a majority shareholding in each company,
 - (d) trustees are associated persons if any person is a beneficiary common to the trusts of which they are trustees,
 - (e) a company and a trustee are associated persons if a related body corporate of the company is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee,
 - (f) a company and the trustee of a unit trust scheme are associated persons if the shares in the company and the units in the unit trust scheme are “stapled”, so that they cannot be traded except as a single security,
 - (g) trustees of unit trust schemes are associated persons if the units in the unit trust schemes are “stapled”, so that they cannot be traded except as a single security.
- (2) However, the responsible entity for a managed investment scheme and the responsible entity for another managed investment scheme are considered to be associated persons only if:
- (a) a person who holds a significant interest in one scheme also holds a

significant interest in the other scheme, or

(b) a person holds a significant interest in one scheme and a related person to that person holds a significant interest in the other scheme.

(3) A person holds a **significant interest** in a managed investment scheme if the person is a member of the scheme and has an interest in the scheme that (either alone or when aggregated with the interests in the scheme held by related persons who are members of the scheme) is an interest of more than 20%.

3 Meaning of “widely held trust”

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

(2) If a registered unit holder in a unit trust scheme holds units as a trustee for 2 or more trusts the unit holder is to be treated as a separate registered unit holder in relation to each of those trusts and the units held under each trust are to be treated as a separate unit holding.

(3) However, a trustee is not to be treated as a separate registered unit holder in relation to 2 or more trusts if, as separate registered unit holders in relation to those trusts, they would be associated persons.

Explanatory note

The amendments replace the provisions of the *Duties Act 1997* relating to charging of duty on the acquisition of an interest in a unit trust scheme or company that is a land rich landholder. Duty is chargeable under the current provisions when a significant interest in a land rich landholder is acquired (for example, through the acquisition of shares or units in the unit trust scheme or company). Duty is charged by reference to the value of the land holdings of the unit trust scheme or company, at the same rate as the general rate for a transfer of land under Chapter 2 of the Act.

The principal changes effected by the new provisions are as follows:

(a) Liability for duty will be assessed on the acquisition of an interest in a landholder whether or not that landholder is “land rich”. That is, an acquisition of a significant interest in a unit trust scheme or company will be dutiable under the provisions if the scheme or company has land holdings with an unencumbered value of \$2,000,000 or more. It will no longer be necessary to establish that its land holdings comprise 60% or more of the unencumbered value of all its property. This change will not apply to acquisitions in primary producers. Duty will only be chargeable on an acquisition of a significant interest in a primary producer if the unencumbered value of its land holdings comprise 80% or more of the unencumbered value of all its property.

(b) Liability for duty will be extended to acquisitions of interests in public unit trust schemes and listed companies that are landholders. At present, only acquisitions in private unit trust schemes and private companies that are landholders are dutiable. However, for public unit trust schemes and listed companies that are landholders (**public landholders**), a different threshold for the charging of duty will apply. A significant interest is acquired in a public landholder only if a 90% interest in the landholder is acquired. For private landholders a 50% interest suffices. Duty on the acquisition of a significant interest in a public landholder will be charged at a concessional rate, being 10% of the rate that would be charged on a

transfer of all the land holdings and goods of the public landholder.

- (c) The threshold at which duty is charged on an acquisition in a private unit trust scheme is increased so that it is the same as the threshold for the charging of duty on an acquisition in a private company. In both cases, a significant acquisition will now be an acquisition of an interest of 50% or more. At present, an acquisition of an interest in a private unit trust scheme is dutiable if an interest of 20% or more is acquired.
- (d) Duty on the acquisition of an interest in a landholder will be charged by reference to the value of the goods of the landholder, as well as the value of its land holdings. The inclusion of goods makes the arrangements for charging of duty more consistent with Chapter 2 of the Act, which imposes duty on a transfer of land or goods (or both).
- (e) Tracing provisions that allow land holdings to be traced through linked entities are revised so that entities can be linked only where a person has an interest of 50% or more in another entity (rather than 20%).
- (f) Provisions that quarantine interests in private landholders that were acquired before the landholder duty provisions commenced or before the landholder held land are removed. As a result, those interests may be counted for the purpose of determining whether a person has acquired a significant interest in a landholder. However, duty will not be chargeable on an interest to the extent that it was acquired before the commencement of the landholder duty provisions or before the landholder held land in New South Wales. An interest in a landholder that is acquired at a time when a landholder does not hold land in New South Wales will continue to be quarantined for the period of 12 months after the landholder first holds land in New South Wales.
- (g) The concessional treatment currently given to a private unit trust scheme that is in the process of converting into a public unit trust scheme is removed.
- (h) Managed investment schemes, and sub-trusts of unit trust schemes, will be treated as unit trust schemes for the purposes of the provisions.
- (i) Further provision is made for the disclosure of previous acquisitions in a landholder, so that an acquisition made more than 3 years before the acquisition to which a statement relates will have to be disclosed if it is related to a later acquisition.
- (j) The definitions of **associated person** and **related person** are changed, to reflect the fact that the scheme now extends to public landholders. Interests acquired in a landholder by a person may be aggregated with interests acquired by associated persons for duty purposes. The new provisions allow trusts and companies to be treated as associated persons under the provisions if their securities are traded as stapled securities. The changes to the definitions will also apply in respect of Chapter 2 of the Act (which similarly allows dutiable transactions made by or to associated persons to be aggregated).
- (k) The definition of **associated person** is also changed to limit the circumstances in which the responsible entity of a managed investment scheme will be deemed to be associated with the responsible entity of another managed investment scheme. (Again, this affects when dutiable transactions and acquisitions in landholders can be aggregated.)
- (l) Provision is made for a partial exemption from duty under the landholder provisions where the Chief Commissioner considers it just and reasonable to grant a partial exemption. At present, only a full exemption can be granted.
- (m) The general exemption under the Act for corporate reconstructions is extended to landholder duty.

The principal amendment is set out in item [2]. Items [10], [11] and [13] define the terms used in the new provisions. Item [8] extends the corporate reconstruction exemption as referred to above. Items [1], [3]-[7], [9] and [12] are consequential amendments.

