

Passed by both Houses



New South Wales

# State Revenue Legislation Further Amendment Bill 1999

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 1999*



New South Wales

## **State Revenue Legislation Further Amendment Bill 1999**

Act No , 1999

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

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*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

*Chairman of Committees of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *State Revenue Legislation Further Amendment Act 1999*.

**2 Commencement**

(1) This Act commences or is taken to have commenced on 1 January 2000, except as provided by this section.

(2) The following provisions commence or are taken to have commenced on the dates indicated:

Schedule 2 [6] on 23 June 1999

Schedule 2 [10] on the date of assent

Schedule 2 [11] on 1 July 1998

Schedule 2 [12] on 1 July 1999

Schedule 3 [1] on 1 July 1997

Schedule 3 [2], [3], [4] and [5] on 1 February 2000

Schedule 4 [1], [6], [7] and [8] on the date of assent.

**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.

**5 Amendment of Health Insurance Levies Act 1982 No 159**

The *Health Insurance Levies Act 1982* is amended as set out in Schedule 3.

**6 Amendment of Pay-roll Tax Act 1971 No 22**

The *Pay-roll Tax Act 1971* is amended as set out in Schedule 4.

**7 Amendment of Taxation Administration Act 1996 No 97**

The *Taxation Administration Act 1996* is amended as set out in Schedule 5.

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## **Schedule 1 Amendment of Accommodation Levy Act 1997**

(Section 3)

### **[1] Part 1A**

Insert after Part 1:

### **Part 1A Abolition of accommodation levy on 1 July 2000**

#### **5A No levy on accommodation provided on or after 1 July 2000**

- (1) This Act does not apply in respect of residential accommodation provided for use or occupation on or after 1 July 2000.
- (2) Accordingly, no levy is charged by this Act for residential accommodation provided for use or occupation on or after that date.
- (3) This section does not affect any liability to pay a levy charged by this Act for residential accommodation provided for use or occupation before 1 July 2000.
- (4) For the purposes of this Act, accommodation provided for overnight use on 30 June 1999 is taken to have been provided before 1 July 2000.

#### **5B Final return**

Despite section 14:

- (a) June 2000 is a return period for the purposes of that section, and
- (b) the return date for the return period of June 2000 is 15 July 2000, and
- (c) a return is not required to be lodged with the Chief Commissioner for any period commencing on or after 1 July 2000.

**5C Transitional**

For the purposes of this Act, any amount paid or payable after 30 June 2000 for residential accommodation provided for use or occupation before 1 July 2000 is taken to have been paid in June 2000. Accordingly, any such amount is to be included in the calculation of the levy for the period of June 2000.

**[2] Section 20**

Omit the section. Insert instead:

**20 Act ceases to have effect on 1 September 2003**

- (1) This Act ceases to have effect on 1 September 2003.
- (2) This section does not affect any liability that arises, before 1 September 2003:
  - (a) to pay an accommodation levy required to be paid under this Act, or
  - (b) to lodge a return with the Chief Commissioner.

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## Schedule 2 Amendment of Duties Act 1997

(Section 4)

### [1] Section 48A

Insert after section 48:

#### **48A Nomineeing transactions—unlisted marketable securities**

Despite section 66, duty of \$10 is chargeable on a transfer of marketable securities, being marketable securities that are not quoted on the Australian Stock Exchange, if the transfer would otherwise be exempt from duty under section 66 (4) (a).

### [2] Section 49A

Omit the section. Insert instead:

#### **49A Purchases “off the plan”**

- (1) Liability for duty on an off the plan purchase agreement arises:
  - (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, or
  - (c) on the expiration of 12 months after the date of the agreement,

whichever first occurs.

- (2) This section applies despite section 12.
- (3) Nothing in this section prevents the Chief Commissioner from accepting payment of duty and stamping an off the plan purchase agreement at any time after the agreement has been executed.

- (4) In this section:

*off the plan purchase agreement* means 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.

