

NORFOLK



ISLAND

# Absentee Landowners Levy Act 1976

No. 2, 1976

## Compilation No. 2

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(No. 2, 2015)



# ABSENTEE LANDOWNERS LEVY ACT 1976

## TABLE OF PROVISIONS

1. Short title
2. Definitions
3. Absentees
4. Unimproved value of land
5. Absentee levy
- 5A. Reduced levy
6. Exemptions
- 6A. Application for, and grant of, exemptions
- 6B. Provision of information
7. Valuations
8. Assessments
9. Payment of levy and interest
10. Objections
11. Appeals
12. Payment pending and after appeal
13. Recovery of levy and interest
14. No limitation of action
15. Charge on land
16. Sale of land for non-payment of levy
17. Conveyance of land by Minister
18. Application of purchase money
19. Contribution between joint owners
20. Evidence
21. Relief in cases of hardship
- 21A. Delegation
22. Regulations



## Absentee Landowners Levy Act 1976

An Act to impose a levy on absentee landowners, and for other purposes.

### Short title

1. This Act may be cited as the *Absentee Landowners Levy Act 1976*.

### Definitions

2. (1) In this Act, unless the contrary intention appears —  
“an exempt person means a person granted exemption from payment of the levy under section 6A;  
“interest” means interest payable under subsection 9(3) on unpaid levy;  
“levy” means the annual levy imposed by subsection 5(1);  
“levy day” means September 15, in every year other than 2017 or a later year;  
“parcel of land” includes a lot, but does not include common property, under the *Community Title Act 2015*;  
“year of levy” means the period of 12 months immediately preceding a levy day.

(2) For the purposes of this Act, where a parcel of land is subject to a mortgage, the person having the equity of redemption shall be deemed to be the owner in fee simple of that parcel.

### Absentees

3. (1) For the purposes of this Act, an absentee, in relation to a year of levy, means —
  - (a) a person who is not a company or an exempt person and has been absent from Norfolk Island for a period of, or periods aggregating, 183 days or more during the year of levy; and
  - (b) a company, other than a company that —
    - (i) has, during the year of levy, been approved as a local company under section 638 of the *Companies Act 1985*; or
    - (ii) has, during more than one half of the year of levy, been principally engaged in Norfolk Island in a prescribed business.

(2) For the purposes of subparagraph 3(1)(b)(ii), each of the following is a prescribed business:

- (a) retail or wholesale trading;
- (b) banking within the meaning of the *Banking Act 1959 (Clth)*;
- (c) the manufacture, processing, repair, or maintenance of goods;
- (d) building or construction;
- (e) repair work or maintenance work;
- ....
- (g) the carriage of goods or passengers.

#### **Unimproved value of land**

4. For the purposes of this Act, the unimproved value of a parcel of land is the capital sum that might be expected to be offered for the fee simple with vacant possession of the land at a bona fide sale on such reasonable terms and conditions as a bona fide seller would require, it being assumed that no improvements had been made on or to the parcel of land.

#### **Absentee levy**

5. (1) An annual levy is imposed by this Act on each parcel of land owned in fee simple on a levy day, whether alone or jointly with another person, by an absentee.

Note: The last levy day in respect of which the levy is imposed is 15 September 2016: see the definition of *levy day* in subsection 2(1).

(2) The amount of the annual levy payable in respect of a parcel of land is —

- (a) where there is only one owner of the parcel of land - 1% of the unimproved value of the parcel of land as at the levy day; and
- (b) in any other case - 1% of an amount that bears to the unimproved value of the parcel of land as at the levy day the same proportion as the absentee's share in the parcel bears to the whole.

#### **Reduced levy**

5A. (1) In this section, “resident” has the same meaning as in the *Immigration Act 1980*.

(2) Notwithstanding section 5, where an absentee is a resident, the amount of the annual levy payable by that absentee in respect of a parcel of land is, subject to subsection 5A(3), 25% of the amount that, but for this subsection, would be payable under section 5 by that absentee in respect of that parcel of land.

(3) An absentee referred to in subsection 5A(2) is not liable to pay more than \$500 by way of annual levy under this Act in relation to a year of levy.

#### **Exemptions**

6. (1) Notwithstanding sections 5 and 5A, the following are not liable to payment of the levy —

- (a) an exempt person;
- (b) a religious, scientific, charitable or public educational body;
- (c) a social or sporting association not carried on for the purposes of profit or gain to its individual members;
- ....