Transitional provisions relating to these amendments are in Schedule 1.5 [41]. The amendments will apply to the assessment of duty on interests acquired in landholders on or after 1 July 2009. However, in the case of public landholders, an acquisition of a significant interest will be chargeable with duty under the new provisions only if an acquisition is made in the public landholder on or after 1 October 2009. Acquisitions in public landholders made before 1 July 2009 are exempt from duty. There is an exemption for acquisitions in public landholders that have already been announced to the market. Concessions also apply to acquisitions made as a result of an option or agreement entered into before 11 November 2008 (the date the removal of the land rich requirement was announced in Parliament).

1.3 Amendments relating to mortgage duty

[1] Section 204 Imposition of duty

Omit “of advances” from the note to the section.

[2] Section 204, note

Omit “section 217”. Insert instead “section 214”.

[3] Section 204, note

Omit “sections 216–218C”. Insert instead “section 216”.

[4] Section 208 When does a liability arise?

Omit section 208 (2). Insert instead:

- (2) A mortgage becomes liable to additional duty on the making of an advance or further advance if, as a result of that advance or further advance, the amount secured by the mortgage exceeds the amount secured by the mortgage at the time a liability to duty last arose under this Act.

Note—

Section 219 exempts some further advances from duty.

[5] Section 208 (3) and (3A)

Omit “is duly stamped under a corresponding Act or” wherever occurring.

[6] Section 210

Omit the section. Insert instead:

210 How is mortgage duty charged?

- (1) The amount of duty chargeable on a mortgage is calculated by reference to the amount secured by it at the liability date, as determined under Part 2.
- (2) The amount of duty is:
- (a) \$5.00, if no amount is secured by the mortgage or the amount secured by the mortgage is not more than \$16,000, or
- (b) if the amount secured by the mortgage is more than \$16,000—\$5.00, plus a further \$4.00 for every \$1,000, or part, by which the amount secured exceeds \$16,000.
- (3) The amount of duty chargeable on the mortgage at a liability date is to be

reduced by the amount of ad valorem duty (if any) for which the mortgage has already been duly stamped under this Act.

- (4) No refund of duty is payable because the amount of ad valorem duty for which a mortgage has already been duly stamped under this Act exceeds the duty chargeable under subsection (2) on the amount secured by the mortgage at a liability date.

[7] Section 211

Omit the section. Insert instead:

211 Consequences of non-payment of duty

A mortgage on which duty is required by this Chapter to be paid is unenforceable to the extent of any amount secured by the mortgage on which duty has not been paid.

[8] Sections 213 and 214

Omit the sections. Insert instead:

213 Amount secured by mortgage

- (1) For the purposes of this Chapter, the **amount secured** by a mortgage is the amount of any advances made under an agreement, understanding or arrangement for which the mortgage is security (even if the amount of advances made exceeds the amount of advances recoverable under the mortgage).
- (2) A reference in this Chapter to an advance secured by or made under a mortgage includes a reference to any advance made under an agreement, understanding or arrangement for which the mortgage is security (whether or not the advance is recoverable under the mortgage).
- (3) To avoid doubt, an advance made under an agreement, understanding or arrangement includes any advance made as a consequence of a variation to that agreement, understanding or arrangement.

214 Mortgage packages

- (1) The Chief Commissioner must, at the liability date for a mortgage, assess the mortgage, together with any other instruments of security, as a **mortgage package** if the mortgage and other instruments secure or partly secure the same money.
- (2) This section applies regardless of when the other instruments of security were

first executed.

- (3) Duty on a mortgage package is to be assessed under this Part as if the instruments comprising the mortgage package, to the extent that they secure the same moneys, were a single mortgage.
- (4) One of the mortgages in the mortgage package is to be stamped, or upstamped, with any ad valorem duty paid under this Act for the mortgage package and each other mortgage in the mortgage package is to be stamped as a collateral mortgage.
- (5) If any of the mortgages in the mortgage package partly secures other moneys, that mortgage is to continue to be treated as a separate mortgage under this Chapter in respect of the other moneys that it secures and may be stamped for the duty chargeable in respect of those other moneys.

[9] Section 215 Contingent liabilities

Omit “advance secured by the mortgage” from section 215 (1).

Insert instead “advance made under the agreement, understanding or arrangement for which the mortgage is security”.

[10] Section 216 Mortgages over property not wholly within New South Wales

Omit “, subject to subsection (6)” from section 216 (5).

[11] Section 216 (6) and (7)

Omit the subsections.

[12] Section 217

Omit sections 217 and 217A. Insert instead:

217 Collateral mortgages—minimum duty

A collateral mortgage is chargeable with a minimum duty of \$50.

[13] Section 218 Stamping before advance

Omit the section.

[14] Sections 218B and 218BA

Omit the sections.

[15] Section 218D

Insert before section 219:

218D Concession for advances charged with duty under corresponding Acts

- (1) If the total of the amount of ad valorem duty chargeable under this Act in respect of the amount secured by a mortgage at a liability date and the amount of duty paid under a corresponding Act in respect of the mortgage exceeds the maximum duty charge in respect of the mortgage, the amount of ad valorem duty chargeable on the mortgage at the liability date is to be reduced by the amount necessary to ensure that the maximum duty charge is not exceeded.
- (2) The **maximum duty charge** in respect of the mortgage is the amount of ad valorem duty that would be chargeable in respect of the amount secured by the mortgage at the liability date if:
 - (a) it were a single mortgage over property wholly within New South Wales (that is, disregarding section 216), and
 - (b) it had not previously been stamped under this Act for any ad valorem duty.
- (3) The amount of duty paid under a corresponding Act in respect of the mortgage is the total of all ad valorem duty already paid in respect of the amount secured by the mortgage under any corresponding Act.
- (4) If a mortgage has already been duly stamped under this Act for an amount of duty, any reduction in the amount of duty chargeable on the mortgage at the liability date that is made under section 210 (3) is to be made after making any reduction required by this section.
- (5) To avoid doubt, this section extends to a mortgage package assessed as a single mortgage.

[16] Section 220 Refinancing of loans

Omit section 220 (3A) (a). Insert instead:

- (a) the amount secured by the earlier mortgage on which duty has been paid under this Act or in relation to which an exemption from duty has been obtained,

[17] Section 226 Payment on mortgages associated with debenture issues

Omit section 226 (3C).

[18] Section 226 (3CA)

Omit “, for the purposes of the application of section 218B to any collateral mortgage,”.

[19] Dictionary, definition of “mortgage package”

Omit “section 217”. Insert instead “section 214”.

