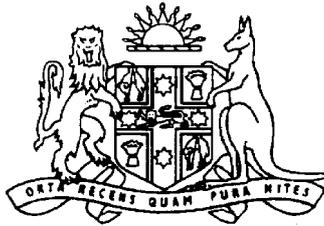


New South Wales

State Revenue Legislation Further Amendment Act 2003 No 80

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New South Wales

State Revenue Legislation Further Amendment Act 2003 No 80

Act No 80, 2003

An Act to make miscellaneous amendments to certain State revenue legislation;
and for other purposes. [Assented to 27 November 2003]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *State Revenue Legislation Further Amendment Act 2003*.

2 Commencement

- (1) This Act commences on the date of assent, except as otherwise provided by this section.
- (2) The following provisions commence, or are taken to have commenced, on the dates indicated:
 - Schedule 1 (except Schedule 1 [20], [21], [22] and [26])—1 January 2004
 - Schedule 1 [20], [21], [22] and [26]—1 January 2003
 - Schedule 2—1 October 2003
 - Schedule 4—31 December 2003
 - Schedule 5 [1], [3] and [5]—1 January 2004
 - Schedule 6—1 January 2004
 - Schedule 7—1 January 2004

3 Amendment of Acts

The Acts specified in Schedules 1–7 are amended as set out in those Schedules.

Schedule 1 Amendment of Duties Act 1997

(Section 3)

[1] Section 8 Imposition of duty on certain transactions concerning dutiable property

Omit “a court order,” from section 8 (1) (b) (v).

Insert instead “an order of a court of this or another jurisdiction, whether inside or outside Australia.”.

[2] Section 8 (1) (b) (vii)

Insert after section 8 (1) (b) (vi):

- (vii) a vesting of land in New South Wales by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia.

[3] Section 8A

Insert after section 8:

8A Vesting of land in New South Wales by statute law

- (1) Without limiting section 8 (1) (b) (vii), land in New South Wales is vested under statute law if the law vests the land in an entity that the law states is the successor in law of, continuation of or same entity as, the entity in which the land was previously vested.
- (2) However, land in New South Wales is not vested under statute law on the registration of a company under Part 5B.1 of Chapter 5B of the *Corporations Act 2001* of the Commonwealth.
- (3) The merger of a corporation (*company A*) with and into another corporation (*company B*) in circumstances where neither subsection (4) nor subsection (5) applies is taken to be a vesting of the land in New South Wales of company A in company B by statute law.
- (4) A merger of corporations (the *merging corporations*) in circumstances where another corporation (*company C*) results as a consequence of the merger is taken to be a vesting of the land in New South Wales of the merging corporations in company C by statute law.

- (5) A merger of corporations (the *merging corporations*) with and into each other in circumstances where each of the merging corporations continues in existence is taken to be a vesting in the merging corporations, jointly, of 50% (in value) of the land in New South Wales of the merging corporations by statute law.

[4] Section 9 Imposition of duty on dutiable transactions that are not transfers

Insert at the end of the Table to the section in columns 1–4, respectively:

vesting by statute law	the vested land in New South Wales	the person in whom the land is vested	when the vesting by statute law occurs
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[5] Sections 15 (1), 78 (1), 101 (1), 130, 136 and 143

Omit “a form approved by the Chief Commissioner” wherever occurring.

Insert instead “an approved form”.

[6] Section 24

Omit the section. Insert instead:

24 Interests, agreements and arrangements that reduce the dutiable value

- (1) In determining the dutiable value of dutiable property under this Part, any interest, agreement or arrangement (other than an encumbrance) granted or made in respect of the dutiable property that has the effect of reducing the dutiable value is to be disregarded, subject to subsection (2).
- (2) An interest, agreement or arrangement is not to be disregarded if the Chief Commissioner is satisfied that it was not granted or made as a part of an arrangement or scheme with a collateral purpose of reducing the duty otherwise payable on the dutiable transaction.
- (3) In considering whether or not he or she is satisfied for the purposes of subsection (2), the Chief Commissioner may have regard to:

-
- (a) the duration of the interest, agreement or arrangement before the dutiable transaction, and
 - (b) whether the interest, agreement or arrangement has been granted to or made with an associated person, and
 - (c) whether there is any commercial efficacy to the granting of the interest or the making of the agreement or arrangement other than to reduce duty, and
 - (d) any other matters the Chief Commissioner considers relevant.

[7] Section 26 Certain transactions concerning goods and other property

Insert at the end of the section:

- (2) This section does not enable the Chief Commissioner to disregard the value of goods used in connection with a business in respect of which the goodwill of the business is, or is part of, the dutiable property.

[8] Section 50 Cancelled agreements

Omit “rescinded or annulled” wherever occurring.

Insert instead “cancelled”.

[9] Section 50 (3)

Insert after section 50 (2):

- (3) In this section, *cancelled* means rescinded, annulled or otherwise terminated without completion.

[10] Section 65 Exemptions from duty

Insert after section 65 (11):

(12) Vesting by statute law—deceased estates

No duty is chargeable under this Chapter on the vesting of dutiable property in a legal personal representative of a deceased person.

[11] Section 99 Transfer by special trust to corporation

Omit “section 160ZZN (Transfer of asset to wholly-owned company) of the Commonwealth *Income Tax Assessment Act 1936*” from section 99 (1) (b).

Insert instead “Division 122 of Part 3-3 of the Commonwealth *Income Tax Assessment Act 1997*”.

[12] Section 166 What is the “cost” of a lease?

Omit “the lease” from section 166 (1) (b).

Insert instead “a lease of premises in a retirement village within the meaning of section 5 of the *Retirement Villages Act 1999*”.

