

# State Revenue Legislation Further Amendment Act (No 2) 2009 No 91

[2009-91]



New South Wales

## Status Information

### Currency of version

Repealed version for 20 November 2009 to 1 December 2009 (accessed 22 December 2024 at 13:22)

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.

### Notes—

- **Repeal**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 2.12.2009.

### 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](#).

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# State Revenue Legislation Further Amendment Act (No 2) 2009 No 91



New South Wales

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# State Revenue Legislation Further Amendment Act (No 2) 2009 No 91



New South Wales

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

## 1 Name of Act

This Act is the *State Revenue Legislation Further Amendment Act (No 2) 2009*.

## 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsections (2) and (3).
- (2) Schedule 1 commences, or is taken to have commenced, on 1 December 2009.
- (3) Schedule 2 is taken to have commenced on 1 September 2009.

## Schedule 1 Amendment of **Duties Act 1997 No 123**

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

Insert after section 11 (1) (l):

**Note—**

In relation to interests in land, see clause 4 of the Dictionary.

### [2] Section 146 Meaning of “landholder”

Omit “an unencumbered value” from section 146 (1).

Insert instead “a threshold value”.

### [3] Section 146A

Insert after section 146:

### **146A Threshold value of land holdings**

- (1) For the purposes of this Chapter, the **threshold value** of the land holdings of a unit trust scheme, private company or listed company is the total value of all land holdings in New South Wales of the unit trust scheme or company.
- (2) For a land holding that consists of an estate in fee simple in land (other than a strata lot), the value of the land holding is the registered land value of the land as at 1 July in the previous year.
- (3) For a land holding that consists of a proportionate interest in an estate in fee simple in land (other than a strata lot), the value of the land holding is the amount determined by applying that proportion to the registered land value of the land as at 1 July in the previous year.
- (4) For a land holding that consists of an estate in fee simple in a strata lot, the value of the land holding is an amount that bears to the registered land value of the relevant parcel (as at 1 July in the previous year) the same proportion as the unit entitlement of the lot bears to the aggregate unit entitlement.
- (5) For a land holding that consists of a proportionate interest in an estate in fee simple in a strata lot, the value of the land holding is the amount determined by applying that proportion to the amount determined under subsection (4).
- (6) The proportionate interests of joint tenants in an estate in fee simple are to be determined as if they were tenants in common in equal shares.
- (7) For any land holding for which a value cannot be obtained under the above provisions, the value of the land holding is the unencumbered value of the land holding, determined in the same way as it is for dutiable property under Chapter 2.
- (8) For the purposes of this section, the **registered land value** of land (including a parcel) is the land value of the land as entered in the Register of Land Values kept by the Valuer-General under section 14CC of the [Valuation of Land Act 1916](#).
- (9) For the purposes of this section, a **strata lot** means a lot under the [Strata Schemes \(Freehold Development\) Act 1973](#), and expressions used in this section in relation to such a lot have the same meanings as they do in that Act.

#### **[4] Section 147 What are the “land holdings” of a landholder?**

Omit section 147 (2). Insert instead:

- (2) An interest in land is a land holding of a unit trust scheme only to the extent that

the interest is held by the trustee of the unit trust scheme in its capacity as trustee of the scheme or by a custodian of the trustee of the unit trust scheme in its capacity as custodian.

**[5] Section 147, note**

Insert at the end of the section:

**Note—**

In relation to interests in land, see also clause 4 of the Dictionary.

**[6] Section 149 What is a “relevant acquisition”?**

Insert “private” after “ceasing to be a” in section 149 (2).

**[7] Section 149 (3)-(6)**

Insert after section 149 (2):

- (3) If a person who acquires or holds an interest in a landholder is a trustee for 2 or more trusts, any interests in the landholder acquired or held by the person for different trusts are to be treated as if they were acquired or held independently by separate persons.
- (4) If a person who acquires or holds an interest in a landholder is a life company, any interests in the landholder acquired or held by the life company for different statutory funds are to be treated as if they were acquired or held independently by separate persons.
- (5) If a life company acquires or holds an interest in a landholder otherwise than for a statutory fund, that interest is to be treated as if it were acquired or held independently of, and by a separate person to, any interest acquired or held by the life company for a statutory fund.
- (6) In this section:

**statutory fund** has the meaning given by the [Life Insurance Act 1995](#) of the Commonwealth.

**[8] Section 150 What are “interests” and “significant interests” in landholders?**

Omit section 150 (1). Insert instead:

- (1) For the purposes of this Chapter, a person has an **interest** in a landholder if the person, in the event of a distribution of all the property of the landholder, would be entitled to any of the property distributed.

(1A) However, an entitlement that arises merely because a person has a debt interest (within the meaning of Division 974 of the *Income Tax Assessment Act 1997* of the Commonwealth) in a landholder, or an interest that would be a debt interest if the landholder were a company for the purposes of that Division, is not an interest in a landholder.

**[9] Section 156 How duty is charged on relevant acquisitions—public landholders**

Omit “public” where secondly occurring in section 156 (5).

