

Passed by both Houses



New South Wales

State Revenue Legislation Amendment Bill 2016

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2016



New South Wales

State Revenue Legislation Amendment Bill 2016

Act No , 2016

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

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue Legislation Amendment Act 2016*.

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 (other than Schedule 1 [1]) is taken to have commenced on the day on which the Bill for this Act was first introduced into Parliament.
- (3) Schedules 1 [1] and 2 commence, or are taken to have commenced, on 1 July 2016.

3 Explanatory notes

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

Schedule 1 Amendment of Duties Act 1997 No 123

[1] Section 80A Definitions

Omit the definition of *substantially renovated home*. Insert instead:

substantially renovated home has the same meaning as in the *First Home Owner Grant (New Homes) Act 2000*.

[2] Chapter 11, heading

Omit “from duty”. Insert instead “and concessions”.

[3] Section 273A Definitions

Omit section 273A (2). Insert instead:

- (2) A reference in this Part to anything done by or held by a unit trust scheme (including any voting control held by a unit trust scheme):
 - (a) is a reference to anything done by or held by a trustee of the unit trust scheme as trustee of that unit trust scheme, and
 - (b) in the case of a unit trust scheme that is a managed investment scheme—includes a reference to anything done by or held by a custodian of the trustee of the managed investment scheme as custodian of the trustee of that scheme.

[4] Section 273BA

Insert after section 273B:

273BA Concession for agreements connected to corporate consolidation transactions

- (1) Duty chargeable under this Act on an agreement for the sale or transfer of securities is to be reduced if the Chief Commissioner is satisfied that any transfer to which the agreement applies is a corporate consolidation transaction.
- (2) The dutiable value of the agreement is, for the purposes of charging duty under this Act, to be reduced by the dutiable value of the transfer that the Chief Commissioner is satisfied is a corporate consolidation transaction.
- (3) Section 273 does not apply to the agreement.

[5] Section 273D Corporate consolidation transaction

Omit “dutiable transaction or an acquisition of an interest in a landholder (within the meaning of Chapter 4)” from section 273D (1).

Insert instead “transfer, or an acquisition of an interest in a landholder (within the meaning of Chapter 4),”.

[6] Section 273D (1) (b)

Omit the paragraph. Insert instead:

- (b) is any of the following:
 - (i) a transfer of securities of the affected corporation to, or an acquisition of those securities by, the head corporation for which the only consideration given by the head corporation is the issue or transfer of its securities to the person from whom the affected corporation’s securities were transferred or acquired,

- (ii) a transfer of securities of the head corporation to, or an acquisition of those securities by, a holder of securities of the affected corporation.

[7] Section 273D (2) and (3)

Omit “dutiabale transaction or an acquisition of an interest in a landholder” wherever occurring.

Insert instead “transfer, or an acquisition of an interest in a landholder,”.

[8] Section 273D (2)

Omit “the transaction or acquisition”. Insert instead “the transfer or acquisition”.

[9] Section 273E Meaning of “corporate group”

Omit section 273E (5). Insert instead:

- (5) A transaction between:
 - (a) the trustee of a corporation that is a unit trust scheme, acting as trustee of the scheme, and
 - (b) another corporation that is a member of the same corporate group as the unit trust scheme (including, if that other corporation is a unit trust scheme, a trustee acting as trustee of that scheme),

is taken, for the purposes of a corporate reconstruction transaction, to be a transaction between the corporations as members of the same group.

- (5A) A reference in subsection (5) to a trustee includes, in the case of a trustee of a unit trust scheme that is a managed investment scheme, a reference to a custodian of the trustee of the scheme acting as custodian of the trustee of that scheme.

Explanatory note

Item [1] of the proposed amendments to the *Duties Act 1997* makes an amendment that is consequential on item [1] of the proposed amendments to the *First Home Owner Grant (New Homes) Act 2000* in Schedule 2.

Part 1 of Chapter 11 of the *Duties Act 1997* provides for exemptions from duty for corporate reconstruction transactions and corporate consolidation transactions, including transactions involving unit trust schemes. References in the Part to anything done by or held by a unit trust scheme are references to anything done by or held by a trustee of the unit trust scheme as trustee. Items [3] and [9] extend those references, in the case of a unit trust scheme that is a managed investment scheme, to ensure that they include a custodian of the trustee of the managed investment scheme.

Item [4] provides for a new duty concession on an agreement for the sale or transfer of securities if the Chief Commissioner of State Revenue is satisfied that any transfer to which the agreement applies is a corporate consolidation transaction. Item [2] makes a consequential amendment.

Items [5]–[8] make amendments in the nature of statute law revision.

