

# **EXPLANATORY MEMORANDUM**

## **LAND TAX ASSESSMENT AMENDMENT (RESIDENTIAL CONSTRUCTION EXEMPTIONS) BILL 2023**

The Land Tax Assessment Amendment (Residential Construction Exemptions) Bill 2023 amends the *Land Tax Assessment Act 2002* (LTA Act) to temporarily extend the land tax residential construction exemptions for owners who commenced construction between 1 July 2020 and 30 June 2023 by providing:

- a three-year exemption for newly constructed or refurbished homes, which can be extended to four years in exceptional circumstances (such as delays caused by a builder going into liquidation); and
- a two-year exemption for a new home that is being built or refurbished while the owner lives in their existing home, which can be extended to three years in exceptional circumstances (such as delays caused by building material or labour shortages).

### ***Background***

Land tax is payable for an assessment year (financial year) on all land in Western Australia unless an exemption applies.<sup>1</sup> Land tax is calculated on the aggregated taxable value of all land held in the same ownership at midnight on 30 June before the assessment year.

Under the LTA Act, an exemption applies to land that contains a home which is used as the owner's primary residence.<sup>2</sup> Exemptions are also available if an owner builds or refurbishes a private residential property that will become their home (the residential construction exemptions).

### ***Newly constructed or refurbished residence exemption***

Under the LTA Act, land is exempt for two assessment years if the owner constructs or refurbishes a private residential property on land (newly constructed or refurbished residence exemption).<sup>3</sup>

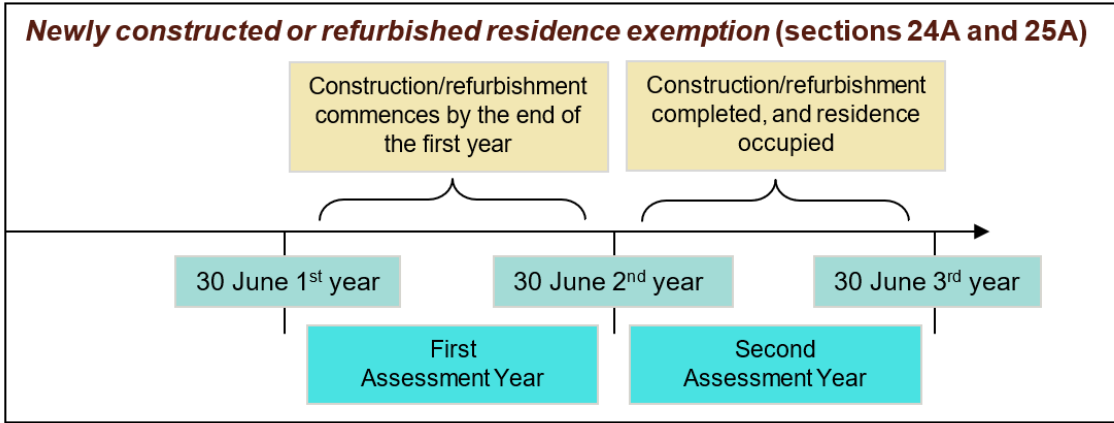
The exemption requires the owner to move into the property as their primary residence when the building works are completed, and that the owner not receive a residential exemption on another property they own during the two assessment years. This means an owner cannot receive the newly constructed or refurbished residence exemption on the home under construction while receiving a primary residence exemption for their current home.

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<sup>1</sup> LTA Act s. 5.

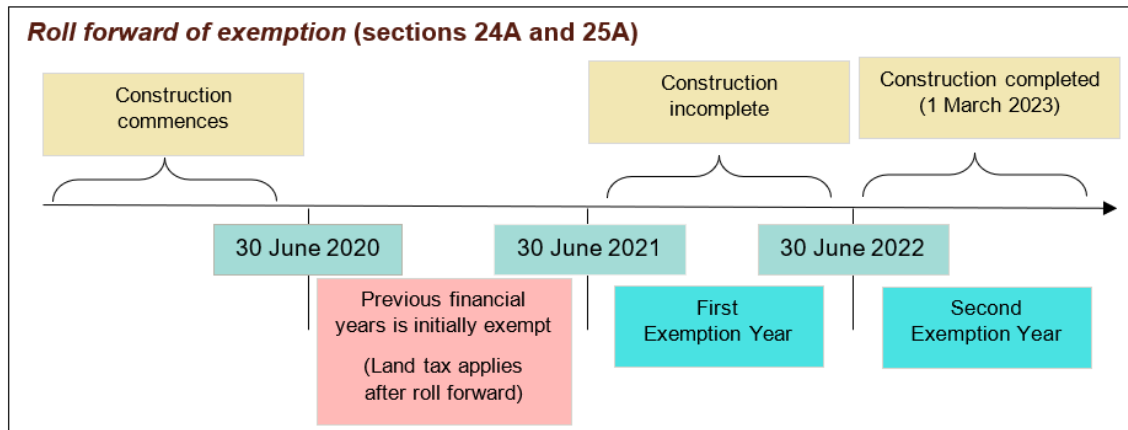
<sup>2</sup> LTA Act s. 21.

<sup>3</sup> LTA Act ss. 24A and 25A.