[13] Section 166 (2)

Insert “but does not include any premium paid or payable expressed to be rent” after “to be rent”.

[14] Section 170 General rate

Insert at the end of the section:

- (2) In addition, duty at the rate chargeable under section 32 (1) is chargeable on the amount of any premium paid or payable in respect of the lease (other than a premium paid or payable in respect of a lease of premises in a retirement village within the meaning of section 5 of the *Retirement Villages Act 1999*) as if that amount were the dutiable value of dutiable property subject to a dutiable transaction.

[15] Section 179 Exemptions

Insert “subject to subsection (3),” before “a lease” in section 179 (1) (a).

[16] Section 179 (1) (b)

Insert “subject to subsection (3),” before “a lease”.

[17] Section 179 (2) (c)

Insert at the end of section 179 (2) (b):

, or

- (c) so much of the consideration paid or agreed to be paid on the grant of the lease as is chargeable with duty under Chapter 2.

[18] Section 179 (3) and (4)

Insert after section 179 (2):

- (3) Subsection (1) (a) or (b) does not apply to a lease that is one of two or more leases:
 - (a) that are:
 - (i) for terms that are consecutive or not more than 3 months apart, and
 - (ii) over the same or substantially the same property, and
 - (iii) between the same lessor and lessee or associated persons of the lessee, and
 - (b) the date of first execution of each of which is within a period of 12 months, and
 - (c) that, if they were taken to be a single lease instrument for a term which is the aggregation of the terms of the leases and for a total cost which is the aggregation of the costs of the leases, would be chargeable with duty.
- (4) The lease instruments for two or more leases that satisfy the requirements of subsection (3) are, for the purposes of this Chapter, taken to be a single lease instrument for a term which is the aggregation of the terms of the leases and for a total cost which is the aggregation of the costs of the leases.

[19] Section 208 When does a liability arise?

Insert after section 208 (4):

- (5) A reference in subsection (3) to land does not include a reference to an interest in land that is held by way of security.

[20] Section 218B Collateral mortgage

Insert “on the date of its first execution” after “chargeable” in section 218B (1).

[21] Section 218B (1) (b)

Omit “under section 217”. Insert instead “under this Act”.

[22] Section 218B (1A)

Insert after section 218B (1):

- (1A) However, if at the time an advance or a further advance is made under a mortgage, instrument of security or mortgage package referred to in subsection (1) no such mortgage or mortgage package has been duly stamped under this Act (this section excepted), the collateral mortgage ceases to be a collateral mortgage for the purposes of this section and is chargeable with duty under this Act otherwise than as a collateral mortgage.

[23] Section 267 Exemptions

Omit “mine rescue work in accordance with the *Mines Rescue Act 1925*” from section 267 (5) (b) (ii).

Insert instead “mines rescue functions in accordance with the *Coal Industry Act 2001*”.

[24] Section 284A

Insert after section 284:

284A Joint government enterprise—water savings projects

Duty under this Act is not chargeable, in the case of a joint government enterprise that has the function of allocating funds for water savings projects, on the following:

- (a) a dutiable transaction in respect of dutiable property if the enterprise is the person described in this Act as the person liable to pay the duty,
- (b) an instrument executed by or on behalf of the enterprise if the enterprise is the person described in this Act as the person liable to pay the duty,

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- (c) an application by the enterprise to register a motor vehicle,
 - (d) any insurance taken out by or on behalf of the enterprise.

[25] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2003 (to the extent that it amends this Act)

[26] Schedule 1

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

Part Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2003

Collateral mortgages

Section 218B, as amended by the *State Revenue Legislation Further Amendment Act 2003*, extends to a mortgage on which minimum duty of \$10 was paid before the commencement of the amendments if an advance or a further advance is made after that commencement as referred to in section 218B (1A).

[27] Dictionary

Omit the definition of *approved*. Insert instead:

approved form means a form approved under section 34 of the *Taxation Administration Act 1996*.

Schedule 2 Amendment of Fines Act 1996

(Section 3)

[1] Section 22 Persons who may issue and deal with penalty notices (appropriate officers)

Omit section 22 (2) (b). Insert instead:

- (b) a person employed in the Office of State Revenue in the Treasury and authorised by the Chief Commissioner of State Revenue for the purposes of this Part,

[2] Section 114 Functions of Office

Insert after section 114 (1):

(1A) The Office:

- (a) may enter into arrangements with persons who issue penalty notices, or on whose behalf penalty notices are issued, for or with respect to the receipt, recovery and collection of amounts payable under those notices, including the issuing of courtesy letters, and
- (b) may receive, recover and collect, and may otherwise deal with, those amounts in accordance with those arrangements, and
- (c) may do all such things as may be necessary or convenient for the exercise of the functions referred to in paragraphs (a) and (b), including:
 - (i) the issuing of court attendance notices, and
 - (ii) the demanding and recovering of fees and charges with respect to the provision of its services.

[3] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2003 (to the extent that it amends this Act)

[4] Schedule 3, Part 3

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
State Revenue Legislation Further
Amendment Act 2003**

11 Service level deeds

The Treasurer and the Director of the State Debt Recovery Office are taken to be parties to each service level deed in force as at 1 October 2003 and entered into by the Commissioner of Police, or otherwise by or on behalf of the Infringement Processing Bureau within NSW Police, for or with respect to the processing of penalty notices.

12 Construction of references to the Infringement Processing Bureau

A reference in any instrument made before the commencement of this clause to the Manager, Infringement Processing Services of the Police Service, the Infringement Processing Bureau within the Police Service or a person employed in the Infringement Processing Bureau is taken to be a reference to:

- (a) if the reference is made in relation to the issuing or processing of a penalty notice, a person employed in the Office of State Revenue in the Treasury and authorised by the Chief Commissioner of State Revenue for the purposes of Part 3 of this Act, or
- (b) if the reference is made otherwise than in relation to the issuing of a penalty notice, the State Debt Recovery Office,

subject to the regulations.