**[3] Section 56A**

Insert after section 56:

**56A Transfer of property subject to a statutory trust to a beneficial owner**

- (1) This section applies if dutiable property that is vested in a person as trustee of a statutory trust as a consequence of the making of an order under section 66G of the *Conveyancing Act 1919* is transferred or agreed to be transferred by the trustee to one or more of the beneficial owners of the dutiable property.
- (2) The dutiable value of the dutiable property that is the subject of the transfer or agreement is to be calculated by deducting from the unencumbered value of the dutiable property or the consideration for the transfer or agreement, whichever is the greater, the proportion of that amount that is the same as the proportion of the purchaser's beneficial interest in the dutiable property immediately before the transfer or agreement.

**[4] Section 66 Exemptions—marketable securities**

Omit section 66 (4) (a), (b) and (b1). Insert instead:

- (a) a transfer of marketable securities between any of the following persons:
  - (i) the beneficial owner,
  - (ii) a trustee or nominee of the beneficial owner,
  - (iii) a custodian of a trustee or nominee of the beneficial owner,
  - (iv) a sub-custodian of a custodian of a trustee or nominee of the beneficial owner,

but only if:

- (v) there is no change in the beneficial ownership of the marketable securities, and
- (vi) if the transferee is a person referred to in subparagraph (ii)–(iv), the transferee is to hold the marketable securities solely for another person referred to in subparagraph (i)–(iii) and there is no contemplation of the marketable securities being held for any other person, and

- (vii) if the transferor is a person referred to in subparagraph (ii)–(iv), the marketable securities were held by the person solely for another person referred to in subparagraph (i)–(iii) and, since the time when the marketable securities were first transferred or issued to the transferor, no person has held the marketable securities other than solely for a person referred to in subparagraph (i)–(iii), or

**Note.** Duty of \$10 is chargeable if the marketable securities are not quoted on the Australian Stock Exchange (see section 48A).

**[5] Section 66 (4) (c)**

Omit the paragraph. Insert instead:

- (c) without limiting paragraph (a), a transfer of marketable securities to or from:
  - (i) SECH Nominees Pty Limited, or
  - (ii) CHESS Depository Nominees Pty Limited, or
  - (iii) a nominee company that holds marketable securities solely for the purpose of facilitating marketable security transaction settlements by a SCH participant,

but only if the transfer is made solely for the purpose of facilitating a marketable security transaction settlement, and there is no change in the beneficial ownership of the marketable securities (except as a result of an on-market transaction settlement), or

**[6] Section 87 Discount for full payment of remaining duty**

Omit section 87 (1). Insert instead:

- (1) A person or persons to whom this Subdivision applies may choose at any time to pay out, at a discount of 50%, the total of all instalments of duty remaining at that time.

**[7] Section 226 Payment of duty on mortgages associated with debenture issues**

Insert “binds the corporation” after “30 days) and” in section 226 (3).



**[8] Section 270 Exemptions for motor dealers**

Omit section 270 (2)–(5). Insert instead:

(2) **Demonstrator motor vehicles—new motor vehicles**

The Chief Commissioner may approve arrangements for the issue to motor dealers of exemption authorities to be used in connection with the registration of demonstrator motor vehicles of the dealer.

(3) Duty under this Chapter is not chargeable on an application by a motor dealer to register a motor vehicle if the motor vehicle is a demonstrator motor vehicle and, at the time the application for registration is made, the dealer produces an exemption authority that has been completed by the dealer.

(4) A motor dealer must not produce an exemption authority in connection with the registration of a motor vehicle that is not a demonstrator motor vehicle.

Maximum penalty: 100 penalty units.

(5) If a motor dealer produces an exemption authority in connection with the registration of a motor vehicle that is not a demonstrator motor vehicle, the Chief Commissioner may recover any duty that would have been chargeable on the application for registration, together with any interest and penalty tax payable.

**[9] Section 270 (6)**

Insert in alphabetical order:

*exemption authority* means an exemption authority issued in accordance with arrangements approved by the Chief Commissioner.

**[10] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Further Amendment Act 1999*

**[11] Schedule 1**

Omit “Chapter 5C” from subclause (2) (b) of clause 16 (Managed investment schemes—novation of contracts) of Part 3 (Provisions consequent on enactment of State Revenue Legislation Amendment Act 1999), as so numbered on the date of introduction into the Legislative Assembly of the Bill for this Act.

