

South Australia

## Statutes Amendment (Budget Measures) Act 2023

An Act to amend the *Emergency Services Funding Act 1998*, the *First Home and Housing Construction Grants Act 2000*, the *Land Tax Act 1936* and the *Stamp Duties Act 1923*.

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**The Parliament of South Australia enacts as follows:**

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Statutes Amendment (Budget Measures) Act 2023*.

#### 2—Commencement

- (1) Subject to this section, this Act comes into operation on the day on which it is assented to by the Governor.
- (2) Part 2 will be taken to have come into operation on 1 July 2023.

- (3) Part 3 and Part 5 will be taken to have come into operation on 15 June 2023.
- (4) Part 4 will be taken to have come into operation at midnight on 30 June 2023.

## **Part 2—Amendment of *Emergency Services Funding Act 1998***

### **3—Amendment of section 3—Interpretation**

- (1) Section 3(1), definition of *emergency service*, (a)(v)—delete subparagraph (v) and substitute:
  - (v) a body or organisation accredited as a Volunteer Marine Rescue organisation by the State Marine Rescue Committee; or
- (2) Section 3(1), definition of *owner*—after paragraph (e) insert:
  - (f) where the land is held under a shack lease—the person entitled to the right of occupation,
- (3) Section 3(1)—after the definition of *owner* insert:

*shack lease* means a lease for the occupation of land for holiday, recreational or residential purposes where the land is situated on or adjacent to the banks of the River Murray, a tributary of the River Murray, or a lake or lagoon connected with the River Murray or a tributary of the River Murray;

### **4—Amendment of section 28—The Community Emergency Services Fund**

Section 28(4)(a)(v)—delete subparagraph (v) and substitute:

- (v) a body or organisation accredited as a Volunteer Marine Rescue organisation by the State Marine Rescue Committee; or

## **Part 3—Amendment of *First Home and Housing Construction Grants Act 2000***

### **5—Amendment of section 7—Entitlement to grants**

Section 7(1a)(b)—after subparagraph (i) insert:

- (ia) where the commencement date of the eligible transaction is on or after 15 June 2023—\$650 000; or

## **Part 4—Amendment of *Land Tax Act 1936***

### **6—Insertion of section 7A**

After section 7 insert:

#### **7A—Reduction in taxable value for certain build-to-rent properties**

- (1) For the purpose of assessing land tax, the taxable value of a parcel of land is to be reduced by 50% if—
  - (a) a building is situated on the land; and

- (b) construction of the building commenced on or after 1 July 2023; and
  - (c) the Commissioner is satisfied that the building is being used for a build-to-rent property in accordance with subsection (2); and
  - (d) an application for the reduction is made in accordance with this section.
- (2) A building will only be taken to be used for a build-to-rent property for the purposes of this section if—
- (a) the building, and the use of the building as a build-to-rent property, complies with all requirements applicable under the *Planning, Development and Infrastructure Act 2016*; and
  - (b) each tenant of the build-to-rent dwellings or units in the property is offered (on a genuine basis) a lease of a term not less than 3 years (and any shorter lease may only be entered into at the option of the tenant); and
  - (c) any other requirements prescribed by the regulations are complied with.
- (3) Regulations made for the purposes of this section may include provisions with respect to—
- (a) the minimum number of build-to-rent dwellings or units within a property; and
  - (b) the development of affordable housing in build-to-rent properties; and
  - (c) any other matters relating to build-to-rent properties and the land on which build-to-rent properties are situated.
- (4) Regulations made for the purposes of this section may—
- (a) apply generally or be limited in their application by reference to specified exceptions or factors; or
  - (b) apply differently according to different factors of a specified kind, or both.
- (5) If the Commissioner is satisfied that only part of a parcel of land is being used for a build-to-rent property, the reduction in land value under subsection (1) is to be proportionately decreased in accordance with the regulations.
- (6) This section does not apply to an owner of land in respect of a financial year unless—
- (a) the owner applies to the Commissioner for the reduction, in the form approved by the Commissioner, either before, or during, that financial year; and

- (b) the owner furnishes the Commissioner with the evidence that the Commissioner requests for the purpose of enabling the Commissioner to determine whether there is an entitlement to the reduction.
- (7) An owner of land whose liability to pay land tax in respect of a financial year has been assessed in accordance with this section must, if this section ceases to apply to the land during that financial year, within 1 month after that occurs, inform the Commissioner of the date on which this section ceased to apply to the land.
- (8) If this section ceases to apply to land during a financial year—
  - (a) the taxable value of the land will not be reduced under this section for the purposes of determining the land tax payable for that financial year; and
  - (b) the Commissioner may, accordingly, reassess the land tax payable in respect of the land for that financial year.
- (9) This section will expire immediately before midnight on 30 June 2040.