Explanatory note

The amendments revise the provisions of the *Duties Act 1997* relating to mortgage duty, to simplify the duty assessment process and close avoidance opportunities.

The principal changes in respect of mortgage duty are as follows:

- (a) Liability for duty will be assessed on the basis of the amount of advances made under the agreement, understanding or arrangement for which the mortgage is security, so as to deter avoidance practices.
- (b) The Chief Commissioner will be required to reassess the total mortgage duty payable in respect of a mortgage any time the amount secured by the mortgage is increased. The mortgage will then be charged with additional duty on the basis of the difference between the total duty chargeable on the amount secured by the mortgage, and the amount of ad valorem duty for which the mortgage has already been stamped under NSW law. This replaces the current arrangements where the amount of further mortgage duty that is chargeable is calculated by reference to the amount of any advance or further advance.
- (c) All mortgages or other instruments that secure the same moneys will be treated as, and assessed as, a mortgage package (it will no longer be necessary for them to be executed within a 28-day period). This simplifies the assessment process as such mortgages or instruments will be assessed as if they are a single mortgage.
- (d) There will be a concession for mortgage packages that have been charged with duty in other jurisdictions, so that the maximum duty that may be charged in respect of a mortgage package is the duty that would be chargeable if it were a single mortgage over property wholly within New South Wales. This replaces the current (more complex) arrangements for giving credit for the payment of duty in other jurisdictions.
- (e) A mortgage on which any mortgage duty is unpaid will be unenforceable to the extent of any amount secured by it on which duty has not been paid.

The principal amendments are set out in items [4]-[8] and [11]-[15]. Items [1]-[3], [9], [10] and [16]-[19] are amendments of a consequential nature.

Transitional provisions relating to these amendments are in Schedule 1.5 [41]. The amendments will apply to the assessment of mortgage duty for which a liability arises on or after 1 July 2009. However, any further advances made on or after 1 July 2009 in respect of mortgages first executed before 1 July 2009 that secure a definite and limited sum will continue to be assessed on the basis of the amount of the further advance, to avoid the imposition of a duty liability that would not have been anticipated at the time of first execution of the mortgage.

1.4 Amendments relating to tax avoidance schemes

Chapter 11A

Insert after Chapter 11:

Chapter 11A Tax avoidance schemes

284C Object of Chapter

The object of this Chapter is to deter artificial, blatant or contrived schemes to reduce or avoid liability for duty.

284D Payment of duty avoided as a result of tax avoidance scheme

- (1) A person is liable to pay the amount of duty avoided by the person as a result of a tax avoidance scheme that is of an artificial, blatant or contrived nature.
- (2) For the purposes of this Chapter, the **amount of duty avoided** by a person as a result of the tax avoidance scheme is the amount of duty, or the amount of additional duty, that would have been payable by the person, or that it is reasonable to expect would have been payable by the person, if the tax avoidance scheme had not been entered into or made.
- (3) The Chief Commissioner may make an assessment, or reassessment, of a liability for duty on the basis of the person's liability under this Chapter to pay an amount of duty avoided by the person.

284E What is a tax avoidance scheme?

- (1) For the purposes of this Chapter, a **tax avoidance scheme** is any scheme that a person, whether alone or with others, enters into, makes or carries out for the sole or dominant purpose of enabling liability for duty to be avoided or reduced.
- (2) It does not matter that the scheme is entered into, made or carried out wholly or partly outside New South Wales.
- (3) In determining the sole or dominant purpose for which a scheme is entered into, made or carried out, any purpose related to avoiding, reducing or postponing a liability for foreign tax is to be disregarded.
- (4) In this section:

foreign tax means a duty, tax or other impost imposed under a law of another State, a Territory, the Commonwealth or a jurisdiction outside Australia.

284F Matters relevant to whether scheme is tax avoidance scheme

The following matters are to be taken into account in determining whether a scheme is a tax avoidance scheme, and whether it is of an artificial, blatant or contrived nature:

- (a) the way in which the scheme was entered into, made or carried out,
- (b) the form and substance of the scheme, including:
 - (i) the legal rights and obligations involved in the scheme, and
 - (ii) the economic and commercial substance of the scheme,
- (c) when the scheme was entered into or made and the length of the period during which the scheme was carried out,

- (d) the purpose of this Act or any provision of this Act, whether or not that purpose is expressly stated,
- (e) the effect that this Act would have in relation to the scheme apart from this Chapter,
- (f) any change in any person's financial position, or other circumstances, that has resulted, will result, or may reasonably be expected to result, from the scheme,
- (g) the nature of any connection, whether of a business, family or other nature, between the person whose liability for duty is avoided or reduced as a result of the scheme and any other person whose financial position or other circumstances have changed, will change, or may reasonably be expected to change, as a result of the scheme,
- (h) the circumstances surrounding the scheme.

284G When does a liability to pay avoided duty arise?

- (1) A liability to pay an amount of duty avoided by a person as a result of a tax avoidance scheme is taken to arise on the date the amount of duty avoided would have been payable if the tax avoidance scheme had not been entered into or made.
- (2) Accordingly, a tax default is taken to have occurred, for the purposes of the *Taxation Administration Act 1996*, on the date the amount of duty avoided would have been payable if the tax avoidance scheme had not been entered into or made.

Note—

This means that interest and penalty tax may be charged in addition to the amount of duty avoided.

- (3) This section applies only if the Chief Commissioner issues a notice of assessment, or reassessment, of liability for duty on the basis that a scheme is a tax avoidance scheme of an artificial, blatant or contrived nature.

284H Reasons for decision to be given

A notice of assessment, or reassessment, of liability for duty that is issued by the Chief Commissioner on the basis that a scheme is a tax avoidance scheme of an artificial, blatant or contrived nature is to be accompanied by a statement of the Chief Commissioner's reasons for making the assessment or reassessment.

284I Innocent participants

- (1) A person is liable under this Chapter to pay an amount of duty avoided by the person as a result of a tax avoidance scheme whether or not the person entered into, made or carried out the relevant tax avoidance scheme.

- (2) However, a person is not liable to pay an amount of duty avoided by the person as a result of a tax avoidance scheme if the Chief Commissioner is satisfied that the person did not know that the scheme was a tax avoidance scheme.

