

FIRST PRINT

STAMP DUTIES (FURTHER AMENDMENT) BILL 1986

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Stamp Duties Act 1920 so as effect various amendments (some of which were announced in the Budget speech).

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the various provisions of the proposed Act.

Clause 3 defines the expression "Principal Act".

Clause 4 is a formal provision that gives effect to the Schedules of amendments.

Clause 5 repeals section 65 of the Valuation of Land Act 1916. That section requires a certificate of the Valuer-General for the purpose of assessing the amount of duty payable on the value of land. The Bill (Schedule 9 (9)) will permit the use of other means to determine the value of land.

Clause 6 validates certain action taken between 1 December 1985 and 11 December 1985. The latter date was the date of commencement of amendments made to section 38c of the Principal Act by the Stamp Duties (Amendment) Act 1985. The provision will validate the stamping of certain documents by means of a return between those dates.

Clause 7 is a formal provision that gives effect to the Schedule of transitional provisions.

SCHEDULE 1—MISCELLANEOUS BUDGET AMENDMENTS TO THE PRINCIPAL ACT

This Schedule effects certain amendments announced in the Budget speech.

Schedule 1 (1) exempts from duty a conveyance made between a married couple (including a de facto married couple), where the property conveyed will be held jointly by the couple.

Schedule 1 (2) and (3) extend the period during which stockbrokers may deal in shares purchased on their own behalf without liability for duty.

Schedule 1 (4) increases the duty payable for conveyances of any property, where the consideration exceeds \$300,000.

Schedule 1 (5) exempts from duty any policy of insurance relating to the hull of a floating vessel used primarily for commercial purposes or relating to goods or merchandise carried by sea, land or air.

SCHEDULE 2—BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO GOODS, WARES OR MERCHANDISE

This Schedule effects amendments announced in the Budget speech relating to stamp duty payable in respect of the conveyance of goods, wares or merchandise.

The Schedule collects the existing exemptions and concessional rate for agreements for goods, wares or merchandise into one section (proposed section 43). It also provides that duty is, however, payable at full rates on goods, wares and merchandise included in an agreement or other arrangement for the sale or conveyance of other property (proposed section 43A), unless the goods, wares or merchandise are stock-in-trade or used in connection with primary production (proposed section 43B).

SCHEDULE 3—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE SECONDARY MORTGAGE MARKET

This Schedule provides for the exemption from duty of certain instruments associated with the secondary mortgage market.

SCHEDULE 4—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO TRANSACTIONS ON THE LONDON STOCK EXCHANGE

The amendments made by this Schedule are designed to overcome a "double duty" situation that has arisen because of differences between the relevant legislation of this State and the other States.

SCHEDULE 5—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DE FACTO RELATIONSHIPS

The amendments made by this Schedule provide for the same exemptions from duty in relation to a transfer of property following breakdown of a de facto relationship as are available in relation to the dissolution of a marriage under the Family Law Act 1975 of the Commonwealth.

SCHEDULE 6—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CERTAIN EXEMPTIONS

Item (1) of this Schedule makes a consequential amendment and items (2), (3) and (4) provide respectively for exemptions from duty—

- (a) for a policy of insurance relating to mortgages, or pools of mortgages acquired for the purposes of the secondary mortgage market (Schedule 6 (1));
- (b) for a transfer of shares by way of a loan of the shares and transfer of identical shares in discharge of such a loan (Schedule 6 (2)); and
- (c) for a transfer of shares to or by the nominee company operating for the Australian Stock Exchange under its proposed centralised scrip and accountancy settlement system.

SCHEDULE 7—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ADHESIVE STAMPS

These amendments are concerned with the various provisions of the Principal Act that relate to the affixing and cancellation of adhesive stamps where their use is permitted instead of impressed stamps. Their effect is that any person, not merely the person executing an instrument, may affix and cancel adhesive stamps where they are permitted and that, instead of cancellation being required at the time of execution of the instrument, the time limits and penal provisions relating to impressed stamps will apply.

SCHEDULE 8—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN SECURITIES

Schedule 8 (1) and (2) amends definitions, and inserts new definitions, for the purposes of the provisions of the Principal Act affecting loan securities.

Schedule 8 (3) proposes amendments to the Principal Act designed to ensure that duty is paid in relation to further advances made in relation to a loan security.

Schedule 8 (4) is designed to remove the possibility of a double duty situation in relation to a New South Wales loan security collateral to a primary security in respect of which duty is payable under the law of another State or a Territory of the Commonwealth.

Schedule 8 (5) deals with a duty avoidance situation by imposing on a caveat protecting an unregistered mortgage the same duty as would have been paid if the mortgage had been stamped.

Schedule 8 (6) removes from certain contracts "deemed" by the Credit Act 1984 to be regulated contracts under that Act the exemption from duty applicable to contracts that are in fact regulated contracts under that Act.

Schedule 8 (7) rectifies a double duty situation that would otherwise arise in relation to a loan security that affects property in another State or in a Territory of the Commonwealth.

Schedule 8 (8) and (9) makes amendments to the Second Schedule to the Principal Act consequential upon other amendments.

SCHEDULE 9—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

Schedule 9 (1) enables the Chief Commissioner to sue for unpaid stamp duty, this being the procedure under other revenue Acts.

Schedule 9 (2) repeals a provision for the imposition of a daily penalty for a breach of the regulations.

Schedule 9 (3) is consequential on amendments enabling evidence of valuation of land to be provided otherwise than by a certificate of the Valuer-General.

Schedule 9 (4) excludes from the provisions of the Principal Act fixing a maximum duty in respect of certain hiring arrangements any such arrangement under which the goods the subject of the arrangement may be replaced or other goods may be added.

Schedule 9 (5) repeals a provision of the Principal Act that provides for the cost of servicing goods to be taken into account when assessing duty on a hiring arrangement.

Schedule 9 (6) extends from 3 months to 12 months the period during which application may be made for a refund of duty following annulment or early termination of a lease and permits the acceptance of evidence of annulment or termination other than the instrument of lease itself.

Schedule 9 (7) provides for a fixed duty of \$10 on a lease under section 5A of the Landlord and Tenant (Amendment) Act 1948 instead of a duty of 35 cents for each \$100 of rent payable during the term of the lease and enables adhesive stamps to be used.

