

# Property Tax (First Home Buyer Choice) Act 2022 No 60

[2022-60]



New South Wales

## Status Information

### Currency of version

Current version for 4 September 2023 to date (accessed 18 May 2024 at 17:00)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Responsible Minister

- Treasurer

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 4 September 2023

# Property Tax (First Home Buyer Choice) Act 2022 No 60



New South Wales

## Contents

**Long title** ..... 5

**Part 1 Preliminary** ..... 5

1 Name of Act ..... 5

2 Commencement ..... 5

3 Definitions ..... 5

4 Relationship with Taxation Administration Act 1996 ..... 5

**Part 2 Key terms** ..... 5

5 Meaning of “first home buyer” ..... 5

6 Meaning of “land” ..... 6

7 Meaning of “exclusive land use entitlement” ..... 7

8 Meaning of “owner of land” ..... 8

9 Meaning of “residential land” ..... 9

10 Meaning of “approved trust” ..... 9

11 Meaning of “transferee” ..... 10

**Part 3 Eligibility** ..... 10

12 Basis for making application ..... 10

13 Eligible transferees ..... 10

14 Eligible transfers ..... 11

15 Residence requirement ..... 12

<b>Part 4 Opting in</b>	13
16 Making the application	13
17 Decision on application	13
18 Land subject to property tax if application approved	14
19 Land wrongly opted in	15
<b>Part 5 Liability for property tax</b>	15
20 Liability for property tax	15
21 Amount of property tax depends on class of land use	15
22 Classes of land use	15
23 Mixed use land	16
24 Property tax amount—class of land use	16
25 Property tax payable	18
26 Reduction in property tax if only proportion of land subject to property tax	18
27 Reduction in property tax for land subject to property tax for only part of year	18
<b>Part 6 Assessments and payment of property tax</b>	18
28 Issue of notice of assessment or reassessment	18
29 Time for payment	19
30 Included owner of land taken to have opted to pay in instalments	19
31 Unpaid property tax—tax default	20
<b>Part 7 Deferral and recovery of unpaid property tax</b>	20
32 Definitions	20
33 Grounds for deferral	20
34 Applying for deferral of payment of property tax	20
35 Assessing grounds for deferral	21
36 Effect of deferral	21
37 Relevant interest rate	21
38 Recovery of unpaid amounts	22
39 Transfer authorised with charge attached in certain circumstances	22
40 Person must not be required to sell principal place of residence	23
41 Functions of Hardship Review Board	23
<b>Part 8 Transactions involving land subject to property tax</b>	23

42 Transfers of land subject to property tax .....	23
43 Transfer of land subject to property tax—transferor not included owner .....	24
44 Transfer of land subject to property tax—transferor included owner .....	24
45 Exception—transfer to related person .....	25
46 Exception—transfer to spouse on death or break down of relationship .....	25
47 Consolidation of land .....	26
48 Subdivision of land .....	27
<b>Part 9 Miscellaneous .....</b>	<b>27</b>
49 Identification of land subject to property tax .....	27
50 Early release of charge on land .....	27
51 Notification of change of land use .....	28
52 Failure to give information .....	28
53 Act to bind Crown .....	28
54 Regulations .....	28
55 Bills to increase property tax .....	29
<b>Schedule 1 Special treatment of certain land .....</b>	<b>29</b>
<b>Schedule 2 Calculating property tax .....</b>	<b>34</b>
<b>Schedule 3 Meaning of owner-occupied .....</b>	<b>37</b>
<b>Schedule 4 Savings, transitional and other provisions .....</b>	<b>39</b>
<b>Schedule 5 (Repealed) .....</b>	<b>41</b>
<b>Schedule 6 Dictionary .....</b>	<b>41</b>

# Property Tax (First Home Buyer Choice) Act 2022 No 60



New South Wales

An Act to enable first home buyers to opt to pay an annual property tax rather than duty when buying a first home.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Property Tax (First Home Buyer Choice) Act 2022*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

Schedule 6, Dictionary defines certain terms used in this Act.

#### **Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

### 4 Relationship with *Taxation Administration Act 1996*

This Act must be read together with the *Taxation Administration Act 1996*, which makes provision for the administration and enforcement of this Act and other taxation laws.

## Part 2 Key terms

### 5 Meaning of “first home buyer”

(1) In this Act—

**first home buyer** means a person—

- (a) who is an individual, and
- (b) who is 18 years of age or older, and

- (c) who has not at any time owned residential land in Australia, either solely or with another person, and
- (d) who has not previously been a party to a relevant application approved by the Chief Commissioner, and
- (e) if the individual has a spouse—whose spouse—
  - (i) has not at any time owned residential land in Australia, either solely or with another person, and
  - (ii) has not previously been a party to a relevant application approved by the Chief Commissioner.
- (2) Land owned by a person on trust or as an executor of a will is taken not to be owned by the person for the purposes of subsection (1).
- (3) A person is taken not to be a party to a relevant application if the relevant application was made by the person in the person's capacity as a trustee or an executor of a will.
- (4) A person is taken to have owned land in the Australian Capital Territory if the person has held a leasehold interest granted by the Commonwealth in the land.
- (5) The Chief Commissioner may waive the requirement that an individual be 18 years of age or over to be a first home buyer in relation to a transfer of land if satisfied that—
  - (a) the individual as a first home buyer will occupy the land following the transfer in accordance with section 15, and
  - (b) the waiver is reasonable in the circumstances.
- (6) In this section—  
**relevant application** means an application under—
  - (a) this Act, or
  - (b) provisions of the [Duties Act 1997](#), Chapter 2, Part 8 intended to assist persons to buy a first home, or
  - (c) provisions of an Act prescribed by the regulations.

## 6 Meaning of “land”

In this Act—

**land** means the following—

- (a) a lot, including a strata-type lot, of land,
- (b) a parcel other than a lot if—

- (i) the parcel is owned by the Crown, and
- (ii) the parcel is leased to a person other than the Crown, and
- (iii) a valuation is reasonably available from the Valuer-General for the parcel.

**strata-type lot** means—

- (a) a lot within the meaning of the [Strata Schemes Development Act 2015](#), or
- (b) a development lot or a neighbourhood lot within the meaning of the [Community Land Development Act 2021](#), or
- (c) an exclusive land use entitlement.

## **7 Meaning of “exclusive land use entitlement”**

- (1) This section applies to an interest if the Chief Commissioner is satisfied—
  - (a) the interest gives the owner an exclusive right to occupy part of a building on land, and
  - (b) the interest is—
    - (i) shares or units in a relevant entity that owns or leases the land, or
    - (ii) a part ownership of the land if—
      - (A) ownership of the land is as tenants in common, and
      - (B) each part ownership gives an exclusive right to occupy a different part of the building on the land, and
  - (c) the interest is transferable, and
  - (d) the whole of the land is reasonably used in connection with the occupation of the building.
- (2) The interest giving the exclusive right to occupy part of a building may be jointly owned.
- (3) The owner of the interest is taken to be the owner of the part of the building that the owner is entitled to exclusively occupy because of the interest.
- (4) The part of the building is taken to be a separate lot (the **exclusive land use entitlement**).
- (5) An interest that gives an exclusive right to occupy part of a building only at certain times is not an interest to which this section applies.
- (6) If there is more than 1 building on the land, this section applies to an exclusive right

to occupy a whole building, but not all buildings, in the same way as it applies to part of a building.