- (e) the legal personal representative of a deceased person in respect of land vested in him under the *Administration and Probate Act 2006* if the deceased was, before his death, not an absentee.
- (2) Paragraph 6(1)(e) does not apply where —
  - (a) land owned by the deceased has not been disposed of by the legal personal representative within 2 years after the death of the deceased; and

....

### **Application for, and grant of, exemptions**

**6A. (1)** A person who is a resident within the meaning of the *Immigration Act 1980* and who might otherwise be liable for payment of the levy under section 5 or a reduced levy under section 5A may apply to be recognised as an exempt person in respect of a particular levy year.

**(2)** For the purpose of this section an exempt person is a person who was during a levy year absent from Norfolk Island and has, after the levy day but within 60 days thereafter, —

- (a) applied to the Minister to be recognised as an exempt person;
- (b) satisfied the Minister that —
  - (i) the person was absent from Norfolk Island for employment purposes and was, in fact, employed, or actively seeking employment, during the absence in the levy year; and
  - (ii) during the absence from Norfolk Island the person had a dependant family resident in a family home on the land the subject of an assessment; and
  - (iv) did not, upon leaving Norfolk Island, state in relevant immigration forms an intention to leave permanently; and
- (c) the Minister has informed the person that the person is recognised as an exempt person.

**(3)** For this section a ‘dependant family’ is constituted by the partner of the person alone and may include any one or more of the following —

- (a) a child of the partners;
- (b) a child accepted by the partners or either of them into the household of the partners, whether or not the child is a child of either of the partners; or
- (c) any person dependent on the partners who has been accepted by the partners or either of them into the household of the partners; and
- (d) where such person or persons are or have been dependent upon the applicant for their maintenance and support (including the provision of food and upkeep) during a period of not less than 183 days prior to the date of the making of an application .

**(4)** For this section “partner” includes a spouse and de facto partner as defined in the *De Facto Relationships Act 2006*.

**(5)** If Minister has reasonable cause to believe that one or more parcels of land the subject of an assessment has been, or is being occupied by a dependant family as defined in subsection (3) for the purpose of avoiding a levy that might

otherwise become payable, the Minister may revoke the recognition of the person as an exempt person.

(6) If the Minister revokes the recognition of a person as an exempt person, the Minister may cause an assessment of levy payable in respect of each parcel of land owned by the applicant in respect of which the applicant had been recognised as an exempt person and the applicant shall be deemed, as from the levy day, to be in default of payment of the levy assessed and interest shall be paid as if the applicant were in default of payment under subsection 9(3).

(7) A person must not in making an application to the Minister under subsection (1) —

- (a) make an untrue statement; or
- (b) arrange his or her affairs such that the Minister revokes the recognition of the person as an exempt person under subsection (5).

Penalty 10 penalty units.

### **Provision of information**

**6B.** Notwithstanding the provisions of any other Act, the Minister may, for any purpose under this Act, require a person responsible for the collection and maintenance of information concerning the arrival in and departure from Norfolk Island of persons, to provide the Minister with such information by way of production of documents or other records as the Minister may require and the person so responsible must comply therewith.

### **Valuations**

7. (1) The Minister may at any time cause a valuation to be made of the unimproved value of a parcel of land on which levy is payable under this Act.

(2) Where an objection to an assessment on the ground that the unimproved value of a parcel of land as at a levy day is excessive is upheld by the Minister or on appeal, the unimproved value shall be deemed to be varied accordingly and to have been the unimproved value of the parcel of land as at that levy day.

(3) A valuation made under subsection 7(1), or such a valuation as varied on an objection or appeal, continues to have effect for the purposes of this Act until a subsequent valuation is made under subsection 7(1).

(4) A valuation made under this section must be made by a valuer appointed under subsection (5).

(5) For the purposes of this section the Minister may by notice in the Gazette appoint one or more persons who are registered as a valuer in a State or Territory of the Commonwealth.

(6) For the purpose of making a valuation under subsection (1) a valuer may at any time during the normal hours of duty of the Norfolk Island public sector enter upon the land the subject of the valuation.

(7) A valuer entering upon land for the purpose of making a valuation must upon request produce identification in a form approved by the Minister.