Schedule 9 (8) clarifies and revises the provisions for objections to assessments of duty and the statement of cases for the opinion of the Supreme Court.

Schedule 9 (9) permits the use of means other than a certificate of the Valuer-General in order to determine the value of land for stamp duty purposes.

Schedule 9 (10) enables the Chief Commissioner to fix a time limit for the provision of information, or attendance for questioning, in accordance with the Principal Act.

Schedule 9 (11)—

- (a) increases from \$2,000 to \$5,000 the penalty for an offence against the Principal Act by a corporation;
- (b) removes the provision for a daily penalty of \$50 for a continuing offence;
- (c) provides in relation to certain requirements under the Principal Act that the obligation to comply with the requirement continues even though there has already been a conviction for non-compliance; and
- (d) enables the Chief Commissioner, if a failure to comply with a requirement continues for more than 14 days after a conviction for the failure, to apply to the Supreme Court for an injunction restraining any further failure to comply with the requirement.

Schedule 9 (12) repeals provisions enabling a daily penalty to be imposed for a continuing breach of the regulations.

Schedule 9 (13)–(15) provides—

- (a) for the same fixed duty (\$200) to be applicable to a variation of an approved deposit fund under the Income Tax Assessment Act 1936 of the Commonwealth as is applicable to a variation of a superannuation trust deed;
- (b) for wide-ranging exemptions for Aboriginal Land Councils and an exemption from duty in relation to certain instruments executed by certain Aboriginal organisations; and
- (c) for an exemption from duty of an instrument giving effect to an order under the Registered Clubs Act 1976 that results in the amalgamation of 2 clubs.

SCHEDULE 10—TRANSITIONAL PROVISIONS

This Schedule contains transitional provisions relating to the operation of certain amendments made by the proposed Act.

STAMP DUTIES (FURTHER AMENDMENT) BILL 1986

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 47, 1920
5. Repeal
6. Validation: payment of duty by return in certain cases
7. Transitional provisions

SCHEDULE 1—MISCELLANEOUS BUDGET AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 2—BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO GOODS, WARES OR MERCHANDISE

SCHEDULE 3—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE SECONDARY MORTGAGE MARKET

SCHEDULE 4—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO TRANSACTIONS ON THE LONDON STOCK EXCHANGE

SCHEDULE 5—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DE FACTO RELATIONSHIPS

SCHEDULE 6—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CERTAIN EXEMPTIONS

SCHEDULE 7—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ADHESIVE STAMPS

SCHEDULE 8—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN SECURITIES

SCHEDULE 9—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 10—TRANSITIONAL PROVISIONS

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STAMP DUTIES (FURTHER AMENDMENT) BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to amend the Stamp Duties Act 1920 with respect to the stamp duty payable on certain conveyances, loan securities and other instruments and with respect to certain exemptions from stamp duty; to repeal section 65 of the Valuation of Land Act 1916; and for other purposes.

Stamp Duties (Further Amendment) 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Stamp Duties (Further Amendment) Act 1986".

Commencement

10 2. (1) Except as provided by this section, this Act shall commence on the date of assent to this Act.

(2) Section 5 shall commence on 1 January 1987.

(3) Schedule 1 (1), (4) and (5) shall be deemed to have commenced on 1 December 1986.

15 (4) Schedule 1 (2) and (3) shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

(5) Schedule 2 shall be deemed to have commenced on 1 December 1986.

(6) Schedule 4 shall be deemed to have commenced on 24 April 1986.

(7) Schedule 5 shall be deemed to have commenced on 1 August 1986.

20 (8) Schedule 6 (2) shall be deemed to have commenced on 1 July 1986.

(9) Schedule 6 (4) shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

(10) Schedules 7, 8 and 9 shall commence on 1 January 1987.

25 (11) Section 4, in its application to a provision of Schedules 1-9, shall commence on the day on which the provision commences or is deemed to have commenced.

Stamp Duties (Further Amendment) 1986

Principal Act

3. The Stamp Duties Act 1920 is referred to in this Act as the Principal Act.

Amendment of Act No. 47, 1920

5 4. The Principal Act is amended in the manner set forth in Schedules 1-9.

Repeal

5. Section 65 of the Valuation of Land Act 1916 is repealed.

Validation: payment of duty by return in certain cases

10 6. (1) In this section, "section 38C" means section 38C of the Principal Act, as amended by the Stamp Duties (Amendment) Act 1985.

(2) Anything done on or after 1 December 1985 and before 11 December 1985 that could have been done under section 38C on and after 11 December 1985 is validated.

15 **Transitional provisions**

7. Schedule 10 has effect.

SCHEDULE 1

(Sec. 4)

MISCELLANEOUS BUDGET AMENDMENTS TO THE PRINCIPAL
ACT

5 (1) Section 66E—

After section 66D, insert:

Conveyance between married couple

66E. (1) In this section—

10 “de facto married couple” means a man and a woman who,
although not legally married to each other, are living with
each other as husband and wife on a bona fide domestic
basis;

“married couple” includes a de facto married couple;

15 “private dwelling house” includes a lot within the meaning
of the Strata Titles Act 1973 used as a place of residence.

(2) A conveyance of property is exempt from stamp duty, if it
is proved to the satisfaction of the Chief Commissioner that—

20 (a) as a result of the conveyance, the property is held by a
married couple as joint tenants or tenants in common
(whether or not in equal shares);

(b) the property has erected on it a private dwelling house and
was solely or principally used, as at the date of the
conveyance, as the married couple’s principal place of
residence;

25 (c) the conveyor and the conveyee were the married couple,
and there were no others; and

(d) in the case of a de facto married couple, the parties to the
relationship have lived in the relationship for at least the
2 years before the date of the conveyance.

30 (2) Section 97AB (**Returns to be lodged and duty paid**)—

Section 97AB (2)—

Omit “two clear days” wherever occurring, insert instead “10 clear
days”.

Stamp Duties (Further Amendment) 1986

SCHEDULE 1—*continued*

MISCELLANEOUS BUDGET AMENDMENTS TO THE PRINCIPAL
ACT—*continued*

(3) Section 97E (Duty payable in relation to relevant transactions)—

Section 97E (2)—

Omit “2 clear days” wherever occurring, insert instead “10 clear days”.