(7) In this section—

**relevant entity** means a company or unit trust where all shares in the company or units in the trust—

- (a) are distributed to persons, and
- (b) give the persons a right to occupy parts of a building on land owned by the company or trust.

## 8 Meaning of “owner of land”

(1) In this Act, **owner of land** means—

- (a) for a lot within the meaning of the [Strata Schemes Development Act 2015](#)—the owner of the lot within the meaning of that Act, or
- (b) for a development lot or neighbourhood lot within the meaning of the [Community Land Development Act 2021](#)—the owner of the lot within the meaning of that Act, or
- (c) for an exclusive land use entitlement—the owner of the interest that gives the entitlement, or
- (d) for land leased from the Crown in perpetuity by a person other than the Crown—the lessee, or
- (e) for land subject to an eligible life estate—the owner of the life estate, or
- (f) otherwise—the legal owner of the lot.

(2) If a lessee is taken to be the owner of land for the purposes of this Act, the person who owns the fee simple in the land is taken not to be an owner of the land for the purposes of this Act.

(3) If an exclusive land use entitlement arises from ownership of shares or units in a relevant entity that owns land, the relevant entity is taken not to be the owner of the land for the purposes of this Act.

(4) In this section—

**eligible life estate** means a life estate—

- (a) created directly by the terms of a will and not by the exercise of a discretion under a will, and
- (b) conferred for the life of the owner of the life estate.



**relevant entity** has the same meaning as in section 7.

## 9 Meaning of “residential land”

- (1) In this Act, land is **residential land** if the Chief Commissioner is satisfied—
  - (a) the land contains either of the following that is suitable for occupation or use as a dwelling—
    - (i) a building,
    - (ii) a strata-type lot, including associated utility lots, and
  - (b) the land is, or is suitable to be, occupied or used predominantly for residential purposes.
- (2) If a strata-type lot is residential land, associated utility lots are also taken to be residential land.
- (3) In this section—

**associated utility lot** means a utility lot if—

- (a) the utility lot is transferred with the strata-type lot, and
- (b) its use is restricted to the owner or occupier of the strata-type lot, and
- (c) it is not suitable to be used—
  - (i) for human occupation, or
  - (ii) as a residence, office, shop or similar.

**building** includes a moveable dwelling within the meaning of the [Local Government Act 1993](#) if the Chief Commissioner is satisfied the moveable dwelling is designed, constructed or adapted for use as a dwelling on a long-term basis.

## 10 Meaning of “approved trust”

- (1) In this Act, a trust is an **approved trust** if—
  - (a) the trustee is an apparent purchaser of the land, or
  - (b) the trustee will hold the land for a person who—
    - (i) is under a legal disability, and
    - (ii) is under the guardianship of the trustee.
- (2) In this section—

**apparent purchaser** means an apparent purchaser referred to in the [Duties Act](#)

1997, section 55.

## 11 Meaning of “transferee”

(1) In this Act—

**transferee** means a person who will be the owner of land as a result of a transfer of—

- (a) for an exclusive land use entitlement—the interest that gives the entitlement, or
- (b) for land leased from the Crown in perpetuity by a person other than the Crown—the lease, or
- (c) otherwise—the fee simple in the land.

(2) In this Act, for transferred land that will be subject to an approved trust—

- (a) a reference to the **transferee** is taken to be a reference to the beneficiary under the approved trust, and
- (b) the actual transferee is referred to as the **trustee transferee**.

## Part 3 Eligibility

### 12 Basis for making application

- (1) A transferee may make an application to subject transferred land to property tax if at the time the application is made—
  - (a) the transferee is an eligible transferee, and
  - (b) the transfer is an eligible transfer.
- (2) However, a transferee may not make an application if—
  - (a) there is more than 1 eligible transferee, and
  - (b) another eligible transferee does not agree to the application being made.
- (3) A transferee may not make an application if the transferred land will be held on trust following the transfer of the land, unless the trust is an approved trust.
- (4) For an approved trust referred to in section 10(1), a trustee transferee is eligible to make an application under this section on behalf of a beneficiary who would be eligible to make the application.

### 13 Eligible transferees

- (1) A transferee is an **eligible transferee** if—
  - (a) the transferee is an eligible first home buyer, or

- (b) the transferee is not an eligible first home buyer but—
  - (i) the transferee is a first home buyer, and
  - (ii) there is more than 1 transferee under the transfer, and
  - (iii) at least 1 other transferee is an eligible first home buyer, or
- (c) for an approved shared equity scheme where all transferees other than approved equity partners are eligible transferees—the approved equity partners are also eligible transferees.

(2) In this section—

**approved equity partner** has the same meaning as in the [Duties Act 1997](#).

**eligible first home buyer** means a person who is—

- (a) a first home buyer, and
- (b) an Australian citizen or a permanent resident.

**permanent resident** has the same meaning as in the [Duties Act 1997](#).

#### 14 Eligible transfers

(1) A transfer is an **eligible transfer** if—

- (a) it is for the acquisition of—
  - (i) residential land, or
  - (ii) vacant land the Chief Commissioner is satisfied will be residential land, and
- (b) it is for the whole of the land, and
- (c) the dutiable value of the land is not more than—
  - (i) for vacant land—\$800,000, or
  - (ii) otherwise—\$1,500,000, and
- (d) it is not for the transfer of—
  - (i) business premises, or
  - (ii) a business, or
  - (iii) land used for primary production within the meaning of the [Land Tax Management Act 1956](#), section 10AA, or
  - (iv) a holiday home, and

- (e) all transferees are eligible transferees, and
- (f) the transfer of land occurs—
  - (i) before 1 July 2023, or
  - (ii) on or after 1 July 2023 but relates to, or is made in conformity with, an agreement for sale or transfer entered into before 1 July 2023.

(2) Subsection (1)(e) does not apply if—

- (a) more than 1 transferee will own the land other than under an approved shared equity scheme, and
- (b) at least 1 transferee is an eligible transferee, and
- (c) eligible transferees will own at least 50% of the land, and
- (d) no transferee is a company, unless the Chief Commissioner is reasonably satisfied the transfer should be an eligible transfer despite the transferee being a company.

## **15 Residence requirement**

- (1) If an application to subject transferred land to property tax is approved by the Chief Commissioner, at least 1 first home buyer who is a transferee must occupy the transferred land as a principal place of residence for a continuous period of at least 6 months.
- (2) The occupation must start within 12 months after the land is transferred.
- (3) The Chief Commissioner may, if satisfied there are good reasons to do so—
  - (a) approve a shorter period of occupation by a first home buyer, or
  - (b) approve a later day on which occupation by a first home buyer must start, or
  - (c) exempt a first home buyer from the occupation requirement.
- (4) The Chief Commissioner may give the approval or exemption even if—
  - (a) it is more than 12 months after the land is transferred, or
  - (b) the first home buyer no longer occupies the land as a principal place of residence.
- (5) This section does not apply to transferred land that is vacant land if the Chief Commissioner is satisfied—
  - (a) the land is intended to be used as the site of a home, and
  - (b) the home will be occupied by a first home buyer as a principal place of residence.