Schedule 2 Amendment of First Home Owner Grant (New Homes) Act 2000 No 21

[1] Section 4A New homes

Omit section 4A (2) and (3). Insert instead:

- (2) A **substantially renovated home** is a home that:
 - (a) has been created through renovations in which all, or substantially all, of a building is removed or replaced (whether or not the renovations involve the removal or replacement of foundations, external walls, interior supporting walls, floors or staircases), and
 - (b) as renovated, has not been previously occupied or sold as a place of residence.
- (3) A home is a **home built to replace demolished premises** if:
 - (a) the home has been built to replace demolished premises on the same land, and
 - (b) the home, as built to replace the demolished premises, has not been previously occupied or sold as a place of residence, and
 - (c) the owner of the home did not occupy the demolished premises as a place of residence before they were demolished.

[2] Schedule 1 Savings, transitional and other provisions

Insert after Part 12:

Part 13 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2016

21 Application of amendment

- (1) The amendment to section 4A made by the *State Revenue Legislation Amendment Act 2016* extends to an application for a first home owner grant made before the commencement of that amendment that, immediately before that commencement, had not been finally determined.
- (2) For the purposes of this clause, an application is not finally determined if:
 - (a) any period for bringing an appeal as of right against a decision in respect of the application has not expired (ignoring any period that may be available by way of extension of time to appeal), or
 - (b) any appeal against the decision is pending (whether or not it is an appeal brought as of right).
- (3) In this clause, a reference to an appeal includes a reference to an administrative review by the Civil and Administrative Tribunal under the *Administrative Decisions Review Act 1997*.

Explanatory note

The first home owner grant scheme under the *First Home Owner Grant (New Homes) Act 2000* applies in relation to new homes, including substantially renovated homes and homes built to replace demolished premises. Item [1] of the proposed amendments to that Act replaces the definitions of **substantially renovated home** and **home built to replace demolished premises**, removing the current requirement for the sale of the home to be a taxable supply under the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth. Item [1] of the proposed amendments to the *Duties Act 1997* in Schedule 1 makes a consequential amendment to that Act.

Item [2] makes an amendment of a transitional nature consequent on the enactment of the amendment proposed to be made by item [1].

Schedule 3 Amendment of Land Tax Management Act 1956 No 26

[1] Schedule 1A Principal place of residence exemption

Omit clause 6 (3) (b). Insert instead:

- (b) if, after the person became owner and before the building or other works physically commence, the land is used and occupied for residential purposes by another person—4 tax years immediately following the tax year in which the other person ceases to use and occupy the land for those purposes.

[2] Schedule 1A, clause 6 (4)

Insert after clause 6 (3):

- (4) Without limiting subclause (3) (a):
 - (a) this clause does not apply in respect of the assessment of a person's ownership of land in a period referred to in subclause (3) (b) unless the Chief Commissioner is satisfied that, by the end of the first of the 4 tax years concerned:
 - (i) the building or other works will be, or have been, physically commenced, or
 - (ii) significant steps will be, or have been, taken to enable those works to physically commence, and
 - (b) if the building or other works are not physically commenced by the end of that tax year (or the Chief Commissioner is not satisfied that, by the end of that tax year, significant steps have been taken to enable those works to physically commence):
 - (i) the principal place of residence exemption applying by operation of this clause to the land is taken not to have applied to the land in respect of that tax year (unless subclause (3) (a) applied to the assessment in that tax year), and
 - (ii) land tax liability is to be assessed or reassessed accordingly.

[3] Schedule 1A, clause 6 (6A)

Insert after clause 6 (6):

- (6A) For the purposes of section 9 (3) (c) of the *Taxation Administration Act 1996*, any reassessment under this clause is authorised to be made more than 5 years after the initial assessment.

[4] Schedule 2 Savings and transitional provisions

Insert after Part 28:

Part 29 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2016

59 General application of amendments

The amendments made to this Act by the *State Revenue Legislation Amendment Act 2016* apply to the assessment of land tax liability in respect of the 2017 land tax year and subsequent land tax years.

Explanatory note

Clause 6 of Schedule 1A to the *Land Tax Management Act 1956 (the LTM Act)* enables the owner of unoccupied land to claim the land as his or her principal place of residence (**PPR**), for the purposes of the PPR exemption, if the owner intends to use and occupy the land as his or her PPR and intends to carry out, or is carrying out, building or other works necessary to facilitate that use and occupation.

The period during which unoccupied land may be assessed as a PPR under clause 6 is limited to:

- (a) 4 tax years immediately following the year in which the owner became owner of the land, or
- (b) if the land is used and occupied for residential purposes by a person other than the owner (for example, a tenant) at any time after the owner became the owner—4 tax years immediately following the tax year in which the works are physically commenced on the land.

Item [1] of the proposed amendments to the LTM Act changes the period applying if the land is used and occupied by a person other than the owner to a period of 4 tax years immediately following the tax year in which the person ceases to use and occupy the land for residential purposes.