(8) A person must not refuse entry to a valuer who has produced his identification and who seeks entry to land in accordance with this section.

Penalty: 5 penalty units.

(9) A copy of the valuation made by the valuer under this section must be made available to the landowner upon request.

#### **Assessments**

8. (1) The Minister shall cause an assessment to be made annually of the levy payable in respect of each parcel of land owned by an absentee.

(2) As soon as practicable after the levy day in each year, the Minister shall serve on each absentee a notice of assessment by prepaid post to the last-known address of the absentee.

(3) The notice of assessment shall set out —

- (a) the name of the absentee;
- (b) a brief description of the land;
- (c) the unimproved value of the land;
- (d) the amount of the levy and, where there are 2 or more owners of the land, the basis on which the levy payable by the absentee has been calculated; and
- (e) the date on which the levy is payable.

#### **Payment of levy and interest**

9. (1) Each absentee to whom a notice of assessment has been posted is liable to pay the amount of levy on the date specified in the notice for the payment of the levy.

(2) The date specified for the payment of the levy shall be a date not less than 60 days after the date on which the notice of assessment is posted.

(3) Where an amount due under this section has not been paid by the date specified under subsection 9(1), interest is payable on the amount at the rate of 10% per annum calculated from the relevant levy day.

(4) For the purposes of subsection 9(3), an amount due under this section includes any previous unpaid levy and any interest calculated under subsection 9(3) in respect of that unpaid levy.

#### **Objections**

10. (1) A person dissatisfied with his assessment may, not later than 60 days after the date on which the notice of assessment is posted, post to or lodge with the Minister an objection in writing against the assessment on the grounds that —

- (a) he is not liable to pay the levy;
- (b) the unimproved value is excessive; or
- (c) the amount of levy is excessive.

(2) The Minister shall consider the objection and may either disallow it, or allow it wholly or in part, and shall notify the objector in writing of his decision but if the Minister does not do so within 45 days of receiving it, the objection is deemed to have been disallowed.

#### **Appeals**

11. (1) An objector dissatisfied with a decision of the Minister under subsection 10(2) may, within 90 days after notification of the decision, appeal to the Administrative Review Tribunal against the decision.

(2) On the hearing of the appeal, the Administrative Review Tribunal may confirm, cancel or reduce the assessment, and may make such order as to costs as it thinks fit.

**Payment pending and after appeal**

12. (1) Notwithstanding that an appeal is pending, the levy may be recovered as if no appeal were pending.

(2) If an assessment is cancelled or reduced on appeal, amounts paid in excess shall be refunded.

**Recovery of levy and interest**

13. (1) Subject to subsection 13(2), levy or interest payable in respect of a parcel of land is a debt due to the Administration and may be recovered in a Court of competent jurisdiction from —

(a) an absentee by whom the parcel was owned in fee simple, whether alone or jointly with another person, at the time the levy was imposed under subsection 5(1); or

(b) a person (whether or not an absentee) who, after the time referred to in paragraph 13(1)(a), obtained as a result of a disposition or devolution in respect of the land a legal or equitable interest in the land,

at the election of the Administration.

(2) Subsection 13(1) does not apply in respect of a person referred to in paragraph 13(1)(b) if the person obtained a legal or equitable interest referred to in that paragraph as a bona fide purchaser for value or mortgagee who, at the time of the purchase or mortgage, made due enquiry but had no notice of the charge referred to in subsection 15(1).

**No limitation of action**

14. Notwithstanding any other law, an action for the recovery of levy or interest may be commenced at any time.

**Charge on land**

15. (1) Levy and interest are a first charge upon the parcel of land to which they relate in priority to all other charges, encumbrances, sales and conveyances.

(2) Notwithstanding subsection 15(1), the charge is of no effect as against a bona fide purchaser for value or mortgagee who at the time of the purchase or mortgage made due enquiry but had no notice of the charge.

(3) A purchaser or mortgagee shall be deemed for the purposes of this Act not to have made due enquiry unless the purchaser or mortgagee, at the time of or immediately before the purchase or mortgage, obtained a certificate from the Minister certifying that —

(a) no levy or interest is payable; or

(b) levy or interest is payable, and specifying the amount unpaid.

**Sale of land for non-payment of levy**

16. (1) Where levy in respect of a parcel of land or interest or Court costs remains unpaid for more than 5 years, the Minister may apply to the Supreme Court for an order to sell the parcel of land to which the levy relates.