- (6) This section does not apply if at the time the application is made—
  - (a) at least 1 of the first home buyers is a member of the Permanent Forces of the Australian Defence Force, within the meaning of the [Defence Act 1903](#) of the Commonwealth, and
  - (b) each first home buyer is enrolled to vote in State elections under the [Electoral Act 2017](#).

## Part 4 Opting in

### 16 Making the application

- (1) A transferee, including a trustee transferee, who is eligible to make an application to subject land to property tax may make the application to the Chief Commissioner.
- (2) The application must be made—
  - (a) for an agreement for sale or transfer—before the transfer of the land, or
  - (b) otherwise—before the earlier of—
    - (i) the end of the duty default period, or
    - (ii) the time at which the instrument effecting the transfer is endorsed under the [Duties Act 1997](#), section 289.
- (3) The application may be revoked by the applicant if the applicant makes an application to the Chief Commissioner for revocation before the land is transferred.
- (4) An application under this section must be in a form approved by the Chief Commissioner.
- (5) The Chief Commissioner may require an applicant to provide further information if the Chief Commissioner considers it necessary for the proper administration of this Act.
- (6) The Chief Commissioner may impose the requirement at any time, including after the application has been approved.
- (7) In this section—

**duty default period** for a relevant transaction, means the period of 3 months after the liability to pay duty arises under the [Duties Act 1997](#) for the transaction.

### 17 Decision on application

- (1) The Chief Commissioner must approve an application to subject transferred land to property tax if the Chief Commissioner is satisfied—
  - (a) the application is made in accordance with this Act, and

- (b) if the application relates to an agreement for sale or transfer—the transfer will conform or substantially conform with the agreement, and
  - (c) if applicable, the residence requirement in section 15 will be satisfied.
- (2) For this section, a transfer substantially conforms with an agreement for sale or transfer if—
- (a) the transfer would be in conformity with the agreement if the transferee, or a trustee transferee, was the purchaser under the agreement, and
  - (b) the transfer occurs at the same time as, or proximately with, the settlement of the agreement, and
  - (c) at the time the agreement was entered into, and at the settlement of the agreement—
    - (i) the purchaser under the agreement, other than a purchaser who purchased as a trustee, and the transferee under the transfer were related persons, or
    - (ii) if the purchaser purchased as a trustee—the purchaser and the beneficiary were related persons.

- (3) In this section—

**related person** means an individual who is a related person within the meaning of the [Duties Act 1997](#).

**transfer** does not include an agreement for sale or transfer.

**transferee** does not include a purchaser.

## **18 Land subject to property tax if application approved**

- (1) If an application to subject transferred land to property tax is approved by the Chief Commissioner—
- (a) on the transfer of the land—each eligible transferee becomes an **included owner**, other than an eligible transferee who is a beneficiary under an approved trust, in which case the trustee transferee becomes the **included owner**, and
  - (b) on the transfer of the land—the proportion of the transferred land owned by included owners becomes subject to property tax, and
  - (c) on the giving of the approval—the duty chargeable on the transfer is reduced by the proportion referred to in paragraph (b).

### **Note—**

If the proportion of the transferred land owned by included owners is 100%, the transfer is exempt from duty under the [Duties Act 1997](#), Chapter 2.

- (2) Duty chargeable on the transfer is payable only by the transferees who are not eligible transferees.
- (3) If only a proportion of land is subject to property tax, the land may be referred to as **hybrid land**.

## **19 Land wrongly opted in**

- (1) An approval of the Chief Commissioner is void and is taken never to have been given for the purposes of this Act if the Chief Commissioner is satisfied—
  - (a) the transfer to which the approval relates is not in conformity or substantial conformity with the agreement for sale or transfer as required by section 17, or
  - (b) the residence requirement in section 15 has not been satisfied, or
  - (c) the approval would not have been given had the Chief Commissioner been aware of all relevant information.
- (2) If the approval is void, duty is chargeable as if the application had never been made.
- (3) Duty chargeable is a charge on the land transferred until the duty is paid.

## **Part 5 Liability for property tax**

### **20 Liability for property tax**

- (1) An included owner of land subject to property tax is liable to pay property tax on the land each financial year.
- (2) If there is more than 1 included owner of the land, each included owner is jointly and severally liable to pay the property tax.
- (3) The liability for a financial year arises at the start of the financial year.
- (4) If land becomes subject to property tax during a financial year, the liability is only for the part of the financial year commencing when the land becomes subject to property tax.
- (5) If land ceases to be subject to property tax during a financial year, the liability is only for the part of the financial year until the land ceases to be subject to property tax.

### **21 Amount of property tax depends on class of land use**

The amount of property tax payable on land depends on the class of land use of the land.

### **22 Classes of land use**

- (1) For the purposes of this Act, **class of land use** means—

- (a) land that is owner-occupied, or
  - (b) land that is not owner-occupied.
- (2) Schedule 1 sets out circumstances in which certain land—
- (a) is treated as being a particular class of land use for the purposes of this Act, or
  - (b) is otherwise treated differently for the purposes of this Act.

## **23 Mixed use land**

- (1) The Chief Commissioner may approve parts of land being treated as if they were separate lots (**deemed lots**) for the purposes of this Act.
- (2) An included owner of land may apply to the Chief Commissioner to have parts of the land treated as deemed lots if the parts have different classes of land use.

### **Example—**

a residential flat building in which 1 flat is owner-occupied and the rest are leased out by the owner

- (3) The Chief Commissioner may approve the application if the Chief Commissioner is satisfied each deemed lot is identifiable using—
- (a) an apportionment factor recorded in the Register of Land Values for the land, or
  - (b) if no apportionment factor is recorded in the Register of Land Values for the land—an apportionment factor approved for the land by the Chief Commissioner taking into account—
    - (i) the floor space or land area used for each class of land use, and
    - (ii) other factors the Chief Commissioner considers relevant.
- (4) If no apportionment factor is recorded in the Register of Land Values for the land—
- (a) the Chief Commissioner may ask the Valuer-General to determine an apportionment factor for the land, and
  - (b) the Valuer-General must—
    - (i) determine the apportionment factor in accordance with the [Valuation of Land Act 1916](#), Part 1B, Division 5 or 5A, and
    - (ii) record the apportionment factor in the Register of Land Values.

## **24 Property tax amount—class of land use**

- (1) The property tax amount must be calculated as if land had a single class of land use for a financial year.