Item [2] ensures that, if the land is used and occupied by a person other than the owner after the owner became the owner, the owner is only entitled to claim the unoccupied land as his or her PPR if the Chief Commissioner of State Revenue is satisfied that, by the end of the first of the 4 tax years concerned, the works will be, or have been, physically commenced (or significant steps will be, or have been, taken to enable those works to physically commence).

Item [2] also ensures that, if the works have not physically commenced by the end of that first tax year (or the Chief Commissioner is not satisfied that, by the end of that first tax year, significant steps enabling the works to physically commence have been taken), the PPR exemption can be taken not to have applied. Land tax liability is to be assessed or reassessed accordingly.

Item [3] authorises any reassessment under clause 6 of Schedule 1A to the LTM Act to be made more than 5 years after the initial assessment of liability to pay land tax. Generally, the *Taxation Administration Act 1996* prevents the Chief Commissioner from making a reassessment of a tax liability more than 5 years after the initial assessment of the liability. Item [3] will particularly assist in ensuring land tax is recovered in the case of a PPR exemption that is revoked under clause 6 (5) of Schedule 1A to the LTM Act. Clause 6 (5) revokes any PPR exemption applying because a person has claimed unoccupied land as his or her PPR if the person fails to actually use and occupy the land as his or her PPR by the end of the applicable 4 tax years (and to continue to do so for a period of at least 6 months).

Item [4] makes an amendment of a transitional nature consequent on the enactment of the other amendments proposed to be made by Schedule 3.

Schedule 4 Amendment of Payroll Tax Act 2007 No 21

[1] Section 59 Local government business entities

Omit section 59 (1) (a). Insert instead:

- (a) by a wholly-owned subsidiary of a council or of 2 or more councils, and

[2] Section 59 (1) (b) and (2)

Insert “or councils” after “the council” wherever occurring.

[3] Section 59 (3) and (4)

Insert after section 59 (2):

- (3) In this section:

council has the same meaning as in the *Local Government Act 1993*.

wholly-owned subsidiary has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

- (4) In this section, a reference to a wholly-owned subsidiary of 2 or more councils is a reference to a body corporate that, if the councils were a single council, would be a wholly-owned subsidiary of the single council.

[4] Schedule 2 NSW specific provisions

Omit “Director-General of the Department of Education and Training” wherever occurring in clauses 5 (5) (c) and 6 (1) (a) and (b).

Insert instead “Secretary of the Department of Education”.

[5] Schedule 2, clause 9

Omit “staff employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Home Care Service to exercise its functions”.

Insert instead “members of staff of the Home Care Service”.

[6] Schedule 2, clause 10

Omit “Director-General of the Department of Health”. Insert instead “Health Secretary”.

[7] Schedule 2, clause 10 (2)

Insert at the end of clause 10:

- (2) In this clause:

Health Secretary has the same meaning as in the *Health Services Act 1997*.

[8] Schedule 2, clause 14

Omit the clause. Insert instead:

14 Application of Act to certain Public Service agencies

- (1) This clause applies in relation to any Public Service agency in which staff are employed under Part 4 of the *Government Sector Employment Act 2013* to enable a statutory body to exercise its functions.

- (2) For the purposes of this Act, each Public Service agency to which this clause applies is taken to be a separate employer with respect to the matters specified in subclause (3). If the agency concerned comprises separate parts each of

which is assigned to a different statutory body, each such part of the agency is taken to be a separate employer with respect to the matters specified in subclause (3) in so far as they relate to that part.

- (3) The matters that are specified for the purposes of subclause (2) are as follows:
- (a) the wages paid or payable to the staff of the agency or part of the agency,
 - (b) any fees or other remuneration paid or payable to the members of the board or other governing body of the statutory body to which the staff of the agency (or part of the agency) are assigned,
 - (c) any amount paid or payable under a relevant contract (within the meaning of Division 7 of Part 3 of this Act) entered into by the statutory body concerned.
- (4) In this clause:
Public Service agency has the same meaning as in the *Government Sector Employment Act 2013*.

Explanatory note

Section 59 of the *Payroll Tax Act 2007* exempts a wholly-owned subsidiary of a local council from liability to pay payroll tax on wages that are paid or payable to a person for an activity conducted for the council. Items [1]–[3] of the proposed amendments to that Act extend that exemption to a body corporate wholly owned by 2 or more local councils if the wages are paid or payable to a person for an activity conducted for those councils.

Items [4]–[8] make amendments in the nature of statute law revision that are consequent on the enactment of the *Government Sector Employment Act 2013*.

