

First print



New South Wales

State Revenue Legislation (Miscellaneous Amendments) Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the following Acts:

- *Accommodation Levy Act 1997*
 - *Duties Act 1997*
 - *Land Tax Act 1956*
 - *Land Tax Management Act 1956*
 - *Legal Profession Act 1987*
 - *Pay-roll Tax Act 1971*
 - *Stamp Duties Act 1920*
 - *Taxation Administration Act 1996.*
-

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 or otherwise in accordance with the provisions of the clause.

Clause 3 is a formal provision giving effect to the amendments to the *Accommodation Levy Act 1997* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Duties Act 1997* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Land Tax Act 1956* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Land Tax Management Act 1956* set out in Schedule 4.

Clause 7 is a formal provision giving effect to the amendments to the *Legal Profession Act 1987* set out in Schedule 5.

Clause 8 is a formal provision giving effect to the amendments to the *Pay-roll Tax Act 1971* set out in Schedule 6.

Clause 9 is a formal provision giving effect to the amendments to the *Stamp Duties Act 1920* set out in Schedule 7.

Clause 10 is a formal provision giving effect to the amendments to the *Taxation Administration Act 1996* set out in Schedule 8.

Schedule 1 Amendment of Accommodation Levy Act 1997

Schedule 1 [1] and **[2]** extend the accommodation levy imposed under the *Accommodation Levy Act 1997* to accommodation provided at the club premises of registered clubs. **Schedule 1 [7]** (proposed section 11B) exempts from this liability residential accommodation provided by a club to persons who are full members of the club.

Schedule 1 [2] also excludes from the levy residential accommodation provided on vessels.

Schedule 1 [3], by changing references to the "Treasurer" to references to the "Minister", will, if it is desired to do so, facilitate any future transfer of the administration of the Act.

Schedule 1 [4] and [5] reduce the amount of the levy in respect of a place of accommodation that has, on or before 31 December 1997, signed a contract with SOCOG committing accommodation to the Olympic Games, or that was not presented with such a contract before that date. The reduced amounts are:

- 5% (instead of 10%) for the period from 1 September 1997 to 31 March 1998, and
- 7% (instead of 10%) for the period from 1 April 1998 to 31 August 1998.

Schedule 1 [6] excludes certain charges from the determination of the amount paid or payable for residential accommodation for the purposes of the Act. The charges excluded are:

- booking fees or commissions
- amounts for residential accommodation provided in a dormitory that has communal or self-catering facilities
- amounts for residential accommodation provided under the Homestay or Homehost programs for the Olympic Games
- amounts for residential accommodation provided as overflow accommodation at the request of a welfare organisation.

Schedule 1 [7] (proposed section 11A) exempts from the levy amounts paid by the same person for accommodation that exceeds 28 consecutive days.

Schedule 1 [8] replaces the requirement for the lodgment of monthly returns by the managers of places of residential accommodation with a requirement that returns be lodged quarterly.

Schedule 2 Amendment of Duties Act 1997

Transactions concerning dutiable property

Schedule 2 [1] and [3] exempt from the payment of transfer duty the vesting of dutiable property by or as a consequence of a statute.

Schedule 2 [2] and [24] seek to make it clear that a buy-back of shares is, for the purposes of the *Duties Act 1997*, a transfer of property.

Schedule 2 [4] and [5] relate to the liability to transfer duty of:

- a transfer of intellectual property that relates to the goodwill of a business that is transferred, and
- a transfer of goods that relates to other dutiable property that is transferred.

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They provide that any common arrangement relating to intellectual property and goodwill, or to goods and other dutiable property, is to be subject to transfer duty even if effected by separate transactions.

Schedule 2 [6] seeks to ensure that the duty payable on a partition that includes property that is not dutiable property does not exceed the duty payable on a simple transfer of the dutiable property.

Schedule 2 [7] substitutes section 31. The substituted section deals with the effect, for the purposes of adjusting liability to transfer duty, of an extended range of circumstances that can result in the change in the purchase price of dutiable property after an agreement for the transfer of the property is entered into and before the property is transferred.

Schedule 2 [8] provides a concession in relation to the payment of transfer duty for dutiable transactions involving marketable securities quoted on the market operated by the Stock Exchange of Newcastle.

Schedule 2 [9], [12]–[14] and [39] (the definitions of *managed investment scheme* and *responsible entity*) provide for the payment of concessional duty of \$10 on certain transfers of dutiable property in the administration of a managed investment scheme (being a managed investment scheme within the meaning of the *Corporations Law* that complies with Chapter 5C of that Law, and including a public unit trust scheme).

Schedule 2 [10] inserts proposed section 49A which contains the provisions that are to apply to the payment of transfer duty for purchases “off the plan.”

Schedule 2 [15] clarifies the circumstances in which there is no change in the beneficial ownership of dutiable property in certain superannuation funds and trusts.

Schedule 2 [16] extends the exemption from transfer duty for the transfer of a mortgage so as to include a transaction arising from a transfer of an interest in a mortgage and a transfer of a charge over property.