- (2) The **property tax amount** for a class of land use for land for a financial year is—
- (a) if subsection (5) applies—the property tax indexed amount for the class of land use for the land for the financial year, or
  - (b) otherwise—the lesser of the following—
    - (i) the property tax indexed amount for the class of land use for the land for the financial year, or
    - (ii) the property tax amount for the class of land use for the land for the previous financial year multiplied by 1.04.
- (3) The **property tax indexed amount** for a class of land use for land for a financial year is calculated by adding the land value component for the class of land use for the land for the financial year to—
- (a) for land that is owner-occupied—the fixed component for the financial year as set out in Schedule 2, section 1(1), or
  - (b) for land that is not owner-occupied—the fixed component for the financial year as set out in Schedule 2, section 1(2).
- (4) The **land value component** for a class of land use for land for a financial year is calculated by multiplying—
- (a) the land value of the land subject to property tax—
    - (i) at the beginning of the previous financial year, and
    - (ii) as if the proportion of the land subject to property tax were 100%, and
  - (b) the land value rate for the financial year, as set out in Schedule 2, section 2 for the class of land use.
- (5) This subsection applies for the purposes of subsection (2)(a) if—
- (a) the land was not subject to property tax in the previous financial year, or
  - (b) no included owner of the land was an included owner of the land in the previous financial year, or
  - (c) the land is a deemed lot under section 23 which has an apportionment factor that has been introduced or changed in the financial year or the previous financial year, or
  - (d) the class of land use of the land in the current financial year was not a class of land use of the land at any time in the previous financial year, or
  - (e) the land was consolidated with other land in the financial year or the previous

financial year, or

(f) the land was subdivided in the financial year or the previous financial year.

## **25 Property tax payable**

- (1) If a single class of land use applies to land in a financial year—the property tax payable is the property tax amount for the class of land use for the land for the financial year.
- (2) If more than 1 class of land use applies to land in a financial year—the property tax payable for the land for a financial year is calculated by—
  - (a) for each class of land use that applies—reducing the property tax amount for the class of land use for the land for the financial year proportionally to reflect the number of days in the financial year that the class of land use applied to the land, and
  - (b) adding together each amount calculated under paragraph (a) for each class of land use.

### **Note—**

The property tax payable may be adjusted in certain circumstances. See, for example, sections 26–27.

## **26 Reduction in property tax if only proportion of land subject to property tax**

If only a proportion of land is subject to property tax, the property tax payable must be reduced proportionally.

## **27 Reduction in property tax for land subject to property tax for only part of year**

For land that becomes, or ceases to be, subject to property tax during a financial year, the property tax payable for the financial year must be reduced proportionally to reflect the number of days in the financial year for which the land is subject to property tax.

# **Part 6 Assessments and payment of property tax**

## **28 Issue of notice of assessment or reassessment**

- (1) The Chief Commissioner must give the included owner of land subject to property tax a notice of assessment of the property tax payable on land for a financial year as soon as practicable after—
  - (a) for land that becomes subject to property tax after the start of the financial year—the land becomes subject to property tax, or
  - (b) otherwise—the start of the financial year.
- (2) The Chief Commissioner must give the included owner of land subject to property tax

a notice of reassessment during a financial year as soon as practicable after the Chief Commissioner is notified of a change affecting the property tax payable, including—

- (a) a change of land use class applying to the land, or
- (b) a change in the value of the land, or
- (c) a change in the proportion of the land subject to property tax.

(3) A reassessment may be made more than 5 years after the initial assessment.

**Note—**

See the [Taxation Administration Act 1996](#), section 9(3)(c).

(4) Property tax is payable by the included owner of the land in accordance with the notice of assessment or reassessment.

(5) No payment of property tax is required earlier than 30 days after the notice is given to the included owner of the land.

## **29 Time for payment**

(1) As far as practicable, a notice of assessment or reassessment must give an included owner of land subject to property tax an option of paying the property tax in a single instalment or in multiple approximately equal instalments.

(2) If a notice relating to a financial year is issued before 1 August in the financial year, it must provide as far as practicable for—

- (a) a single annual instalment to be payable by 31 August in the financial year, or
- (b) 4 quarterly instalments to be payable by 31 August, 30 November, 28 February and 31 May in the financial year.

(3) The Chief Commissioner may give reminder notices to included owners who are paying in more than 1 instalment about upcoming instalment payments.

(4) Failure to give a notice of assessment or reassessment or a reminder notice does not affect the liability of an included owner to pay property tax at the times set out in this section.

## **30 Included owner of land taken to have opted to pay in instalments**

The included owner of land subject to property tax is taken, for the purposes of this section, to have opted to pay property tax for a financial year in instalments, if—

- (a) the notice of assessment has been given to the included owner for the land for the financial year, and
- (b) the full amount of property tax payable for the financial year is not paid by the time

specified in the notice for payment of the single instalment.

### 31 Unpaid property tax—tax default

The included owner of land is taken to have committed a tax default for the purposes of the [Taxation Administration Act 1996](#), Part 5 if an amount of property tax required to be paid under this Act by a particular time is not paid in full within that time.

## Part 7 Deferral and recovery of unpaid property tax

### 32 Definitions

In this Part—

**basic living expenses** means—

- (a) reasonable expenses for food, shelter, clothing and medical treatment of the relevant individual and the dependants of the individual, and
- (b) other expenses the Chief Commissioner considers to be basic living expenses.

**grounds for deferral** means the grounds for deferral set out in section 33.

### 33 Grounds for deferral

For land that is owner-occupied, there are grounds for deferral if the payment of the property tax would cause an individual to be unable to meet basic living expenses.

### 34 Applying for deferral of payment of property tax

- (1) A person (the **applicant**) who is liable to pay property tax on land may apply to the Chief Commissioner to defer the payment of property tax on the land if there are grounds for deferral.
- (2) The application must be in a form approved by the Chief Commissioner.
- (3) The Chief Commissioner may, if satisfied grounds for deferral exist—
  - (a) approve the application, and
  - (b) defer some or all of the property tax payable for—
    - (i) a financial year, or
    - (ii) if satisfied the grounds for deferral will continue for more than a financial year—a longer period.
- (4) The Chief Commissioner may make a deferral for more than a financial year subject to conditions the Chief Commissioner considers to be reasonable and appropriate.

### 35 Assessing grounds for deferral

In making a decision about whether an individual can meet basic living expenses, the Chief Commissioner must consider the following—

- (a) the income and expenses of the individual,
- (b) whether the individual has disposed of assets since a property tax liability was previously deferred or since property tax became payable for the financial year,
- (c) the ability of the individual to rearrange current financial commitments or otherwise manage the individual's financial affairs,
- (d) whether the individual's ability to manage the individual's financial affairs is impaired because of ill health, including a mental illness, intellectual disability or cognitive impairment,
- (e) other matters the Chief Commissioner reasonably considers to be relevant.

### 36 Effect of deferral

- (1) Unpaid property tax continues to be a charge on land even if the Chief Commissioner approves deferral of payment.
- (2) Interest is payable on the deferred unpaid property tax.
- (3) The rate of interest is the relevant interest rate set out in section 37.
- (4) Unpaid property tax, the payment of which is deferred, is payable in the next financial year or at a later time specified by the Chief Commissioner unless—
  - (a) a further application to defer the payment is approved by the Chief Commissioner, or
  - (b) the Chief Commissioner specifies a later date for payment.

### 37 Relevant interest rate

- (1) The **relevant interest rate** for a period is—
  - (a) the rate for the period specified by the Chief Commissioner by notice in the Gazette, or
  - (b) if no rate is specified for the period under paragraph (a)—the monthly NSW Treasury Corporation 10 year bond yield published by the Reserve Bank of Australia in the following months—
    - (i) 1 January–31 March in a year—the rate published for November in the preceding year,

- (ii) 1 April–30 June in a year—the rate published for February in the same year,
- (iii) 1 July–30 September in a year—the rate published for May in the same year,
- (iv) 1 October–31 December in a year—the rate published for August in the same year.