**[10] Chapter 4, Part 2A**

Insert after Part 2:

## **Part 2A Charging of duty on acquisitions made by trustees**

### **157A Application of Part**

- (1) This Part applies for the purposes of determining liability for duty under this Chapter where a person acquires or holds an interest in a landholder as bare trustee for another person.
- (2) In this Part, a **bare trustee** includes a custodian.

### **157B Beneficial owner—meaning**

- (1) If a person who acquires or holds an interest in a landholder acquires or holds that interest as bare trustee for another person, the other person is a **beneficial owner** of that interest in the landholder.
- (2) If a person who is a beneficial owner of an interest in a landholder (whether as a result of subsection (1) or as a result of one or more applications of this subsection) holds that interest as bare trustee for another person, that other person is also a **beneficial owner** of that interest in the landholder.
- (3) For the purposes of this Part, the **ultimate beneficial owner** of an interest in a landholder is any beneficial owner of the interest in the landholder who does not hold that interest as bare trustee for another person.

### **157C Beneficial owners liable for duty on acquisitions in landholders**

- (1) Any interest in a landholder that is acquired or held by a person (the **legal owner**) as bare trustee for another person is taken, for the purposes of this Chapter, to have been acquired by, or to be held by, the ultimate beneficial owner of the interest in the landholder, rather than the legal owner.
- (2) Accordingly, the ultimate beneficial owner of an interest acquired by the legal

owner will be liable to lodge an acquisition statement, and to pay any duty chargeable under this Chapter, in respect of any relevant acquisition made as a result of that acquisition by the legal owner.

**Note—**

For example, A acquires an interest in a landholder as bare trustee for B. A is the legal owner and B is a beneficial owner of the interest in the landholder. B holds that interest as bare trustee for C. As a result, C is also a beneficial owner of the interest in the landholder acquired by A. If C does not hold the interest as bare trustee for another person, C is the ultimate beneficial owner of the interest and will be liable for any duty chargeable on the acquisition.

- (3) For the purpose of determining whether an acquisition is a relevant acquisition, section 149 applies as if a reference to a person who acquires or holds an interest in a landholder were a reference to the ultimate beneficial owner of the interest, rather than the legal owner.
- (4) That is, the acquisition is to be aggregated with other interests held by the ultimate beneficial owner of the interest or an associated person of the ultimate beneficial owner of the interest, rather than with other interests held by the legal owner or associated persons of the legal owner.

**[11] Section 158 Constructive ownership of land holdings and other property: linked entities**

Omit “if the other person were to be wound up” wherever occurring in section 158 (2) (a) (iii) and (3) (c).

Insert instead “in the event of a distribution of all the property of the person”.

**[12] Section 158 (4)**

Omit “if each entity in the chain of entities were to be wound up”.

Insert instead “in the event of a distribution of all the property of each entity in the chain of entities”.

**[13] Section 161 Agreements for sale or issue of shares or units in landholder**

Omit “completion of the agreement” from section 161 (1).

Insert instead “the agreement liability date”.

**[14] Section 161 (1) (a)**

Omit “from the landholder on a winding up of the landholder (as if the purchase or interest acquired by the person were registered on completion)”.

Insert instead “of the landholder in the event of a distribution of all the property of the landholder (as if the purchase or interest acquired by the person were registered on the agreement liability date)”.

**[15] Section 161 (1), note**

Omit “when the agreement is completed”.

Insert instead “on the agreement liability date”.

**[16] Section 161 (2) and (2A)**

Omit section 161 (2). Insert instead:

(2) The **agreement liability date** is the date on which the following occurs (whichever occurs first):

- (a) the agreement is completed,
- (b) the necessary transfer or title documents are delivered to the person acquiring the share or unit,
- (c) the consideration for the purchase or issue is paid,
- (d) the period of 12 months beginning on the date of first execution of the agreement, or such longer period as the Chief Commissioner may approve, expires.

(2A) If:

- (a) at the time of acquisition of an interest by any person in a landholder that necessitates the lodgment of an acquisition statement under this Chapter, the person was the purchaser or person to whom a unit or share was to be issued under an uncompleted agreement for the purchase or issue of a share or unit in a landholder, and
- (b) the agreement is subsequently rescinded, annulled or otherwise terminated without completion,

the Chief Commissioner is to assess or reassess the statement on the basis that the purchaser or person to whom the unit or share was to be issued did not have an interest in the landholder as a result of the agreement.

**[17] Section 162 Valuation of property**

Insert “unencumbered” before “value of land holdings” in section 162 (1).

**[18] Section 162 (2)**

Insert “or goods” after “the land holdings”.



**[19] Section 163 Maximisation of entitlements on distribution of property**

Omit “, whether on a winding up of the landholder or otherwise” from section 163 (1).