The newly constructed or refurbished residence exemption applies for two assessment years ending in the year in which the construction or refurbishment is completed. If construction or refurbishment takes more than two years, the exemption is 'rolled forward' to exempt the land for the current and previous assessment year. Land tax for the year before the previous assessment year is reassessed.

For example, construction of a residence begins on 1 March 2020 and is completed on 1 March 2023. The residence initially receives an exemption for the 2020-21 and 2021-22 assessment years. When the home is not completed by the end of the 2021-22 assessment year, the exemption is rolled forward to 2022-23 and 2020-21 becomes taxable:



## Second private residence exemption

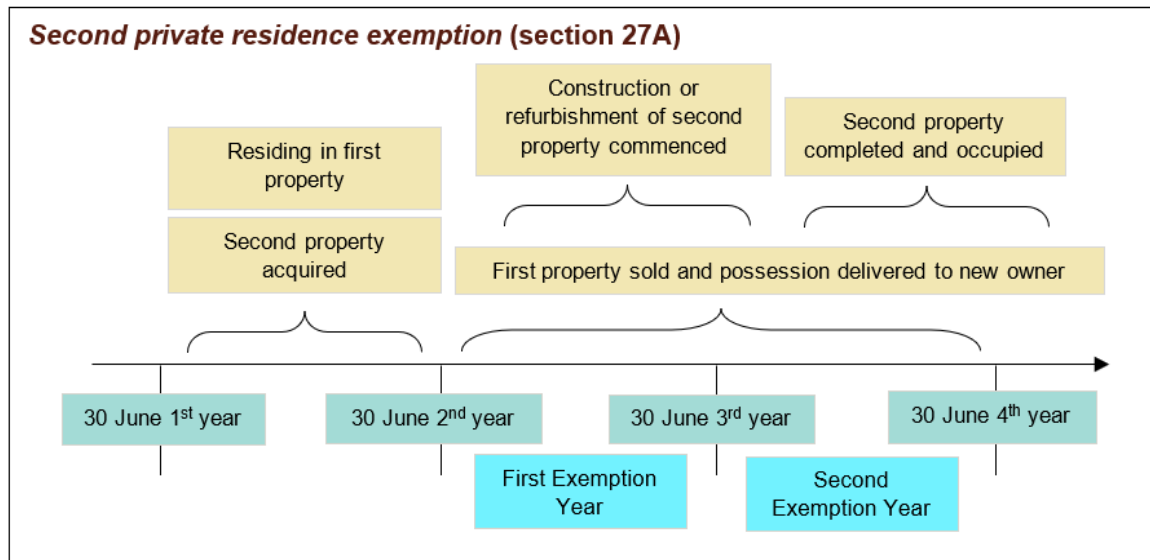
The LTA Act also provides a two-year exemption for private residential property that is being constructed or refurbished while the owner also receives a primary residence exemption for another property they occupy as their home.<sup>4</sup>

This allows an owner to live in and receive an exemption for their current home, while also receiving a two-year exemption for the property that will become their new home. The owner receives a primary residence exemption for the property they currently occupy (the first property) while receiving the section 27A exemption for the other property (the second property).

<sup>4</sup> LTA Act s. 27A.

This exemption requires the owner to move into the second property as their primary residence once construction or refurbishment is completed, and to sell or otherwise dispose of the first property by the end of the second assessment year.

If any of these requirements are not met, the exemption is not rolled forward and land tax is payable for the second property for the first and second assessment years.



### ***Land tax impacts of building industry delays***

The residential construction exemptions both apply for a maximum of two financial years.

The residential construction market has faced several constraints in recent years with labour and material shortages limiting the industry's ability to respond to the demand for new housing. This has led to significant delays in construction. The construction delays may cause some owners to be charged land tax because their new home was not finished within two years.

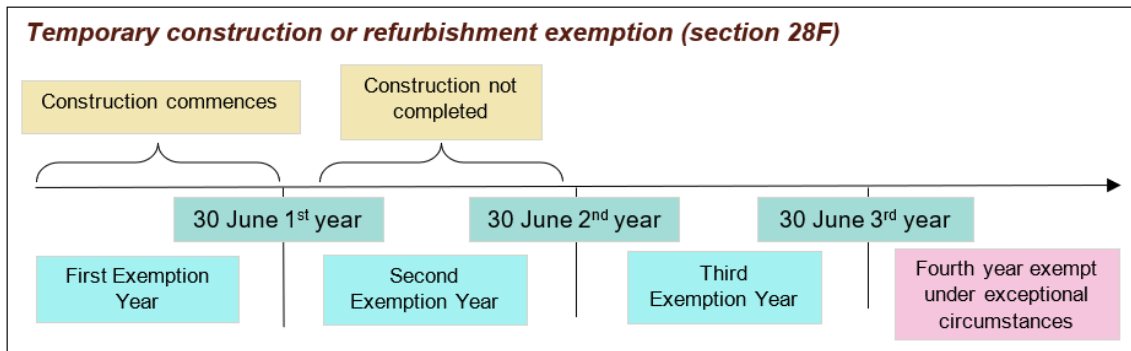
This Bill proposes to address these issues by temporarily extending the land tax residential construction exemptions for owners who commenced construction between 1 July 2020 and 30 June 2023.

The Bill accomplishes this by introducing two new temporary land tax exemptions.

### ***Temporary construction or refurbishment exemption***

The Bill introduces a temporary three-year exemption for newly constructed or refurbished homes if the owner is not receiving a residential exemption for another property they own (the temporary construction or refurbishment exemption).