Schedule 5 Amendment of Taxation Administration Act 1996 No 97

[1] Section 105 Payment of interest

Insert at the end of the section:

- (2) The requirement under this section to pay interest on an amount refunded to the taxpayer extends, subject to section 19, to an amount of land tax or payroll tax paid by and refunded to any other member of a group to which the taxpayer belongs if:
 - (a) (as a consequence of the objection of the taxpayer being allowed in whole or in part or the review being successful) the Chief Commissioner makes a reassessment of the amount of land tax or payroll tax the other member of the group is liable to pay, and
 - (b) the reassessment shows that the other member of the group is entitled to the refund.
- (3) In this section:

group has the same meaning as in:

 - (a) section 29 (7) of the *Land Tax Management Act 1956*, in the case of land tax, or
 - (b) the *Payroll Tax Act 2007*, in the case of payroll tax.

land tax has the same meaning as in the *Land Tax Management Act 1956*.

payroll tax has the same meaning as in the *Payroll Tax Act 2007*.

[2] Schedule 1 Savings, transitional and other provisions

Insert after Part 13:

Part 14 Provisions arising from enactment of State Revenue Legislation Amendment Act 2016

43 Requirement to pay interest on refund to member of group

Section 105 (2) and (3), as inserted by the *State Revenue Legislation Amendment Act 2016*, extend to an amount of land tax or payroll tax paid by a taxpayer before the commencement of those provisions (but do not apply in relation to a reassessment that is made before the commencement of those provisions of the amount of land tax or payroll tax the taxpayer is liable to pay).

Explanatory note

The *Taxation Administration Act 1996* requires the Chief Commissioner of State Revenue to pay interest on an amount refunded to a taxpayer following a successful objection or review. Item [1] of the proposed amendments to that Act extends that requirement to any other member of a group to which the taxpayer belongs under the *Land Tax Management Act 1956* or the *Payroll Tax Act 2007* if, as a result of that successful objection or review, the Chief Commissioner makes a reassessment to refund land tax or payroll tax to the other member of the group.

Item [2] makes an amendment of a savings and transitional nature consequent on the enactment of the amendment proposed to be made by item [1].

Schedule 6 Amendment of Unclaimed Money Act 1995 No 75

[1] Section 3 Definitions

Omit “, 13B or 13BA” from the definition of *return*. Insert instead “or 13B”.

[2] Section 10 Return and payment of unclaimed money to Chief Commissioner

Insert after section 10 (1A):

- (1AA) An enterprise may include, in any return that it is required to lodge under this section, particulars of money that is not unclaimed money because it does not exceed \$100 and section 9 (3) (c) applies to it. In any such case, the money is to be treated as unclaimed money for the purposes of this Part (other than subsections (1) and (1A) and section 12 (1)) and Parts 4 and 5.

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

Omit section 12 (1A) (a). Insert instead:

- (a) the existence of each sum of unclaimed money that:
- (i) does not exceed \$100 and is specified in a return under section 10 (1AA) and paid to the Chief Commissioner, or
 - (ii) is paid to the Treasurer under section 14 of the *Legal Profession Uniform Law Application Act 2014* or section 26 of the *Trustee Companies Act 1964* (which relate to unclaimed money),

[4] Section 18 Time for application

Insert at the end of the section:

- (2) The Chief Commissioner may permit an application in accordance with section 17 to be lodged after the owner’s right to the money has been extinguished.

[5] Section 26A Recovery of money wrongly paid

Omit “*Limitation Act 1969*.”) from section 26A (1). Insert instead “*Limitation Act 1969*.”).

[6] Schedule 2 Savings, transitional and other provisions

Insert after Part 9:

Part 10 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2016

18 Time for application

Section 18 (2), as inserted by the *State Revenue Legislation Amendment Act 2016*, extends to money paid to the Chief Commissioner before the commencement of that provision.

Explanatory note

The *Unclaimed Money Act 1995* (**the Act**) requires enterprises holding unclaimed money on 30 June of each year to lodge a return relating to that money with the Chief Commissioner of State Revenue. Item [2] of the proposed amendments to the Act enables an enterprise to voluntarily report, in any such return, amounts that are not unclaimed money for the purposes of the Act because they are \$100 or less. Item [2] also ensures that, if an enterprise chooses to report any such amount in a return, the amount must be paid to the Chief Commissioner for payment into the Consolidated Fund and that other provisions applying to unclaimed money under the Act apply to the amount (including record-keeping requirements and provisions allowing owners to recover unclaimed money that has been paid to the Chief Commissioner). Item [3] makes a consequential amendment.

Item [4] enables the Chief Commissioner to permit the owner of unclaimed money that has been paid to the Chief Commissioner to apply for that money to be repaid to the owner even though the owner's right to the money has been extinguished.

Items [1] and [5] make amendments in the nature of statute law revision.

Item [6] makes an amendment of a transitional nature consequent on the enactment of the amendment proposed to be made by item [4].