



New South Wales

# State Revenue Legislation Amendment (Electronic Transactions) Bill 2014

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Duties Act 1997* and the *Taxation Administration Act 1996* to make further provision for the assessment and payment of tax by electronic means. The amendments are largely consequential on the enactment and implementation of the *Electronic Conveyancing National Law (NSW)* (the *National Law*). The amendments:

- (a) make it clear that electronic instruments lodged under the National Law are regarded as written instruments for the purposes of the *Duties Act 1997* and provide for the circumstances in which such an instrument is taken to be executed, and
- (b) provide for special arrangements for the assessment and payment of duty in respect of those instruments, and
- (c) permit the disclosure of information by tax officers in connection with the assessment of, and payment of duty in respect of, dutiable transactions or mortgages that are effected or partially effected electronically under the National Law, and
- (d) allow banks and other parties to a transaction in respect of which a liability for tax arises to be approved to pay tax under a special arrangement, and
- (e) simplify enforcement provisions relating to special arrangements, and
- (f) provide for the registration of persons approved to pay tax under the special arrangements, and
- (g) permit the Chief Commissioner of State Revenue (the *Chief Commissioner*) to direct an approval holder to pay tax in accordance with a special arrangement, and

- (h) permit the Chief Commissioner to direct the payment of tax by electronic means, and
- (i) provide for the phasing-out of the use of impressed stamps.

## 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

**Schedule 1 [10]** provides that a reference in the *Duties Act 1997* to a written instrument or a dutiable transaction that is effected by a written instrument includes a reference to an electronic registry instrument or a dutiable transaction that is effected by an electronic registry instrument. An electronic registry instrument is a registry instrument under the National Law that is in a form that enables it to be lodged electronically under that Law. The amendment merely confirms the provisions of the National Law which state that electronic registry instruments that are digitally signed under the National Law are taken to be in writing for the purposes of the laws of New South Wales.

**Schedule 1 [9]** inserts a definition of *electronic registry instrument* in the *Duties Act 1997*. **Schedule 1 [3]** is a consequential amendment.

**Schedule 1 [1]** provides that an electronic registry instrument is taken to be first executed when it is first digitally signed by a subscriber under the National Law. Accordingly, liability for duty on a dutiable transaction that is effected under the National Law will arise when the electronic registry instrument is first digitally signed.

**Schedule 1 [2]** provides that if a single dutiable transaction is effected by more than one electronic registry instrument, only one of them is required to be stamped with the duty chargeable.

**Schedule 1 [4]** provides that an electronic registry instrument is not regarded as a counterpart for the purposes of a provision that imposes duty on counterpart instruments.

**Schedule 1 [7]** permits the Chief Commissioner to approve procedures for the payment of duty in respect of electronic registry instruments and for the endorsement or certification of those instruments in a way that indicates that duty has been paid, is payable or is not chargeable. An electronic registry instrument is taken to be duly stamped if the instrument is endorsed or certified in accordance with such a procedure. **Schedule 1 [6]** is a consequential amendment.

**Schedule 1 [8]** permits the disclosure of information relating to the assessment of a dutiable transaction or mortgage, or the payment of duty in respect of a dutiable transaction or mortgage, if:

- (a) the disclosure is made in connection with a dutiable transaction or mortgage that is effected or partially effected by use of an Electronic Lodgment Network under the National Law, and
- (b) the disclosure is made to the Electronic Lodgment Network Operator or by use of the Electronic Lodgment Network, and
- (c) the disclosure is made in connection with the administration or execution of the *Duties Act 1997*.

**Schedule 1 [5]** recognises that an instrument may be stamped with a unique transaction identifier or reference number, instead of an impressed stamp. The use of impressed stamps is to be phased-out.

## **Schedule 2      Amendment of Taxation Administration Act 1996 No 97**

**Schedule 2 [1]** permits the Chief Commissioner to approve special arrangements for the payment of tax by any specified person who is a party to a transaction or class of transactions in respect of which a liability for tax arises and who is not a taxpayer. For example, this would permit the Chief Commissioner to approve special arrangements for the payment of mortgage duty by a bank (even though the bank is not the taxpayer liable to pay the duty). The amendment also makes it clear that an agent or other person who acts on behalf of a taxpayer may be approved to pay tax under a special arrangement in relation to any taxpayers on whose behalf the agent or other person acts. **Schedule 2 [3]** is a consequential amendment.

**Schedule 2 [6]** simplifies enforcement provisions relating to approved special arrangements. Under the new provisions, it will be an offence for a person who is given approval to pay tax in accordance with the arrangements to contravene the conditions of the arrangement. The conditions will be binding only on the person who is given the approval and not on a taxpayer who is not a party to the approval. A taxpayer will still be liable for any tax not paid in accordance with the special arrangements. **Schedule 2 [2], [5] and [8]** are related amendments.

**Schedule 2 [4]** permits the Chief Commissioner to register a person as a person who is approved to pay tax under a special arrangement. The Chief Commissioner may, by order in writing served on the person, direct the person to pay tax to which the special arrangement applies in accordance with the special arrangement. For example, a special arrangement may provide for the payment of duty electronically and the endorsement of the instrument to indicate the payment of the duty (rather than the stamping of the instrument). If the Chief Commissioner directs an approval holder to pay duty in accordance with the special arrangement, the instrument must be endorsed under the special arrangement rather than lodged for stamping by the Chief Commissioner. **Schedule 2 [9]** is a transitional provision.

**Schedule 2 [7]** permits the Chief Commissioner to direct that tax be paid by electronic means.