This exemption applies to properties that began construction or refurbishment between 1 July 2020 and 30 June 2023 in place of the existing two-year exemption. This provides owners an additional year to complete construction or refurbishment to accommodate building delays that are outside their control.



The Bill includes a discretion which allows the Commissioner of State Revenue (the Commissioner) to extend the exemption for a further year to four years total. To extend the exemption, there must have been a delay in the completion of the residence which is primarily caused by exceptional circumstances outside the owner's control. This can include a builder becoming insolvent or abandoning the building contract before starting or completing work on the home.

### ***Temporary second private residence exemption***

The Bill also introduces a temporary two-year exemption for a home that is being built or refurbished while the owner lives in and receives a residential exemption for their existing home (the temporary second private residence exemption).

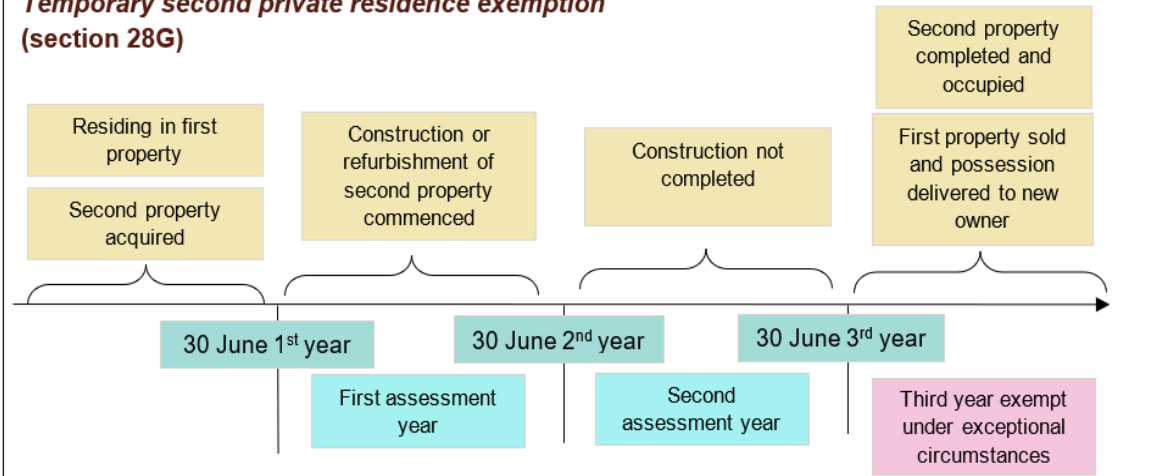
This exemption applies to properties that began construction or refurbishment between 1 July 2020 and 30 June 2023 in place of the existing two-year exemption.

The temporary second private residence exemption does not increase the timeframe for the exemption beyond two years. This is because the existing second private residence exemption is already more generous than other Australian jurisdictions, which only provide a one-year exemption for two homes in the above circumstances.

The temporary exemption provides a different benefit to eligible owners. Unlike the existing second private residence exemption, the temporary exemption will not require the owner to repay the two exempt years of land tax if the construction or refurbishment is not completed by the second assessment year. This will help ensure owners are not required to repay their exemptions in response to building delays which are beyond their control.

The temporary exemption can also be extended for a further year to a total of three years in exceptional circumstances outside the owner's control. This can include a builder becoming insolvent or abandoning the building contract before starting or completing work on the home as well as delays caused by a building materials or labour shortage.

***Temporary second private residence exemption  
(section 28G)***



## Part 1 – Preliminary

### Clause 1: Short Title

This clause provides that the short title of this Act is the *Land Tax Assessment Amendment (Residential Construction Exemptions) Act 2023*.

### Clause 2: Commencement

This clause provides the commencement dates for this Bill.

Paragraph (a) provides that clauses one and two of the Act come into operation on the day on which Royal Assent is received.

The rest of the Act introduces the temporary residential construction exemptions. Paragraph (b) provides that this part of the Act comes into operation on the day after the day Royal Assent is received.

The amendments do not commence retrospectively but apply to owners who commenced construction between 1 July 2020 and 30 June 2023 from the day after Royal Assent is received.

### Clause 3: Act amended

This clause provides that this Act amends the *Land Tax Assessment Act 2002*.

### Clause 4: Section 27 amended

Section 27 provides a one-year exemption for a person moving between two private residences.

The exemption requires that the second property would have been exempt as the owner's primary residence if the owner had been living in it as their primary residence instead of the first property.

There is a minor error in the section where the term *private residence* is used instead of *primary residence*. The LTA Act defines *primary residence* to mean an individual's sole or principal place of residence.<sup>5</sup> In contrast, *private residence* means a building or part of a building that was occupied, or fit to be occupied and intended by the owner to be occupied, as a place of residence of one or more individuals.

This clause corrects this error.

### Clause 5: Section 27A amended

Section 27A provides a two-year second residence exemption for a second property under construction or refurbishment while the owner continues to live in their first property.

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<sup>5</sup> LTA Act, Glossary Cl 1.

The exemption requires that the second property would have been exempt as the owner's primary residence if the owner had been living in it as their primary residence instead of the first property.