**[20] Section 163A General exemptions**

Omit section 163A (b). Insert instead:

- (b) if the interest was acquired solely as the result of the making of a compromise or arrangement with creditors under Part 5.1 of the *Corporations Act 2001* of the Commonwealth that has been approved by a court, or

**[21] Section 163I Meaning of expressions used in this Chapter**

Insert at the end of the section:

- (2) To avoid doubt, in this Chapter, **property** includes money, and a reference to a distribution of property includes a reference to the payment of money.

**[22] Section 163K Goods of a landholder**

Omit section 163K (2). Insert instead:

- (2) For the purposes of this Chapter, goods are goods of a landholder if the landholder has any interest in the goods, other than an interest as mortgagee, chargee or other secured creditor.
- (3) Goods are goods of a unit trust scheme only to the extent that the interest in the goods is held by the trustee of the unit trust scheme in its capacity as trustee of the scheme or by a custodian of the trustee of the unit trust scheme in its capacity as custodian.
- (4) Goods are not goods of a company if the interest the company has in the goods is held on trust and the company is not a beneficiary of the trust.

**[23] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

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**[24] Schedule 1, clause 75**

Insert after clause 75 (2):

(2A) However, in calculating the duty payable in respect of any acquisition made before 1 July 2009, the unencumbered value of the goods of the landholder in New South Wales is to be disregarded.

(2B) Similarly, in applying section 155 (5) to an acquisition made before 1 July 2009, the value of "A" is to be determined disregarding the unencumbered value of the goods in New South Wales of the landholder.

**[25] Schedule 1, clause 77**

Insert "made on or after 1 July 2009" after "advance or further advance" in clause 77 (1) (b).

**[26] Schedule 1, Part 32**

Insert after Part 31:

## **Part 32 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act (No 2) 2009**

### **80 Application of landholder duty amendments**

- (1) The amendments made to Chapter 4 by the *State Revenue Legislation Further Amendment Act (No 2) 2009* apply in respect of an interest in a landholder that is acquired on or after the commencement of Schedule 1 to that Act.
- (2) However, section 163A, as in force immediately before its amendment by the *State Revenue Legislation Further Amendment Act (No 2) 2009*, continues to apply in respect of an interest acquired by a person in a landholder if the person's intention to make the acquisition was announced to the market before the date on which the Bill for the *State Revenue Legislation Further Amendment Act (No 2) 2009* was introduced into the Legislative Assembly.
- (3) The amendments to section 161 made by the *State Revenue Legislation Further Amendment Act (No 2) 2009* apply to agreements first executed on or after the commencement of Schedule 1 to that Act.

### **81 Liability of beneficial owners for landholder duty**

- (1) The landholder liability amendments apply to an interest in a landholder that is acquired on or after the commencement of the amendments.
- (2) If the ultimate beneficial owner of an interest in a landholder acquires an interest in a landholder on or after the commencement of the amendments, an acquisition of an interest in a landholder made before that commencement (a ***pre-commencement acquisition***) that would have been treated as an

acquisition made by the ultimate beneficial owner of the interest or an associated person if the landholder liability amendments had been in force at the time that the acquisition was made is to be counted for the purpose of determining whether a relevant acquisition has been made.

- (3) For that purpose, such a pre-commencement acquisition is treated as an acquisition made by the ultimate beneficial owner of the interest or an associated person (as the case requires) and must be disclosed in an acquisition statement by the ultimate beneficial owner of the interest.
- (4) However, a pre-commencement acquisition disclosed in an acquisition statement by the ultimate beneficial owner of an interest in a landholder is an exempt acquisition if, but for subclause (3), the acquisition would not have to be disclosed in that statement.
- (5) Expressions used in this clause have the same meanings as they have in the landholder liability amendments.
- (6) In this clause, the **landholder liability amendments** means the provisions of Part 2A of Chapter 4, as inserted by the [State Revenue Legislation Further Amendment Act \(No 2\) 2009](#).

## 82 Meaning of “interest in land”

Clause 4 of the Dictionary, as inserted by the [State Revenue Legislation Further Amendment Act \(No 2\) 2009](#), applies in respect of:

- (a) a transfer of dutiable property that occurs on or after the commencement of Schedule 1 to that Act (except where made in conformity with an agreement for sale or transfer entered into before that commencement), and
- (b) an acquisition of an interest in a landholder under Chapter 4 that is made on or after the commencement of Schedule 1 to that Act.

### [27] Dictionary

Insert after clause 3:

#### 4 Interests in land

- (1) For the purposes of this Act, a mining lease or mineral claim granted under the [Mining Act 1992](#) is taken to give the holder an interest in the land to which it relates.
- (2) For the purposes of this Act, the following do not give rise to an interest in land:
  - (a) an assessment lease, exploration licence or opal prospecting licence under

the *Mining Act 1992*,

- (b) a carbon sequestration right within the meaning of Division 4 of Part 6 of the *Conveyancing Act 1919*,
- (c) a petroleum title within the meaning of the *Petroleum (Onshore) Act 1991*,
- (d) a licence, permit, lease, access authority or special prospecting authority under the *Petroleum (Offshore) Act 1982*.

### **Schedules 2, 3 (Repealed)**