284J Meaning of “scheme”

- (1) In this Chapter, a **scheme** means:
- (a) a trust, contract, agreement, arrangement, understanding, promise or undertaking (including all steps and transactions by which it is carried into effect):
 - (i) whether entered into or made orally or in writing, and
 - (ii) whether express or implied, and
 - (iii) whether or not it is, or is intended to be, enforceable by legal proceedings, or
 - (b) a scheme, plan, proposal, action, course of action or course of conduct.
- (2) A scheme may be a unilateral scheme.
- (3) This Chapter applies in relation to a part of a scheme in the same way as it applies to a scheme. For that purpose, a reference in this Chapter to a scheme includes a reference to a part of a scheme.

Explanatory note

The amendment introduces new restrictions on tax avoidance schemes. The object of the new provisions is to deter artificial, blatant or contrived schemes to reduce or avoid liability for duty. The provisions require a person who has avoided the payment of duty, as a result of a tax avoidance scheme that is of an artificial, blatant or contrived nature, to pay the amount of duty avoided to the Chief Commissioner of State Revenue (the **Chief Commissioner**). A tax avoidance scheme is any scheme entered into, made or carried out by a person, whether alone or with others, for the sole or dominant purpose of enabling liability for duty to be avoided or reduced.

“Scheme” is broadly defined to include trusts, contracts and other arrangements, promises, plans and other proposals.

The provisions list a number of factors to be considered for the purpose of determining whether a scheme is a tax avoidance scheme and whether it is of an artificial, blatant or contrived nature.

The amount of duty avoided by a person as a result of a tax avoidance scheme is the amount of duty or additional duty that would have been payable (or that it is reasonable to expect would have been payable) by the person if the tax avoidance scheme had not been entered into or made. A liability to pay the duty avoided is taken to have arisen when the duty would have been payable had the scheme not been entered into or made.

The Chief Commissioner must give reasons to a taxpayer for assessing or reassessing liability for duty on the basis that a scheme is a tax avoidance scheme.

Transitional provisions relating to the amendment are in Schedule 1.5 [41]. The amendment applies to tax avoidance schemes entered into or made, or carried out, on or after 1 July 2009.

1.5 Other amendments

[1] Section 11 What is “dutiabale property”?

Omit section 11 (1) (g) (i). Insert instead:

- (i) the goodwill of a business, if the business has supplied goods in New South Wales, or provided services in New South Wales, to a customer of the business during the previous 12 months, or

[2] Section 11 (3)

Insert after section 11 (2) (before the note):

- (3) In the definition of **business asset** in this section, a reference to services provided to a customer includes a reference to anything done for a customer pursuant to a contractual obligation.

[3] Section 28 Apportionment—business assets in this and other jurisdictions

Omit “11 (g)” from section 28 (1). Insert instead “11 (1) (g)”.

[4] Section 28 (1) (a)

Omit the paragraph. Insert instead:

- (a) the goodwill of a business, if the business has also supplied goods outside New South Wales, or provided services outside New South Wales, to a customer of the business during the previous 12 months, or

[5] Section 28 (2), definition of “X”

Omit “the gross amount of the sales of goods and services (expressed in Australian dollars) made to New South Wales customers of the business”.

Insert instead “the gross amount (expressed in Australian dollars) of goods supplied, and services provided, in New South Wales by the business to customers of the business”.

[6] Section 28 (2), definition of “Y”

Omit “the gross amount of the sales of goods and services (expressed in Australian dollars) made to both New South Wales customers and non-New South Wales customers of the business”.

Insert instead “the gross amount (expressed in Australian dollars) of goods supplied, and services provided, in and outside New South Wales by the business to customers of the business”.

[7] Section 28 (5)

Omit the subsection. Insert instead:

- (5) In this section, a reference to a service provided to a customer includes a reference to anything done for a customer pursuant to a contractual obligation.

[8] Section 33 Shares, units, derivatives and interests (marketable securities)

Omit "\$50" from section 33 (3). Insert instead "\$10".

[9] Section 33 (5) and (6)

Insert after section 33 (4) (before the note):

- (5) If a provision of this Chapter provides that a duty of \$50 is chargeable in respect of a transfer of marketable securities, and the duty charged at the rate provided for by subsection (1) would be less than \$50, the duty chargeable is that lesser amount.

- (6) This section is subject to section 273, which provides for a minimum duty of \$10.

[10] Section 54 Change in trustees

Insert "dutiable" before "property" wherever occurring in section 54 (3A).

[11] Section 54A Transfers in relation to managed investment schemes

Insert after section 54A (3):

- (4) Duty of \$50 is chargeable in respect of a transfer of dutiable property from the sub-custodian of a custodian of the responsible entity of a managed investment scheme to the custodian of the responsible entity of the managed investment scheme.

[12] Section 63 Deceased estates

Insert after section 63 (3):

- (4) If the duty chargeable in respect of a transfer, consent or transmission application referred to in subsection (1) would, but for that subsection, be less than \$50, the duty chargeable is that lesser amount.

- (5) This section is subject to section 273, which provides for a minimum duty of \$10.

[13]-[25] (Repealed)

[26] Section 231 What is a “premium” in relation to general insurance?

Insert “and emergency service levy” after “fire service levy” in section 231 (2).

[27] (Repealed)

[28] Section 243 What duty is payable?

Omit “**disability income insurance**” from the heading to section 243 (1).

Insert instead “**trauma or disability insurance**”.

[29] Section 243 (1)

Omit “or a policy of disability income insurance”.

Insert instead “a trauma policy, a TPD policy or a disability income policy”.

[30] Section 243 (4)

Omit the subsection. Insert instead:

- (4) **Trauma or disability insurance** The amount of duty chargeable on a trauma policy, a TPD policy or a disability income policy is 5% of the premium paid to effect the insurance.

[31] Section 243 (5)

Insert in alphabetical order:

disability income policy means a policy of insurance under which an amount is payable as a replacement of income in the event of the disablement of the insured by accident or sickness.

TPD policy means a policy of insurance under which an amount is payable in the event of the total and permanent disablement of the insured by accident or sickness.

trauma policy means a policy of insurance under which an amount is payable in the event of the insured being found to have a stated condition or disease.

[32]-[43] (Repealed)

Explanatory note

Business assets

Items [1]-[7] clarify the provisions of the *Duties Act 1997* relating to the charging of duty in respect of a transfer of business assets. The amendments make it clear that duty is chargeable in respect of a transfer of the goodwill of a business when goods have been supplied or services have been provided by the business in New South Wales in the previous 12 months. It will no

longer be necessary for there to have been a sale of goods or services by the business (that is, the provisions extend to goods supplied, or services provided, whether or not for consideration). Also, the provision of services that a business is contractually obliged to provide can fall within the ambit of the provisions.