Schedule 2 [17] exempts from transfer duty the vesting of dutiable property in a statutory trust as the consequence of the making of an order under section 66G of the *Conveyancing Act 1919*.

Schedule 2 [18] exempts from the payment of transfer duty the transfer or vesting of a liquor licence in certain circumstances under section 41, 42 or 61 of the *Liquor Act 1982*.

Schedule 2 [20] and [21] extend the exemption from duty on transfers between married couples or de facto partners of their principal place of residence.

Marketable securities—on-market transfers (Broker provisions)

Schedule 2 [23] imposes duty on an on-market sale or purchase of marketable securities when it is put into SEATS in New South Wales if the order for the sale or purchase was not previously received in another Australian jurisdiction.

Schedule 2 [26] seeks to clarify the liability to payment of the concessional duty on sales or purchases of marketable securities by a broker on behalf of another broker who is engaged in principal trading.

Hire of goods

Schedule 2 [27] clarifies the meaning of duty-free threshold in relation to the hire of goods.

Mortgages

Schedule 2 [28] and **[29]** seek to clarify the time at which liability for mortgage duty arises in respect of certain mortgages.

Schedule 2 [30] clarifies an exemption from the payment of mortgage duty and provides an exemption for mortgages taken by the clearing houses of the Sydney Futures Exchange and the Australian Options Market that do not secure an advance.

Schedule 2 [31] and **[32]** make it clear that certain debentures and related instruments are only exempt from mortgage duty to the extent to which they secure particular debenture issues.

General exemptions from duty

Schedule 2 [33]–[35] and **[39]** (the definition of *public hospital*) clarify the circumstances in which charitable institutions, public hospitals and corporate reconstructions are exempt from payment of duty.

Miscellaneous amendments

Schedule 2 [11], [19], [22], [25] and **[40]** update references to various provisions of the *Corporations Law*.

Schedule 2 [36] replaces references to the marking of instruments by the Chief Commissioner with references to the stamping of the instruments.

Schedule 2 [37] enables the making of regulations of a savings and transitional nature as a consequence of the enactment of the proposed Act.

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Schedule 2 [38] and [41] make minor amendments to the definitions of *associated person* and *related person* in the Dictionary with respect to public unit trust schemes.

Schedule 2 [42] makes it clear that the transfer of a convertible note is exempt from duty.

Schedule 3 Amendment of Land Tax Act 1956

Land tax liability of certain corporations

Schedule 3 omits section 5 of the *Land Tax Act 1956*. That section currently gives a land tax concession to certain corporations by allowing land tax to be calculated in relation to each parcel of land owned by them that is subject to taxation as if it were the only land owned.

Schedule 4 Amendment of Land Tax Management Act 1956

Certain land tax concessions to continue for limited period on death of owner of land

Section 9C of the *Land Tax Management Act 1956* allows a reduction in land tax where land that is used for more than one purpose has the owner's principal place of residence situated on it. **Schedule 4** amends section 10A of that Act to ensure that the concession continues to apply for a limited period on the death of the owner.

Schedule 5 Amendment of Legal Profession Act 1987

Disclosure of information to Chief Commissioner of State Revenue

Schedule 5 enables the Legal Services Commissioner or a member of the Law Society Council to disclose information obtained in the administration of Part 10 (Complaints and discipline) of the *Legal Profession Act 1987* to the Chief Commissioner of State Revenue.

Schedule 6 Amendment of Pay-roll Tax Act 1971

Employment agents

The *Pay-roll Tax Act 1971* is amended by **Schedule 6 [2] and [3]** to make employment agents, instead of the end-user, liable for pay-roll tax in respect

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of employment agency contracts, not being contracts of employment. An employment agent is not liable for pay-roll tax if:

- the contract worker is liable for pay-roll tax in respect of the wages paid for provision of the services, or
- the wages paid to the contract worker would be exempt from pay-roll tax if they had been paid to the contract worker by the end-user of the services, or
- the end-user of the services is not liable to pay pay-roll tax.

Grouping provisions

Schedule 6 [8]–[13]:

- amend the ownership/control test for grouping of commonly owned or controlled businesses to remove the application of the grouping provisions to 50/50 joint ventures and other arrangements where there is no more than 50% common ownership or control of a business, and
- remove the Chief Commissioner's discretion to exclude a member who is grouped if the grouping occurs due to more than 50% common ownership or control.

Exemptions from pay-roll tax

Schedule 6 [4] and [5] exempt wages paid by the Home Care Service from pay-roll tax.

Other amendments

Schedule 6 [1] makes a minor amendment in relation to the liability to pay-roll tax, as wages, of certain superannuation benefits.

Schedule 6 [6] updates an out-of-date reference.

Schedule 6 [7] exempts from pay-roll tax:

- wages (not including wages for recreation leave, annual leave, long service leave or sick leave) paid to State Emergency Service volunteers while taking part in providing emergency assistance under the *State Emergency and Rescue Management Act 1989*, and

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- wages that would be exempt from the payment of income tax by an employee under section 23 (z) of the Commonwealth *Income Tax Assessment Act 1936* (certain income derived by way of scholarship or other educational assistance by a full-time student at a tertiary educational institution).