Schedule 3 Amendment of First Home Owner Grant Act 2000

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order:

multiple occupancy contract—see section 6A.

multiple occupancy land—see section 6B.

terms contract means a contract for the sale or purchase of land under which the purchaser:

- (a) is obliged to make 2 or more payments to the vendor after the execution of the contract and before becoming entitled to a conveyance or transfer of the land, and
- (b) is entitled to possession or occupation of the land before becoming entitled to a conveyance or transfer of the land.

[2] Section 5 Ownership of land and homes

Insert after section 5 (2) (e):

- (e1) an interest as purchaser of an estate in fee simple under a terms contract,

[3] Sections 6A and 6B

Insert after section 6:

6A Multiple occupancy contract

- (1) For the purposes of this Act:
 - (a) a contract made on or after 1 July 2002 for the purchase of a home is a *multiple occupancy contract* if 2 or more homes are purchased under the contract and the homes are on the same parcel of land, and
 - (b) a comprehensive home building contract made on or after 1 July 2002 is a *multiple occupancy contract* if 2 or more homes are to be built under the contract and the homes are on the same parcel of land.

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- (2) The provisions of this Act apply in respect of a multiple occupancy contract as if a separate contract had been made in respect of each home purchased or built under the contract that is an exclusive occupancy.
 - (3) Accordingly, each of those contracts may, subject to the requirements of section 13, be treated as a separate eligible transaction under this Act and section 7 (4) does not prevent the payment of a grant in respect of each such eligible transaction.
 - (4) A home is an *exclusive occupancy* only if the Chief Commissioner is satisfied that the purchaser of the home or the party to the contract for whom the home is built is, on the completion of the contract, entitled to occupy that home as a place of residence to the exclusion of the persons who purchase the other homes, or for whom the other homes are built, under the contract.

6B Multiple occupancy land

- (1) For the purposes of this Act, a parcel of land is *multiple occupancy land* if there are 2 or more homes, built or being built, on the parcel.
- (2) The provisions of this Act apply in respect of the purchase or building of a home on multiple occupancy land as if the home purchased or built is an exclusive occupancy.
- (3) A home is an *exclusive occupancy* only if the Chief Commissioner is satisfied that the persons who occupy the home as a place of residence are entitled to do so to the exclusion of the persons who occupy the other home or homes on the parcel of land.

[4] Section 11 Criterion 4—Applicant (or applicant’s spouse) must not have had relevant interest in residential property

Omit “before the date on which the application is made, held an interest in property (other than property to which the application relates)” from section 11 (3).

Insert instead “before the commencement date of the eligible transaction to which the application relates, held an interest in property”.

[5] Section 12 Criterion 5—Residence requirement

Omit “within 12 months after completion of the eligible transaction or a longer period approved by the Chief Commissioner” from section 12 (1).

Insert instead “for a continuous period of at least 6 months”.

[6] Section 12 (1A) and (1B)

Insert after section 12 (1):

- (1A) However, if the Chief Commissioner is satisfied there are good reasons to do so, the Chief Commissioner may:
 - (a) approve a shorter period, or
 - (b) exempt the applicant from the requirement to comply with subsection (1).
- (1B) The period of occupation required under subsection (1), or the shorter period approved under subsection (1A) (a), must start within 12 months after completion of the eligible transaction or a longer period approved by the Chief Commissioner.

[7] Section 13 Eligible transactions

Insert “except in the case of a terms contract,” before “if” in section 13 (5) (a) (ii).

[8] Section 15 All interested persons to join in application

Omit section 15 (2). Insert instead:

- (2) An *interested person* is a person who is, or will be, on the completion of the eligible transaction to which the application relates, an owner of the relevant home but does not include the following persons:
 - (a) a person who is excluded from the application of this section by the Chief Commissioner because the Chief Commissioner has recognised the interest of another person to be a non-conforming interest under section 5 (4),
 - (b) in the case of a home being purchased or built under a multiple occupancy contract, a purchaser of another home under the contract or party to the contract for whom another home is being built under the contract,

and who does not, on the completion of the contract, acquire any entitlement to occupy the home that is the subject of the application,

- (c) in the case of a contract to purchase or build a home on multiple occupancy land, a person who has an exclusive occupancy of another home on the multiple occupancy land and who does not, on completion of the contract, acquire any entitlement to occupy the home that is the subject of the application,
- (d) the New South Wales Land and Housing Corporation.

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

Insert “for a continuous period of at least 6 months commencing” after “principal place of residence” in section 20 (1) (b).

[10] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2003 (to the extent that it amends this Act)

[11] Schedule 1, Part 4

Insert after Part 3:

Part 4 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2003

6 Definition

In this Part:

amending Act means the *State Revenue Legislation Further Amendment Act 2003*.

7 Some amendments operate from 1 July 2002

- (1) The amendments made to this Act by Schedule 3 [1], [2], [3], [7] and [8] to the amending Act are taken to have operated from 1 July 2002 and, subject to subclause (2), apply from 1 July 2002 in respect of contracts made before, on or after that date.

- (2) The multiple occupancy contract amendments apply only to contracts made on or after 1 July 2002.
- (3) For the purposes of this clause, *the multiple occupancy contract amendments* are:
 - (a) Schedule 3 [3] to the amending Act, and
 - (b) Schedule 3 [1] and [8] to the amending Act, insofar as they relate to multiple occupancy contracts.