5 (4) Second Schedule, under the heading “CONVEYANCES OF ANY PROPERTY”—

Omit paragraph (1) (d), insert instead:

- | | | |
|----|--|---|
| 10 | (d) where the amount of such consideration exceeds \$80,000 but does not exceed \$300,000 | \$1,290 plus \$3.50 for every \$100 or part thereof by which the amount exceeds \$80,000. |
| | (e) where the amount of such consideration exceeds \$300,000 but does not exceed \$1,000,000 | \$8,990 plus \$4.50 for every \$100 or part thereof by which the amount exceeds \$300,000. |
| 15 | (f) where the amount of such consideration exceeds \$1,000,000 | \$40,490 plus \$5.50 for every \$100 or part thereof by which the amount exceeds \$1,000,000. |

(5) Second Schedule, under the heading “GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART III”—

20 After paragraph (26), insert:

(27) Any policy of insurance of—

- | | |
|----|--|
| 25 | (a) the hull of a floating vessel used primarily for commercial purposes; or |
| | (b) goods or merchandise, or the freight of goods or merchandise, carried by sea, land or air, |

or both, but only so far as the policy covers those matters.

Stamp Duties (Further Amendment) 1986

SCHEDULE 2

(Sec. 4)

BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
GOODS, WARES OR MERCHANDISE5 (1) Section 3 (**Interpretation**)—

Section 3 (1), definition of “Agreement”—

Before the definition of “Appointed day”, insert:

10 “Agreement”, in relation to a sale or conveyance of goods,
wares or merchandise, includes a memorandum relating to
the sale or conveyance of goods, wares or merchandise.

(2) Section 41 (**Agreements for sale or conveyance to be chargeable as conveyances, etc.**)—

Section 41 (6)—

Omit the subsection.

15 (3) Sections 43–43B—

After section 42, insert:

Agreements for goods, wares or merchandise generally43. (1) An agreement for the sale or conveyance of goods,
wares or merchandise—

20 (a) if under seal—is chargeable with a duty of \$10 but is
otherwise exempt from duty; or

(b) if under hand—is exempt from duty,

so far as the agreement relates to the goods, wares or merchandise
only.

25 (2) Subsection (1) does not apply to any goods, wares or
merchandise included in an agreement to which section 43A
applies, unless they are goods, wares or merchandise referred to
in section 43B.

30 (3) The parties to the agreement are primarily liable for the
duty chargeable under this section.

*Stamp Duties (Further Amendment) 1986*SCHEDULE 2—*continued*BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
GOODS, WARES OR MERCHANDISE—*continued***Goods, wares or merchandise included in or connected with an
agreement for the sale or conveyance of other property**

43A. (1) In this section—

5 “arrangement” means a written or unwritten arrangement, and
includes a written or unwritten agreement for the sale,
conveyance, lease or use of goods, wares or merchandise;

“other property” means property that is not goods, wares or
merchandise.

(2) If—

10 (a) one agreement is made for the sale or conveyance of
property (being goods, wares or merchandise) and other
property; or

15 (b) one agreement is made with respect to property (being
goods, wares or merchandise) and other property and part
of the agreement is for the sale or conveyance of some or
all of the other property,

20 the agreement shall, except in so far as the Chief Commissioner
is satisfied that it would not be just and reasonable in the
circumstances, be charged with the same ad valorem duty (to be
paid by the purchaser or person to whom the property is agreed
to be conveyed) as if it were a conveyance of the whole of the
property to which the agreement relates and shall be stamped
accordingly.

(3) If—

25 (a) 2 or more arrangements are entered into with respect to
property (being goods, wares or merchandise) and other
property—

30 (i) pursuant to one transaction relating to the whole of
the property; or
(ii) that together evidence or give effect to what is,
substantially, one transaction relating to the whole of
the property; and

*Stamp Duties (Further Amendment) 1986*SCHEDULE 2—*continued*BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
GOODS, WARES OR MERCHANDISE—*continued*

- (b) at least one of the arrangements is an agreement for the sale or conveyance of some or all of the other property,

5 the agreement, or one of the agreements, shall be charged with the same ad valorem duty (to be paid by a purchaser or person to whom the property is agreed to be conveyed) as if it were a conveyance of the whole of the property to which the transaction relates and shall be stamped accordingly and such of the other arrangements as are written shall be charged with the duty of \$10 each.

- 10 (4) If—

(a) the ad valorem duty to be charged under subsection (2) or (3) in respect of the whole of any property would, but for this subsection, be calculated separately in respect of different component parts of the property; and

- 15 (b) the amount of duty would be greater if it were calculated on an aggregation of the relevant amounts or values applicable to those component parts,

the duty shall be calculated on the basis described in paragraph (b).

- 20 (5) If 2 or more arrangements are entered into with respect to property (being goods, wares or merchandise) and other property—

(a) between the same parties or between different parties who are not at arms' length; and

- 25 (b) within, or apparently within, a period of 12 months of each other,

the arrangements shall, except in so far as the Chief Commissioner is satisfied that it would not be just and reasonable in the circumstances, be deemed to have been entered into pursuant to one transaction relating to the whole of the property.

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Stamp Duties (Further Amendment) 1986

SCHEDULE 2—*continued*

BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
GOODS, WARES OR MERCHANDISE—*continued*

(6) A person—

(a) who makes or is otherwise engaged or concerned in the preparation of an agreement referred to in subsection (2) or (3); and

5 (b) who does not disclose, in writing to the Chief Commissioner—

(i) upon submission by the person or any other person of the agreement to the Chief Commissioner for stamping; or

10 (ii) when required by the Chief Commissioner to do so,
the relevant amounts or values on which subsection (2) or (3) requires ad valorem duty to be charged in respect of that agreement,

15 shall be guilty of an offence and liable to a fine not exceeding \$1,000.

(7) It is a defence to a prosecution under subsection (6)—

(a) that the defendant did not know and could not reasonably be expected to have known the relevant amounts or values required to be disclosed by that subsection; or

20 (b) that a person to whom that subsection applies, other than the defendant, did, in relation to the agreement referred to in subsection (2) or (3) in respect of which the prosecution is brought, disclose the relevant amounts or values required to be disclosed by subsection (6).