Schedule 6 [14] and [15] contain savings and transitional provisions arising from the amendments to the *Pay-roll Tax Act 1971*.

Schedule 7 Amendment of Stamp Duties Act 1920

Exemption of certain receipts from financial institutions duty

Schedule 7 [1] and [4]–[8] exempt from the payment of duty certain receipts in respect of accounts used by financial institutions solely for the purposes of clearing payments.

Schedule 7 [2] converts a reference to a bank cheque to a cheque that a financial institution draws on itself as a consequence of recent amendments to the Commonwealth *Cheques and Payment Orders Act 1986* that enable a financial institution to issue cheques.

Schedule 7 [3] exempts from the payment of duty a receipt to a farm management deposit as a result of the transfer by the Commonwealth Department of Primary Industry and Energy of an amount held in an income equalisation deposit or a farm management bond.

Abolition of liability to pay death duty

Schedule 7 [10] and [11] abolish existing liabilities to pay death duties.

Savings and transitional provisions

Schedule 7 [9] enables the making of regulations of a savings and transitional nature as a consequence of the enactment of the proposed Act.

Schedule 8 Amendment of Taxation Administration Act 1996

Disclosure of information by tax officers to certain persons

Schedule 8 [1] enables a tax officer to disclose information obtained in the administration of the *Taxation Administration Act 1996* to the Legal Services Commissioner, a member of the Law Society Council or a trust account inspector or investigator appointed under the *Legal Profession Act 1987* to investigate the affairs of a solicitor.

Objections to Chief Commissioner of State Revenue

Schedule 8 [2] provides that a decision of the Chief Commissioner against which an objection may be lodged to the Chief Commissioner does not include a determination by the Chief Commissioner of an objection.



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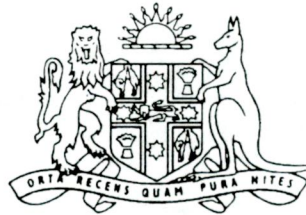
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New South Wales

State Revenue Legislation (Miscellaneous Amendments) Bill 1998

No. , 1998

A Bill for

An Act to make miscellaneous amendments to certain State revenue legislation; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue Legislation (Miscellaneous Amendments) Act 1998*.

2 Commencement

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- (1) This Act commences on the date of assent, except as provided by this section.
- (2) The following provisions commence, or are taken to have commenced, on the dates indicated:

Schedule 1 [1] (in so far as it inserts the definition of **club** into section 4 of the *Accommodation Levy Act 1997*), [2] and [7] (in so far as it inserts section 11B into that Act) on 1 March 1999 10

Schedule 1 [1] (in so far as it inserts the definition of **SOCOG** into section 4 of the *Accommodation Levy Act 1997*) and [5] on 1 September 1997 15

Schedule 2 [1], [3], [9], [12]–[18], [28]–[30], [36], [38], [39] (in so far as it inserts the definitions of **managed investment scheme** and **responsible entity** into the Dictionary to the *Duties Act 1997*) and [40]–[42] on 1 July 1998 20

Schedule 2 [4]–[8], [20], [21], [23], [26], [27], [31]–[35] and [39] (in so far as it inserts the definition of **public hospital** into the Dictionary to the *Duties Act 1997*) on 1 January 1999 25

Schedule 2 [10] on the day on which the Bill for this Act is introduced into the Legislative Assembly

Schedule 3 on 1 January 1999

Schedule 6 [2] and [3] on 1 January 1999

Schedule 6 [4] and [5] on 1 July 1998 30

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- Schedule 6 [7] (in so far as it inserts section 10 (1) (p) into the *Pay-roll Tax Act 1971*) on 31 July 1997
- Schedule 6 [7] (in so far as it inserts section 10 (1) (q) into the *Pay-roll Tax Act 1971*) on 1 July 1998
- Schedule 6 [8]–[13] on 1 July 1999 5
- Schedule 7 [1] and [4]–[8] on 22 June 1998
- Schedule 7 [9]–[11] on 1 January 1999.
- (3) Sections 3–10 in their application to a provision of Schedules 1–8 commence, or are taken to have commenced, on the day on which the provision commences or is taken to have commenced. 10
- 3 Amendment of Accommodation Levy Act 1997 No 32**
The *Accommodation Levy Act 1997* is amended as set out in Schedule 1.
- 4 Amendment of Duties Act 1997 No 123**
The *Duties Act 1997* is amended as set out in Schedule 2. 15
- 5 Amendment of Land Tax Act 1956 No 27**
The *Land Tax Act 1956* is amended as set out in Schedule 3.
- 6 Amendment of Land Tax Management Act 1956 No 26**
The *Land Tax Management Act 1956* is amended as set out in Schedule 4. 20
- 7 Amendment of Legal Profession Act 1987 No 109**
The *Legal Profession Act 1987* is amended as set out in Schedule 5.
- 8 Amendment of Pay-roll Tax Act 1971 No 22**
The *Pay-roll Tax Act 1971* is amended as set out in Schedule 6. 25
- 9 Amendment of Stamp Duties Act 1920 No 47**
The *Stamp Duties Act 1920* is amended as set out in Schedule 7.
- 10 Amendment of Taxation Administration Act 1996 No 97**
The *Taxation Administration Act 1996* is amended as set out in Schedule 8. 30

Schedule 1 Amendment of Accommodation Levy Act 1997

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order: 5

club means premises owned or operated by a club that is registered under the *Registered Clubs Act 1976*.