8 Criterion 5—residence requirement

The amendments made to section 12 by Schedule 3 [5] and [6] to the amending Act apply to applications made on or after 1 January 2004.

Schedule 4 Amendment of Land Tax Management Act 1956

(Section 3)

[1] Section 3 Definitions

Omit section 3 (3).

[2] Section 3A Special trust—meaning

Insert at the end of section 3A (4) (d):

, or

- (e) if the trust is established by will, but only during the period ending on the expiration of 12 months after the date of death of the testator, or such further period as may be approved by the Chief Commissioner in a particular case.

[3] Section 10 Land exempted from tax

Omit “10AA,” from section 10 (1).

[4] Section 10 (1) (p3)

Insert after section 10 (1) (p2):

- (p3) land that is vested in, owned by, held on trust by or for, or leased by a joint government enterprise that has the function of allocating funds for water savings projects,

[5] Section 10 (1) (r)

Omit the paragraph. Insert instead:

- (r) land that is exempt from taxation under the principal place of residence exemption, as provided for by Schedule 1A,

[6] Section 10 (1D), (1F), (1FA) and (1G)

Omit the subsections.

[7] Section 10AA Exceptions to principal place of residence exemption

Omit the section.

[8] Section 10A

Omit the section. Insert instead:

10A Land used for several purposes

- (1) If land is used for more than one purpose and each of those purposes is an exempt purpose, the land is exempt from taxation.
- (2) A purpose for which land is used is an *exempt purpose* if land used solely for that purpose would be exempt from taxation because of its use for that purpose.

[9] Sections 10H, 10I and 10J

Omit the sections.

[10] Section 10T Concession for unoccupied land intended to be owner's principal place of residence

Omit the section.

[11] Schedule 1A

Insert before Schedule 1:

Schedule 1A Principal place of residence exemption

(Section 10 (1) (r))

Part 1 Preliminary

1 Definitions

- (1) In this Schedule:
 - principal place of residence exemption*—see clause 2.
 - residential land*—see clause 3.
 - taxing date*—means midnight on the thirty-first day of December.
- (2) For the purposes of this Schedule, a reference to the owner of land includes, if there are joint owners, any one or more of those joint owners.

Part 2 Principal place of residence exemption

2 Principal place of residence exemption

- (1) Land used and occupied by the owner as the principal place of residence of the owner of the land, and for no other purpose, is exempt from taxation under this Act, in respect of the year commencing on 1 January 2004 or any succeeding year, if:
 - (a) the land has a land value in respect of the year of less than the premium tax threshold, and
 - (b) the land is:
 - (i) a parcel of residential land, or
 - (ii) a lot under the *Strata Schemes (Freehold Development) Act 1973* or a lot under the *Strata Schemes (Leasehold Development) Act 1986*.
- (2) Land is not used and occupied as the principal place of residence of a person unless:
 - (a) the land, and no other land, has been continuously used and occupied by the person for residential purposes and for no other purposes since 1 July in the year preceding the tax year in which land tax is levied, or
 - (b) in any other case, the Chief Commissioner is satisfied that the land is used and occupied by the person as the person's principal place of residence.
- (3) If the owner of land is entitled to the exemption conferred by this clause, no other person is liable to be assessed for taxation under this Act in respect of the land during the period of the owner's entitlement to the exemption.
- (4) The exemption conferred by this clause is referred to as the ***principal place of residence exemption***.

3 Residential land—meaning

- (1) In this Schedule, ***residential land*** means land that is used and occupied for residential purposes and for no other purpose, that use and occupation being use and occupation of a building or buildings designed, constructed or adapted for residential purposes, other than a building or buildings:
 - (a) comprised of lots within a strata plan or residential units, or

- (b) containing (out of the total of all rooms in the building or buildings) occupancies other than that of the owner, or
 - (c) from any part of which income is derived.
- (2) Land does not cease to be used and occupied as provided by subclause (1) by reason of there being on that land any building or improvement that is used or occupied for a purpose ancillary to the purposes for which the building is, or the buildings are, designed, constructed or adapted.

Note. Clause 4 allows one residential occupancy to be disregarded in applying the principal place of residence exemption. Clause 5 allows the use of land for purposes ancillary to a business conducted at a different place to be disregarded in certain circumstances.

Part 3 Concessions in application of principal place of residence exemption

4 Concession for land on which there is one other residential occupancy

- (1) For the purposes of the principal place of residence exemption, if a building or buildings used or occupied for residential purposes contains or contain a residential occupancy other than that of the owner, the use of the building or buildings for the purpose of that residential occupancy may be disregarded if:
- (a) the residential occupancy is an excluded residential occupancy, and
 - (b) the building contains or buildings contain (out of a total of all rooms in the building or buildings) not more than one of those excluded residential occupancies (not including the occupancy of the owner).
- (2) For the purposes of this clause, each of the following residential occupancies is an ***excluded residential occupancy***:
- (a) one room,
 - (b) one suite of rooms (not being a flat) each room of which all occupants of the suite are entitled to occupy,
 - (c) one flat,

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- (d) one suite of rooms (not being a flat) each room of which all occupants of the suite are entitled to occupy, and one room,
 - (e) one flat and one room,
 - (f) 2 rooms, each of which is separately occupied.
- (3) Accordingly, land does not cease to be residential land because there is on the land one, but not more than one, such excluded residential occupancy, even if income is derived from the residential occupancy.

5 Concession for land used for incidental business purposes

- (1) For the purposes of the principal place of residence exemption, if land owned by a person is used and occupied by the owner primarily for residential purposes but not more than one room is used primarily for business purposes, the use of the land for the purpose of the business may be disregarded if the business is primarily conducted elsewhere.
- (2) Accordingly, land does not cease to be residential land because of the use of one room primarily for business purposes, even if income is derived from the use of the land for that purpose.
- (3) Nothing in this clause affects, or is affected by, clause 3.