25 (8) The provisions of section 41 (4), (5) and (7) apply to and in respect of an agreement duly stamped in accordance with this section in the same way as they apply to and in respect of an agreement duly stamped in accordance with section 41.

*Stamp Duties (Further Amendment) 1986*SCHEDULE 2—*continued*BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
GOODS, WARES OR MERCHANDISE—*continued***Certain goods, wares or merchandise exempt from section 43A**

43B. (1) Goods, wares or merchandise are exempt from section 43A, so far as they are—

- (a) stock-in-trade held or used in connection with a business;
- 5 (b) goods, wares or merchandise held or used in connection with land used for primary production; or
- (c) goods, wares or merchandise of a prescribed class or description,

10 and section 43A accordingly does not apply to or in respect of the goods, wares or merchandise so exempt.

(2) If goods, wares or merchandise included in an agreement are eligible for the exemption, and the agreement also relates to another matter for which duty is payable, the exemption does not apply unless—

- 15 (a) a claim is made for the exemption; and
- (b) particulars of and the respective values of the goods, wares and merchandise for which the exemption is claimed, and an apportionment of the purchase money, are fully set out in the agreement.

20 (3) The Chief Commissioner may exercise any of the powers conferred by section 68 with respect to the claim.

(4) The duty of \$10 under section 43 does not apply if other duty is payable because the exemption does not apply.

(5) In this section—

25 “land used for primary production” means land used primarily for—

- (a) the cultivation of the land for the purpose of selling the produce of the cultivation;

*Stamp Duties (Further Amendment) 1986*SCHEDULE 2—*continued*BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
GOODS, WARES OR MERCHANDISE—*continued*

- (b) the maintenance of animals or poultry on the land for the purpose of selling them or their natural increase or bodily produce;
- 5 (c) the keeping of bees on the land for the purpose of selling their honey;
- (d) a nursery within the meaning of the Horticultural Stock and Nurseries Act 1969, being a nursery in respect of which a person is registered under that Act as a nurseryman; or
- 10 (e) the propagation for sale of mushrooms, orchids or flowers.
- (4) Second Schedule, under the heading “AGREEMENT OR MEMORANDUM OF AN AGREEMENT, and not otherwise specifically charged with any duty”—
- 15 Omit subparagraph (a) of the exemptions in paragraph (1).
- (5) Second Schedule, under the heading “AGREEMENT FOR THE SALE OR CONVEYANCE (INCLUDING EXCHANGE) OF ANY PROPERTY”—
- Omit the proviso.

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SCHEDULE 3

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
SECONDARY MORTGAGE MARKET

- 25 (1) Section 84^{FA} (**Charging of duty on issue, etc., of mortgage-backed securities**)—
- (a) Section 84^{FA} (2) (b)—
- Omit “or” where thirdly occurring.

Stamp Duties (Further Amendment) 1986

SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
SECONDARY MORTGAGE MARKET—*continued*

(b) Section 84FA (2) (c), (d)—

At the end of section 84FA (2) (c), insert:

; or

5 (d) a mortgage or other charge executed on or after the date
of assent to the Stamp Duties (Further Amendment) Act
1986 over the interest of a corporation, company or society
in mortgages or in assets specified in paragraph (b) (i), (ii)
or (iii), or prescribed for the purposes of paragraph (b) (iv),
10 of the definition of “pool of mortgages” in subsection (1),
being a mortgage or other charge relating to corporate debt
securities that are mortgage-backed securities issued by the
corporation, company or society to secure the repayment
of financial accommodation provided to it,

(c) Section 84FA (2)—

15 Omit “, as the case may require,”, insert instead “referred to in
paragraph (a), (b) or (c)”.

(2) Second Schedule, under the heading “GENERAL EXEMPTIONS
FROM STAMP DUTY UNDER PART III”—

After paragraph (27), as inserted by this Act, insert:

20 (28) Any instrument that, in the opinion of the Chief
Commissioner, was executed for the purpose of creating, issuing
or marketing mortgage-backed securities.

SCHEDULE 4

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS ON THE LONDON STOCK EXCHANGE5 (1) Section 97C (**Interpretation**)—

(a) Section 97C (1), definition of “corresponding law”—

Before the definition of “jobber”, insert:

10 “corresponding law” means a law of another State or a Territory of the Commonwealth that is declared by the Governor by an order for the time being in force under section 97D to be a corresponding law for the purposes of this Division;

(b) Section 97C (2)—

Omit the subsection, insert instead:

15 (2) In this Division, a reference to marketable securities is a reference to marketable securities, or rights to marketable securities, of—

(a) a corporation which is incorporated in New South Wales;

(b) a corporation which—

20 (i) is incorporated in another State or a Territory of the Commonwealth other than a State or Territory in which a corresponding law is in force; and

(ii) has a register in New South Wales in which the marketable securities or rights are registered;

25 (c) a corporation which is incorporated outside Australia and is registered in New South Wales as a foreign company; or

(d) a corporation which—

(i) is incorporated outside Australia;

30 (ii) is registered in another State or a Territory of the Commonwealth other than a State or Territory in which a corresponding law is in force; and

(iii) has a register in New South Wales in which the marketable securities or rights are registered.

Stamp Duties (Further Amendment) 1986

SCHEDULE 4—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS ON THE LONDON STOCK EXCHANGE—*continued*

(2) Section 97D (**Declarations by the Governor**)—

Section 97D (2), (3)—

At the end of section 97D, insert:

5 (2) The Governor may, by order published in the Gazette, declare a specified law in force in another State or a Territory of the Commonwealth to be a corresponding law for the purposes of this Division.

10 (3) The first order made under subsection (2) shall be deemed to have taken effect on a day specified in the order that is not earlier than 24 April 1986.

(3) Section 97E (4)—

Omit the subsection.

SCHEDULE 5

(Sec. 4)

15 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DE
FACTO RELATIONSHIPS

(1) Section 74CA (**Interpretation**)—

(a) Section 74CA (1), definitions of “de facto partner”, “de facto relationship”—

20 After the definition of “Commonwealth Act”, insert:

“de facto partner” has the same meaning as it has in the De Facto Relationships Act 1984;

“de facto relationship” has the same meaning as it has in the De Facto Relationships Act 1984;

Stamp Duties (Further Amendment) 1986

SCHEDULE 5—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DE
FACTO RELATIONSHIPS—*continued*

(b) Section 74CA (1), definition of “partnership property”—

After the definition of “matrimonial property”, insert:

“partnership property”, in relation to a de facto relationship,
means property of the partners to the relationship or of either
of them.

