

State Revenue and Other Legislation Amendment (Budget Measures) Act 2012 No 46

[2012-46]



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**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

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State Revenue and Other Legislation Amendment (Budget Measures) Act 2012 No 46



New South Wales

An Act to make miscellaneous amendments to certain State revenue and other legislation in connection with the Budget for the year 2012–2013.

1 Name of Act

This Act is the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2012*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, subject to subsection (2).
- (2) The amendments made by the Schedules to this Act commence on the day or days specified in those Schedules in relation to the amendments concerned. If a commencement day is not specified, the amendments commence on the date of assent to this Act.

3 Explanatory notes

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

Schedule 1 (Repealed)

Schedule 2 Amendment of *First Home Owner Grant Act 2000 No 21*

[1] Section 1 Name of Act

Insert “(New Homes)” after “Grant”.

[2] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

new home—see section 4A.

[3] Section 4A

Insert after section 4:

4A New homes

- (1) A **new home** is a home that has not been previously occupied or sold as a place of residence, and includes a substantially renovated home and a home built to replace demolished premises.
- (2) For the purposes of this section, a home is a **substantially renovated home** if:
 - (a) the sale of the home is, under the [A New Tax System \(Goods and Services Tax\) Act 1999](#) of the Commonwealth, a taxable supply as a sale of new residential premises within the meaning of section 40-75 (1) (b) of that Act, and
 - (b) the home, as renovated, has not been previously occupied or sold as a place of residence.
- (3) For the purposes of this section, a home is a **home built to replace demolished premises** if:
 - (a) in the case of a contract for the purchase of a home—the sale of the home is, under the [A New Tax System \(Goods and Services Tax\) Act 1999](#) of the Commonwealth, a taxable supply as a sale of new residential premises within the meaning of section 40-75 (1) (c) of that Act, and
 - (b) in the case of a comprehensive home building contract to have a home built or the building of a home by an owner builder—the home is, under the [A New Tax System \(Goods and Services Tax\) Act 1999](#) of the Commonwealth, new residential premises within the meaning of section 40-75 (1) (c) of that Act, and
 - (c) the home, as built to replace the demolished premises, has not been previously occupied or sold as a place of residence, and
 - (d) the owner of the home did not occupy the demolished premises as a place of residence before they were demolished.

[4] Section 6A Multiple occupancy contract

Omit “made on or after 1 July 2002” wherever occurring in section 6A (1).

[5] Section 13 Eligible transactions

Omit section 13 (1). Insert instead:

(1) An **eligible transaction** is:

- (a) a contract made on or after 1 October 2012 for the purchase of a new home in New South Wales, or
- (b) a comprehensive home building contract made on or after 1 October 2012 by the owner of land in New South Wales, or by a person who will on completion of the contract be the owner of land in New South Wales, to have a new home built on the land, or
- (c) the building of a new home in New South Wales by an owner builder if the building work commences on or after 1 October 2012.

[6] Section 13 (3A)

Insert after section 13 (3):

(3A) A contract made on or after 1 October 2012 is not an eligible transaction if the Chief Commissioner is satisfied that:

- (a) the contract replaces a contract made before 1 October 2012, and
- (b) the replaced contract was a contract for the purchase of the same home or a comprehensive home building contract to build the same or a substantially similar home.

Note—

See also Part 11 of Schedule 1.

[7] Section 13A First home owner grant cap

Omit “\$835,000” from section 13A (2) (a). Insert instead “\$650,000”.

[8] Section 13A (4)

Omit the subsection.

[9] Section 18

Omit the section. Insert instead:

18 Amount of grant

(1) The amount of the first home owner grant is:

- (a) in the case of an eligible transaction with a commencement date on or after 1 October 2012 but before 1 January 2014—\$15,000, or

- (b) in the case of an eligible transaction with a commencement date on or after 1 January 2014—\$10,000.
- (2) For an eligible transaction with a commencement date on or after 1 October 2012 that is a contract to purchase a home, or a comprehensive home building contract, made pursuant to an option granted in the transitional period, the amount of the grant is \$7,000.
- (3) A contract is made pursuant to an option granted in the transitional period if:
 - (a) in the case of a contract to purchase a home—the purchaser had an option to purchase the home granted during the transitional period or the vendor had an option to require the purchaser to purchase the home granted during the transitional period, or
 - (b) in the case of a comprehensive home building contract—either party had a right or option granted during the transitional period to require the other party to enter into the contract.
- (4) The maximum amount of the first home owner grant is the consideration for the eligible transaction. Accordingly, if the amount that would be payable, but for this subsection, exceeds the consideration for the eligible transaction, the amount of the first home owner grant is the consideration for the eligible transaction.
- (5) In this section:

the transitional period means the period starting on the date the Bill for the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2012* was introduced in the Legislative Assembly and ending immediately before 1 October 2012.