(2) On an application for an order under this section, the Supreme Court may make an order directing the sale of the parcel of land by the Minister on such terms and conditions as it thinks fit.

(3) Subject to subsection 16(4), notice of the Minister's intention to make an application under this section shall be served on each person whom the



Minister believes, after diligent enquiry, to have a legal or equitable interest in the land that is the subject of the application.

(4) In spite of subsection 16(3), if —

- (a) a person referred to in subsection 16(3) is not present in Norfolk Island; and
- (b) the whereabouts of the person is unknown to the Minister,

the Minister may give notice of the Minister's intention to make an application under this section by publishing a copy of the notice in the Gazette.

#### **Conveyance of land by Minister**

17. (1) Where a parcel of land is sold in pursuance of an order under section 16, the Minister shall, upon payment to him of the purchase money, convey or transfer the fee simple to the purchaser.

(2) A conveyance or transfer by the Minister purporting to be made under this Act shall vest the land in the purchaser for an estate in fee simple in possession, freed and discharged from all trusts, obligations, estates, interests, contracts, charges, levies and rates, but subject to any exceptions and reservations in any Crown grant and to any easements, restrictive covenants and public rights of way affecting the land.

(3) The purchase money shall be paid to the Minister, and his receipt shall be an effectual discharge to the purchaser.

#### **Application of purchase money**

18. (1) The Minister shall apply the purchase money received by him upon the sale of a parcel of land for any outstanding levy or interest to the following purposes and in the following order:

- (a) first, the expenses of the Minister incurred in connection with the sale;
- (b) secondly, the levy, costs and interest owing to the Minister in respect to the land.

(2) Any balance of the purchase money shall be applied by the Minister for the benefit of the persons having estates or interests in the land immediately before the sale, according to their respective estates and interests.

(3) Where a person who held an estate or interest in the land immediately before sale cannot be found, any balance of purchase money shall be paid to the Trust Fund established by the *Public Moneys Act 1979*.

#### **Contribution between joint owners**

19. (1) A joint owner of a parcel of land who pays levy or interest for which another joint owner of the parcel of land is liable may recover the amount paid from that other joint owner.

(2) A person referred to in paragraph 13(1)(b) who pays levy or interest in respect of a parcel of land, may recover the amount paid from an absentee by whom the parcel was owned in fee simple, whether alone or jointly with another person, at the time the levy was imposed under subsection 5(1).

#### **Evidence**

20. The production of a notice of assessment, or of a document signed by the Minister purporting to be a copy of a notice of assessment, shall be evidence —

- (a) of the due making of the assessment; and
- (b) except in proceedings on appeal against the assessment, that the amount of the levy and all the particulars of the assessment are correct.

**Relief in cases of hardship**

**21.** Where the Minister in any case is satisfied that, owing to death, financial distress or ill health, exaction of the full amount of a levy or interest would entail serious hardship, he may waive the levy or interest wholly or in part.

**Delegation**

**21A. (1)** The Minister may by written instrument delegate to a person —

- (a) who is a member of the Legislative Assembly; or
- (b) who is employed by the Norfolk Island Regional Council;

any of the powers or functions of the Minister under this Act, other than this power of delegation.

**(2)** A power or function delegated under subsection 21A(1) when exercised or performed by the delegate shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.

**(3)** A delegation under subsection 21A(1) does not prevent the exercise of a power or the performance of a function by the Minister.

**Regulations**

**22.** The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**NOTES**

The *Absentee Landowners Levy Act 1976* as shown in this reprint comprises Act No. 2 of 1976 and amendments as indicated in the Tables below.