Insert instead “Part 11.2”.

**[12] Schedule 1**

Insert after clause 16 of Part 3 (Provisions consequent on enactment of State Revenue Legislation Amendment Act 1999), as so numbered on the date of introduction into the Legislative Assembly of the Bill for this Act, with appropriate clause numbering:

**Managed investment schemes—transactions entered into by custodians**

- (1) This clause applies to a transaction entered into or an instrument executed by a custodian of a responsible entity, or by a custodian of a responsible entity and the responsible entity, to replace a transaction entered into or an instrument executed by a body holding the office of trustee or representative and management company who has retired from that office to enable an undertaking to become a managed investment scheme.
- (2) This clause applies only to transactions that occur and instruments that are executed in relation to a managed investment scheme on or after 1 July 1999 and before:
  - (a) 1 July 2000, or
  - (b) the date on which the scheme became a registered scheme within the meaning of Division 11 of Part 11.2 of the *Corporations Law*,  
whichever first occurs.
- (3) Despite the other provisions of this Act, a transaction or instrument to which this clause applies is chargeable with duty in accordance with this clause.

- (4) The amount of duty chargeable in respect of the transaction or instrument is:
- (a) the amount of duty that would be chargeable in respect of the transaction or instrument but for this clause, less the amount of duty paid (under this Act or the *Stamp Duties Act 1920*) in relation to the transaction or instrument that is being replaced, or
  - (b) \$10,
- whichever is the greater.

**[13] Schedule 1**

Insert at the end of the Schedule, with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 1999**

**“Off the plan” purchases**

- (1) Section 49A, as in force immediately before 1 January 2000, continues to apply in respect of any off the plan purchase agreement that was stamped “interim stamp only” under that section before that date.
- (2) Section 49A, as substituted by the *State Revenue Legislation Further Amendment Act 1999*, extends to any off the plan purchase agreement executed before 1 January 2000 in respect of which no duty had been paid by that date.

**[14] Dictionary**

Omit paragraph (b) from the definition of “instalment warrant”.

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## Schedule 3 Amendment of Health Insurance Levies Act 1982

(Section 5)

### [1] Section 4 Definitions

Omit “the basic private table or basic table of the organisation” from the definition of *basic health benefits* in section 4 (1).

Insert instead “an applicable benefits arrangement (within the meaning of the *National Health Act 1953* of the Commonwealth) of the organisation”.

### [2] Section 16D Commission for authorised agents

Omit “is entitled to retain, as commission, such amount from each weekly contribution” from section 16D (1).

Insert instead “is entitled to a commission on contributions, being such amount”.

### [3] Section 16F

Omit the section. Insert instead:

#### **16F Remittance of contributions by authorised agents**

An authorised agent must, on or before the 15th day of each month:

- (a) lodge a return with the Chief Commissioner, in a form approved by the Chief Commissioner, for that month, and
- (b) pay to the Chief Commissioner an amount calculated in accordance with the following formula:

$$A = (S + 2F) \times C \times D \times 1/7 - E$$

where:

**A** is the amount in dollars to be paid to the Chief Commissioner,

**S** is the number of contributors to single membership at the beginning of the month,

**F** is the number of contributors to family membership at the beginning of the month,

**C** is the prescribed rate in force during the month,

**D** is the number of days in the month,

**E** is the authorised agent's commission (determined in accordance with section 16D) on contributions for the month.

**[4] Section 16G**

Insert after section 16G:

**16G Annual adjustment**

- (1) If the amount paid to the Chief Commissioner by an authorised agent under section 16F for a year exceeds the actual amount payable by the authorised agent for that year, the authorised agent may apply for a refund of an amount equal to the difference and the Chief Commissioner is to refund that difference.
- (2) If the actual amount payable by an authorised agent for a year exceeds the amount paid to the Chief Commissioner by the authorised agent for the year under section 16F, the authorised agent is to pay the difference to the Chief Commissioner by the date on which the authorised agent is required to lodge a return for the first month of the next year.
- (3) In this section:

*actual amount payable* for a year means the total of all contributions to the State Ambulance Insurance Plan for the year collected by an authorised agent, less the total of all commission deducted from those contributions by the authorised agent in accordance with section 16D.