Nominal duties

Item [8] requires a minimum duty of \$10, instead of \$50, to be charged in respect of a transfer of shares of a corporation that is not the legal or beneficial owner of land in New South Wales.

Item [9] requires a transfer of marketable securities that is chargeable with duty at the concessional rate of \$50 to be charged with ad valorem duty, if the ad valorem duty would be less than \$50. This is subject to a minimum duty of \$10 being payable.

Item [11] allows a nominal duty of \$50 to be charged in respect of a transfer of dutiable property from a sub-custodian of a custodian of a responsible entity of a managed investment scheme to the custodian of the responsible entity of a managed investment scheme.

Item [12] requires a transaction made in connection with a deceased estate that is chargeable with duty at the concessional rate of \$50 to be charged with ad valorem duty, if the ad valorem duty would be less than \$50. This is subject to a minimum duty of \$10 being payable.

Insurance duty

Item [26] requires an emergency service levy to be treated as a part of the premium of an insurance policy, for duty purposes.

Items [28]-[31] clarify that a duty of 5% of the premium is payable on life insurance that is trauma or disability insurance.

Application of Act to Crown

Items [38] and [42] replace the current arrangements for specifying which (if any) Crown bodies are liable to pay duty under the [Duties Act 1997](#). In general the Crown in right of New South Wales is not required to pay duty under the Act. However, the Act currently allows the Governor to make an order applying the Act to specified persons or bodies (whether statutory or otherwise), so that those persons or bodies do not benefit from a duty exemption. The amendments remove the power to make such an order. Instead, the Crown bodies that are required to pay duty will now be specified in a Schedule to the Act. Item [39] enables the Schedule to be amended by proclamation of the Governor.

The Crown bodies which are required to pay duty (and which are already required to pay duty) are Forests NSW, the State Transit Authority of New South Wales and the Sydney Harbour Foreshore Authority.

Law revision amendments

Item [10] clarifies a reference to property, so that it applies to dutiable property only.

Items [13]-[17] update provisions relating to liquor licences, as a consequence of the repeal of the [Liquor Act 1982](#) and its replacement by the [Liquor Act 2007](#).

Items [18]-[25] and [33]-[37] update certain duty exemptions that apply in respect of transactions that are made as a consequence of the termination of a de facto relationship, to reflect the fact that financial settlements made in connection with the breakdown of a de facto relationship are now made under the [Family Law Act 1975](#) of the Commonwealth, rather than under State law. Item [43] replaces the definition of "de facto relationship" so that it is consistent with the Commonwealth law.

Items [27] and [32] update references to a Commonwealth health services law, as a consequence of changes to Commonwealth law.

Savings and transitional matters

Item [40] enables savings and transitional regulations to be made as a consequence of the amendments.

Item [41] contains particular savings and transitional provisions, that clarify the application of the amendments made to the [Duties Act 1997](#) by the Schedule. Most of the amendments in Schedule 1.5 have effect from 1 July 2009. The amendments relating to de facto relationships have effect from 1 March 2009 (when the relevant changes were made to Commonwealth law). The more particular provisions relating to landholder duty, mortgage duty and tax avoidance schemes are explained in the explanatory note relating to the amendments concerned in the Subschedules above.

Schedule 2 (Repealed)

Schedule 3 Amendment of [First Home Owner Grant Act 2000 No 21](#)

[1] Section 3 Definitions

Omit the definition of **Australian citizen**. Insert instead:

Australian citizen has the same meaning as in the [Australian Citizenship Act 2007](#) of the Commonwealth.

[2] Section 3

Insert in alphabetical order:

first home owner grant cap—see section 13A.

property means:

- (a) a home, or
- (b) land, or
- (c) a relevant interest in land.

total value of a transaction—see section 13B.

[3] Section 6 Spouses

Insert “, on the commencement date of the eligible transaction” after “another person if” in section 6 (1).

[4] Section 6 (2)

Omit the subsection. Insert instead:

- (2) A person to whom an applicant for a first home owner grant is legally married is not to be regarded as the applicant’s spouse if the Chief Commissioner is satisfied that:
 - (a) the applicant was not cohabiting with the person on the commencement date of the eligible transaction, and
 - (b) at the time of deciding the application, the applicant is not cohabiting with the person and has no intention of resuming cohabitation.

[5] Section 7 Entitlement to grant

Insert after section 7 (1):

- (1A) If the first home owner grant cap applies to the eligible transaction for which the grant is sought, a first home owner grant is payable in respect of the eligible transaction only if the total value of the transaction does not exceed the amount of the first home owner grant cap.

[6] Section 9 Criterion 2—Applicant to be Australian citizen or permanent resident

Insert “on the commencement date of the eligible transaction” after “permanent resident” in section 9 (1).

[7] Sections 13A and 13B

Insert after section 13:

13A First home owner grant cap

- (1) A first home owner grant cap applies to any eligible transaction with a commencement date on or after 1 January 2010.

Note—

The first home owner grant cap does not apply to an eligible transaction that qualifies for the first home owner boost for new homes or established homes. The first home owner boost is available for eligible transactions until 31 December 2009.

- (2) For the purposes of this Act, the amount of the first home owner grant cap is:
- (a) \$750,000, or
 - (b) if another amount is prescribed by the regulations for the purposes of this section—that other amount.
- (3) The question of whether the total value of a transaction exceeds the amount of the first home owner grant 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) If another amount for the first home owner grant cap is prescribed, the regulations may include provisions of a savings or transitional nature as a consequence of the change to the amount.