5

(c) Section 74CA (2A)—

After section 74CA (2), insert:

(2A) A reference in this Division to a de facto partner includes
a reference to a person who was a de facto partner in a de facto
relationship that has ceased, whether the cessation took effect in
Australia or elsewhere.

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(2) Section 74CB (**Certain instruments exempt from duty**)—

Section 74CB (2)—

At the end of section 74CB, insert:

(2) An instrument is exempt from duty to the extent that the
instrument makes provision for or with respect to the conveyance
to the de facto partners in a de facto relationship, or to either of
them, of partnership property, if—

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(a) the de facto relationship ceases; and

20

(b) the instrument is an order of a court made under the De
Facto Relationships Act 1984 or is executed in accordance
with such an order.

Stamp Duties (Further Amendment) 1986

SCHEDULE 5—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DE
FACTO RELATIONSHIPS—*continued*

(3) Section 74CC (**Special provisions as to motor vehicles**)—

Section 74CC (2)—

At the end of section 74CC, insert:

5 (2) A motor vehicle certificate of registration issued to the de
facto partners in a de facto relationship or to either of them (and
to no other person) pursuant to an application relating to the
transfer of the vehicle concerned is exempt from duty to the extent
that the vehicle was, at the time the application was made,
partnership property, if—

10 (a) the de facto relationship ceases; and

(b) the application was made for the purposes of, or in
accordance with, an order of a court made under the De
Facto Relationships Act 1984.

SCHEDULE 6

(Sec. 4)

15 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CERTAIN
EXEMPTIONS

(1) Section 97AC (**Endorsement of transfer as to payment of duty**)—

Section 97AC (1) (c)—

20 Omit the paragraph, insert instead:

(c) effecting a transfer of shares for the sole purpose of—

(i) lending the shares to the transferee; or

(ii) replacing an identical parcel of shares previously
borrowed from the transferee,

Stamp Duties (Further Amendment) 1986

SCHEDULE 6—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CERTAIN
EXEMPTIONS—*continued*

- (2) Second Schedule, exemptions appearing under the heading
“POLICIES OF INSURANCE”—

After paragraph (i), insert:

- 5 (j) Any policy covering mortgages or pools of mortgages acquired for the purpose of issuing mortgage-backed securities within the meaning of section 84FA.

- (3) Second Schedule, exemptions appearing under the heading
“TRANSFER OF SHARES”—

Omit paragraph (e), insert instead:

- 10 (e) Any transfer of shares listed on a stock exchange in Australia if the transfer is for the sole purpose of—
- (i) lending the shares to the transferee; or
 - (ii) replacing an identical parcel of shares previously borrowed from the transferee.

- 15 (4) Second Schedule, exemptions appearing under the heading
“TRANSFER OF SHARES”—

After paragraph (f), insert:

- (g) A transfer to or by a prescribed nominee company of a marketable security or right in respect of shares.
-

Stamp Duties (Further Amendment) 1986

SCHEDULE 7

(Sec. 3)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ADHESIVE STAMPS

- 5 (1) Section 22 (**Cancellation of adhesive stamps**)—
Section 22 (1)—
Omit “unless the person who first executes the instrument cancels the stamp at the time of the execution of the instrument by him,” insert instead “until a person cancels the stamp”.
- 10 (2) Section 40 (**Duty on certain agreements under hand may be denoted by adhesive stamp**)—
(a) Section 40 (1)—
Omit “, which is to be cancelled by the person by whom the agreement is first executed”.
- 15 (b) Section 40 (2)—
Omit the subsection.
- (3) Section 54 (**Executing bill of lading**)—
Section 54 (4)—
Omit “, which is to be affixed and cancelled before or at the time of execution by the person by whom the instrument is first executed”.
- 20 (4) Section 56 (**Adhesive stamps may be used**)—
Omit “, which is to be affixed and cancelled at the time of execution by the person by whom the instrument is first executed”.
- 25 (5) Section 62 (**Adhesive stamps may be used**)—
Section 62 (2)—
Omit the subsection.
- 30 (6) Section 81 (**Duty on letters of allotment and letters of renunciation**)—
Section 81 (2)—
Omit “which is to be cancelled by the person by whom the letter of allotment or letter of renunciation is executed”.

Stamp Duties (Further Amendment) 1986

SCHEDULE 7—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ADHESIVE STAMPS—*continued*

(7) Section 87 (**Duties may be denoted by adhesive stamps**)—

Section 87 (2), (3)—

Omit the subsections.

(8) Second Schedule, under the heading “LOAN SECURITY”—

5 Omit “Adhesive”, insert instead “If the loan security is a
debenture, an adhesive”.

SCHEDULE 8

(Sec. 4)

10 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES

(1) Section 3 (**Interpretation**)—

(a) Section 3 (1), definition of “Mortgage”—

Omit “means”, insert instead “includes”.

(b) Section 3 (1), definition of “Mortgage”—

15 Omit “; or”, insert instead “; and”.

(2) Section 83 (**Interpretation**)—

(a) Section 83 (1), definitions of “Advance”, “Bill facility”—

Before the definition of “Debenture”, insert:

20 “Advance” includes the provision of funds by way of financial
accommodation.

“Bill facility” means an agreement, understanding or
arrangement for the provision of funds under which a bill of
exchange or promissory note—

(a) is drawn, accepted, indorsed or made; and

*Stamp Duties (Further Amendment) 1986*SCHEDULE 8—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

(b) is held by, or negotiated or discounted to, the person providing the funds.