(2) An amount under subsection (1)(b) must be—

- (a) expressed as a percentage, and
- (b) rounded to 2 decimal places with 0.005% being rounded up.

### **38 Recovery of unpaid amounts**

(1) An amount of unpaid property tax is—

- (a) a charge on the land, and
- (b) the first charge on the land.

(2) The following are taken to be **unpaid property tax** for the purposes of this Act—

- (a) unpaid interest on unpaid property tax,
- (b) unpaid penalties imposed under the [Taxation Administration Act 1996](#) in relation to property tax.

(3) A charge on land under this Act must be paid before the land is transferred.

(4) The maximum amount payable under the charge if the land is transferred is 75% of the dutiable value of the land.

(5) The Chief Commissioner must waive payment of that part of the charge that is more than 75% of the dutiable value of the land if the charge is only a charge on that land and no other land.

### **39 Transfer authorised with charge attached in certain circumstances**

(1) The Chief Commissioner may authorise a transfer of land with the charge still attached if the Chief Commissioner is satisfied—

- (a) the transfer is a relevant transfer, and
- (b) the land is the principal place of residence of the transferee before the transfer, and
- (c) circumstances of hardship would exist if the payment of property tax were not deferred.

(2) In this section—

**relevant transfer** means—

- (a) a transfer of land by the legal personal representative of a deceased person to a beneficiary if—
  - (i) the transfer is made in accordance with the trusts contained in the will of the deceased person, or
  - (ii) the transfer occurs as a result of intestacy, or
- (b) a transfer of land that is matrimonial property or relationship property within the meaning of the [Duties Act 1997](#), section 68 to the following persons if the transfer would not be subject to duty under the section—
  - (i) a party to the marriage or relationship,
  - (ii) a child of the party,
  - (iii) a trustee of the child.

#### **40 Person must not be required to sell principal place of residence**

The Chief Commissioner must not require a person who is liable to pay property tax to sell—

- (a) land that is owner-occupied, or
- (b) land subject to property tax if it is the only land owned by the person.

#### **41 Functions of Hardship Review Board**

The Hardship Review Board may—

- (a) conduct a review of a decision by the Chief Commissioner to defer, or refuse to defer, payment of property tax, and
- (b) exercise its functions under the [State Debt Recovery Act 2018](#) and the [Taxation Administration Act 1996](#) in relation to property tax.

### **Part 8 Transactions involving land subject to property tax**

#### **42 Transfers of land subject to property tax**

Each of the following transactions of land subject to property tax is taken to be a transfer of the land to the person specified—

- (a) a transfer of the land—the transferee,
- (b) an agreement for the sale or transfer of land—the purchaser or transferee,
- (c) a declaration of trust over the land—the person declaring the trust,

- (d) a surrender of the land—the person to whom the land is surrendered,
- (e) a vesting of the land because of the following—the person in whom the land is vested—
  - (i) an order of a court of an Australian or other jurisdiction,
  - (ii) legislation of an Australian or other jurisdiction.

#### **43 Transfer of land subject to property tax—transferor not included owner**

- (1) For a transfer of land subject to property tax from a transferor who is not an included owner—
  - (a) if the transferee is already an included owner of the land—
    - (i) duty is not chargeable on the transaction, and
    - (ii) the land remains subject to property tax with the proportion subject to property tax being increased by the proportion of the land transferred, or
  - (b) if the transferee is not already an included owner of the land—
    - (i) duty is chargeable on the transaction, and
    - (ii) the land remains subject to property tax with the proportion subject to property tax being unchanged.
- (2) The regulations may prescribe exceptions to this section.

#### **44 Transfer of land subject to property tax—transferor included owner**

- (1) For a transfer involving land subject to property tax from a transferor who is an included owner—
  - (a) if the transferee is already an included owner of the land—
    - (i) duty is not chargeable on the transaction, and
    - (ii) the land remains subject to property tax with the proportion subject to property tax being unchanged, or
  - (b) if the transferee is not already an included owner of the land and each current included owner will no longer be an included owner of the land after the transaction—
    - (i) duty is chargeable on the transaction, and
    - (ii) the land ceases to be subject to property tax, or
  - (c) if the transferee is not already an included owner of the land and a current



included owner will be an included owner of the land after the transaction—

- (i) duty is chargeable on the transaction, and
- (ii) the land remains subject to property tax with the proportion subject to property tax being the lesser of—
  - (A) the proportion of the land subject to property tax before the transaction, or
  - (B) the proportion of the land owned by included owners after the transaction.

(2) Sections 45 and 46 create exceptions to this section.

(3) The regulations may prescribe other exceptions to this section.

#### **45 Exception—transfer to related person**

(1) This section applies to a transfer of land from an included owner of land to a person who is not an included owner of the land if—

- (a) the included owner and the person are related persons, and
- (b) the duty that would be chargeable under the transaction is less than the general rate of duty chargeable under the [Duties Act 1997](#), section 32.

(2) No duty is chargeable on the transfer.

(3) The related person becomes an included owner.

(4) The land remains subject to property tax with the proportion subject to property tax being unchanged.

(5) This section does not apply to a transfer as a result of—

- (a) the death of the included owner, or
- (b) the break down of the included owner's marriage or de facto relationship.

(6) In this section—

**related person** has the same meaning as in the [Duties Act 1997](#).

#### **46 Exception—transfer to spouse on death or break down of relationship**

(1) This section applies to a transfer of land from an included owner—

- (a) as a result of a relevant event for the included owner, and
- (b) to a person (the **former spouse**) who was the spouse of the included owner immediately before the relevant event.

- (2) No duty is chargeable on the transfer.
- (3) The former spouse becomes an included owner.
- (4) The land remains subject to property tax with the proportion subject to property tax being unchanged.
- (5) In this section—

**eligible life estate** has the same meaning as in section 8.

**relevant event**, for an included owner, means—

- (a) the death of the included owner, or
- (b) the break down of the included owner's marriage or de facto relationship.

**transfer of land** includes the creation of an eligible life estate in the land.

#### **47 Consolidation of land**

- (1) This section applies if land subject to property tax (**property tax land**) is consolidated with land not subject to property tax.
- (2) The consolidated land is subject to property tax with the proportion subject to property tax being the proportion obtained by multiplying—
  - (a) the proportion of the property tax land subject to property tax, and
  - (b) the ratio of—
    - (i) the land value the property tax land would have had if the consolidation had not occurred, and
    - (ii) the land value of the consolidated land.
- (3) For the purposes of this section the Chief Commissioner may use—
  - (a) the land value recorded in the Register of Land Values for the land, or
  - (b) if no land value is recorded in the Register of Land Values for the land—a land value for the land determined by the Chief Commissioner using—
    - (i) a method prescribed by the regulations, or
    - (ii) if no method is prescribed—a method the Chief Commissioner considers appropriate.
- (4) If no land value is recorded in the Register of Land Values for the land—
  - (a) the Chief Commissioner may ask the Valuer-General to determine the land value for the land, and

(b) the Valuer-General must—

- (i) determine the land value in accordance with the [Valuation of Land Act 1916](#), and
- (ii) record the land value in the Register of Land Values.

#### **48 Subdivision of land**

- (1) This section applies if land subject to property tax is subdivided.
- (2) Each lot resulting from the subdivision is subject to property tax in the same proportion as the subdivided lot was subject to property tax.