There is a minor error in the section where the term *private residence* is used instead of *primary residence*. The LTA Act defines *primary residence* to mean an individual's sole or principal place of residence.<sup>6</sup> In contrast, *private residence* means a building or part of a building that was occupied, or fit to be occupied and intended by the owner to be occupied, as a place of residence of one or more individuals.

This clause corrects this error.

**Clause 6: Section 28A amended**

Part 3 Division 2 Subdivision 2 of the LTA Act allows the residential construction exemptions to apply where land has been subdivided or amalgamated and the requirements for the relevant exemption are met.

Section 28A defines several terms which are used in Subdivision 2. Clause 6 amends the definitions of *exemption period* and *exemption provision* in the section to reflect the new temporary residential construction exemptions.

**Clause 7: Section 28C amended**

Section 27 provides an exemption for a person moving between two private residences for one financial year and section 27A provides a two year exemption for the construction or refurbishment of a second private residence.

Both sections require the owner to sell the property acquired first and deliver possession of that property to the new owner by the end of the exemption period.

Section 28C ensures these sections function if the property acquired first is subdivided during the exemption period.

Clause 7 amends section 28C to include references to the temporary second residence exemption in proposed section 28G. This ensures the temporary second residence exemption will also function correctly if the property acquired first is subdivided during the exemption period.

**Clause 8: Section 28D amended**

Section 28D provides that if land is subdivided in the first year of a two-year residential construction exemption under section 24A, 25A or 27A, the exemption applies to the new lots in the second financial year. Without section 28D the new lots would be taxable in the

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<sup>6</sup> LTA Act, Glossary Cl 1.

second financial year as they are not the land which received the exemption in the first year.

Clause 8 amends section 28D to provide that it applies to the temporary residential construction exemptions in proposed sections 28F and 28G. This ensures these exemptions will function correctly if the property receiving the exemption is subdivided during the exemption period.

**Clause 9: Part 3 Division 2 Subdivision 3 inserted**

This clause inserts a new subdivision which provides the temporary exemptions for land used for construction or refurbishment of a private residence.

**Subdivision 3 – Special provisions for construction or refurbishment of private residence: commencement in period from 1 July 2020 to 30 June 2023**

**28F. Construction or refurbishment of private residence: 3 year exemption**

Section 28F provides a three-year exemption for construction or refurbishment of a private residential property that starts being constructed or refurbished from 1 July 2020 to 1 July 2023.

The exemption requirements are substantially the same as those for the existing newly constructed or renovated residence exemption in sections 24A and 25A with the following exceptions:

1. The temporary exemption requires construction or refurbishment to commence between 1 July 2020 to 1 July 2023, while the existing exemption has no commencement date requirements.

This ensures that only owners who started construction during the qualification period can receive the temporary exemption.

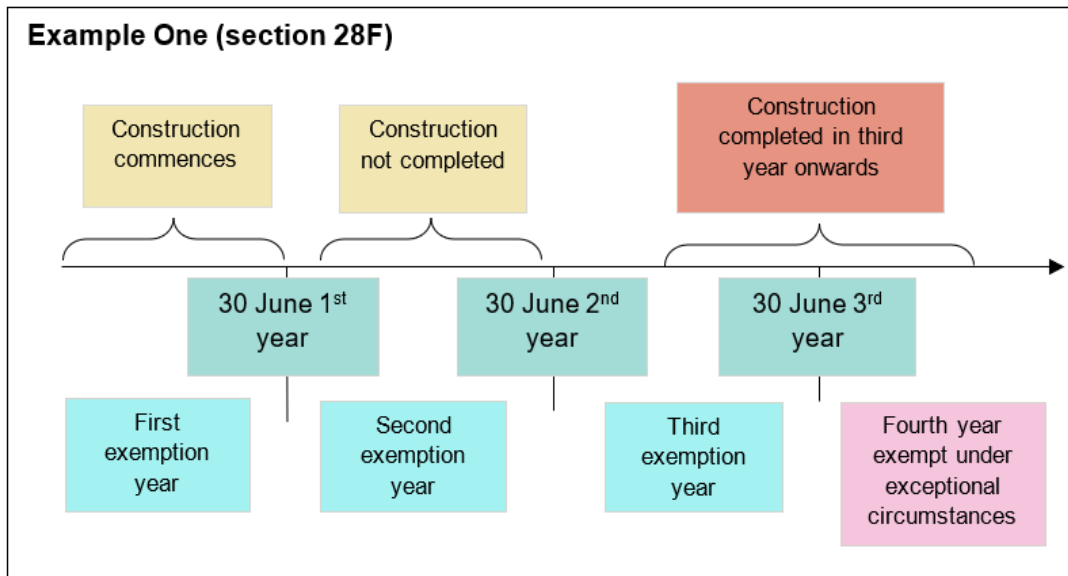
2. The temporary exemption requires the construction or refurbishment to be completed in the third assessment year or a later year. This means a residence's construction must extend beyond two years to qualify for the exemption.

The existing exemption does not require construction to be completed in a specific assessment year, because the exemption is rolled forward to apply to the two most recent assessment years.

This requirement is different for the temporary exemption to ensure that residences will only qualify for the exemption when construction or refurbishment takes longer than two financial years.



### Example One (section 28F)



Subsection (1) provides the requirements for a property to be eligible for the exemption. Private residential property is exempt for three assessment years if it meets the requirements of this subsection and is not held in trust.