13B Calculation of total value of transaction for purposes of first home owner grant cap

- (1) For the purposes of this Act, the **total value** of a transaction is:
 - (a) in the case of a contract for the purchase of a home—the greater of the following:
 - (i) the consideration for the eligible transaction,
 - (ii) the unencumbered value, at the commencement date, of the property the subject of the transaction, or
 - (b) in the case of a comprehensive home building contract—the amount calculated by adding together:
 - (i) the consideration for the eligible transaction, and
 - (ii) the value, at the commencement date, of the relevant interest in the land on which the home is to be built, or
 - (c) in the case of the building of a home by an owner builder—the amount calculated by adding together:
 - (i) the unencumbered value, at the date the transaction is completed, of the home, and
 - (ii) the value, at the date the transaction is completed, of the relevant interest in the land on which the home is built.
- (2) The **value of the relevant interest in land** on which a home is to be built is the greater of the following:
 - (a) the consideration paid or payable for the interest,
 - (b) the unencumbered value of the interest.
- (3) The **unencumbered value** of the property is the value of the property determined without regard to:
 - (a) any encumbrance to which the property is subject, whether contingently or otherwise, or
 - (b) any arrangement that results in the reduction of the value of the property, if the parties to the arrangement are not dealing with each other at arm's length, or
 - (c) any scheme or arrangement that, in the opinion of the Chief Commissioner, was entered into, made or carried out by a party to the scheme or arrangement for the sole or dominant purpose of reducing the value of the

property, or

(d) if the property is held by a person on trust as guardian for another person who is under a legal disability—any liabilities of the trust, including the liability to indemnify the trustee.

(4) For the purposes of subsection (3) (c), the Chief Commissioner may have regard to:

(a) the duration of the scheme or arrangement before the commencement date of the transaction to which the property relates, and

(b) whether there is any commercial efficacy to the making of the scheme or arrangement other than to reduce the value of the property, and

(c) any other matters the Chief Commissioner considers relevant.

[8] Section 18 Amount of grant

Omit “an additional \$14,000” from section 18 (1) (a).

Insert instead “the new homes boost amount”.

[9] Section 18 (1) (b)

Omit “an additional \$7,000”.

Insert instead “the established homes boost amount”.

[10] Section 18, note

Omit the note.

[11] Section 18 (3)

Insert after section 18 (2):

(3) In this section:

established homes boost amount means:

(a) if the commencement date of the eligible transaction is on or before 30 September 2009, \$7,000, or

(b) if the commencement date of the eligible transaction is after 30 September 2009 and on or before 31 December 2009, \$3,500.

new homes boost amount means:

(a) if the commencement date of the eligible transaction is on or before 30

September 2009, \$14,000, or

- (b) if the commencement date of the eligible transaction is after 30 September 2009 and on or before 31 December 2009, \$7,000.

[12] Section 18A First home owner boost for new homes

Omit “30 June 2009” from section 18A (2), (3) (a), (4) (a) and (5) (a) wherever occurring.

Insert instead “31 December 2009”.

[13] Section 18A (3) (b)

Omit “1 January 2011” wherever occurring.

Insert instead “the required completion date”.

[14] Section 18A (7)

Insert in alphabetical order:

required completion date means:

- (a) for a contract made on or after 14 October 2008 and on or before 30 June 2009, 1 January 2011, or
- (b) for a contract made after 30 June 2009 and on or before 30 September 2009, 31 March 2011, or
- (c) for a contract made after 30 September 2009 and on or before 31 December 2009, 30 June 2011.

[15] Section 18B First home owner boost for established homes

Omit “30 June 2009” from section 18B (1) (c).

Insert instead “31 December 2009”.

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

Insert after section 20 (2):

(2A) If the first home owner grant is paid in anticipation of compliance with the first home owner grant cap, the payment is made on condition that, if the applicant becomes aware that the total value of the transaction exceeds or will exceed the first home owner grant cap, the applicant must within 14 days after the day on which the applicant becomes so aware:

- (a) give written notice of that fact to the Chief Commissioner, and

(b) repay the amount of the grant.

(2B) The first home owner grant is paid in anticipation of compliance with the first home owner grant cap if the grant is paid in respect of an eligible transaction that involves the building of a home by an owner builder before completion of the eligible transaction and the first home owner grant cap applies to the eligible transaction.

[17] Section 23 Power to correct decision

Insert after section 23 (2):

(3) The 5-year time limit on varying or reversing a decision does not apply to a decision that was made on the basis of false or misleading information provided by an applicant for a first home owner grant, or by a person on behalf of the applicant.

[18] Section 36A

Insert after section 36:

36A Power to require valuation

(1) For the purposes of determining the total value of a transaction, the Chief Commissioner may do any one or more of the following:

(a) require, by written notice, an applicant (or former applicant) for a first home owner grant to provide to the Chief Commissioner:

(i) a valuation by a registered valuer of any property or consideration, or

(ii) other evidence of the value of the property or consideration the Chief Commissioner considers appropriate,

(b) have a valuation made of any property or consideration,

(c) adopt any available valuation of the property or consideration by a registered valuer (or other person the Chief Commissioner considers suitably qualified).

(2) In this section, a **registered valuer** has the same meaning as it has in the [Valuers Act 2003](#).

[19] Section 46 Power to recover certain amounts

Insert after section 46 (3):

(3A) The charge created by subsection (3) gives the Chief Commissioner an interest in

the land and, accordingly, the Chief Commissioner may lodge a caveat in respect of the land under the *Real Property Act 1900* to protect that interest.

(3B) The caveat must be withdrawn when the amount that the applicant is liable to pay has been paid.

[20] Section 47 Protection of confidential information

Omit section 47 (3) (b) and (c). Insert instead:

(b) in connection with the administration of the following laws (including for the purpose of any legal proceedings arising out of any of those laws or a report of any such proceedings):

(i) this Act or a corresponding law,

(ii) a taxation law of the Commonwealth or a State or Territory,

(iii) the *First Home Saver Accounts Act 2008* of the Commonwealth, or

[21] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2009

[22] Schedule 1

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

Part Provisions consequent on enactment of *State Revenue Legislation Further Amendment Act 2009*

Definition

In this Part:

amending Act means the *State Revenue Legislation Further Amendment Act 2009*.

Eligibility criteria

An amendment made to section 6 or 9 by the amending Act applies in respect of an application for a first home owner grant that is made on or after the commencement of that amendment.

Time limit on varying or reversing decisions

The amendment made to section 23 by the amending Act extends to a decision made within 5 years before the commencement of that amendment.

Explanatory note

First home owner boost for new and established homes

Items [8]-[15] extend the first home owner boost for new and established homes from 30 June 2009 to 31 December 2009. For new homes, the current amount of the boost (\$14,000) remains in place for transactions with a commencement date between 1 July 2009 and 30 September 2009. The amount is reduced to \$7,000 for transactions with a commencement date between 1 October 2009 and 31 December 2009. For established homes, the current amount of the boost (\$7,000) remains in place for transaction with a commencement date between 1 July 2009 and 30 September 2009. The amount is reduced to \$3,500 for transactions with a commencement date between 1 October 2009 and 31 December 2009.