### **Part 9 Miscellaneous**

#### **49 Identification of land subject to property tax**

- (1) The Chief Commissioner must issue a certificate (a **property tax status certificate**) to a person, if the person—
  - (a) makes an application for the certificate in a form approved by the Chief Commissioner, and
  - (b) pays the fee, if any, prescribed by the regulations.
- (2) The property tax status certificate must include—
  - (a) identification details for the land, and
  - (b) whether the land is subject to property tax, and
  - (c) if requested to do so in the application—the amount of unpaid property tax outstanding as a charge on the land, and
  - (d) other information prescribed by the regulations.
- (3) A purchaser of land is entitled to rely on the accuracy of a property tax status certificate issued by the Chief Commissioner.
- (4) The property tax status certificate may be included as part of another certificate or document issued by the Chief Commissioner.

#### **50 Early release of charge on land**

The Chief Commissioner may release a charge imposed under this Act for the payment of unpaid property tax before the property tax is paid if the Chief Commissioner is satisfied the property tax will be paid.

## **51 Notification of change of land use**

- (1) Each included owner of land must ensure the Chief Commissioner is given notice of a change of use of land that will change the property tax payable on the land.
- (2) The notice must be given in a form approved by the Chief Commissioner.
- (3) The notice must be given within 3 months after the change of use.

## **52 Failure to give information**

- (1) A person liable for property tax who fails to give information as required by this Act or as reasonably required by the Chief Commissioner for the purposes of this Act is taken to have committed a tax default for the purposes of the [Taxation Administration Act 1996](#), Part 5.
- (2) For the tax default—
  - (a) the interest payable in accordance with that Part accrues on the amount of unpaid property tax for the relevant period, and
  - (b) penalty tax is payable in accordance with that Part on the amount of unpaid property tax.
- (3) In this section—

**relevant period** means the period—

  - (a) commencing on the last day permitted for giving the information, and
  - (b) ending on the earlier of—
    - (i) the day on which the information is given, or
    - (ii) the day on which the assessment calculated on the basis of the information is made, or
    - (iii) the day on which the property tax payable by the person is paid in full.

## **53 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, to the extent the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

## **54 Regulations**

The Governor may make regulations, not inconsistent with this Act, about matters that by this Act are required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## 55 Bills to increase property tax

- (1) This section applies to a Bill that proposes to increase property tax above the indexed amounts set out in this Act when it was first made whether by amending this Act or otherwise.
- (2) Parliament recognises ownership of land is a key part of many people's financial security and that investment in land is a long-term investment.
- (3) To enable people to properly calculate the costs of investing in land, Parliament recommends that property tax not be increased in the future above the indexed amounts set out in this Act when it is first made.
- (4) The Bill must not be introduced into a House of Parliament unless notice of the proposed Bill is given in the House at least 30 sitting days before the Bill is introduced.
- (5) Before the notice is given, the Minister proposing the Bill, must ensure—
  - (a) reasonable steps are taken to adequately notify members of the public and relevant organisations about the proposed increase of property tax, and
  - (b) members of the public and relevant organisations are given a reasonable opportunity to make written submissions to the Minister about the proposal.
- (6) The Minister proposing the Bill must also ensure—
  - (a) a summary of the opinions expressed in the submissions is tabled in each House of Parliament with the notice referred to in subsection (4), and
  - (b) copies of all submissions are made available to members if requested.

## Schedule 1 Special treatment of certain land

section 22

### Part 1 Land treated as being owner-occupied

#### 1 Definition

In this Part—

***included owner*** means, in the case of an approved trust, the beneficiary under the trust and not the trustee transferee.

***land-related costs*** for land means the following—

- (a) council rates and charges,
- (b) strata fees,
- (c) water rates,

- (d) energy rates and charges,
- (e) maintenance costs,
- (f) property tax,
- (g) insurance,
- (h) other costs approved by the Chief Commissioner.

## **2 Included owner may make application under this Part**

- (1) An included owner may make an application to the Chief Commissioner for an approval under this Part.
- (2) The application must be made in a form approved by the Chief Commissioner.
- (3) The Chief Commissioner may accept an application made on behalf of an included owner if satisfied it is not reasonably practicable for the included owner to make the application.

## **3 Person in full-time care**

- (1) The Chief Commissioner may approve land being treated as if it were land that is owner-occupied if the Chief Commissioner is satisfied the eligibility criteria will be met.
- (2) The eligibility criteria are—
  - (a) the included owner of the land is in full-time care, and
  - (b) immediately before the included owner entered full-time care, the land—
    - (i) was owned by the included owner, and
    - (ii) was land that was owner-occupied, and
  - (c) since the included owner entered full-time care no income has been derived from the land except—
    - (i) income from an excluded residence, or
    - (ii) income from a person occupying the land if the income derived is no more than an amount reasonably necessary to cover the cost of the land-related costs for the land.

- (3) In this section—

***aged care establishment*** means a building or part of a building used or intended to be used by an approved provider under the [Aged Care Act 1997](#) of the Commonwealth for the provision of respite care or residential care within the meaning of that Act.

**full-time care** for an included owner means the included owner—

- (a) resides at one of the following as a patient—
  - (i) a hospital within the meaning of the [Health Services Act 1997](#),
  - (ii) a health institution within the meaning of the [Health Services Act 1997](#),
  - (iii) a private health facility within the meaning of the [Private Health Facilities Act 2007](#),
  - (iv) a mental health facility within the meaning of the [Mental Health Act 2007](#), or
- (b) resides at an aged care establishment while being provided with residential care, or respite care, or
- (c) resides with another person who is eligible for a carer payment under the [Social Security Act 1991](#) of the Commonwealth because the other person provides care to the included owner.

#### **4 Absence from principal place of residence**

- (1) The Chief Commissioner may approve land being treated as if it were land that is owner-occupied for 1 or more periods (**relevant periods**) between the relevant day and the end day if the Chief Commissioner is satisfied the eligibility criteria will be met.
- (2) The eligibility criteria are—
  - (a) immediately before the relevant day, the land—
    - (i) was owned by an included owner, and
    - (ii) was land that was owner-occupied, and
  - (b) during a relevant period, no income will be derived from the land except—
    - (i) income from an excluded residence within the meaning of Schedule 3, or
    - (ii) income from a person occupying the land if the income derived is no more than an amount reasonably necessary to cover the cost of the land-related costs for the land, and
  - (c) during a relevant period no other land will be owned by the included owner if the land is—
    - (i) owner-occupied, or
    - (ii) eligible for a principal place of residence exemption under the [Land Tax Management Act 1956](#), Schedule 1A, and

(d) within 1 year after the end day the included owner will have—

- (i) lawfully recommenced occupation of the land as the principal place of residence of the included owner, and
- (ii) continuously occupied the land as the principal place of residence of the included owner for a period of at least 6 months.

(3) In this section—

**end day** means—

- (a) the day occurring 3 years after the relevant day, or
- (b) a later day approved by the Chief Commissioner if satisfied the later day is reasonable in the circumstances.