## **Part 5—Amendment of *Stamp Duties Act 1923***

### **7—Insertion of sections 71DD and 71DE**

After section 71DC insert:

#### **71DD—Relief from duty in respect of certain purchases of new homes and land**

- (1) If, on an application under this section, in a manner and form determined by the Commissioner and supported by such evidence as the Commissioner may require, the Commissioner is satisfied that—
  - (a) the applicant is a purchaser under a contract for the conveyance or transfer of a new home or vacant land on which a home is to be built; and
  - (b) the conveyance or transfer qualifies for relief under this section,this section applies to the conveyance or transfer.
- (2) The duty payable on a conveyance or transfer to which this section applies will be as follows:
  - (a) in the case of the conveyance or transfer of a new home where the market value of the home (including the land on which the home is situated) when the contract is entered into does not exceed \$650 000—no duty will be payable;

- (b) in the case of the conveyance or transfer of a new home where the market value of the home (including the land on which the home is situated) when the contract is entered into exceeds \$650 000 but does not exceed \$700 000—the duty otherwise payable will be reduced in accordance with subsection (7);
  - (c) in the case of the conveyance or transfer of vacant land where the market value of the land when the contract is entered into does not exceed \$400 000—no duty will be payable;
  - (d) in the case of the conveyance or transfer of vacant land where the market value of the land when the contract is entered into exceeds \$400 000 but does not exceed \$450 000—the duty otherwise payable will be reduced in accordance with subsection (7).
- (3) A conveyance or transfer of a new home, or of vacant land on which a home is to be built, qualifies for relief under this section if—
- (a) the contract for the conveyance or transfer was entered into on or after 15 June 2023; and
  - (b) subject to subsection (6), the purchasers under the contract are at least 18 years of age; and
  - (c) at least 1 of the purchasers under the contract is an Australian citizen or permanent resident at the time application for the benefit of this section is made; and
  - (d) no purchaser under the contract, and no spouse or domestic partner of a purchaser under the contract, has been a party to an earlier conveyance or transfer for which no duty, or a reduced rate of duty, was payable under subsection (2); and
  - (e) no purchaser under the contract, and no spouse or domestic partner of a purchaser under the contract, has, before the commencement date of the contract—
    - (i) held a relevant interest in residential property in South Australia or another State; and
    - (ii) occupied the property as a place of residence for a continuous period of at least 6 months; and
  - (f) the market value of the new home (including the land on which the home is situated) or vacant land when the contract is entered into does not exceed—
    - (i) in the case of a new home—\$700 000; and
    - (ii) in the case of vacant land on which a home is to be built—\$450 000.

- (4) Subject to subsection (5), an exemption from duty, and a reduced rate of duty, provided under this section are subject to the following requirement (the *residence requirement*):
- (a) in the case of the conveyance or transfer of land on which a new home is situated—the purchasers under the contract must occupy the home as their principal place of residence for a continuous period of at least 6 months (or a shorter period approved by the Commissioner) (the *residence period*) that commences within 12 months of the date on which the conveyance or transfer occurs (the *completion period*);
  - (b) in the case of the conveyance or transfer of vacant land on which a home is to be built—the purchasers under the contract must occupy a home on the land as their principal place of residence for a continuous period of at least 6 months (or a shorter period approved by the Commissioner) (the *residence period*) that commences before whichever of the following dates occurs first:
    - (i) the date falling 12 months after the date on which the purchaser was lawfully first able to use a home constructed on the land as a place of residence;
    - (ii) the date falling 36 months after the date on which the conveyance or transfer occurred,(the *completion period*).
- (5) The Commissioner may, in relation to the residence requirement—
- (a) determine that a conveyance or transfer qualifies for relief under this section even though a purchaser under the contract has not satisfied the residence requirement if the Commissioner is satisfied that—
    - (i) there are 2 or more purchasers under the contract; and
    - (ii) at least 1 of the purchasers complies with the residence requirement; and
    - (iii) there are, in the Commissioner's opinion, good reasons to exempt the non-complying purchaser from the residence requirement; or
  - (b) if the Commissioner considers there are good reasons for doing so—vary a purchaser's required residence period at any time (including after the end of the period allowed for compliance with that requirement) by approving a shorter residence period or a longer completion period (or both) (and if the Commissioner varies a residence requirement under this paragraph, the requirement as varied will be taken to have been the purchaser's residence requirement from the date of the determination of the application).