[10] Sections 18A-18C

Omit the sections.

[11] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any Act that amends this Act

[12] Schedule 1, Part 11

Insert after Part 10:

Part 11 Provisions consequent on enactment of [State](#)

Revenue and Other Legislation Amendment (Budget Measures) Act 2012

18 Pre-1 October 2012 contracts and transfers

Part 2 of this Act, as in force immediately before its amendment by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2012*, continues to apply in respect of the following:

- (a) a contract made before 1 October 2012 for the purchase of a home in New South Wales,
- (b) a comprehensive home building contract made before 1 October 2012,
- (c) the building of a home in New South Wales by an owner builder if the building work commenced before 1 October 2012.

Note—

Accordingly, the above transactions may still be eligible for the grant that was payable under Part 2 before 1 October 2012.

19 Replacement contracts

- (1) A contract made on or after 1 October 2012 that replaces a contract made before that date (an **earlier contract**) is taken, for the purposes of Part 2 of this Act, as in force immediately before its amendment by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2012*:
 - (a) to have been made on the date the earlier contract was made, and
 - (b) to have a commencement date that is the date the earlier contract was made.
- (2) A contract replaces another contract if the Chief Commissioner is satisfied the contract made at the earlier date was a contract for the purchase of the same home or a comprehensive home building contract to build the same or a substantially similar home.

Note—

Under section 13 (3A), the above transaction is not an eligible transaction. As a result of this transitional provision the transaction may still be eligible for the grant that was payable before 1 October 2012.

[13] Long title

Insert “who purchase or build new homes” after “first home owners”.

Commencement

Schedule 2 commences on 1 October 2012.

Explanatory note

The amendments limit the operation of the first home owner grant scheme, from 1 October 2012, to new homes. That is, a first home owner will be able to obtain the grant in respect of the purchase or construction of a home only if it is a new home. A **new home** is defined as a home that has not been previously occupied or sold as a place of residence, and includes a substantially renovated home and a home built to replace demolished premises. The amendments also increase the amount of the first home owner grant payable for new homes, on and from 1 October 2012.

Items [3] and [5] limit eligibility under the first home owner grant scheme to contracts for new homes entered into, or the building of a new home by an owner builder that is started, on or after 1 October 2012. Items [1], [2] and [13] are consequential amendments (including a change to the name and long title of the Act).

Item [7] lowers the cap on the first home owner grant to homes with a value of \$650,000 (from \$835,000). Item [8] removes a provision that allows the regulations to prescribe a different cap.

Item [9] increases the amount of the grant, on and from 1 October 2012, to \$15,000 (up from \$7,000). On and from 1 January 2014, the grant will be \$10,000. Item [6] prevents the use of replacement contracts to obtain the increased grant.

Items [4] and [10] remove redundant provisions of the *First Home Owner Grant Act 2000*.

Item [11] provides for the making of savings and transitional regulations as a consequence of the enactment of any Act that amends the *First Home Owner Grant Act 2000*.

Item [12] enables the existing first home owner grant to continue to apply to contracts entered into, or the building of a home by an owner builder that starts, before 1 October 2012 and provides for other transitional matters.

Schedules 3-5 (Repealed)

Schedule 6 Amendment of petroleum (onshore) legislation

6.1 Amendment of **Petroleum (Onshore) Act 1991 No 84**

[1]-[8] (Repealed)

[9] Part 6, Division 2

Omit the Division. Insert instead:

Division 2 Conditions relating to the environment, rehabilitation and reporting

75 Conditions for environment protection and rehabilitation

- (1) Without limiting any other provision of this Act, a condition may be imposed on a petroleum title that requires the holder of the title to carry out activities for any one or more of the following purposes:
 - (a) the conservation of the environment, and the protection of the environment from harm as a result of activities under the title or the prevention, control or mitigation of any such harm,
 - (b) the rehabilitation of land or water that is or may be affected by activities