**relevant day** means the day on which the included owner commenced the period of absence from the land.

## **5 Before residence requirement is satisfied**

(1) The Chief Commissioner may approve land being treated as if it were land that is owner-occupied for 1 or more periods (**relevant periods**) between the relevant day and the end day if the Chief Commissioner is satisfied the eligibility criteria will be met.

(2) The eligibility criteria are—

- (a) the included owner intends to occupy the land as the principal place of residence of the included owner, and
- (b) during a relevant period no income is derived from the land, and
- (c) the included owner will have continuously occupied the land as the principal place of residence of the included owner for a period of at least 6 months commencing no later than the end day.

(3) In this section—

**end day** means—

- (a) the day occurring 1 year after the relevant day, or
- (b) a later day approved by the Chief Commissioner if satisfied the later day is reasonable in the circumstances.

**relevant day** means the day on which the included owner became the owner of the land.



## **6 Unoccupied land to be used as principal place of residence of owner**

- (1) The Chief Commissioner may approve land being treated as if it were land that is owner-occupied for a continuous period of up to 5 years (the **relevant period**) if the Chief Commissioner is satisfied the eligibility criteria will be met.
- (2) The eligibility criteria are—
  - (a) the land is unoccupied to allow works to be carried out to enable the land to be used as the principal place of residence of an included owner of the land, and
  - (b) within 2 years after the application is approved—
    - (i) the works will physically commence, or
    - (ii) significant steps will be taken to allow the works to physically commence, and
  - (c) during the relevant period—
    - (i) no income will be derived from the land, and
    - (ii) no other land owned by the included owner will be used as a principal place of residence by the owner or a member of the owner's family, and
  - (d) within 1 year after the end of the relevant period, the included owner will have—
    - (i) commenced lawful occupation of the land, and
    - (ii) continuously occupied the land as the principal place of residence of the included owner for a period of at least 6 months.
- (3) The Chief Commissioner may extend the period of 5 years referred to in subsection (1) if the Chief Commissioner is satisfied it is reasonable in the circumstances.

## **7 Failure to meet eligibility criteria**

- (1) If the eligibility criteria under this Part are not met after an approval is given—
  - (a) the approval is revoked, and
  - (b) property tax must be reassessed for the period to which the approval applied.
- (2) The reassessment may be made more than 5 years after the initial assessment.

### **Note—**

See the [Taxation Administration Act 1996](#), section 9(3)(c).

## **Part 2 Land transferred in certain circumstances**

### **8 Child support liability**

- (1) This section applies if land subject to property tax is transferred to a trustee as a

consequence of enforcement action taken by the Commonwealth in relation to a registered maintenance liability.

- (2) The transfer from the owner to the trustee and the transfer from the trustee back to the owner does not affect the property tax status of the land.
- (3) However, while the land is held by the trustee it is taken not to be subject to property tax.
- (4) In this section—

**registered maintenance liability** has the same meaning as in the [Child Support \(Registration and Collection\) Act 1988](#) of the Commonwealth.

## 9 Transfers back from nominee

- (1) This section applies to land if—
  - (a) the land is subject to property tax and is then transferred to a nominee and subsequently transferred back, and
  - (b) the [Duties Act 1997](#), section 56(2) applies.
- (2) The land is taken to have continued to be subject to property tax as if it had never been transferred to the nominee.
- (3) The Chief Commissioner may apply duty that would be refundable under the [Duties Act 1997](#), section 56 to the payment of unpaid property tax in relation to the land.
- (4) An assessment or reassessment of property tax may be made for the purposes of this section even if it occurs more than 5 years after the relevant financial year.

## Schedule 2 Calculating property tax

section 24

### 1 Fixed component

- (1) The fixed component for land that is owner-occupied is—
  - (a) for a financial year ending on or before 30 June 2024—\$400, and
  - (b) for a subsequent financial year the amount calculated using the formula in subsection (3).
- (2) The fixed component for land that is not owner-occupied is—
  - (a) for a financial year ending on or before 30 June 2024—\$1,500, and
  - (b) for a subsequent financial year the amount calculated using the formula in subsection (3).

- (3) For the purposes of this section the formula is as follows—

$$F = P \times G$$

where—

**F** is the fixed component amount for a financial year.

**P** is the fixed component amount for the previous financial year.

**G** is the Gross State Product per capita indexation factor for the financial year.

## 2 Land value rate

- (1) The land value rate for land that is owner-occupied is—

- (a) for a financial year ending on or before 30 June 2024—0.003, and
- (b) for a subsequent financial year the rate calculated using the formula in subsection (3).

- (2) The land value rate for land that is not owner-occupied is—

- (a) for a financial year ending on or before 30 June 2024—0.011, and
- (b) for a subsequent financial year the rate calculated using the formula in subsection (3).

- (3) For the purposes of this section the formula is as follows—

$$F = P \times G$$

where—

**R** is the land value rate for a financial year.

**P** is the land value rate for the previous financial year.

**G** is the Gross State Product per capita indexation factor for the financial year.

**L** is the land value indexation factor for the financial year.

- (4) The result of the formula must be rounded to 5 decimal places.

## 3 Gross State Product per capita indexation factor

- (1) The Gross State Product per capita indexation factor for a financial year (the **current financial year**) is the amount calculated by dividing the GSP amount for the financial year 2 years before the current financial year by the GSP amount for the financial year 3 years before the current financial year.

- (2) In this section—

**GSP amount** means—

- (a) the New South Wales gross state product per capita at current prices (series ID A2336248J) as first published for a financial year by the Australian Bureau of Statistics in the Australian National Accounts: State Accounts (5220.0) Table 1, or
- (b) if that number is not reasonably available, a gross state product per capita amount for New South Wales calculated in accordance with the regulations.

#### **4 Land value indexation factor**

The land value indexation factor for a financial year (the **current financial year**) must be worked out by—

- (a) identifying all land (the **relevant land**)—
  - (i) subject to property tax on 31 December in the financial year immediately before the current financial year (the **preceding financial year**), and
  - (ii) for which a land value is available at 1 July in—
    - (A) the preceding financial year, and
    - (B) the financial year immediately before the preceding financial year, and
- (b) calculating the aggregate land value of the relevant land as at 1 July in the preceding financial year, and
- (c) dividing that aggregate amount by the aggregate land value of the relevant land as at 1 July in the financial year immediately before the preceding financial year.

#### **5 Publication of information by Chief Commissioner**

- (1) The Chief Commissioner must publish the following information for a financial year in the Gazette before 31 March in the year the financial year starts—
  - (a) the fixed component and land value rate for—
    - (i) land that is owner-occupied, and
    - (ii) land that is not owner-occupied,
  - (b) the Gross State Product per capita indexation factor,
  - (c) the land value indexation factor.
- (2) The information must also be published on the website of Revenue NSW.
- (3) Calculations must be made under this Schedule regardless of whether the information is published in accordance with this section.

- (4) The failure to publish the information does not affect the validity of any assessment of property tax that relies on the calculations.

## **Schedule 3 Meaning of owner-occupied**

### **1 Definitions**

In this Schedule—

***included owner*** means, in the case of an approved trust, the beneficiary under the trust and not the trustee transferee.