- (6) The Commissioner may determine that a conveyance or transfer qualifies for relief under this section even though a purchaser under the contract is not at least 18 years of age if the Commissioner is satisfied that—
- (a) the purchaser will comply with the residence requirement that applies to the exemption or reduction in duty under subsection (4); and
  - (b) the application does not form part of a scheme to circumvent limitations on, or requirements affecting, eligibility or entitlement to relief under this section.
- (7) For the purposes of subsection (2)(b) and (d), the amount by which duty is to be reduced is to be determined as follows:

- (a) in the case of the conveyance or transfer of a new home:

$$R = S \times \left( 1 - \frac{MV - 650\,000}{50\,000} \right)$$

Where—

**R** is the amount of the reduction in duty

**S** is the amount of stamp duty that would be payable but for this section

**MV** is the market value of the new home (including the land on which the home is situated)

- (b) in the case of the conveyance or transfer of vacant land on which a home is to be built:

$$R = S \times \left( 1 - \frac{MV - 400\,000}{50\,000} \right)$$

Where—

**R** is the amount of the reduction in duty

**S** is the amount of stamp duty that would be payable but for this section

**MV** is the market value of the vacant land

- (8) An application under subsection (1)—
- (a) may only be made by a natural person; and
  - (b) must be made jointly by each person who is, or will be, following the conveyance or transfer to which the application relates, an owner of the relevant new home or vacant land (except such a person who is excluded from the application of this subsection under the regulations).
- (9) This section does not apply to a contract if the Commissioner is satisfied that the contract replaces a contract entered into before 15 June 2023 for the purchase of the same new home or vacant land.

- (10) A conveyance or transfer for which no duty, or a reduced rate of duty, is payable under subsection (2) is to be taken, for the purposes of the *Real Property Act 1886*, to be a conveyance or transfer that is not exempt from duty, or to which no reduction applies, under this section.
- (11) If the Commissioner is satisfied that, at the time of deciding an application under this section, an applicant—
- (a) is legally married but not cohabiting with the person to whom the applicant is legally married; and
  - (b) has no intention of resuming cohabitation,
- the person to whom the applicant is legally married is not to be regarded as the applicant's spouse.
- (12) For the purposes of this section, a person will be taken to have held a **relevant interest** in land in South Australia, or in another State, if the person is taken to have held a relevant interest in the land for the purposes of the *First Home and Housing Construction Grants Act 2000*.
- (13) In this section—
- Australian citizen** means an Australian citizen within the meaning of the *Australian Citizenship Act 2007* of the Commonwealth;
- home** has the same meaning as in the *First Home and Housing Construction Grants Act 2000*;
- new home** has the same meaning as in the *First Home and Housing Construction Grants Act 2000*;
- permanent resident** means—
- (a) the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* of the Commonwealth; or
  - (b) a New Zealand citizen who holds a special category visa within the meaning of section 32 of the *Migration Act 1958* of the Commonwealth.

#### **71DE—Duty payable if relief ceases to be available**

- (1) If—
- (a) an exemption from duty, or a reduction in the rate of duty, has been provided in respect of a conveyance or transfer under section 71DD; and
  - (b) —
    - (i) the Commissioner ceases to be satisfied that the conveyance or transfer qualifies for relief under that section; or
    - (ii) a purchaser under the conveyance or transfer fails to comply with a requirement under section 71DD(4),



section 71DD will cease to apply to the conveyance or transfer and duty will be payable on the conveyance or transfer as if no exemption or reduction in duty applied.

- (2) If section 71DD ceases to apply to a conveyance or transfer under subsection (1), the following provisions apply:
- (a) the Commissioner must advise the purchasers in writing that relief from duty is no longer available under section 71DD;
  - (b) duty will be payable in relation to the conveyance or transfer from the date on which the conveyance or transfer occurred;
  - (c) the liability of the purchasers to pay duty is to be assessed in relation to the circumstances applying at the date of the conveyance or transfer as if the conveyance or transfer had not been exempted from duty or as if no reduction in duty had applied;
  - (d) the duty chargeable on a conveyance or transfer is to be calculated according to the rates in force as at the date on which the conveyance or transfer occurred;
  - (e) for the purposes of section 20, the duty is to be regarded as having become chargeable on the conveyance or transfer in consequence of section 71DD having ceased to apply to the conveyance or transfer;
  - (f) the purchasers may, at the discretion of the Commissioner, be liable to pay interest and penalty tax as if the failure to pay duty, or to pay full duty, at the date of the conveyance or transfer were a tax default under the *Taxation Administration Act 1996*.

## **8—Amendment of Schedule 2—Stamp duties and exemptions**

Schedule 2, Note—delete the note