under the title,

- (c) the afforestation (including for carbon sequestration within the meaning of section 87A of the [Conveyancing Act 1919](#) and related environmental purposes) of any part of the land comprised in a petroleum title that may have been adversely affected by activities under the petroleum title,
 - (d) the offsetting of any such adverse effects by the dedication or conservation of land for a public purpose or the rehabilitation of land or water other than the land comprised in a petroleum title.
- (2) However, a condition referred to in subsection (1) (c) may be imposed only at the request of an applicant for, or the holder of, the petroleum title.
- (3) A condition may be imposed under this section:
- (a) whether or not the land or water that is or may be affected by the activities is or has at any time been land comprised in a petroleum title, and
 - (b) whether or not the activities were carried out by the current holder of the petroleum title, and
 - (c) whether or not the activities were authorised by the petroleum title, and
 - (d) if the petroleum title has been previously wholly or partly transferred, whether or not the activities were carried out under the transferred petroleum title.
- (4) A condition relating to land or water outside land comprised in a petroleum title (including land previously comprised in a petroleum title):
- (a) may be imposed only in relation to matters arising, or likely to arise, directly from activities carried out under a petroleum title, and
 - (b) may require the provision and management of environmental off-sets related to the matters referred to in paragraph (a), and
 - (c) may require the monitoring of environmental impacts and the provision of environmental data in relation to the land or water.
- (5) A condition may be imposed on the holder of a petroleum title in relation to the rehabilitation of land or water affected by activities carried on under a petroleum title that has been cancelled or previously carried on without a petroleum title only if the condition is imposed when the petroleum title is granted or with the consent of the holder.
- (6) A condition imposed under this section may be varied.

- (7) A condition may be imposed or varied under this section:
- (a) when a petroleum title is granted or renewed, or
 - (b) when a full or partial transfer of a petroleum title is approved under this Act, or
 - (c) at any other time during the term of the petroleum title.
- (8) A condition imposed or varied under this section takes effect as follows:
- (a) in the case of a condition imposed on the grant of a petroleum title—when the grant takes effect,
 - (b) in the case of a condition imposed or varied on the renewal of a petroleum title—when the renewal takes effect,
 - (c) in the case of a condition imposed or varied when a full or partial transfer of a petroleum title is approved under this Act—when the transfer is registered under this Act,
 - (d) in any other case—when written notice of the imposition or variation of the condition is served on the holder of the petroleum title or on any later date specified in the notice.
- (9) A condition imposed under this section may be revoked at any time by written notice served on the holder of the petroleum title.
- (10) This section does not affect the operation of section 89K or 115ZH (Approvals etc legislation that must be applied consistently) or 93 (Granting and modification of approval by approval body) of the [Environmental Planning and Assessment Act 1979](#).

76 Conditions requiring reporting

- (1) A condition may be imposed on a petroleum title to require the holder to provide the Director-General with reports detailing any one or more of the following:
- (a) the extent to which the conditions of the petroleum title, or any provisions of this Act or the regulations applicable to activities under the petroleum title, have or have not been complied with,
 - (b) particulars of any non-compliance with any such conditions or provisions,
 - (c) the reasons for any such non-compliance,
 - (d) any action taken, or to be taken, to prevent any recurrence, or to mitigate the effects, of that non-compliance.

- (2) A condition imposed under this section (a **reporting condition**) may require a report to be certified as correct by the holder, another person approved by the Director-General or a person who is a member of a class of persons prescribed by the regulations.
- (3) A reporting condition may be varied.
- (4) A condition may be imposed or varied under this section:
 - (a) when a petroleum title is granted or renewed, or
 - (b) when a full or partial transfer of a petroleum title is approved under this Act, or
 - (c) at any other time during the term of the petroleum title.
- (5) A condition imposed or varied under this section takes effect as follows:
 - (a) in the case of a condition imposed on the grant of a petroleum title—when the grant takes effect,
 - (b) in the case of a condition imposed or varied on the renewal of a petroleum title—when the renewal takes effect,
 - (c) in the case of a condition imposed or varied when a full or partial transfer of a petroleum title is approved under this Act—when the transfer is registered under this Act,
 - (d) in any other case—when written notice of the imposition or variation of the condition is served on the holder of the petroleum title or on any later date specified in the notice.
- (6) A reporting condition may be revoked at any time by written notice served on the holder of the petroleum title.
- (7) A person who provides information or a document in compliance with, or in purported compliance with, a reporting condition is guilty of an offence if the person provides the information or document knowing that it is false or misleading in a material particular.

Maximum penalty:

 - (a) in the case of a corporation—1,000 penalty units, or
 - (b) in the case of a natural person—200 penalty units.
- (8) A person is not guilty of an offence against subsection (7) in respect of the provision of a document that is false or misleading in a material particular if the person, when providing the document, discloses the manner in which the

document is false or misleading.

76A Use of information provided under reporting condition

- (1) Any document or information provided under a reporting condition imposed under this Division may be taken into consideration by the Director-General or the Minister and used for the purposes of this Act, including for the purposes of the prosecution of offences under this Act or the regulations.
- (2) The Director-General is authorised, despite any other Act or law, to provide a relevant agency with any such document or information.
- (3) Any such document or information is required to be provided by the holder of a petroleum title, whether or not the document or information might incriminate the holder.
- (4) However, information provided by a natural person in compliance with a reporting condition is not admissible in evidence against the person in criminal proceedings (other than proceedings for an offence under section 76 (7)) if the person, when providing the information, objected to the provision of the information on the grounds that it might incriminate him or her.
- (5) In this section, **relevant agency** means the Department or a public authority engaged in administering or executing the environment protection legislation, the *Environmental Planning and Assessment Act 1979* or such other legislation, if any, as may be prescribed by the regulations.