Subsection (1)(a) provides that the commencement date for the construction or refurbishment must be on or after 1 July 2020 and before 1 July 2023.

This ensures that only properties that started being constructed or refurbished during this period qualify for the exemption.

The commencement date of the construction or refurbishment of a private residence is:<sup>7</sup>

- for a building contract – the date the contract is made; or
- for owner-builders – the date the building permit for the work is granted under the *Building Act 2011*.

Subsection (1)(b) provides that construction or refurbishment must commence in the first assessment year the exemption applies, or in the financial year before that assessment year. This ensures the exemption applies from the start of the construction or refurbishment and not from a later financial year.

This requirement is the same as the newly constructed or renovated residence exemption in sections 24A and 25A.

Subsection (1)(c) provides the individual must own the property on 30 June immediately before the first assessment year in which the exemption applies.

Subsection (1)(d) provides that for refurbishment of a property, the property must be unoccupied at 30 June immediately before the first assessment year.

This ensures that no individual is occupying the property during its refurbishment. If refurbishment works do not require the owner to

<sup>7</sup> LTA Act, Glossary, CI 1.

vacate the property because they are minor, the owner will not need to access this exemption. The property will remain eligible for a primary residence exemption.

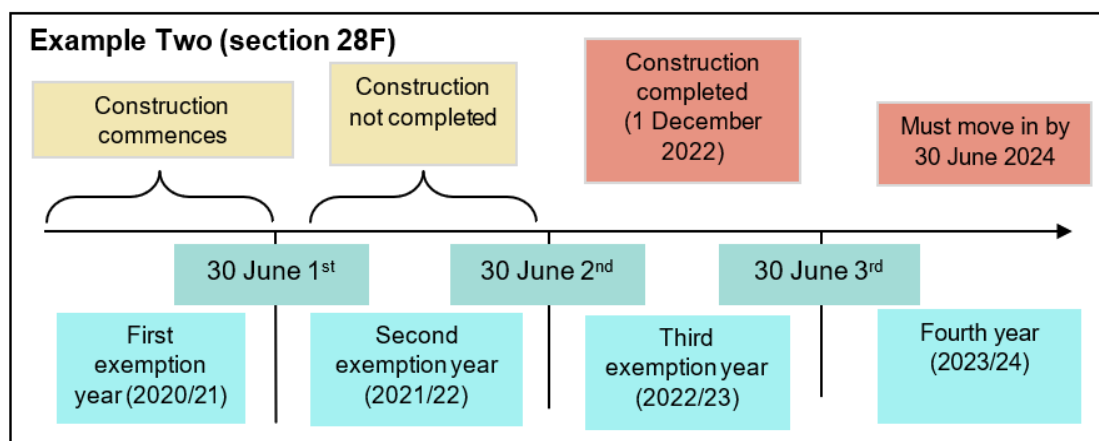
Subsection (1)(e) requires the construction or refurbishment to be completed in the third assessment year or later.

This ensures that only residences that take longer than two financial years to construct or refurbish can qualify for the exemption. Residences that are completed within two financial years can access the existing residential construction exemptions and will not need the extended period provided by the temporary exemption.

Subsection (1)(f) requires the owner of the property to be the first occupant of the private residence once the construction or refurbishment is completed.

Subsection (1)(g) requires the owner to use the residence as their primary residence before the end of the financial year after the construction or renovation is completed.

These two requirements ensure the exemption only applies to owners who intend to live in the residence after its construction or refurbishment. The exemption is not intended to apply to the construction or refurbishment of an investment property or other property not used as the owner's primary residence.



For example, Amy receives the exemption for her home renovation in the 2020-21, 2021-22 and 2022-23 financial years. The renovation works are completed on 1 December 2022 (the 2022-23 financial year). Amy must use the home as her primary residence before 30 June 2024 (the end of the 2023-24 financial year).

Subsection (2) provides several criteria which disqualify property from the exemption applying. If a property receives the exemption but one of these criteria later applies, the exemption will be removed and land tax will be charged.

Subsection (2)(a) provides the property is not exempt if the owner or another individual derives rent or other income from the property during the exemption period.

Subsection (2)(b) provides the property is not exempt if the owner receives another private residential property exemption for a different property during the exemption period.

The temporary construction or refurbishment exemption is intended to apply in situations where the owner of the property is not receiving any other residential construction exemptions. If the owner is receiving an exemption for living in their home while constructing another residence, they can access the temporary second private residence exemption in proposed section 28G.

Subsection (2)(c) provides the property is not exempt if it is sold before being occupied by the owner after its construction or refurbishment.

This ensures that only owners who construct or renovate a property for use as their primary residence can receive the exemption. The exemption is not intended to apply to the construction or refurbishment of an investment property, or other property not used as the owner's primary residence.

Subsection (3) provides that an owner can apply for the exemption after the start of the construction or refurbishment.

This means owners with a building contract can apply for the exemption from the date the contract is signed. Owner-builders can apply from the date the building permit for the work is granted under the *Building Act 2011*.

Subsection (4) provides the Commissioner power to require an owner receiving the exemption to notify the Commissioner of:

- (a) the completion date of their property's construction or refurbishment; and
- (b) the date they occupy the property.

This requirement assists the Commissioner with the administration of land tax exemptions and is consistent with the existing residential construction exemptions.