*year* means a period commencing on and including 1 February and ending on and including the following 31 January.

**[5] Schedule 3 Transitional provisions**

Insert after Part 4:

**Part 5 Provision consequent on enactment of State Revenue Legislation Further Amendment Act 1999**

**6 Application of amendments**

- (1) The amendments made to Part 3A by the amending Act do not apply in respect of contributions to the State Ambulance Insurance Plan that are received by an authorised agent before 1 February 2000.
- (2) Accordingly, such a contribution, the membership of the contributor and the commission on the contribution is not to be included in the calculation of the following:
  - (a) the amount payable to the Chief Commissioner under the section 16F, as substituted by the amending Act,
  - (b) any adjustment under section 16G.
- (3) The provisions of Part 3A, as in force immediately before 1 February 2000, continue to apply in respect of any contribution to the State Ambulance Insurance Plan received by an authorised agent before 1 February 2000.
- (4) In this clause:

*amending Act* means the *State Revenue Legislation Further Amendment Act 1999*.

## Schedule 4 Amendment of Pay-roll Tax Act 1971

(Section 6)

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*Board of Review* means the Board of Review constituted under section 33.

### [2] Section 3C Employment agents

Insert “and a declaration to that effect has been given by the contract worker to the employment agent” after “those services” in section 3C (4) (a).

### [3] Section 3C (4) (b)

Insert “and a declaration to that effect has been given by the client to the employment agent” after “employment agent”.

### [4] Section 3C (4) (c)

Omit the paragraph. Insert instead:

- (c) if the client of the employment agent:
  - (i) is not registered or required to be registered as an employer under this Act, and
  - (ii) would not be required to be registered as an employer under this Act if the client were the employer in respect of the wages paid or payable under all the employment agency contracts to which the client is a party,and a declaration to that effect has been given by the client to the employment agent.

### [5] Section 3C (5)–(8)

Omit section 3C (5). Insert instead:

- (5) If a contract worker gives a declaration to an employment agent under subsection (4) (a), and that paragraph does not apply or at any time ceases to apply to the contract worker, the

employment agent is liable to pay pay-roll tax in respect of the wages paid or payable under the employment agency contract during any period in which the paragraph does not apply.

- (6) If a client of an employment agent gives a declaration to the employment agent under subsection (4) (b), and that paragraph does not apply or at any time ceases to apply in respect of the wages paid or payable under the employment agency contract, the client, and not the employment agent, is liable to pay pay-roll tax in respect of the wages paid or payable under the employment agency contract during any period in which the paragraph does not apply.
- (7) If a client of an employment agent gives a declaration to the employment agent under subsection (4) (c), and that paragraph does not apply or at any time ceases to apply to the client, the client, and not the employment agent, is liable to pay pay-roll tax in respect of the wages paid or payable under the employment agency contract during any period in which the paragraph does not apply.
- (8) A declaration under subsection (4) is to be in a form approved by the Chief Commissioner.

**[6] Part 5A, sections 31B–31F**

Insert after Part 5:

**Part 5A Recovery of tax from directors and former directors of corporations**

**31B Definitions**

In this Part:

*assessment amount* means the amount of pay-roll tax that a corporation has been assessed as being liable to pay, as set out in a notice of assessment, including any interest or penalty tax specified in the notice of assessment as being payable by the corporation.



*special arrangement* for the payment of an assessment amount means an arrangement for the payment of tax made by the Chief Commissioner under section 47 of the *Taxation Administration Act 1996*.