6 Concession for unoccupied land intended to be owner's principal place of residence

- (1) If the Chief Commissioner is satisfied that the owner of unoccupied land intends to use and occupy the land solely as his or her principal place of residence, the owner is taken, for the purposes of the principal place of residence exemption, to use and occupy that land as his or her principal place of residence.
- (2) This clause does not apply unless the Chief Commissioner is satisfied that:
 - (a) the land is unoccupied because the owner intends to carry out, or is carrying out, building or other works necessary to facilitate his or her intended use and occupation of the land as a principal place of residence, and

- (b) if those building or other works have physically commenced on the land, no income has been derived from the use and occupation of the land since that commencement, and
 - (c) the intended use and occupation of the land is not unlawful.
- (3) This clause applies in respect of the assessment of a person's ownership of land only in the period of:
 - (a) 2 tax years immediately following the year in which the person became owner of the land, or
 - (b) if the land is used and occupied for residential purposes by a person other than the owner at any time after the person became owner, 2 tax years immediately following the tax year in which the building or other works necessary to facilitate the owner's intended use and occupation of the land are physically commenced on the land.
- (4) The Chief Commissioner may extend the period in which this clause applies if satisfied that:
 - (a) there is a delay in the completion or, in a case referred to in subclause (3) (b), the commencement of the building or other works necessary to facilitate the owner's intended use and occupation of the land, and
 - (b) the delay is due primarily to reasons beyond the control of the owner.
- (5) If the principal place of residence exemption applies by operation of this clause to land not actually used and occupied by a person as his or her principal place of residence on a taxing date, that exemption is revoked if the person fails to actually use and occupy the land as his or her principal place of residence by the end of the period in which this clause applies in respect of the assessment of the person's ownership of the land and to continue to so use and occupy the land for at least 6 months.
- (6) The effect of the revocation is that the principal place of residence exemption is taken not to have applied to the land in respect of any tax year to which, but for the revocation, it would have applied. Land tax liability is to be assessed or reassessed accordingly.

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- (7) This clause does not apply in respect of land owned by a person if:
- (a) the person or any member of the person's family (within the meaning of clause 12) is entitled to have his or her actual use and occupation of other land taken into account under section 9C or under this Schedule, or
 - (b) the person or any joint owner of the land owns land outside New South Wales that is the principal place of residence of the person or joint owner, or
 - (c) the land, or the land if combined with any adjoining land of which the person is an owner, is capable of having more than 2 residences or residential units lawfully built on it.
- (8) For the purposes of this clause:
unoccupied land means land that is not being used or occupied for any purpose.

7 Concession for sale of former principal place of residence

- (1) If the Chief Commissioner is satisfied that, on a taxing date (*the relevant taxing date*):
- (a) a person is the owner of land (*the former residence*) that was the principal place of residence of the person on the relevant taxing date or was the principal place of residence of the person on the preceding taxing date, and
 - (b) the person is the owner of other land (*the new residence*) that is being or is intended to be used and occupied by the person as his or her principal place of residence,
- both the former residence and the new residence are taken, for the purpose of the principal place of residence exemption, to be used and occupied by the person as the person's principal place of residence on the relevant taxing date.
- (2) This clause applies in respect of land owned by a person only if the Chief Commissioner is satisfied that:
- (a) the former residence has not been used or occupied except as the person's principal place of residence, and no income has been derived from the use or occupation of the residence, since the preceding 1 July, except:

- (i) income derived from an excluded residential occupancy (within the meaning of clause 4), or
 - (ii) income derived under a lease or licence entered into by the purchaser under a contract for the sale of the former residence for a period pending completion of the sale, and
 - (b) the person became the owner of the new residence within the period of 6 months before the relevant taxing date, and
 - (c) since the person became owner of the new residence the new residence has not been used or occupied except:
 - (i) as the person's principal place of residence, or
 - (ii) by a tenant under a lease entered into by the previous owner, and
 - (d) the person intends to dispose of the former residence within 6 months after the relevant taxing date.
- (3) If the principal place of residence exemption applies by operation of this clause to land not actually used and occupied by a person at the relevant taxing date, the exemption is revoked if:
- (a) the person fails to dispose of the former residence within 6 months after the relevant taxing date, or such further period as may be approved by the Chief Commissioner, or
 - (b) the person is not actually using and occupying the new residence as his or her principal place of residence by the next taxing date immediately following the relevant taxing date.
- (4) The effect of the revocation is that the principal place of residence exemption is taken not to have applied in respect of any tax year to which, but for the revocation, it would have applied. Land tax liability is to be assessed or reassessed accordingly.
- (5) For the purposes of this clause, a person *disposes* of a former residence if:
- (a) the person ceases to be an owner of the former residence, or
 - (b) the person enters into an agreement for the sale of the former residence.

8 Concession for absences from former residence

- (1) If the Chief Commissioner is satisfied that:
 - (a) a person is the owner of land (*the former residence*) that has been used and occupied by the person as his or her principal place of residence for a continuous period of at least 6 months, and
 - (b) the person uses and occupies other land (whether or not in New South Wales), that is not owned by the person, as his or her principal place of residence,the person is taken, for the purpose of the principal place of residence exemption, to continue to use and occupy the former residence as his or her principal place of residence.
- (2) The maximum period for which a person may be taken, under this clause, to continue to use and occupy a former residence as a principal place of residence is 6 years starting at the end of the last period (of at least 6 months) during which the former residence was used and occupied by the person as a principal place of residence (not including any period for which the person may be taken, under clause 7 or this clause, to have used and occupied the former residence as a principal place of residence).
- (3) If the principal place of residence exemption applies to the former residence of a person by operation of this clause, the exemption is revoked if the person is the owner of the former residence at the end of the 6-year period referred to in subclause (2) and fails:
 - (a) to resume actual use and occupation of the residence as a principal place of residence by the end of that period, and
 - (b) to continue that use and occupation for at least 6 months.
- (4) The effect of the revocation is that the principal place of residence exemption is taken not to have applied to the former residence in respect of any tax year to which, but for the revocation, it would have applied. Land tax liability is to be assessed or reassessed accordingly.
- (5) If the principal place of residence exemption is revoked, the reassessment of land tax liability more than 5 years after an

initial assessment was made in respect of the land is authorised.