### **2 Land that is owner-occupied**

- (1) In this Act, residential land is ***owner-occupied*** if the land—
- (a) comprises a single lot or parcel, and
  - (b) contains no more than 1 excluded residence, and
  - (c) is the principal place of residence of—
    - (i) an included owner of the residential land, or
    - (ii) a member of an included owner's family, and
  - (d) is not used for business purposes.
- (2) Land is not used for business purposes if—
- (a) no more than 1 room is predominantly used for business purposes, and
  - (b) the business for which it is used is predominantly carried out other than on the land.
- (3) The members of a family must not own more than 1 lot or parcel that is owner-occupied.

### **3 Principal place of residence**

- (1) In this Act, land is an individual's ***principal place of residence*** if—
- (a) the land—
    - (i) is residential land, and
    - (ii) is the 1 place of residence of the individual at which the individual principally resides, and
    - (iii) for a period of at least 3 months has been continuously used and occupied by the individual for residential purposes, or

- (b) the Chief Commissioner is satisfied the land is used and occupied by the individual as the individual's principal place of residence.

(2) In this section—

**land** includes land outside New South Wales.

#### **4 Two or more lots other than strata-type lots to be treated as a single lot**

(1) For the purposes of deciding if land is owner-occupied, 2 or more lots of land may be treated as a single lot if the lots are—

- (a) adjoining, and
- (b) in the same ownership, and
- (c) the site of a single residence, other than an excluded residence.

(2) For the purposes of this section—

- (a) lots do not adjoin merely because 1 lot has a single corner point on its boundary that is common to the boundary of the other lot, and
- (b) separate lots divided by a fence, wall or other structure do not adjoin unless direct access is readily available between the lots, and

**Example—**

doors, gates or openings

- (c) separate buildings erected on separate lots are not a single residence if the buildings are separately occupied or capable of being separately occupied.

(3) This section does not apply to strata-type lots.

#### **5 Two or more strata-type lots to be treated as a single lot**

For the purposes of deciding if land is owner-occupied, 2 or more strata-type lots may be treated as a single lot if the lots—

- (a) have adjoining walls or floors, and
- (b) have direct internal access between all the lots, and

**Example—**

internal doors or stairways

- (c) are in the same ownership, and
- (d) comprise a single residence, other than an excluded residence.

## **6 Meaning of “same ownership”**

In this Schedule, lots are in the **same ownership** if—

- (a) all the lots are owned by the same individual, or
- (b) for jointly owned lots—all the lots are jointly owned by the same individuals.

## **7 Meaning of “family”**

In this Act, a **family** consists of the following—

- (a) a person,
- (b) the spouse of the person,
- (c) a child, including a step-child, of the person or the spouse who
  - (i) is under 18 years of age, and
  - (ii) is not married, and
  - (iii) ordinarily resides with the person or spouse.

## **8 Meaning of “spouse”**

- (1) In this Act, a person is the **spouse** of another person if—
  - (a) they are legally married, or
  - (b) they are in a de facto relationship.
- (2) The Chief Commissioner may treat a person who is legally married to a first home buyer as not being the first home buyer’s spouse for the purposes of this Act if the Chief Commissioner is satisfied the first home buyer—
  - (a) is not cohabiting with the person, and
  - (b) has no intention of resuming cohabitation with the person.

# **Schedule 4 Savings, transitional and other provisions**

## **Part 1 General**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
  - (a) a provision of this Act, or
  - (b) a provision amending this Act.

- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—
  - (a) for a provision of this Act—the date of assent to this Act, or
  - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
  - (a) affect the rights of a person existing before the publication in a way prejudicial to the person, or
  - (b) impose liabilities on a person for anything done or omitted to be done before the publication.
- (6) In this section—  
**person** does not include the State or an authority of the State.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Opting in during transitional period**

- (1) Section 16(2) does not prevent an application being made by a transferee if—
  - (a) the application is made during the transitional period, and
  - (b) the transferee is still an owner of the land to which the application relates, and
  - (c) the liability for duty for the transfer arose—
    - (i) on or after the date of assent to this Act, and
    - (ii) before the commencement of this Act.
- (2) If the application is approved after the land is transferred—
  - (a) the land becomes subject to property tax when the land is transferred, and
  - (b) the duty chargeable must be adjusted accordingly, and
  - (c) if necessary, duty paid must be refunded.
- (3) In this section—



**transitional period** means the period—

- (a) starting on the commencement of this Act, and
- (b) ending on 30 June 2023.

### 3 No opt-in for transfers occurring before date of assent

A transfer is not an eligible transfer for the purposes of section 14 if a liability for duty on the transfer arose before the date of assent to this Act.

## Schedule 5 (Repealed)

## Schedule 6 Dictionary

section 3

**approved shared equity scheme** has the same meaning as in the [Duties Act 1997](#).

**approved trust**—see section 10.

**basic living expenses**, for Part 7—see section 32.

**break down** of a person's marriage or de facto relationship means—

- (a) a de facto relationship between the person and the person's spouse breaking down, or
- (b) a marriage between the person and the person's spouse—
  - (i) being dissolved, or
  - (ii) being annulled, or
  - (iii) breaking down irretrievably.

**Chief Commissioner** means the Chief Commissioner of State Revenue under the [Taxation Administration Act 1996](#).

**class of land use**—see section 22.

**company** has the same meaning as in the [Land Tax Management Act 1956](#).

**duty** means duty under the [Duties Act 1997](#), Chapter 2.

**dutiable value** has the same meaning as in the [Duties Act 1997](#).

**eligible transfer**—see section 14(1).

**eligible transferee**—see section 13(1).

**excluded residence** means the following residences if located on the same lot as the lot used and occupied by the owner of the lot for residential purposes—

- (a) 1 room,

- (b) 1 suite of rooms,
- (c) 1 flat,
- (d) 1 suite of rooms and 1 room,
- (e) 1 flat and 1 room,
- (f) 2 rooms that are separately occupied.

**exclusive land use entitlement**—see section 7(4).

**family**—see Schedule 3, section 7.

**financial year** means a year ending on 30 June.

**first home buyer**—see section 5.

**grounds for deferral**, for Part 7—see section 32.

**hybrid land**—see section 18(3).

**included owner**—see section 18.

**included owner**, for Schedule 1—see Schedule 1, section 1.

**included owner**, for Schedule 3—see Schedule 3, section 1.

**land**—see section 6.

**land-related costs**, for Schedule 1, Part 1—see Schedule 1, section 1.

**land value** of land for a financial year means the value entered in the Register as the land value of the land as at 1 July in the previous financial year.

**owner of land**—see section 8.

**owner-occupied**—see Schedule 3, section 2.

**principal place of residence**—see Schedule 3, section 3.

**Register of Land Values** means the Register of Land Values under the [Valuation of Land Act 1916](#).

**residential land**—see section 9.

**spouse**—see Schedule 3, section 8.

**strata-type lot**—see section 6.

**suite of rooms** means a suite of rooms—

- (a) that is not a flat, and
- (b) where all occupants of the suite are entitled to occupy all the rooms.

**transfer** includes an agreement for sale or transfer.

**transferee**—see section 11.

**trustee transferee**—see section 11.

**unpaid property tax**—see section 38(2).

**utility lot** means a lot designed to be used primarily for storage or accommodation of boats, motor vehicles or goods and not for human occupation as a residence, office, shop or similar.

**vacant land** has the same meaning as in the [Duties Act 1997](#), section 25.