### **28G. Construction or refurbishment of 2<sup>nd</sup> private residence: 2 year exemption**

Section 28G provides a two-year exemption for private residential property which starts being constructed or refurbished between 1 July 2020 and 30 June 2023 while the owner also receives a primary residence exemption for another property which they occupy as their home.

The owner receives a primary residence exemption for the property they currently occupy (first property) while receiving the section 28G exemption for the other property (second property).

The exemption requirements are substantially the same as those for the existing second private residence exemption in section 27A with the following exceptions:

1. The temporary exemption requires construction or refurbishment to commence between 1 July 2020 to 1 July 2023, while the existing exemption has no commencement date requirements.

This ensures that only owners who started construction during the qualification period can receive the temporary exemption.

2. The temporary exemption requires the construction or refurbishment of the second property to be completed in the third assessment year or a later year. This means the second property's construction must extend beyond two years to qualify for the exemption.

The existing exemption requires construction to be completed in the second assessment year, because the exemption only applies to construction or refurbishment that is completed in two years.

This requirement is different for the temporary exemption to ensure that residences will only qualify for the exemption when construction or refurbishment takes longer than two financial years.

Subsection (1) provides the requirements for a property to be eligible for the exemption. Private residential property is exempt for two assessment years if it meets the requirements of this subsection and is not held in trust.

Subsection (1)(a) provides the individual must own both properties on 30 June immediately before the first assessment year in which the exemption applies.

Subsection (1)(b) provides that the first property must be exempt from land tax in the first assessment year because it is used as the owner's primary residence at 30 June immediately before that year.

Section 28G is only intended to provide an exemption for a person's second property if they are using the first property as their primary residence. This requirement ensures an owner's first property is being used as their home.

Subsection (1)(c) requires that the second property would be exempt from land tax if it was used as the owner's primary residence instead of the first property on 30 June immediately before the first assessment year.

This requirement ensures that the second residence meets the requirements of the primary residence exemption in section 21.

Subsection (1)(d) requires that the owner must have acquired the second property in the financial year immediately before the first assessment year.

Section 28G is intended to apply to a recently acquired property that is being constructed or renovated to be used as the owner's primary residence. It is not intended to apply to an existing property that the owner plans to construct or renovate. This requirement ensures the exemption can only be applied to a recently acquired property.

Subsection (1)(e) provides that construction or refurbishment of the second property must be on or after 1 July 2020 and before 1 July 2023.

This ensures only properties that had construction or refurbishment commence during this period qualify for the exemption.

Subsection (1)(f) requires the construction or refurbishment of the second property to commence in the first assessment year the exemption applies, or in the financial year before that assessment year.

This ensures the exemption applies from the start of the construction or refurbishment and not from a later financial year.

Subsection (1)(g) provides that if the second property is being refurbished, the property must be unoccupied at 30 June immediately before the first assessment year.

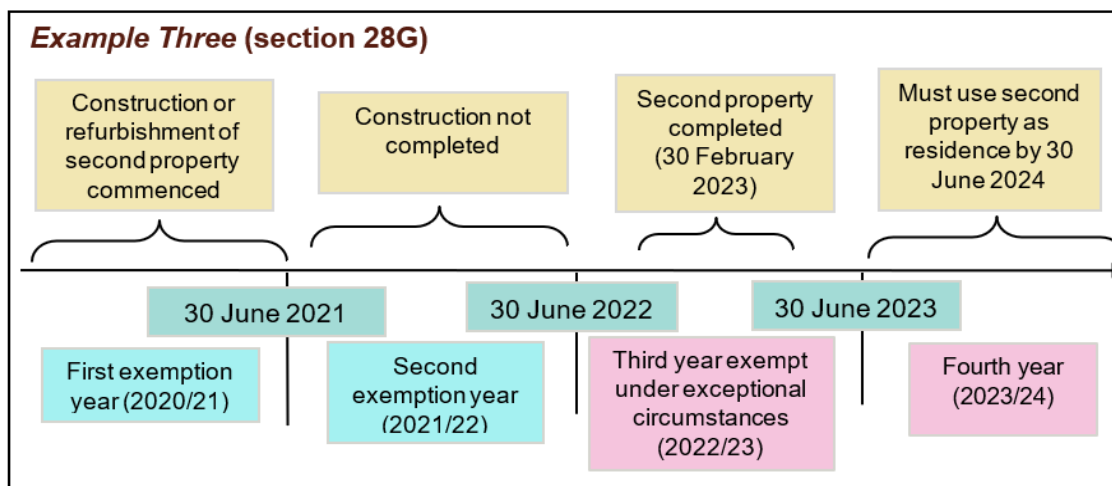
This ensures that no individual is occupying the property during its refurbishment.

Subsection (1)(h) requires construction or refurbishment to be completed in the third assessment year or a later year.

This ensures that only residences that take longer than two financial years to be constructed or refurbished can qualify for the exemption. Residences which are completed within two financial years can access the existing second residence exemption.

Subsection (1)(i) requires the owner of the property to be the first occupant of the second property once the construction or refurbishment is completed.

Subsection (1)(j) requires the owner to use the second property as their primary residence before the end of the financial year after the construction or renovation is completed.