**31C    Liability of directors and former directors of corporation for failure to pay tax**

- (1) If a corporation fails to pay an assessment amount in accordance with a notice of assessment issued by the Chief Commissioner, the Chief Commissioner may serve a compliance notice on one or more of the following persons:
  - (a) a person who is a director of the corporation,
  - (b) a person who was a director of the corporation at the time the corporation first became liable to pay the pay-roll tax, or any part of the pay-roll tax, that is included in the assessment amount or at any time afterwards (referred to in this Part as a *former director*).
- (2) A compliance notice is a notice that advises the director or former director on whom it is served that if the failure to pay the assessment amount is not rectified within the period specified in the notice, being a period of not less than 21 days, the director or former director will be liable to pay the assessment amount.
- (3) For the purposes of this Part, a failure to pay an assessment amount is rectified if:
  - (a) the assessment amount is paid, or
  - (b) the Chief Commissioner makes a special arrangement with the corporation for the payment of the assessment amount, or
  - (c) the Board of Review waives or defers payment of some or all of the assessment amount, or
  - (d) an administrator of the corporation is appointed under Part 5.3A of the *Corporations Law*, or
  - (e) the corporation begins to be wound up within the meaning of the *Corporations Law*.

- (4) If the failure to pay the assessment amount is not rectified within the period specified in the compliance notice, the director or former director on whom the compliance notice was served is jointly and severally liable with the corporation to pay the assessment amount.
- (5) A person does not cease to be liable to pay an assessment amount because the person ceases to be a director of the corporation.

**31D Failure to comply with special arrangements**

If:

- (a) a failure by a corporation to pay an assessment amount is rectified because of a special arrangement for the payment of the assessment amount, or because payment of part or all of the assessment amount is deferred by the Board of Review, and
- (b) the corporation fails to pay the assessment amount in accordance with the terms of the special arrangement or deferral,

the Chief Commissioner may serve a further compliance notice in respect of the assessment amount, or so much of the assessment amount as remains unpaid, and this Part applies accordingly.

**31E Right of indemnity and contribution**

If a director or former director of a corporation is liable to pay an assessment amount under this Part and an amount is paid by the director or former director in discharge of that liability, the director or former director is entitled:

- (a) to be indemnified for payment of that amount by the corporation, and
- (b) to recover a contribution from any other director or former director of the corporation who is liable to pay the assessment amount under this Part, as if the directors and former directors who are liable to pay the assessment amount had jointly guaranteed payment of the assessment amount.

**31F Defences**

In proceedings for the recovery of an assessment amount from a director or former director of a corporation under this Part, it is a defence to the recovery of that amount if the director or former director establishes that:

- (a) the director or former director took all reasonable steps that were possible in the circumstances to ensure that the corporation rectified the failure to pay the assessment amount, or
- (b) the director or former director was unable, because of illness or for some other similar good reason, to take steps to ensure that the corporation rectified the failure to pay the assessment amount.

**[7] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Further Amendment Act 1999*

**[8] Schedule 6, Part 5**

Insert after Part 4:

**Part 5 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 1999**

**8 Liability of directors of corporation**

- (1) Part 5A extends to an assessment amount that includes pay-roll tax that a corporation first became liable to pay before the commencement of that Part.
- (2) A compliance notice may be served in respect of a failure to pay such an assessment amount, whether the notice of assessment was issued by the Chief Commissioner before or after the commencement of Part 5A.

- (3) However, Part 5A does not make a person who was a director of a corporation before the commencement of Part 5A but is not a director of the corporation at that commencement liable for the payment of an assessment amount owed by the corporation, unless the person again becomes a director of the corporation at any time after the commencement of Part 5A.

## **Schedule 5 Amendment of Taxation Administration Act 1996**

(Section 7)

### **[1] Section 86 Objection**

Insert after section 86 (1A):

- (1B) A reference in subsection (1) (b) to a decision does not include a refusal by the Chief Commissioner to refund tax paid by the taxpayer.

### **[2] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Further Amendment Act 1999*

### **[3] Schedule 1, Part 4**

Insert after Part 3:

## **Part 4 Provisions arising from enactment of State Revenue Legislation Further Amendment Act 1999**

### **30 Objections**

Section 86 (1B), as inserted by the *State Revenue Legislation Further Amendment Act 1999*, is taken to extend to any refusal by the Chief Commissioner to refund tax paid by a taxpayer that was made by the Chief Commissioner before the commencement of that subsection.