



New South Wales

# State Revenue Legislation Further Amendment Bill 2019

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to make amendments to the *Duties Act 1997*, the *Land Tax Act 1956* and the *Land Tax Management Act 1956* for the following purposes—

- (a) to provide for exemption from and refunds of surcharge purchaser duty and surcharge land tax payable in respect of residential land by the trustee of a discretionary trust if the trust prevents a foreign person from being a beneficiary of the trust (so as to prevent a discretionary trust from inadvertently attracting liability for surcharge duty and tax payable by a foreign trustee),
- (b) to make it clear that the Chief Commissioner of State Revenue can approve a manner of stamping or endorsement of the payment of transfer duty and surcharge purchaser duty that removes the need for separate stamping or endorsement for each kind of duty,
- (c) to extend provisions that treat an assignment to a third person of an option to purchase dutiable property as a transfer of the property for duty purposes so as to include an arrangement for the relinquishment of the option with an agreement to sell to the third person,
- (d) to change the method of determining the value of the land holdings of a landholder for the purposes of the threshold for provisions that impose duty on the acquisition of an interest in a landholder so that unencumbered value is used instead of unimproved value (for consistency with the use of unencumbered value in calculating the duty payable on the acquisition of such an interest),
- (e) to provide that, for the purposes of duty payable on the acquisition of an interest in a landholder, land includes anything (whether or not a fixture) that is fixed to land,

- (f) to make a landholder jointly liable for the duty payable by a person when the person acquires an interest in the land and to provide for the liability of the landholder to be a charge on the land for which a caveat can be registered,
- (g) to enact consequential savings and transitional provisions (including provisions relating to the indexation of dutiable value thresholds consequent on the enactment of the *State Revenue and Other Legislation Amendment Act 2019*) and to make miscellaneous minor amendments.

The Bill also makes consequential amendments to the *Aboriginal Land Rights Regulation 2014*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## Schedule 1 Amendment of Duties Act 1997 No 123

### Foreign trustees of discretionary trusts

**Schedule 1[1]** (proposed section 104JA) makes special provision for the liability for surcharge purchaser duty of foreign trustees when the trust is a discretionary trust. A trustee of a discretionary trust is taken to be a foreign trustee (and so is liable for surcharge purchaser duty as the transferee of residential land) if the terms of the trust do not prevent a foreign person from being a beneficiary. If the terms of the trust prevent a foreign person from being a beneficiary, the trustee is not a foreign trustee for surcharge purchaser duty purposes.

**Schedule 1[8]** (amendment of Schedule 1) provides transitional arrangements for proposed section 104JA, including provision for surcharge purchaser duty exemptions and refunds when the terms of a discretionary trust have been amended before the end of 2019 to prevent a foreign person from being a beneficiary. The trustee of a discretionary trust arising under a will where the deceased dies within 2 years after the commencement of section 104JA will not be a foreign trustee if the deceased was not a foreign person.

### Acquisition of interests in landholders

**Schedule 1[4] and [5]** (amendment of section 146 and repeal of section 146A) change the method of determining the value of land that establishes the threshold for the application of provisions imposing duty on the acquisition of an interest in a landholder so that unencumbered value is used instead of unimproved value. Unencumbered value is the value that is currently used for calculating the duty payable on such an acquisition.

**Schedule 1[6]** (proposed section 147A) provides that for the purposes of provisions that impose duty on the acquisition of an interest in a landholder, land includes anything fixed to land whether or not a fixture.

**Schedule 1[7]** (substituted section 154) extends liability for the duty payable by a person when the person acquires an interest in a landholder so that the landholder will be jointly liable and to provide for that liability of the landholder to be a charge on the land in respect of which a caveat can be registered.

### Miscellaneous amendments

**Schedule 1[2]** (proposed section 104ZQ(4)) provides that the Chief Commissioner can approve a manner of stamping or endorsing the payment of transfer duty and surcharge purchaser duty that does not require separate stamping or endorsement for each kind of duty, so that a single stamping or endorsement is sufficient to indicate that both kinds of duty have been paid.

**Schedule 1[3]** (proposed section 107(2)(c)) includes, as another situation in which a person is to be treated as having assigned their right under a call option to purchase dutiable property to a third

party, the situation of an agreement or arrangement whereby the option holder relinquishes that right for valuable consideration and the owner of the property agrees to sell to the third party.

### **Savings and transitional**

**Schedule 1[8]** (amendment of Schedule 1) provides for the transitional arrangements for proposed section 104JA and the other amendments referred to above.

## **Schedule 2 Amendment of Land Tax Act 1956 No 27**

**Schedule 2** (proposed section 5D) makes special provision for the liability for surcharge land tax of foreign trustees when the trust is a discretionary trust. A trustee of a discretionary trust is taken to be a foreign person (and so is liable for surcharge land tax as the owner of residential land) if the terms of the trust do not prevent a foreign person from being a beneficiary. If the terms of the trust prevent a foreign person from being a beneficiary, the trustee is not a foreign person for surcharge land tax purposes.

## **Schedule 3 Amendment of Land Tax Management Act 1956 No 26**

**Schedule 3** (amendment of Schedule 2) provides for the following transitional arrangements for proposed section 5D of the *Land Tax Act 1956*—

- (a) surcharge land tax exemptions and refunds if the terms of the discretionary trust have been amended before the end of 2019 to prevent a foreign person from being a beneficiary,
- (b) the trustee of a discretionary trust arising under a will where the deceased died within 2 years after the commencement of proposed section 5D of the *Land Tax Act 1956* will not be a foreign person if the deceased was not a foreign person.

## **Schedule 4 Amendments relating to indexation**

### **Aboriginal Land Rights Regulation 2014**

**Schedule 4.1** (substituted clauses 110 and 111 and repeal of Schedule 6) adjusts the method of calculating the amount of the community development levy payable by a Local Aboriginal Land Council for a dutiable transaction so that it aligns with the indexation of dutiable value thresholds under the *Duties Act 1997*. The amendment is consequent on the enactment of the *State Revenue and Other Legislation Amendment Act 2019*.

### **Duties Act 1997 No 123**

**Schedule 4.2** (amendment of section 78A) adjusts the method of calculating the rate of duty payable on a transaction that is subject to a duty concession under the First Home Buyers Assistance Scheme. The adjusted method of calculation ensures that the amount of the duty concession is not reduced by operation of the indexation of dutiable value thresholds for the purpose of calculating the general rate of duty. The amendment is consequent on the enactment of the *State Revenue and Other Legislation Amendment Act 2019*. **Schedule 1[8]** provides for the transitional arrangements for the amendment.