SOCOG means the Sydney Organising Committee for the Olympic Games constituted by the *Sydney Organising Committee for the Olympic Games Act 1993*. 10

[2] Section 7 Places of accommodation

Omit section 7 (1) (g). Insert instead:

(g) a club,

[3] Section 7 (2) (f) and (3)

Omit "Treasurer" wherever occurring. Insert instead "Minister". 15

[4] Section 9 Amount of levy

Insert ", except as provided by this section" after "section 6".

[5] Section 9 (2) and (3)

Insert at the end of section 9:

(2) The amount of the accommodation levy in relation to a place of accommodation that is affected by an Olympic contract is: 20

(a) 5% of the total amount paid or payable for residential accommodation as referred to in section 6 for the period from 1 September 1997 to 31 March 1998 (both dates inclusive), and 25

(b) 7% of the total amount paid or payable for residential accommodation as referred to in section 6 for the period from 1 April 1998 to 31 August 1998 (both dates inclusive). 30

-
- (3) For the purposes of this section, a place of accommodation is affected by an Olympic contract if:
- (a) it is subject to a contract with SOCOG that was entered into on or before 31 December 1997 and by which accommodation is committed to the Games of the XXVII Olympiad in Sydney in the year 2000, or 5
 - (b) the manager of the place of accommodation was not presented with a contract by SOCOG on or before 31 December 1997 for the purpose of seeking the commitment of accommodation to the Games of the XXVII Olympiad in Sydney in the year 2000. 10

[6] Section 11 Exclusion of certain charges

- Insert at the end of section 11: 15
- (2) A reasonable amount paid or payable for booking fees or commissions is not an amount paid or payable for residential accommodation for the purposes of this Act.
 - (3) An amount paid or payable for residential accommodation provided in a dormitory that has communal or self-catering facilities is not an amount paid or payable for residential accommodation for the purposes of this Act. 20
 - (4) An amount paid or payable for residential accommodation provided under the Homestay or Homehost programs for the Games of the XXVII Olympiad in Sydney in the year 2000 is not an amount paid or payable for residential accommodation for the purposes of this Act. 25
 - (5) An amount paid or payable for residential accommodation provided as overflow accommodation at the request of a welfare organisation is not an amount paid or payable for residential accommodation for the purposes of this Act. 30

[7] Sections 11A and 11B

Insert after section 11:

11A Occupation in excess of 28 consecutive days

- (1) If the same natural person occupies the same room within a place of accommodation for a period of consecutive days that exceeds 28 days, no accommodation levy is chargeable on any amount paid or payable for the person's accommodation in that room during that part of that consecutive period that exceeds 28 days. 5
10
- (2) This section extends to a period of accommodation that commenced before the commencement of this section.

11B Club accommodation for members

- (1) An amount paid or payable by a member of a club for residential accommodation provided at the club to the member is not an amount paid or payable for residential accommodation for the purposes of this Act. 15
- (2) In this section, *member* of a club means a person who is a full member of the club within the meaning of the *Registered Clubs Act 1976*. 20

[8] Section 14 Periodic returns

Omit section 14 (1). Insert instead:

- (1) The manager of a place of accommodation must, on or before each return date specified in the following Table in each year: 25
- (a) lodge a return with the Chief Commissioner for the return period specified in that Table opposite the return date, and

-
- (b) pay the amount of accommodation levy required to be paid under this Act for that return period.

Table

Return date	Return period	
15 March	December, January, February	5
15 June	March, April, May	
15 September	June, July, August	
15 December	September, October, November	10

Schedule 2 Amendment of Duties Act 1997

(Section 4)

- [1] **Section 8 Imposition of duty on certain transactions concerning dutiable property** 5
- Omit "statute or" from section 8 (1) (b) (v).
- [2] **Section 8 (3)**
- Omit "and an exchange" from the definition of *transfer*.
Insert instead ", an exchange and a buy-back of shares in accordance with Division 2 of Part 2J.1 of the *Corporations Law*".
- [3] **Section 9 Imposition of duty on dutiable transactions that are not transfers** 10
- Omit the matter relating to "vesting by statute" from Columns 1-4 of the Table to section 9 (2).
- [4] **Section 11 What is "dutiable property"?**
- Omit "a dutiable transaction that includes goodwill" from section 11 (g) (ii). 15
Insert instead "an arrangement that includes a dutiable transaction over goodwill".
- [5] **Section 11 (j)**
- Omit "a dutiable transaction together with any dutiable property". 20
Insert instead "an arrangement that includes a dutiable transaction over any dutiable property".