First home owner grant cap

Items [5] and [7] establish the **first home owner grant cap**, which will apply to all eligible transactions with a commencement date on or after 1 January 2010. The first home owner grant will only be payable in respect of an eligible transaction if the total value of the transaction does not exceed the cap, which is \$750,000 (or another amount prescribed by the regulations). The **total value** of a transaction is:

- (a) in the case of a contract to buy a home, the consideration for the transaction or the value of the property (whichever is the greater), or
- (b) in the case of a contract to build a new home, the total of the consideration for the transaction and the value of the land on which the home is to be built, or
- (c) in the case of the building of a home by an owner builder, the total of the value of the home (once it is built) and the value of the land on which the home is built.

Item [18] enables the Chief Commissioner to require an applicant for a first home owner grant to provide a valuation of the property or consideration for the purposes of determining the total value of a transaction. The Chief Commissioner may also have a valuation done or adopt a valuation by a registered valuer.

Item [16] provides that an applicant who receives the first home owner grant for the building of a home by an owner builder before the completion of the transaction must notify the Chief Commissioner and must repay the grant within 14 days of becoming aware that the transaction will exceed the first home owner grant cap.

Item [2] inserts definitions related to the first home owner grant cap.

Compliance with eligibility criteria

Items [3], [4] and [6] confirm that the commencement date of an eligible transaction is the date at which an applicant's compliance with certain eligibility criteria is to be determined. The commencement date of an eligible transaction is the date on which the contract for the purchase of a first home is made or, in the case of an owner builder, the date on which the laying of foundations for a first home is commenced. Item [3] makes it clear that an applicant's relationship status (that is, whether the applicant has a spouse within the meaning of the Act) is to be determined on the commencement date of the eligible transaction for which the grant is sought. Item [4] revises a provision that allows an applicant who is legally married but separated to have his or her marital status disregarded, to make it clear that the applicant must have been separated on the commencement date of the eligible transaction. Item [6] clarifies that an applicant must be an Australian citizen or permanent resident on the commencement date of the eligible transaction.

Miscellaneous

Item [1] updates the definition of **Australian citizen** as a consequence of changes to Commonwealth laws.

Item [17] removes the 5-year time limit on the Chief Commissioner's power to vary or reverse a decision in relation to a grant if the decision was made on the basis of false or misleading information provided by an applicant. Accordingly, a decision to confer the grant that was based on false and misleading information provided by the applicant may be varied or reversed at any time

after it has been made.

Item [19] allows the Chief Commissioner to lodge and maintain a caveat in respect of land to ensure the payment of any amount that is recoverable from an applicant or former applicant for a first home owner grant.

Item [20] permits information obtained in the administration of the Act to be disclosed in connection with the administration of the [First Home Saver Accounts Act 2008](#) of the Commonwealth.

Savings and transitional provisions

Item [21] enables savings and transitional regulations to be made as a consequence of the amendments to the Act and item [22] provides for particular savings and transitional matters.

Schedule 4 (Repealed)

Schedule 5 Amendment of [Petroleum Products Subsidy Act 1997 No 112](#)

[1] Part 1A

Insert after Part 1:

Part 1A Abolition of subsidies

3B Definition of “subsidy abolition date”

In this Part:

subsidy abolition date means 1 July 2009.

3C Abolition of subsidies

- (1) A subsidy is not payable under this Act in respect of petroleum products sold by a registered person if the date on which the petroleum products are sold by the registered person occurs on or after the subsidy abolition date.
- (2) Accordingly, a subsidy may be claimed by or paid to a registered person in respect of petroleum products under this Act only if the petroleum products were sold by the registered person before the subsidy abolition date.

3D Reduction in time limit for claiming subsidy

- (1) A claim for a subsidy under this Act may be made no later than 12 months after the subsidy abolition date.
- (2) A subsidy is not payable in respect of any claim made more than 12 months after the subsidy abolition date.
- (3) This section applies despite section 11A.

3E Cap on payment of claims for June 2009

- (1) The maximum amount that may be paid as a subsidy to a registered person under this Act in respect of petroleum products sold in the month of June 2009 is the greater of the following amounts:
 - (a) 10 per cent of the total amount of subsidies payable under this Act to the registered person in respect of petroleum products sold in the 11 months preceding June 2009,
 - (b) \$10,000.
- (2) This section applies despite anything to the contrary in Part 2.

3F Extension of scheme beyond subsidy abolition date

- (1) The regulations may postpone the subsidy abolition date to a later date specified in the regulations (the ***new subsidy abolition date***).
- (2) The Minister may recommend the making of a regulation postponing the subsidy abolition date only if satisfied that it is desirable to continue the payment of subsidies under this Act because of the continuation, after 1 July 2009, of the payment of subsidies under the scheme provided for by the *Fuel Subsidy Act 1997* of Queensland.
- (3) If the subsidy abolition date is postponed by the regulations, sections 3C and 3D apply, and are taken to have always applied, subject to any modifications specified in the regulations, as if a reference to the subsidy abolition date were a reference to the new subsidy abolition date.
- (4) The regulations under this section may:
 - (a) modify the application of section 3E in respect of the payment of subsidies in June 2009, and
 - (b) provide for a maximum amount that may be paid as a subsidy under this Act in respect of any month occurring after June 2009, and
 - (c) contain other provisions of a savings or transitional nature consequent on the postponement of the subsidy abolition date.
- (5) A regulation postponing the subsidy abolition date may be made before, on or after 1 July 2009.
- (6) A regulation postponing the subsidy abolition date may be made on more than one occasion.

[2] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2009

[3] Schedule 1, Part 3

Insert after Part 2:

Part 3 State Revenue Legislation Further Amendment Act 2009

4 Postponement of staged repeal of regulation

- (1) Any regulation made under this Act that would (but for this clause) be repealed on 1 September 2009 by section 10 of the *Subordinate Legislation Act 1989* continues in force as if the date on which the regulation would have been repealed by section 10 of that Act had been postponed by one year under section 11 of that Act.
- (2) The repeal of the regulation is taken, for the purposes of the *Subordinate Legislation Act 1989*, to have been postponed on one occasion.