[10]-[28] (Repealed)

Commencement

Schedule 6.1 [9] commences on a day or days to be appointed by proclamation.

The remaining items in this Subschedule commence or are taken to have commenced on 1 July 2012.

Explanatory note

Annual rental fee

The amendments introduce an annual rental fee for petroleum titles under the *Petroleum (Onshore) Act 1991* (the **principal Act**).

Liability for an annual rental fee arises on the grant of a petroleum title and on each grant anniversary date that occurs during the term of the petroleum title. The annual rental fee for which liability arises on grant of a title must be paid in advance, before the grant is made.

The amount of the annual rental fee for a petroleum title is to be determined as provided for by the regulations (see Schedule 6.2).

Administrative levy

The amendments introduce an administrative levy for petroleum titles under the principal Act.

The levy is an annual administrative levy. Liability arises on the grant of the petroleum title and on every grant anniversary date.

The levy for which liability arises on grant must be paid in advance, before the grant is made.

The amount of the administrative levy is, in general terms, one percent of the security deposit amount (being the amount of the security deposit required to be given and maintained under a security deposit condition that has effect in relation to the petroleum title for which the levy is payable when liability arises). A different calculation applies where one security deposit is required in respect of several petroleum titles. If no security deposit is required to be given and maintained in respect of the petroleum title, the administrative levy is one percent of the minimum deposit for the petroleum title (in relation to minimum deposits, see further below).

The minimum administrative levy is \$100 (or any other amount prescribed by the regulations).

Other provisions relating to annual rental fee and administrative levy

The amendments provide for other matters relating to the annual rental fee and administrative levy, including for the recovery of fees as a debt and late payment fees.

Title fees and other fees under principal Act

The amendments transfer provisions relating to the existing title fee payable on the grant or renewal of a petroleum title (which remains payable) to the new Part 7A created by the amendments.

At present, the title fee and certain other fees payable under the principal Act are required to be determined by the Minister, with the concurrence of the Treasurer, but the practice has been to prescribe the fees payable. The amendments validate this practice and make it clear that, for the future, the title fee is to be prescribed by the regulations. The Minister is to recommend the making of such a regulation only with the concurrence of the Treasurer. Other fees are also to be prescribed by the regulations.

Security deposit arrangements

The amendments make a number of changes to the security deposit provisions in the principal Act. The changes relate, in part, to the introduction of an administrative levy.

The principal change is that the amount of the security deposit that may be required under a security deposit condition imposed on a petroleum title must be either an amount assessed for the petroleum title concerned by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (referred to in this Schedule as **the Director-General**) or the minimum deposit for the petroleum title. The minimum deposit is prescribed by the regulations for the type of petroleum title concerned (see Schedule 6.2).

The amendments make provision for the assessment of the security deposit amount by the Director-General and the review of those assessments by the Minister.

The amendments also:

- (a) transfer existing provisions relating to the imposition of security deposit conditions to a new Part, and
- (b) clarify that a security deposit may be required in respect of obligations that may arise under a petroleum title in the future, and
- (c) make other changes, of a statute law revision nature, to the security deposit arrangements under the principal Act so that they are more consistent with the [Mining Act 1992](#).

Environment protection conditions

The amendments update the provisions of the principal Act relating to environment protection conditions and reporting conditions so that they are consistent with the scheme proposed for the [Mining Act 1992](#) (as set out in the [Mining Amendment Act 2008](#), which is, as yet, uncommenced).

Other amendments

Other provisions in Schedule 6.1:

- (a) extend the record keeping requirements under the principal Act, to accommodate the keeping of records in respect of the

annual rental fee, and

- (b) make changes consequential to the above amendments, and
- (c) provide for the making of savings and transitional regulations, and
- (d) set out transitional arrangements in relation to the above amendments, including providing for the phasing-in of the requirements made by the amendments.

6.2

(Repealed)

Schedule 7 Amendment of Electricity Supply Act 1995 No 94

[1] (Repealed)

[2] Section 15A (8G)

Omit the subsection. Insert instead:

(8G) A retailer must, in accordance with the regulations (if any):

- (a) pay a regulated offer customer an amount consisting of the amount of any credit recorded under this section for any electricity supplied by the customer together with the amount of the retailer benefit component for the supply of that electricity (as determined by the Tribunal under Division 5 of Part 4), or
- (b) reduce an amount payable by the regulated offer customer by an amount equal to the amount payable under paragraph (a).

Maximum penalty: 1,000 penalty units.

[3]-[8] (Repealed)

Schedule 8 (Repealed)