[6] Section 30 Partitions

Omit section 30 (3). Insert instead:

(3) **Dutiable value**

The dutiable value (*DV*) of a partition is to be determined in accordance with the following formula: 5

$$DV = A \times \frac{X}{Y}$$

where:

A is the sum of the amounts by which the unencumbered value of the property transferred or agreed to be transferred to a person exceeds the unencumbered value of the interest held by the person in that property immediately before the partition, or the sum of any consideration for the partition paid by any of the parties, whichever is the greater, and 10

X is the unencumbered value of all dutiable property the subject of the partition, and 15

Y is the unencumbered value of all property the subject of the partition.

[7] Section 31

Omit the section. Insert instead: 20

31 Effect of alteration in purchase price

(1) If after an agreement for the sale or transfer of dutiable property is entered into and before the property is transferred:

(a) the consideration under the agreement is reduced and the reduced consideration is not less than the unencumbered value of the dutiable property when the consideration was reduced, or 25

- (b) the consideration under the agreement is reduced because the parties have agreed not to transfer some of the dutiable property previously agreed to be transferred and the reduced consideration is not less than the unencumbered value of the dutiable property that remained to be transferred when the consideration was reduced, or 5
 - (c) the consideration under the agreement is increased and the dutiable value when the consideration was increased is greater than the dutiable value when the agreement was entered into, 10
 - the Chief Commissioner must assess or reassess the liability to duty of the agreement in accordance with the change in the consideration.
 - (2) The liability to pay additional duty arising from an increase in the consideration occurs on the date the consideration is agreed to be increased. 15
- [8] Section 33 Shares, units, derivatives and interests (marketable securities)**
Insert "or the Stock Exchange of Newcastle" after "the Australian Stock Exchange" in section 33 (2). 20
- [9] Section 48 Certain transfers not chargeable with duty**
Insert "54A" after "54," in section 48 (2).
- [10] Section 49A**
Insert after section 49: 25
49A Purchases "off the plan"
 - (1) An agreement for the sale or transfer of dutiable property, being land on which a residence is to be erected or developed before completion of the sale or transfer, may be stamped "interim stamp only" if: 30

-
- (a) duty, estimated as 5% of the duty payable in respect of the agreement, is paid, and
- (b) the purchaser enters into an undertaking in a form approved by the Chief Commissioner as to payment of the balance of the duty. 5
- (2) The balance of the duty is payable:
- (a) on completion of the agreement, or
- (b) on the assignment of the whole or any part of the purchaser's interest under the agreement for the sale or transfer, or 10
- (c) on the expiration of 12 months after the date of the agreement,
- whichever first occurs.
- (3) A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if the balance of the duty is paid within 3 months after it becomes payable in accordance with subsection (2). 15

[11] Section 54 Change in trustees

Omit "Part 9.11" from section 54 (4). Insert instead "Part 11.2".

[12] Section 54A

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Insert after section 54:

54A Transfer to custodian of managed investment scheme

Duty of \$10 is chargeable in respect of a transfer of dutiable property from a responsible entity of a managed investment scheme or a trustee of a responsible entity to a custodian or agent of the responsible entity. 25

[13] Section 59 Instrument relating to managed investment scheme

Insert "or governs" after "establishes" in section 59 (1) (a).

[14] Section 59 (2)

Omit the subsection. Insert instead:

- (2) Duty of \$10 is chargeable in respect of a declaration of trust: 5
 - (a) made by a trustee in respect of dutiable property that, immediately before the trust is declared, is held by the trustee as trustee of the responsible entity of a managed investment scheme, and 10
 - (b) to hold the dutiable property on trust for the responsible entity of the managed investment scheme.

[15] Section 62 Transfers to trustees or custodians of superannuation funds or trusts 15

Insert "or redemption" after "issue" in section 62 (2).

[16] Section 65 Exemptions from duty

Insert "(and a reference in this paragraph to a mortgage includes a reference to a charge and an interest in a mortgage)" after "mortgage" where secondly occurring in section 65 (1) (d). 20

[17] Section 65 (1) (g)

Insert after section 65 (1) (f):

- (g) the vesting of dutiable property in a statutory trust as a consequence of the making of an order under section 66G of the *Conveyancing Act 1919*. 25

[18] Section 65 (6)

Insert after section 65 (5):

(6) Transfer or vesting of liquor licence by court order

No duty is chargeable under this Chapter on the transfer or vesting of a liquor licence by order of a court under section 41, 42 or 61 of the *Liquor Act 1982* if the Chief Commissioner is satisfied that:

- (a) there is no change of, or contemplated change in, the beneficial ownership of the liquor licence as a consequence of the transfer or vesting, or
- (b) the transfer or vesting is a consequence of an agreement for the sale or transfer of dutiable property on which the duty chargeable in respect of the agreement has been paid.

[19] Section 66 Exemptions—marketable securities

Omit “Division 4B of Part 2.4” from section 66 (5).
Insert instead “Division 2 of Part 2J.1”.

[20] Section 67 Exemptions—transfers to married couples and de facto partners

Omit “the whole of” from section 67 (1) (a).