Explanatory note

Item [1] of the amendments to the *Petroleum Products Subsidy Act 1997* provides for the abolition of the payment of subsidies under that Act on 1 July 2009 (the **subsidy abolition date**). This is the date on which it is currently proposed to discontinue payment of subsidies under the *Fuel Subsidy Act 1997* of Queensland.

Subsidies will not be payable on sales of petroleum products by registered persons on or after the subsidy abolition date.

No subsidy will be payable for claims made more than 12 months after the subsidy abolition date.

The amendments also authorise regulations to be made postponing the subsidy abolition date, in the event that the changes to the Queensland subsidy scheme are not proceeded with or are postponed.

Item [2] enables the making of saving and transitional regulations as a consequence of the proposed amendments.

Item [3] postpones the repeal of the *Petroleum Products Subsidy Regulation 2004* for one year. The regulation is due to be repealed by the *Subordinate Legislation Act 1989* on 1 September 2009. The postponement of the repeal ensures that the regulation continues to have effect in the event that the subsidy abolition date is postponed, and for the purposes of the winding up of the subsidy scheme.

Schedule 6 Amendment of Taxation Administration Act 1996 No 97

[1] Section 22 Interest rate

Omit section 22 (4). Insert instead:

- (4) In this section, the Bank Accepted Bill rate in respect of any day within a period specified in Column 1 of the Table to this subsection is the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank for the month specified in Column 2 of that Table opposite that period.

Table

Column 1	Column 2
Period	Monthly average yield
1 January to 31 March	the preceding November
1 April to 30 June	the preceding February
1 July to 30 September	the preceding May
1 October to 31 December	the preceding August

- (5) If the monthly average yield of 90-day Bank Accepted Bills for a particular month is not published by the Reserve Bank before the beginning of the relevant period, it is taken to be the same as the last monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank before that month.

[2] Section 28 Reduction in penalty tax for disclosure before investigation

Insert at the end of the section:

- (2) This section does not apply in respect of information disclosed by a taxpayer if the taxpayer is registered under a taxation law and:
- (a) the tax default involved a failure to lodge a return as required under that taxation law, or
 - (b) the tax default involved a failure to pay tax by the date required under that taxation law.

[3] Section 29 Reduction in penalty tax for disclosure during investigation

Insert at the end of the section:

- (2) This section does not apply in respect of information disclosed by a taxpayer if the taxpayer is registered under a taxation law and:
- (a) the tax default involved a failure to lodge a return as required under that taxation law, or
 - (b) the tax default involved a failure to pay tax by the date required under that taxation law.

Explanatory note

Item [1] of the proposed amendments provides that the market rate component of the interest rate payable on unpaid tax will be updated every quarter, rather than once a year as is currently the case. The applicable rate will be the Bank Accepted Bill rate published by the Reserve Bank before the beginning of the quarter in which the interest falls due, rather than the rate for May of the preceding financial year.

Items [2] and [3] provide that the reduction in penalty tax for a voluntary disclosure of information relating to a tax default does not apply to certain registered taxpayers who fail to lodge a return and pay tax by the due date. As a result of the amendments, a registered employer under the *Payroll Tax Act 2007* will not be able to claim a reduction in penalty tax for a voluntary disclosure of payroll tax liability if the disclosure is made after a failure to lodge a return as required by that Act or pay tax in accordance with that Act.

Schedule 7 Amendment of other Acts

7.1, 7.2

(Repealed)

7.3 Insurance Protection Tax Act 2001 No 40

[1] Section 3 Definitions

Omit “an organisation registered under Part VI of the *National Health Act 1953* of the Commonwealth” from paragraph (f) of the definition of **exempt insurance**.

Insert instead “a private health insurer within the meaning of the *Private Health Insurance Act 2007* of the Commonwealth”.

[2] Section 9 Premiums

Insert “and emergency service levy” after “fire service levy” in section 9 (2) (a).

Explanatory note

Item [1] updates a reference to a Commonwealth health services law as a result of changes to Commonwealth law.

Item [2] ensures that, for the purposes of the calculation of the tax payable under the *Insurance Protection Tax Act 2001*, the premium payable for general insurance includes any contribution required to be paid by an insurer under the *State Emergency Service Act 1989*.

7.4 Payroll Tax Act 2007 No 21

[1] Section 80 Designated group employers

Omit “\$600,000” from section 80 (2) (a) and (3) (a) wherever occurring.

Insert instead “the threshold amount for that financial year (within the meaning of Schedule 1)”.

[2] Schedule 2 NSW specific provisions

Insert after clause 21:

22 Waiver, deferral and writing off of payroll tax in hardship cases

The Hardship Review Board constituted under Division 5 of Part 10 of the *Taxation Administration Act 1996* may exercise its functions in relation to payroll tax payable under this Act.

[3] Schedule 3 Savings, transitional and other provisions

Omit “section 3C (4) (a)” from clause 8. Insert instead “section 3C (4) (b)”.

[4] Schedule 3, Part 4

Insert after Part 3:

Part 4 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2009

17 Functions of Hardship Review Board

- (1) Clause 22 of Schedule 2, as inserted by the *State Revenue Legislation Further Amendment Act 2009*, has effect on and from 1 July 2007.
- (2) Anything done or omitted to be done by the Hardship Review Board, on or after 1 July 2007, that would have been validly done or omitted had clause 22 of Schedule 2 been in force at the time that it was done or omitted is taken to have been validly done or omitted.
- (3) In this clause, the **Hardship Review Board** means the Hardship Review Board constituted under Division 5 of Part 10 of the *Taxation Administration Act 1996*.

Explanatory note

Item [1] ensures that the relevant amount of wages that must be paid by employers annually in order for them to be designated as a group for payroll tax purposes is the same as the threshold amount for payroll tax.

Item [2] authorises the Hardship Review Board, which is constituted under the *Taxation Administration Act 1996*, to exercise its functions under that Act in relation to payroll tax payable under the *Payroll Tax Act 2007*. The Hardship Review Board exercised functions with respect to payroll tax under the *Pay-roll Tax Act 1971*, and has continued to do so since that Act was repealed and replaced by the *Payroll Tax Act 2007*. Item [4] validates certain decisions of the Board that were made after the commencement of the new Act and before the amendment.

Item [3] corrects an incorrect cross-reference.

7.5

(Repealed)