Note. Section 9 of the *Taxation Administration Act 1996* provides the Chief Commissioner cannot make a reassessment of tax liability more than 5 years after an initial assessment. That provision does not apply if reassessment after that period is authorised by a taxation law.

- (6) This clause applies in respect of the assessment of a person's ownership of land in a tax year only if the Chief Commissioner is satisfied that no income has been derived from the use or occupation of the former residence in the preceding tax year, except as permitted by subclause (7).
- (7) Income may be derived from the use or occupation of the former residence in a tax year if:
 - (a) the income is derived from a lease, licence or other arrangement under which a person has a right to occupy the former residence and the total period for which any such right of occupation is conferred does not exceed 6 months in the tax year, or
 - (b) the income is derived from any arrangement under which a person occupies the former residence, but the income is no more than is reasonably required to cover council, water and energy rates and charges and maintenance costs of the owner in respect of the residence.
- (8) This clause is subject to clause 12 (which limits members of a family to one principal place of residence exemption).

9 Concession on death of owner

- (1) If, immediately before the death of a person, the person was an owner of residential land and used and occupied the land as his or her principal place of residence, liability for land tax in respect of the land is to be assessed as if the person had not died and had continued to so use and occupy the land.
- (2) Subclause (1) operates only until whichever of the following happens first:
 - (a) a period of 12 months expires after the date of the deceased's death,
 - (b) the deceased's interest in the land vests in a person (other than as the deceased's personal representative) pursuant to the administration of the deceased's estate.

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- (3) If the deceased's interest in the land has not vested in a person (except as the deceased's personal representative) within 12 months after the deceased's death, the Chief Commissioner may extend (and further extend) the period of 12 months referred to in subclause (2) but only if satisfied that:
- (a) a person is using and occupying the land as his or her principal place of residence, and
 - (b) that person is likely to be a person in whom the deceased's interest in the land vests pursuant to the administration of the deceased's estate.
- (4) Such an extension or further extension by the Chief Commissioner can only be granted in writing and can be withdrawn by the Chief Commissioner at any time by notice in writing given to the deceased's personal representative.
- (5) For the purposes of this section, if the deceased is a registered proprietor under the *Real Property Act 1900* in respect of his or her interest in the land, the deceased's interest in the land is taken to vest in another person when that other person is registered as the proprietor of that interest under that Act.

10 Concession for tenancy following death of owner

For the purposes of the principal place of residence exemption, if the owner of land dies and the land is used and occupied as the principal place of residence of:

- (a) a person using and occupying the land under a right of occupancy created by the will of that owner, or
- (b) a person (other than a tenant) who resided with that owner immediately before his or her death and who continues to use and occupy the land with the permission of the deceased person's personal representative, or of any other person, granted under a power or right conferred by the will of that owner,

then the person who so uses and occupies the land is taken to be the owner of the land, but only while that use and occupation continues.

Part 4 Restrictions

11 Exemption does not apply to land owned by companies and trustees

- (1) Land is not exempt from taxation under the principal place of residence exemption if:
 - (a) the land is owned by a company, unless the land is owned by a trustee company acting in its representative capacity or a company acting in its capacity as trustee of a concessional trust, or
 - (b) the owner of the land, or each of the joint owners, who use and occupy the land as a principal place of residence is an owner only by reason of being a trustee, or
 - (c) the land is owned, or jointly owned, by a person who is a trustee acting in the person's capacity as trustee of a special trust.

Note. The expression *trustee company* (as referred to in subclause (1) (a)) is defined in section 3 (1).
- (2) For the purposes of the principal place of residence exemption, land that is owned by a company acting in its capacity as trustee of a concessional trust is taken to be used and occupied as the principal place of residence of the owner of the land only if the person, or one of the persons, who so uses and occupies the land is a person who is a beneficiary of the trust.
- (3) For the purposes of this clause, land that is a parcel of residential land or a lot under the *Strata Schemes (Freehold Development) Act 1973* is owned by a company if:
 - (a) the land is owned by a company, or
 - (b) the land is owned on behalf of a company and is land of which a mortgagee or person (by way of security for money) is in possession, or
 - (c) the land is owned by a trustee for or on behalf of a company, or
 - (d) a company is a joint owner of the land with any other person.

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- (4) For the purposes of this clause, land that is a lot under the *Strata Schemes (Leasehold Development) Act 1986* is owned by a company if:
- (a) the lot is leased by a company, or
 - (b) the lot is leased on behalf of a company and is land of which a mortgagee or person (by way of security for money) is in possession, or
 - (c) the lot is leased by a trustee for or on behalf of a company, or
 - (d) a company is jointly assessable in respect of the lot with any other person.
- (5) For the purposes of this clause, a person is a *beneficiary* of a trust if the person is a person, or a member of a class of persons:
- (a) in whose favour, by the terms of the trust, capital or income the subject of the trust may be applied:
 - (i) in the event of the exercise of a power or discretion in favour of the person, or
 - (ii) in the event that a discretion conferred under the trust is not exercised, or
 - (b) entitled or permitted, under the terms of the trust, to use and occupy land that is the subject of the trust.