[21] Section 67 (1A)

Insert after section 67 (1):

- (1A) For the purposes of subsection (1) (b), a private dwelling house may be principally used as the principal place of residence of a married couple or de facto partners despite the fact that it may be partly owned by another person or persons or that it may also be the principal place of residence of another person or persons.

[22] Section 125 Definitions

Omit "Division 4B of Part 2.4" from paragraph (a) of the definition of *capital reduction* in section 125 (1).

Insert instead "Division 2 of Part 2J.1".

[23] Section 145 Imposition of duty

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Omit section 145 (2) (a) and (b). Insert instead:

(a) in the case of a manual client order, it is received by an individual who is a broker, or the employee or agent of a broker:

(i) who is present in New South Wales at the time the order is received, or 10

(ii) who is present outside Australia at the time the order is received, and an individual instructs a SEATS operator in New South Wales to put the order into the market, or 15

(b) in the case of an automated client order, it is received by a broker by electronic means:

(i) in New South Wales, or

(ii) outside Australia and is put by a broker into SEATS in New South Wales, or 20

[24] Section 145 (3A)

Insert after section 145 (3):

(3A) For the purposes of this Chapter, a reference to a sale or purchase of marketable securities includes a reference to a transaction that, on completion by the parties, results in a company buying back its own shares in accordance with Division 2 of Part 2J.1 of the *Corporations Law*. 25

[25] Section 149 Exemptions

Omit "Division 4B of Part 2.4" from section 149 (1) (e).
Insert instead "Division 2 of Part 2J.1".

[26] Section 152 Marketable securities held on broker's own account

Insert "or reports" after "effects" in section 152 (3).

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[27] Section 199 Lodgment of returns and payment of duty

Omit "the duty-free threshold" from section 199 (3).
Insert instead "\$6,000".

[28] Section 208 When does a liability arise?

Insert after section 208 (3):

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- (4) An instrument that, on the deposit of documents of title to property in New South Wales or instruments creating a charge on property in New South Wales, becomes a mortgage or evidences the terms of a mortgage becomes liable to duty as a mortgage on the deposit of the documents or instruments.

15

[29] Section 210 How is mortgage duty charged?

Omit "first execution of a mortgage is" from section 210 (1).
Insert instead "a mortgage is, except as provided by subsection (2)."

[30] Section 222 Exempt mortgages and supporting instruments

20

Omit section 222 (5). Insert instead:

- (5) Duty is not chargeable on an instrument referred to in section 205 (d) if it is executed for the purposes of money market trading operations conducted or to be conducted by the person executing the instrument.

25

- (6) Duty is not chargeable in respect of a mortgage:
 - (a) that is taken or is to be taken by the Sydney Futures Exchange Clearing House or the Options Clearing House Pty. Limited, and
 - (b) that is or will be made available to it by a clearing member of the market, and 5
 - (c) that does not secure an advance.

[31] Section 225 Certain debentures and related instruments

Omit section 225 (1) and (2). Insert instead:

- (1) Mortgage duty is not chargeable on a mortgage solely securing the repayment of advances arising from the issue by a financial corporation or a related corporation of a debenture. 10
- (2) Mortgage duty is not chargeable on a mortgage in respect of advances arising from the issue by a financial corporation or a related corporation of a debenture if the mortgage secures in part the repayment of those advances. 15

[32] Section 226 Payment of duty on mortgages associated with debenture issues 20

Omit section 226 (2). Insert instead:

- (2) If the corporation and the trustee for the debenture holders give a written undertaking in the approved form to the Chief Commissioner:
 - (a) a mortgage executed by the corporation and solely securing the repayment of money received or to be received by the corporation in respect of its debentures is not liable to mortgage duty, and 25
 - (b) a mortgage, not executed by the corporation, solely securing the repayment of such money is liable to duty of \$10, and 30

- (c) a mortgage, whether executed by the corporation or by another party, and securing in part the repayment of such money is not liable to mortgage duty in respect of advances arising from the issue of debentures.

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[33] Section 275 Charitable or benevolent societies or institutions

Omit "the transfer, agreement or declaration of trust" from section 275 (b).

Insert instead "the dutiable transaction or instrument".

[34] Section 281 Members of a group of corporations

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Omit section 281 (1). Insert instead:

- (1) Duty under this Act is not chargeable on a dutiable transaction approved by the Chief Commissioner in accordance with guidelines approved by the Treasurer by which dutiable property is transferred by, or agreed to be transferred by, or vests in, a corporation that is a member of a group of corporations to another corporation that is a member of the same group.

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[35] Section 281 (4)

Insert after section 281 (3):

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- (4) In this section, *corporation* includes a unit trust scheme.

[36] Sections 301 and 304

Omit "marked" wherever occurring. Insert instead "stamped".

[37] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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*State Revenue Legislation (Miscellaneous Amendments)
Act 1998*

[38] Dictionary

Insert "scheme" after "public unit trust" wherever occurring in paragraphs (d) and (e) of the definition of *associated person*.