For example, Gina receives the exemption for her second property renovation in the 2020-21 and 2021-22 financial years. She continues to live in her first property during this time. The renovation works are completed on 20 February 2023 (the 2022-23 financial year). Gina must use the second property as her primary residence before 30 June 2024 (the end of the 2023-24 financial year).

These two requirements ensure that only owners who intend to construct or renovate a property for use as their primary residence can receive the exemption. The exemption is not intended to apply to the construction or refurbishment of an investment property, or other property not used as the owner's primary residence.

Subsection (1)(k) requires that, before the end of the financial year after the construction or renovation is completed, the owner must have:

- (i) sold or otherwise disposed of the first property; and
- (ii) deliver possession of the second property to the new owner.

An owner must dispose and deliver possession of their first property to qualify for the exemption. This subsection ensures owners are not required to dispose of their first property until construction is completed on their second property.

This is more generous than the existing second private residence exemption, which requires the first property to be sold and transferred by the end of the second assessment year. The subsection also ensures owners have at least one year to dispose and deliver possession of their first property.

Subsection (2) provides two criteria which disqualify the second property from the exemption applying. If a property receives the exemption but one of these criteria later applies, the exemption will no longer apply and land tax will be charged.

Subsection (2)(a) provides the second property is not exempt if the owner or another person derives rent or other income from the

property that was not being used as their primary residence, during the exemption period.

Subsection (2)(b) provides the second property is not exempt if it is sold before being occupied by the owner, following its construction or refurbishment.

This ensures that only owners who intend to construct or renovate a property for use as their primary residence can receive the exemption. The exemption is not intended to apply to the construction or refurbishment of an investment property, or other property not used as the owner's primary residence.

Subsection (3) provides that an owner can apply for the exemption after the start of the construction or refurbishment of the second property.

This means owners with a building contract can apply for the exemption from the date the contract is signed. Owner-builders can apply from the date the building permit for the work is granted under the *Building Act 2011*.

Subsection (4) provides the Commissioner the power to require an owner to notify the Commissioner of:

- (a) the completion date of the second property's construction or refurbishment; and
- (b) the date they occupy the second property; and
- (c) the date the first property is disposed of and delivered to its new owner.

This requirement assists the Commissioner with the administration of the exemption and is consistent with the existing residential construction exemptions.

## **28H. Extension of exemption under s. 28F**

Section 28H provides a discretion that allows the Commissioner to extend the timeframe of the section 28F exemption by one year (to a total of four years) if there is a delay in the completion of the construction or refurbishment caused by exceptional circumstances.

Subsection (1) defines the terms used in section 28H.

**completion** means the completion of the construction or refurbishment to the point where the residence is ready for occupation.

**exceptional circumstances** is defined to include a builder failing to commence or cease work on a residence. This could involve a builder becoming insolvent or absconding before starting or completing work on a home.

Exceptional circumstances are not restricted to only these situations. Events of similar significance will also be considered exceptional circumstances.

For the purposes of section 28H, exceptional circumstances do not include a building materials or labour shortage. This is because material and labour shortages are already considered by section 28F when providing a three-year exemption for newly construction or refurbished homes, so these factors cannot also be exceptional circumstances for the purposes of the exemption.

For the purposes of extending the section 28F exemption, exceptional circumstances must be more significant than solely a building materials or labour shortage.

Subsection (2) provides the Commissioner can extend the exemption by one assessment year if satisfied that:

- (a) there is a delay in the completion of the construction or refurbishment, which is a delay in the time where the residence is ready for occupation; and
- (b) the delay is primarily due to exceptional circumstances beyond the owner's control; and

For example, an owner's builder becoming insolvent would not be within the owner's control. However, a disagreement between an owner and builder over pricing under the building contract would not constitute exceptional circumstances outside the owner's control.

- (c) the owner could not have reasonably avoided the delay. For example, an owner could have reasonably avoided the delay if the builder under the building contract absconded before commencing work on the property, but a second builder offered to complete the contract; and
- (d) the property will meet the requirements of section 28F for the four exempt assessment years (instead of three).

Subsection (3) provides that if the Commissioner grants an extension under section 28H, this has the effect that section 28F provides a four-year exemption instead of a three-year exemption.

Subsection (4) requires the owner to apply for an extension of their three-year temporary first residence exemption to a four-year exemption, before the end of the fourth year.

The Commissioner will publish guidance about how the discretion will usually be exercised.

## **28I. Extension of exemption under s. 28G**

Section 28I provides a discretion which allows the Commissioner to extend the timeframe of the section 28G exemption by one year



(to a total of three years) if there is a delay in the completion of the construction or refurbishment caused by exceptional circumstances.

Subsection (1) defines the terms used in section 28G.

**completion** means the completion of the construction or refurbishment to the point where the residence is ready for occupation.

**exceptional circumstances** is defined to include a builder failing to commence or cease work on a residence. This could involve a builder becoming insolvent or absconding before starting or completing work on a home.

For the purposes of section 28G, *exceptional circumstances* includes a building materials or labour shortage.

A building materials or labour shortage is considered *exceptional circumstances* for the purposes of section 28G but not 28F. This is because section 28G does not extend the exemption timeframe in section 27A beyond two years. Section 28G provides a different benefit to recipients, by not requiring the owner to repay the exempt land tax if construction extends beyond two years.