12 Only one principal place of residence for all members of same family

- (1) For the purposes of the principal place of residence exemption, only one place of residence may be treated as the principal place of residence of all members of the same family.
- (2) If members of a family own (whether jointly or separately) more than one residence used and occupied by any of them as a principal place of residence, the Chief Commissioner is to treat the one place of residence elected as the principal place of residence of the family as the principal place of residence of all members of the family in respect of a tax year.
- (3) Such an election is to be made, by or on behalf of the members of the family, in writing and must be lodged with the Chief Commissioner within the period for the lodging of objections under section 89 of the *Taxation Administration Act 1996*.

- (4) An election may be made, in respect of a tax year, by the end of the period allowed for the lodging of an objection to a notice of assessment of land tax liability (being an initial assessment of land tax liability) for that tax year.
- (5) If an election is not made, the Chief Commissioner is to treat the residence that has the highest land value for land tax purposes as the principal place of residence of all members of the family.
- (6) For the purposes of this clause, a **family** consists of the following:
 - (a) a person and his or her spouse (if any),
 - (b) any dependent child or dependent step-child of the person and his or her spouse (or of either of them) who ordinarily resides with the person or his or her spouse.
- (7) A person is the **spouse** of another person if:
 - (a) they are legally married, or
 - (b) they are living together as a couple in a de facto relationship within the meaning of the *Property (Relationships) Act 1984*.
- (8) However, if the Chief Commissioner is satisfied that a person:
 - (a) is legally married to another person but not cohabiting with that other person, and
 - (b) has no intention of resuming cohabitation with that other person,the person is not to be regarded as the spouse of that other person and if a dependent child or dependent step-child of the person has a joint interest in the principal place of residence of the spouse, that interest is to be disregarded.
- (9) A person who is the child or step-child of another person is a **dependent child** or a **dependent step-child** if the person is under 18 years of age and is not legally married.
- (10) Nothing in this clause prevents more than one residence from being treated as the principal place of residence of members of a family under clause 7 (Concession for sale of former principal place of residence).

[12] Schedule 2 Savings and transitional provisions

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

State Revenue Legislation Further Amendment Act 2003 (to the extent that it amends this Act)

[13] Schedule 2, Part 15

Insert after Part 14:

Part 15 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2003

33 Definition

In this Part:

2003 amending Act means the *State Revenue Legislation Further Amendment Act 2003*.

34 Amendment to definition of “special trust”

The amendment made to section 3A by the 2003 amending Act is taken to have had effect from 31 December 2002.

35 Application of principal place of residence exemption amendments

- (1) The amendments made to this Act by the 2003 amending Act (other than the amendments referred to in clause 34) apply in respect of a land tax year commencing on or after 1 January 2004 and do not affect any existing liability for land tax.
- (2) Subject to subclause (1), a reference in Schedule 1A to the principal place of residence exemption, in relation to land owned and occupied as a principal place of residence before 31 December 2003, is a reference to section 10 (1) (r) of this Act (as in force immediately before its substitution by the 2003 amending Act).

- (3) Subject to subclause (1), a reference in clause 8 of Schedule 1A to a period in which land was actually used and occupied as a principal place of residence by the owner extends to any such period that occurred, or started, before 31 December 2003.

Schedule 5 Amendment of Pay-roll Tax Act 1971

(Section 3)

[1] Section 6 Wages liable to pay-roll tax

Insert at the end of section 6 (1) (c):

, or

- (d) are wages that are paid or payable outside New South Wales for services performed or rendered partly in New South Wales, other than:
 - (i) wages so paid or payable for services performed or rendered mainly in another State that are liable to pay-roll tax under a provision of a corresponding law, or
 - (ii) wages so paid or payable for services performed or rendered partly but not mainly in New South Wales and partly but not mainly in at least one other State, if pay-roll tax is paid under a corresponding law, or
 - (iii) wages so paid or payable for services ordinarily performed or rendered in another country if the person does not regularly perform or render services in Australia.

[2] Section 10 Exemptions from pay-roll tax

Insert at the end of section 10 (1) (q):

, or

- (r) by a joint government enterprise that has the function of allocating funds for water savings projects.

[3] Part 5A Recovery of tax from directors and former directors of corporations

Omit the Part.

[4] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2003 (to the extent that it amends this Act)

[5] Schedule 6, Part 10

Insert after Part 9:

**Part 10 Provisions consequent on enactment of
State Revenue Legislation Further
Amendment Act 2003**

17 Effect of repeal of Part 5A

- (1) Anything commenced to be done under Part 5A before the date of its repeal by the *State Revenue Legislation Further Amendment Act 2003* may be continued to be done after its repeal and may be completed as if Part 5A continued in force.
- (2) Nothing in this clause limits or otherwise affects section 30 of the *Interpretation Act 1987*.

Schedule 6 Amendment of Taxation Administration Act 1996

(Section 3)

[1] Section 17 Acceptance of money or return not necessarily an assessment

Insert “, or the acceptance of a return or other document,” after “document”.

[2] Part 7, Division 1, heading

Insert after the heading to Part 7:

Division 1 General

[3] Part 7, Division 2

Insert after section 47:

Division 2 Recovery of tax from directors and former directors of corporations

47A Definitions

In this Division:

assessment amount means the amount of tax that a corporation has been assessed as being liable to pay, as set out in a notice of assessment, including any interest or penalty tax specified in the notice of assessment as being payable by the corporation.

special arrangement for the payment of an assessment amount means an arrangement for the payment of tax made by the Chief Commissioner under section 47.