[39] Dictionary

Insert in alphabetical order: 5

managed investment scheme means a managed investment scheme within the meaning of the *Corporations Law* that complies with Chapter 5C of that Law, and includes a public unit trust scheme.

public hospital means a public health organisation within the meaning of the *Health Services Act 1997*. 10

responsible entity of a managed investment scheme has the same meaning as in the *Corporations Law*.

[40] Dictionary, definition of "public unit trust scheme"

Insert after paragraph (b): 15

(b1) that is a managed investment scheme within the meaning of the *Corporations Law* that complies with Chapter 5C of that Law and in respect of which:

(i) some or all of the units have been offered to the public, and 20

(ii) not less than 50 persons hold units in it, or

[41] Dictionary, definition of "related person"

Insert "scheme" after "public unit trust" wherever occurring in paragraphs (d) and (e) of the definition of *related person*. 25

[42] Dictionary, definition of "right"

Insert ", but does not include a convertible note" after "consideration".

Schedule 3 Amendment of Land Tax Act 1956

(Section 5)

Section 5 Land tax liability of certain corporations

Omit the section.

Schedule 4 Amendment of Land Tax Management Act 1956

(Section 6)

[1] Section 10A Residential use and occupation—concession on death of owner

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Omit “and for no other purpose” from section 10A (1).

[2] Section 10A (3) (a)

Omit “and for no other purpose”.

**Schedule 5 Amendment of Legal Profession Act
1987**

(Section 7)

Section 171P Offence: improper disclosure of information

Insert at the end of section 171P:

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- (2) Subsection (1) does not apply to the disclosure of information by the Commissioner, or a member of the Law Society Council, to the Chief Commissioner of State Revenue.

Schedule 6 Amendment of Pay-roll Tax Act 1971

(Section 8)

[1] Section 3AA Wages

Omit "30 June" from section 3AA (6A). Insert instead "1 July".

[2] Section 3A Application of this Act to certain contracts

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Insert after section 3A (1A):

- (1B) For the purposes of this section, a contract under which services are supplied by an employment agent, or a contract worker is procured by an employment agent, under an employment agency contract within the meaning of section 3C is not a relevant contract.

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[3] Section 3C

Insert after section 3B:

3C Employment agents

- (1) For the purposes of this Act, an *employment agency contract* is a contract under which a person (in this section referred to as an *employment agent*) by arrangement procures the services of another (in this section referred to as a *contract worker*) for a client of the employment agent (by a means other than a contract of employment between the contract worker and the client) and as a result receives directly or indirectly payment in respect of the services provided by the contract worker to the client, whether by way of a lump sum or ongoing fee, during or in respect of the period when the services are provided.
- (2) For the purposes of this Act:
- (a) the employment agent under an employment agency contract is taken to be an employer, and

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- (b) the contract worker under an employment agency contract is taken to be an employee of the employment agent, and
 - (c) an amount, the value of a benefit or a payment, being:
 - (i) any amount paid or payable to the contract worker in respect of the provision of services in connection with an employment agency contract, and
 - (ii) the value of any benefit provided for or in relation to the provision of services in connection with an employment agency contract that would be a fringe benefit if provided to a person in the capacity of an employee, and
 - (iii) any payment made in relation to the contract worker that would be a superannuation benefit if made in relation to a person in the capacity of an employee,

is taken to be wages paid or payable by the employment agent.
 - (3) If it is not reasonably practicable to determine the extent to which an amount, benefit or payment constitutes wages under subsection (2) (c), the Chief Commissioner may accept a return, or make an assessment, in which the amount on which pay-roll tax is levied is determined on the basis of estimates.
 - (4) An employment agent is not liable to pay-roll tax under this Act in relation to an employment agency contract:
 - (a) if the contract worker is liable to pay pay-roll tax (as the employer of the person who actually provides the services to the client of the employment agent under the contract) in respect of wages paid for those services, or

- (b) if the wages that the amount, value of the benefit or payment under subsection (2) (c) is taken to be would have been exempt from pay-roll tax under section 10 had the contract worker been paid those wages by the client of the employment agent, or 5
- (c) if the client of the employment agent is not registered or required to be registered as an employer under this Act at the time the employment agency contract is entered into and a declaration to that effect has been given by the client to the employment agent. 10
- (5) If, after a client gives a declaration referred to in subsection (4) (c) to an employment agent, the client becomes registered or is required to be registered as an employer under this Act, the client is liable to pay pay-roll tax in respect of the wages paid under the employment agency contract during each financial year in which the client is registered or is required to be registered. 15
- [4] Section 10 Exemption from pay-roll tax** 20
- Insert after section 10 (1) (b1):
- (b2) by the Home Care Service,
- [5] Section 10 (1) (c1)**
- Insert after section 10 (1) (c):
- (c1) by the Home Care Service to a person in respect of time when the person is engaged in work of a kind ordinarily performed in connection with the conduct of the Home Care Service, 25
- [6] Section 10 (1) (m)**
- Omit "Department of Industrial Relations and Employment". 30
Insert instead "Department of Training and Education".