(b) Section 83 (1), definition of “Debenture”—

Omit the definition, insert instead:

- 5 “Debenture” includes debenture stock, bonds, notes and any
 other document evidencing or acknowledging a debt owed by
 a corporation in respect of money that is, or may be,
 deposited with, or lent to, the corporation, whether or not
10 payment of the debt is secured by a charge on property of
 the corporation, but does not include—
- (a) a document that merely acknowledges the receipt of
 money by a corporation where, in respect of the money,
 the corporation issues in compliance with section 97 of
15 the Companies (New South Wales) Code a document
 prescribed by section 97 (2) of that Code and complies
 with the other requirements of section 97 of that Code;
- (b) an order for the payment of money;
- (c) a bill of exchange or promissory note;
- 20 (d) a document that merely evidences or acknowledges a
 debt owing by a bank or, within the meaning of Division
 29, the short-term liability of a short-term dealer;
- 25 (e) a document that does not create a debt but merely
 evidences or acknowledges a debt owing by a
 corporation in respect of money deposited with, or lent
 to, the corporation; or

*Stamp Duties (Further Amendment) 1986*SCHEDULE 8—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

- 5 (f) a document that merely evidences or acknowledges the receipt of money by a prescribed person within the meaning of the definition of that expression in this subsection, if the money is deposited with, or lent to, the prescribed person otherwise than—
- (i) in the course of a business of lending money not limited to depositing money with, or lending money to, the prescribed person; and
- 10 (ii) in response to an invitation to the public to deposit or lend money within a specified period.

(c) Section 83 (1), definition of “Financial accommodation”—

After the definition of “Debenture”, insert:

“Financial accommodation” includes—

- 15 (a) funds provided by means of a loan within the meaning of Division 20 or a bill facility; and
- (b) funds provided under any other obligation except an obligation imposed by a lease.

(d) Section 83 (1), definition of “Loan security”—

Omit the definition, insert instead:

20 “Loan security” means—

- (a) a mortgage or debenture executed in New South Wales;
- (b) a guarantee or indemnity securing an obligation to repay financial accommodation where the guarantor or person providing the indemnity is, in the case of a corporation, 25 incorporated in New South Wales or is, in any other case, resident in New South Wales;
- (c) a mortgage that, at the time of its execution, affected property in New South Wales; or

Stamp Duties (Further Amendment) 1986

SCHEDULE 8—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

- 5 (d) a mortgage (not being a floating charge) that did not affect property in New South Wales at the time of its execution but affects property in New South Wales at any time during the period of 12 months that next succeeds its execution.
- (e) Section 83 (1), definition of “Prescribed person”—
After the definition of “Mortgage”, insert:
“Prescribed person” means—
- 10 (a) a financial institution in accordance with the definition of that expression in section 98 (1);
- (b) a person prescribed for the purposes of that definition as not being a financial institution; or
- (c) a person prescribed for the purposes of this definition.
- (f) Section 83 (2)—
- 15 Omit the subsection.
- (3) Section 84 (**Limited and unlimited loan securities**)—
- (a) Section 84 (1) (a), (2)—
Omit “expressed in the loan security to be” wherever occurring.
- (b) Section 84 (1) (a)—
- 20 Omit “or is so expressed to be so limited”, insert instead “(whether or not it is expressed to be so limited)”.
- (c) Section 84 (2)—
After “money” where thirdly occurring, insert “(whether or not it is expressed to be so limited)”.
- 25 (d) Section 84 (2)—
Omit “the amount so expressed”, insert instead “that total amount”.

*Stamp Duties (Further Amendment) 1986*SCHEDULE 8—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

(e) Section 84 (2A)—

After section 84 (2), insert:

(2A) Where—

- 5 (a) the total amount secured or to be ultimately recoverable by or under a loan security is limited to a definite and certain sum of money (whether or not it is expressed to be so limited); and
- 10 (b) advances, or additional advances, are made under the loan security the total amount of which exceeds that definite and certain sum (even though the amount outstanding does not at any time exceed that definite and certain sum),

the loan security shall be stamped as a loan security with duty equal to the difference, if any, between—

- 15 (c) the duty, as duty on a loan security, that would be payable if a loan security were executed in respect of the total amount of the advances; and
- (d) the duty, as duty on a loan security, already paid on the loan security.

(f) Section 84 (3)—

20 Omit “of an amount not less than \$5.”, insert instead:

- (a) of an amount not less than \$5; and
- 25 (b) on an advance, or an additional advance, being made under the loan security—at the rate of 40 cents for each \$100, or remaining fractional part of \$100, of the advance or additional advance, whether or not the amount payable under the loan security after the making of the advance or additional advance is less than the amount in relation to which duty, as duty on a loan security, had previously been paid on the loan security.

*Stamp Duties (Further Amendment) 1986*SCHEDULE 8—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

(g) Section 84 (4), (4A)—

Omit section 84 (4), insert instead:

5 (4) A loan security referred to in this section is unenforceable unless it has been stamped as provided by this section, whether or not the amount in relation to which the loan security is sought to be enforced is less than the amount in relation to which it is required to be stamped.

10 (4A) The Chief Commissioner may, by notice in writing served on a party to a loan security, require the party to provide the Chief Commissioner, within a time specified in the notice, with a statutory declaration specifying the amount of each advance made under the loan security and the date on which it was made.

(h) Section 84 (6)—

15 Omit “Any advance referred to in subsection (4) of this section made in excess of the amount in respect of which duty, as duty on a loan security, has been paid on the loan security shall for the purposes only”, insert instead “An advance or additional advance referred to in subsection (2A) or (3) (b) shall for the purposes”.

(i) Section 84 (6)—

20 Omit “the advance”, insert instead “the advance or additional advance”.

(j) Section 84 (7)—

Omit “(4)”, insert instead “(3)”.

(k) Section 84 (7)—

25 Omit “or affixed to”.

Stamp Duties (Further Amendment) 1986

SCHEDULE 8—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

(4) Section 84B (**Collateral security**)—

Section 84B (3A) (a)—

Omit the paragraph, insert instead:

- 5 (a) a loan security which is collateral security for the same moneys as are secured by a primary loan security not chargeable with duty under this Act, but only to the extent to which stamp duty has been paid, or is payable, in respect of the primary loan security under the law of another State or a Territory of the Commonwealth; or

10 (5) Section 84CA—

After section 84C, insert:

Unregistered mortgage protected by caveat

15 84CA. A caveat under the Real Property Act 1900 in which an estate or interest is claimed under an unregistered mortgage is chargeable with duty—

- (a) if the mortgage is stamped with ad valorem duty or is not chargeable with duty—of \$10; or
- 20 (b) if the mortgage is chargeable, but not stamped, with ad valorem duty—of the same amount as is chargeable on the mortgage.