The exemption is intended to be extended to three years in situations where construction is delayed by building material or labour shortages. For the purposes of extending the section 28G exemption, exceptional circumstances can be solely a building materials or labour shortage.

Exceptional circumstances are not restricted to only these situations. Events of similar significance will also be considered exceptional circumstances.

Subsection (2) provides the Commissioner can extend the exemption by one year if satisfied that:

- (a) there is a delay in the completion of the construction or refurbishment, which is a delay in the time where the residence is ready for occupation; and
- (b) the delay is primarily due to exceptional circumstances beyond the owner's control; and

For example, an owner's builder becoming insolvent would not be within the owner's control. However, a disagreement between an owner and builder over pricing under the building contract would not constitute exceptional circumstances outside the owner's control.

- (c) the owner could not have reasonably avoided the delay; and
- (d) the property will meet the requirements of section 28G for the three exempt assessment years.

Subsection (3) provides that if the Commissioner grants an extension under section 28I, this has the effect that section 28G provides a three-year exemption instead of a two-year exemption.

Subsection (4) provides owner must apply for an extension of their two-year temporary second residence exemption to a three-year exemption, before the later of:

(a) 30 June 2024; or

(b) the end of the third year.

This ensures owners will have until at least 30 June 2024 to apply for an extension. This is necessary because owners who receive the exemption from the 2020-21 financial year will have already passed the third year in 30 June 2023.

The Commissioner will publish guidance about how the discretion will usually be exercised.

### **28J. No double exemption**

Section 28J provides a property cannot receive multiple residential construction exemptions for the same construction or renovation work. This section is intended to prevent a property receiving a temporary exemption (three years under section 28F or two years under section 28G) and then receiving an existing exemption for an additional year or more.

For example, a property which begins construction on 1 August 2020 receives a three-year exemption under section 28F for the 2021-22, 2022-23 and 2023-24 financial years, but construction is not completed until the 2025-26 financial year.

Section 28J provides the property cannot receive an additional exemption for the same construction work. For example, the house could not receive the section 24A exemption for the 2024-25 and 2025-26 financial years.

The temporary residential construction exemptions are intended to provide a more generous land tax exemption to eligible owners, but it is not intended for multiple exemptions to apply to the same construction or renovation work. This is consistent with the current residential construction exemptions in the LTA Act.

Subsection (1) provides the section applies if a property would be exempt under either section 28F or 28G, and one or more current construction or refurbishment exemptions for the same construction or refurbishment work.

Subsection (2) provides the Commissioner must determine which single exemption applies to the property. When the Commissioner makes this determination, the property is not exempt under the other exemption.

Subsection (3) provides the Commissioner does not need to determine which exemption applies to the property if they are satisfied that the owner's land tax liability would be the same regardless of which exemption was applied.

For example, Jake would qualify for the section 28F or 24A exemption in the 2021-22 and 2022-23 financial years. Under section 28J(3), the Commissioner does not need to determine which specific exemption applies because the land is exempt from land tax for the same financial years in either case. The owner's land tax liability will be the same regardless of which exemption applies.

### **28K. Reassessment**

Under section 17(4) of the *Taxation Administration Act 2003*, the Commissioner cannot make a reassessment more than five years after the date of an original assessment except in certain circumstances.

Section 28K provides an exception to these usual time limits by allowing Commissioner to retrospectively assess land tax under Part 3 Division 2 Subdivision 3 even if it has been more than five years since the original land tax assessment.

This ensures the temporary land tax exemptions can be applied even if it has been more than five years since the owner's original land tax assessment.

For example, Adrian begins construction of his new home, but construction ceases after two years due to the contracted builder becoming insolvent. Adrian finds another builder to complete the contract and his home is completed by year four. However, he did not realise he could receive a temporary residential construction exemption until year five.

Section 28K allows the Commissioner to apply the temporary residential exemptions and refund the land tax Adrian has paid, despite more than five years having passed since Adrian's original land tax assessment.

Section 28K also ensures an exemption can be removed and land assessed as taxable if it is determined land did not qualify for the exemption more than five years after it was assessed as exempt.

For example, if an owner does not move into their newly constructed property after receiving an exemption their exemption will be removed because they have not satisfied the criteria. Section 28K allows the Commissioner to remove the exemption and charge land tax, even if more than five years have passed since the original land tax assessment.

**Clause 10: Section 42 amended**

Section 42 provides a one-year exemption for land which has been vacated because the mortgagee of the property required it to be vacated pursuant to their right to sell the property.

Subsection 42(3)(a) provides an exception to this exemption. The property is not exempt if the owner of the property is entitled to an exemption for a different property under section 42 or one of the existing private residential property exemptions. This ensures a person cannot receive two different private residential property exemptions for different properties.

Clause 10 amends section 42 to provide it applies to the temporary residential construction exemption in proposed section 28F. This ensures that section 42 will not apply if the owner of the property is also receiving the temporary construction or refurbishment exemption under section 28F.

**Clause 11: Glossary amended**

The Glossary of the LTA Act defines *private residential property* to include a lot of land on which a private residence is being or has been constructed for the purposes of the exemptions in sections 24, 24A, 27, 27A and 28. This ensures a lot of land on which a private residence will be constructed, or is under construction, is considered private residential property for the purposes of the LTA Act.

Clause 11 amends this definition to include Part 3 Division 2 Subdivisions 2 and 3.