47B Liability of directors and former directors of corporation for failure to pay tax

- (1) If a corporation fails to pay an assessment amount in accordance with a notice of assessment issued by the Chief Commissioner, the Chief Commissioner may serve a compliance notice on one or more of the following persons:
 - (a) a person who is a director of the corporation,

- (b) a person who was a director of the corporation at the time the corporation first became liable to pay the tax, or any part of the tax, that is included in the assessment amount or at any time afterwards (referred to in this Division as a *former director*), subject to subsection (5).
- (2) A *compliance notice* is a notice that advises the director or former director on whom it is served that if the failure to pay the assessment amount is not rectified within the period specified in the notice, being a period of not less than 21 days, the director or former director will be liable to pay the assessment amount.
 - (3) For the purposes of this Division, a failure to pay an assessment amount is rectified if:
 - (a) the assessment amount is paid, or
 - (b) the Chief Commissioner makes a special arrangement with the corporation for the payment of the assessment amount, or
 - (c) the Board of Review waives or defers payment of some or all of the assessment amount, or
 - (d) an administrator of the corporation is appointed under Part 5.3A of the *Corporations Act 2001* of the Commonwealth, or
 - (e) the corporation begins to be wound up within the meaning of the *Corporations Act 2001* of the Commonwealth.
 - (4) If the failure to pay the assessment amount is not rectified within the period specified in the compliance notice, the director or former director on whom the compliance notice was served is jointly and severally liable with the corporation to pay the assessment amount.
 - (5) A person does not cease to be liable to pay an assessment amount because the person ceases to be a director of the corporation, but a former director of a corporation is not liable for any tax for which the corporation first became liable after the director ceased to be a director of the corporation.

47C Failure to comply with special arrangements

If:

- (a) a failure by a corporation to pay an assessment amount is rectified because of a special arrangement for the payment of the assessment amount, or because payment of part or all of the assessment amount is deferred by the Board of Review, and
- (b) the corporation fails to pay the assessment amount in accordance with the terms of the special arrangement or deferral,

the Chief Commissioner may serve a further compliance notice on the director or former director in respect of the assessment amount, or so much of the assessment amount as remains unpaid, and this Division applies accordingly.

47D Right of indemnity and contribution

If a director or former director of a corporation is liable to pay an assessment amount under this Division and an amount is paid by the director or former director in discharge of that liability, the director or former director is entitled:

- (a) to be indemnified for payment of that amount by the corporation, and
- (b) to recover a contribution from any other director or former director of the corporation who is liable to pay the assessment amount under this Division, as if the directors and former directors who are liable to pay the assessment amount had jointly guaranteed payment of the assessment amount.

47E Defences

In proceedings for the recovery of an assessment amount from a director or former director of a corporation under this Division, it is a defence to the recovery of that amount if the director or former director establishes that:

- (a) the director or former director took all reasonable steps that were possible in the circumstances to ensure that the corporation rectified the failure to pay the assessment amount, or

- (b) the director or former director was unable, because of illness or for some other similar good reason, to take steps to ensure that the corporation rectified the failure to pay the assessment amount.

[4] Section 82 Permitted disclosures—to particular persons

Omit section 82 (c).

[5] Section 82 (k) (xiii)

Omit “or”.

[6] Section 82 (k) (xiv) and (xv)

Insert after section 82 (k) (xiii):

(xiv) the Commissioner of Police,

(xv) the Commissioner for Vocational Training, or

[7] Section 84 Prohibition on secondary disclosures of information

Omit “Division 2”. Insert instead “this Part”.

[8] Section 96 Review by Administrative Decisions Tribunal

Insert “(within the meaning of section 6 of the *Administrative Decisions Tribunal Act 1997*)” after “decision” in section 96 (1).

[9] Section 104 Refund of amount

Insert “, subject to section 19,” after “must”.

[10] Section 105 Payment of interest

Insert “, subject to section 19,” after “required”.

[11] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2003 (to the extent that it amends this Act)

[12] Schedule 1, Part 6

Insert after Part 5:

**Part 6 Provisions arising from enactment of
State Revenue Legislation Further
Amendment Act 2003**

32 Permitted disclosures—to particular persons

Section 82, as amended by the *State Revenue Legislation Further Amendment Act 2003*, extends to information disclosed on or after 1 July 2003.

33 Secondary disclosures of information

Section 84, as amended by the *State Revenue Legislation Further Amendment Act 2003*, extends to information obtained before the commencement of the amendment.

Schedule 7 Amendment of Unclaimed Money Act 1995 (Section 3)

[1] Section 9 Certain money not unclaimed money

Omit "\$20" from section 9 (3) (c). Insert instead "\$100".

[2] Section 12 Publication of information relating to unclaimed money

Omit "\$20" from section 12 (1) (a). Insert instead "\$100".

[3] Section 13D Publication of information relating to unclaimed benefits

Omit "that exceeds \$20 (or, if another amount is prescribed by the regulations for the purposes of this paragraph, that other amount)" from section 13D (1) (a).

[4] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2003 (to the extent that it amends this Act)

[5] Schedule 2, Part 6

Insert after Part 5:

**Part 6 Provisions consequent on enactment of
State Revenue Legislation Further
Amendment Act 2003**

12 Publication of unclaimed money and benefit information

Sections 12 (1) and 13D (1), as in force immediately before the amendments made to those provisions by the *State Revenue Legislation Further Amendment Act 2003*, continue to apply in respect of amounts of unclaimed money or superannuation benefits exceeding \$20 paid to the Chief Commissioner before the commencement of those amendments.

[Second reading speech made in—

Legislative Assembly on 14 November 2003

Legislative Council on 19 November 2003]

BY AUTHORITY