(6) Section 84EB (**Exemption of certain loan securities from duty**)—

Section 84EB (1)—

Omit the subsection, insert instead:

(1) For the purposes of this section—

25 “regulated contract” means—

- (a) a regulated contract within the meaning of the Credit Act 1984 other than a contract deemed by section 73 of that Act to be a regulated contract that would not otherwise be a regulated contract; or

Stamp Duties (Further Amendment) 1986

SCHEDULE 8—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

(b) a contract that, but for section 18 (1) of that Act, would be a regulated contract referred to in paragraph (a).

(7) Section 84F—

Omit the section, insert instead:

5 **Credit for duty paid outside New South Wales on loan security**

84F. If—

(a) property that is wholly or partly within another State or a Territory of the Commonwealth is the subject of a loan security; and

10 (b) the Chief Commissioner is provided with such information as the Chief Commissioner requires for the purposes of this section,

the Chief Commissioner shall credit in respect of the duty that would otherwise be payable an amount equal to the lesser of—

15 (c) the amount of the duty; and

(d) the amount of stamp duty paid or payable on the loan security under the law of the other State or the Territory.

(8) Second Schedule, under the heading “LOAN SECURITY”—

20 (a) Omit “Upon every loan security, including a foreign security—”, insert instead:

(1) Upon every loan security other than a mortgage referred to in paragraph (2)—

25 (b) Omit “payable or repayable under or secured by the loan security does not exceed \$15,000 or, if that amount is not fixed, where”, insert instead “or”.

(c) Before the heading “*Exemptions*”, insert:

(2) A mortgage that is the subject of a The mortgagor
caveat on which ad valorem duty
has been paid 10.00

Stamp Duties (Further Amendment) 1986

SCHEDULE 8—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

- (d) From the matter under the heading "*Exemptions*", omit "or any foreign security".
- (9) Second Schedule, under the heading "GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART III"—
- 5 From paragraphs (13) and (14), omit ", including any foreign security," wherever occurring.

SCHEDULE 9

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

- 10 (1) Section 5 (**Duties and other moneys recoverable summarily**)—
 - (a) After "Act", insert "are payable to the Chief Commissioner and".
 - (b) Omit "His Majesty", insert instead "the Crown".
 - (c) Omit "proceedings", insert instead "the Chief Commissioner suing by his or her official title".
- 15 (2) Section 10 (**Fines**)—
 - Section 10 (1) (b)—
 - Omit the paragraph.
- (3) Section 73A (**Valuation of land in possessory application**)—
 - Omit "and section 65 of the Valuation of Land Act, 1916".

*Stamp Duties (Further Amendment) 1986*SCHEDULE 9—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(4) Section 74F (**Payment of duty on hiring arrangements by return**)—

Section 74F (7B)—

5 After “arrangement”, insert “but only if the hiring arrangement precludes the inclusion within it of other goods in replacement of, or in addition to, the original goods to which it relates (whether the other goods are of a class the same as, or of a class different from, the original goods)”.

(5) Section 74G (**Total amount not readily ascertainable**)—

Section 74G (2)—

10 Omit the subsection.

(6) Section 78B (**Refund of part of duty on early determination of certain leases**)—

(a) Section 78B (1)—

Omit “three”, insert instead “12”.

15 (b) Section 78B (1)—

After “him” where secondly occurring, insert “or, upon the Chief Commissioner being provided with such documents and information as the Chief Commissioner may require”.

(c) Section 78B (2)—

20 Omit “3”, insert instead “12”.

(d) Section 78B (2)—

After “Commissioner” where lastly occurring, insert “or, upon the Chief Commissioner being provided with such documents and information as the Chief Commissioner may require”.

Stamp Duties (Further Amendment) 1986

SCHEDULE 9—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(7) Section 78F—

After section 78E, insert:

Lease under section 5A of the Landlord and Tenant (Amendment) Act 1948

5 78F. (1) Notwithstanding any other provision of this Act including the Second Schedule—

(a) a lease under section 5A of the Landlord and Tenant (Amendment) Act 1948 is liable to duty of \$10; and

10 (b) a copy of such a lease in respect of which the duty imposed by paragraph (a) has been paid is liable to duty of 50 cents.

(2) Duty payable under subsection (1) may be denoted by adhesive stamps.

(8) Section 124—

Omit the section, insert instead:

15 **Objections and appeals**

20 124. (1) A person liable to pay duty who is dissatisfied with an assessment of the duty made by the Chief Commissioner may, within the period of 60 days that next succeeds the date of issue of the assessment, object to the assessment by lodging, at an office at which the Chief Commissioner accepts instruments for stamping, a statement in writing of the grounds of the objection.

25 (2) A person entitled to make an objection may, whether before or after the expiration of the time for making the objection, apply for an extension of time and the Chief Commissioner may, for reasonable cause shown, extend the time for making the objection for such period as the Chief Commissioner considers to be reasonable.

(3) The Chief Commissioner shall consider any objection and may—

30 (a) allow the objection wholly or in part and modify the assessment to which it relates; or

Stamp Duties (Further Amendment) 1986

SCHEDULE 9—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) disallow the objection and confirm the assessment to which it relates.

5 (4) Upon making a decision on an objection, the Chief Commissioner shall inform the objector in writing of the decision and the reasons for the decision.

10 (5) An objector dissatisfied with the decision of the Chief Commissioner on the objection may, within the next succeeding period of 30 days after being informed under subsection (4) of the decision (or such longer period as the Chief Commissioner may allow), require the Chief Commissioner to state a case for the opinion of the Supreme Court.

(6) If the Chief Commissioner does not state a case for the opinion of the Supreme Court within 60 days of being required to do so under subsection (5) and the objector—

15 (a) has paid the amount of the assessment the subject of the objection or has arranged with the Chief Commissioner for its payment;

20 (b) has provided the Chief Commissioner with any information required by the Chief Commissioner in relation to the assessment the subject of the objection; and

(c) lodges at an office at which the Chief Commissioner accepts instruments for stamping a notice in writing requiring the Chief Commissioner to state such a case,

25 the Chief Commissioner shall comply with the requirement of the notice not later than 30 days after the notice is lodged.