<b>Enactment</b>	<b>Number and year</b>	<b>Date of commencement</b>	<b>Application saving or transitional provision</b>
<i>Absentee Landowners Levy Act 1976</i>	2, 1976	31.5.76	
<i>Ordinances Citation Act 1976</i>	11, 1976	25.11.76	
<i>Absentee Landowners Levy (Amendment) Act 1978</i>	1, 1978	15.9.77	
<i>Interpretation Act 1979</i>	10, 1979	7.8.79	5
<i>Ordinances Revision Act 1979</i>	13, 1979	7.8.79	5
<i>Ordinances Revision (Executive Members) Act 1980</i>	8, 1980	6.11.81	5
<i>Absentee Landowners Levy (Amendment) Act 1981</i>	12, 1981	10.9.81	
<i>Absentee Landowners Levy (Amendment) Act 1983</i>	15, 1983	7.11.83	4
<i>Immigration (Consequential Amendments) Act 1983</i>	3, 1984	26.3.84	
<i>Absentee Landowners Levy (Amendment) Act 1984</i>	8, 1985	25.4.85	
<i>Absentee Landowners Levy Amendment Act 1987</i>	15, 1987	22.10.87	
<i>Absentee Landowners Levy Amendment Act 1989</i>	8, 1989	24.8.89	
<i>Absentee Landowners Levy Amendment No. 2 Act 1989</i>	18, 1989	9.11.89	6
<i>Statute Law (Miscellaneous Provisions) Act 1995</i>	13, 1995	27.7.95	
<i>Absentee Landowners Levy Amendment Act 2003</i>	18, 2003	3.10.03	

[Previously consolidated as at 1 December 2006]

<b>Enactment</b>	<b>Number and year</b>	<b>Date of commencement</b>	<b>Application saving or transitional provision</b>
<i>Absentee Landowners Levy (Amendment) Act 2007</i>	7, 2008	25.1.08	

*[Previously consolidated as at 6 February 2008]*

<i>Interpretation (Amendment) Act 2012</i> <i>[to substitute throughout —</i> <i>Commonwealth Minister for Minister;</i> <i>and to substitute Minister for executive</i> <i>member]</i>	14, 2012	28.12.12	
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*[Previously consolidated as at 25 February 2013]*

<i>Absentee Landowners Levy (Amendment) Act 2014</i>	3, 2014	4.4.14	
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<i>Absentee Landowners Levy (Amendment No. 2) 2014</i>	6, 2014	2.5.14	
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*[Previously consolidated as at 3 May 2014]*

<i>Community Title (Consequential Provisions) Act 2015</i>	2, 2015	19.6.2015	
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<b>Ordinance</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provision</b>
Norfolk Island Continued Laws Amendment Ordinance 2015 (No. 2, 2015) (now cited as Norfolk Island Continued Laws Ordinance 2015 (see F2015L01491))	17 June 2015 (F2015L00835)	18 June 2015 (s 2(1) item 1)	Sch 1 (items 344–373)
<b>as amended by</b>			
Norfolk Island Continued Laws Amendment (2016 Measures No. 2) Ordinance 2016 (No. 5, 2016)	10 May 2016 (F2016L00751)	Sch 4 (item 6): 1 July 2016 (s 2(1) item 4)	—
Norfolk Island Continued Laws Amendment (2017 Measures No. 2) Ordinance 2017	17 Oct 2017 (F2017L01360)	Sch 2: 18 Oct 2017 (s 2(1) item 1)	—

**Table of Amendments**

ad = added or inserted		am = amended	rep = repealed	rs = repealed and substituted
<b>Provisions affected</b>	<b>How affected</b>			
2	am	8, 1980; 8, 1985; 8, 1989; 7, 2008; 3, 2014; 2, 2015; Ord No 2, 2015 (as am by F2017L01360)		
3	am	11, 1976; 10, 1979; 15, 1987; 7, 2008; 3, 2014; 6, 2014		
5	am	12, 1981; 18, 2003; Ord No 2, 2015 (as am by F2017L01360)		
5A	ad	1, 1978		
5A	am	15, 1983; 3, 1984; 18, 1989; 18, 2003		
6	am	11, 1976; 1, 1978; 10, 1979; 8, 1980; 7, 2008; 3, 2014		
6A	ad	3, 2014		
	am	Ord No 2, 2015 (as am by Ord No 5, 2016)		
6B	ad	3, 2014		
7	am	7, 2008		
8	am	8, 1980		
9	am	13, 1995		
10	am	8, 1980; 7, 2008		
11	am	8, 1980; 7, 2008		
12	am	8, 1980		
13	am	13, 1979; 8, 1989		
15	am	8, 1980; 8, 1989		
16	am	8, 1980; 8, 1989		
17	am	8, 1980		
18	am	10, 1979; 8, 1980		
19	am	8, 1980; 8, 1989		
21	am	8, 1980		
21A	ad	8, 1989		
	am	18, 1989; Ord No 2, 2015 (as am by Ord No 5, 2016)		