[7] Section 10 (1) (p) and (q)

Insert after section 10 (1) (o):

, or

- (p) to an employee in respect of any period during which the employee was taking part in emergency operations as a member of an emergency services organisation under the *State Emergency and Rescue Management Act 1989* (but not in respect of wages paid or payable as recreation leave, annual leave, long service leave or sick leave), or 5
- (q) that would be exempt from the payment of income tax by the employee under section 23 (z) of the *Income Tax Assessment Act 1936* of the Commonwealth. 10

[8] Sections 16D and 16G 15

Omit "50 per centum or more" wherever occurring.
Insert instead "more than 50%".

[9] Section 16DA Grouping of government departments

Omit section 16DA (2).

[10] Section 16E Smaller groups subsumed into larger groups 20

Insert after section 16E (1):

- (1A) If the members of a group (in subsection (2) referred to as a smaller group) have together a controlling interest in a business, that group and the person or persons who carry on that business will constitute, for the purposes of this Act, one group. 25

[11] Section 16E (2)

Insert "or (1A)" after "(1)" wherever occurring.

- [12] Section 16H Exclusion of persons from groups**
Insert "constituted under section 16C" after "group" where firstly occurring in section 16H (1).
- [13] Section 16H (2)**
Omit the subsection. 5
- [14] Schedule 6 Savings, transitional and other provisions**
Insert at the end of clause 1 (1):
State Revenue Legislation (Miscellaneous Amendments) Act 1998
- [15] Schedule 6, Part 4** 10
Insert after Part 3:
- Part 4 Provisions consequent on the enactment of the State Revenue Legislation (Miscellaneous Amendments) Act 1998**
- 6 Payment of pay-roll tax on employment agency contracts** 15
An amount, benefit or payment paid or payable, or provided, on or after 1 July 1999 under an employment agency contract within the meaning of section 3C that was entered into before the date of commencement of that section is liable to pay-roll tax under this Act, subject to section 3C (4). 20
- 7 Grouping of commonly controlled businesses**
An order made under section 16H that is in force immediately before the commencement of the amendments made to that section by the *State Revenue Legislation (Miscellaneous Amendments) Act 1998* and that could not have been made if those amendments had been in force at the time the order was made ceases to have effect on 1 July 1999 if it does not cease to have effect on an earlier date. 25 30

Schedule 7 Amendment of Stamp Duties Act 1920

(Section 9)

[1] Section 98 Definitions

Insert in alphabetical order in section 98 (1):

RTGS transaction means:

- (a) a transaction governed by the regulations of the Reserve Bank Information and Transfer System, or
- (b) a transaction governed by the regulations of Austraclear, or
- (c) a transaction governed by the regulations of the Society for Worldwide Interbank Financial Telecommunications Payment Delivery System.

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[2] Section 98 (9)

Omit "bank cheque".

Insert instead "cheque that a financial institution draws on itself".

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[3] Section 98A Receipts to which this Division does not apply

Insert after section 98A (1) (e):

- (ea) a receipt to the credit of a farm management deposit as a consequence of a transfer of an amount held in an income equalisation deposit or a farm management bond by the Department of Primary Industry and Energy of the Commonwealth, or

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[4] Section 98A (1) (oa)

Insert after section 98A (1) (o):

- (oa) a receipt as a consequence of the credit to an exchange settlement account of a financial institution kept by the Reserve Bank of Australia, being a receipt from an RTGS transaction, or

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[5] Section 98U Exempt accounts

Insert after section 98U (1) (p):

(p1) a settlement account kept by a registered person in the name of a customer (other than a registered person), being an account that is used solely for the purposes of recording RTGS transactions and the balance of which is swept by the end of each day to another account in the name of the same customer, or 5

[6] Section 98U (3) and (6) 10

Omit "bank" wherever occurring.
Insert instead "registered person".

[7] Section 98U (5A)

Omit "a bank account".
Insert instead "an account kept by a registered person". 15

[8] Section 98U (5A)

Omit "bank concerned".
Insert instead "registered person concerned".

[9] Tenth Schedule Savings, transitional and other provisions

Insert at the end of clause 1A (1): 20

*State Revenue Legislation (Miscellaneous Amendments)
Act 1998*

[10] Tenth Schedule

Omit "or in respect of death duty" from clause 27.

[11] Tenth Schedule

Insert after Part 16:

Part 17 State Revenue Legislation (Miscellaneous Amendments) Act 1998

49 Abolition of liability for death duties

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- (1) Any liability for the payment of death duty under this Act existing before 17 December 1991 (the date of assent to the *Stamp Duties (Amendment) Act 1991*) is extinguished.
- (2) A person is not entitled to a refund of any death duty paid under this Act before the commencement of this clause.

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Schedule 8 Amendment of Taxation Administration Act 1996

(Section 10)

[1] Section 82 Permitted disclosures—to particular persons

Insert after section 82 (e) (viii): 5

(viiiia) the Legal Services Commissioner, a member of the Law Society Council or a trust account inspector, or investigator, appointed under section 55 of the *Legal Profession Act 1987*, or 10

[2] Section 86 Objection

Insert after section 86 (1):

(1A) A reference in subsection (1) (a) to an assessment does not include a reference to a reassessment as a result of an objection that is allowed in part. 15