(7) The Supreme Court may extend the time for doing anything under this section.

Stamp Duties (Further Amendment) 1986

SCHEDULE 9—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(8) On giving its decision on a stated case, the Supreme Court may determine the amount of any duty and fine payable as a result of the decision and—

5 (a) if the assessment of the Supreme Court is less than that of the Chief Commissioner—shall order the Chief Commissioner to pay the difference to the objector, together with interest at the prescribed rate; or

10 (b) if the assessment of the Supreme Court is greater than that of the Chief Commissioner—shall order the objector to pay the difference to the Chief Commissioner, together with any fine.

15 (9) If the Supreme Court orders the Chief Commissioner to refund to an objector any amount of excess duty, the Chief Commissioner shall also pay interest on the amount from the date on which it was paid to the Chief Commissioner until the date it is refunded.

20 (10) Except to the extent otherwise arranged with the Chief Commissioner under this section, the lodging of an objection or the stating of a case does not affect any liability of an objector to pay duty in accordance with this Act.

(9) Section 125 (**Valuation of property**)—

(a) Section 125 (1)—

Omit “subsections (1A) and (1B) of this section and”.

(b) Section 125 (1)—

25 Omit “, subject in the case of land or any interest therein the value of which exceeds \$2,000 to the Valuation of Land Act, 1916”, insert instead “including the service of a notice under section 129A”.

(c) Section 125 (1A), (1B)—

30 Omit the subsections.

*Stamp Duties (Further Amendment) 1986*SCHEDULE 9—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(10) Section 129A (Chief Commissioner may obtain information)—

(a) Section 129A (1) (a)—

5 After “requires”, insert “and to do so within such time as is specified in the notice or, if the Chief Commissioner by instrument in writing extends that time, within the extended time”.

(b) Section 129A (1) (b)—

10 After “behalf,”, insert “at such time and place as is specified in the notice or as may be arranged with, and confirmed in writing by, the Chief Commissioner or the officer”.

(11) Section 129B (Offences)—

(a) Section 129B (1) (b)—

15 Omit “fails”, insert instead “within the time required by, or arranged with and confirmed in writing by, the Chief Commissioner, fails, refuses”.

(b) Section 129B (1) (c)—

After “him” where firstly occurring, insert “fails,”.

(c) Section 129B (1) (c) (i)—

20 Omit “when required by the Chief Commissioner”, insert instead “within the time and at the place required by the Chief Commissioner or arranged with, and confirmed in writing by, the Chief Commissioner or the officer”.

(d) Section 129B (1)—

25 Omit “\$2,000 and in the case of a continuing offence to a fine of not more than \$50 for each day on which the offence continues”, insert instead “\$5,000 in the case of a corporation or \$2,000 in any other case”.

Stamp Duties (Further Amendment) 1986

SCHEDULE 9—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(e) Section 129B (1A), (1B)—

After section 129B (1), insert:

5 (1A) If a person is convicted of an offence under subsection (1) (b) or (c) (iii) or is charged with such an offence and the charge is dealt with under section 556A of the Crimes Act 1900, the obligation to comply with the requirement to which the offence relates continues, except in relation to the time for performance.

10 (1B) If a person referred to in subsection (1A) fails for 14 days to discharge the obligation imposed by that subsection, the Supreme Court may, on the application of the Chief Commissioner, grant an injunction restraining a continuation of the failure to discharge the obligation.

(12) Section 145 (**Regulations**)—

Section 145 (2) (g)—

15 Omit “, and where the breach is a continuing one, a penalty not exceeding ten dollars for each day during which the breach continues”.

(13) Second Schedule, under the heading “CONVEYANCES OF ANY PROPERTY”—

20 After paragraph (4) (j), insert:

*Stamp Duties (Further Amendment) 1986*SCHEDULE 9—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

5	(k) Any instrument (being an instrument which, but for this subparagraph, would be chargeable with ad valorem duty) which amends or varies the effect of an instrument establishing an approved deposit fund as defined in section 27A of the Income Tax Assessment Act 1936 of the Commonwealth, where the firstmentioned instrument—		
10	(i) is not an instrument of the kind referred to in subparagraph (a); and		
15	(ii) does not convey, or have the effect of conveying, any part of the fund to a trustee under the fund or to a person who is not a depositor with the fund	200.00	The parties to the instrument.
20	(14) Second Schedule, under the heading “GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART III”—		
	After “nature” in paragraph (24) (b), insert “, or has as its primary object the promotion of the interests of Aborigines”.		
25	(15) Second Schedule, under the heading “GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART III”—		
	After paragraph (28), as inserted by this Act, insert:		
30	(29) In the case of an organisation that is the New South Wales Aboriginal Land Council, or a Regional Aboriginal Land Council, or a Local Aboriginal Land Council, within the meaning of the Aboriginal Land Rights Act 1983—		
	(a) a bill of exchange or order issued or given by the organisation;		
	(b) a motor vehicle certificate of registration issued to the organisation;		

*Stamp Duties (Further Amendment) 1986*SCHEDULE 9—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(c) an instrument executed by the organisation, or on its behalf, in respect of which the organisation would, but for this subparagraph, be primarily liable for duty; and

5 (d) a policy of insurance taken out by or on behalf of the organisation.

10 (30) If such information and documents as the Chief Commissioner may require are given to the Chief Commissioner—any instrument executed for the purpose of giving effect to an order under section 17A of the Registered Clubs Act 1976 for the amalgamation of 2 clubs or for the dissolution of 2 clubs and the formation of a new club.

SCHEDULE 10

(Sec. 7)

TRANSITIONAL PROVISIONS

15 **Conveyances between married couple**

1. Section 66E of the Principal Act (as inserted by this Act) applies to conveyances executed after, but not before, the commencement of Schedule 1 (1).

Sales or purchases by stockbrokers

20 2. The amendments made by Schedule 1 (2) and (3) do not apply to sales or purchases made or deemed to have been made before the commencement of those amendments.

Duty on conveyances

3. The amendment made by Schedule 1 (4) does not apply to a conveyance executed or agreement made before the commencement of that amendment.

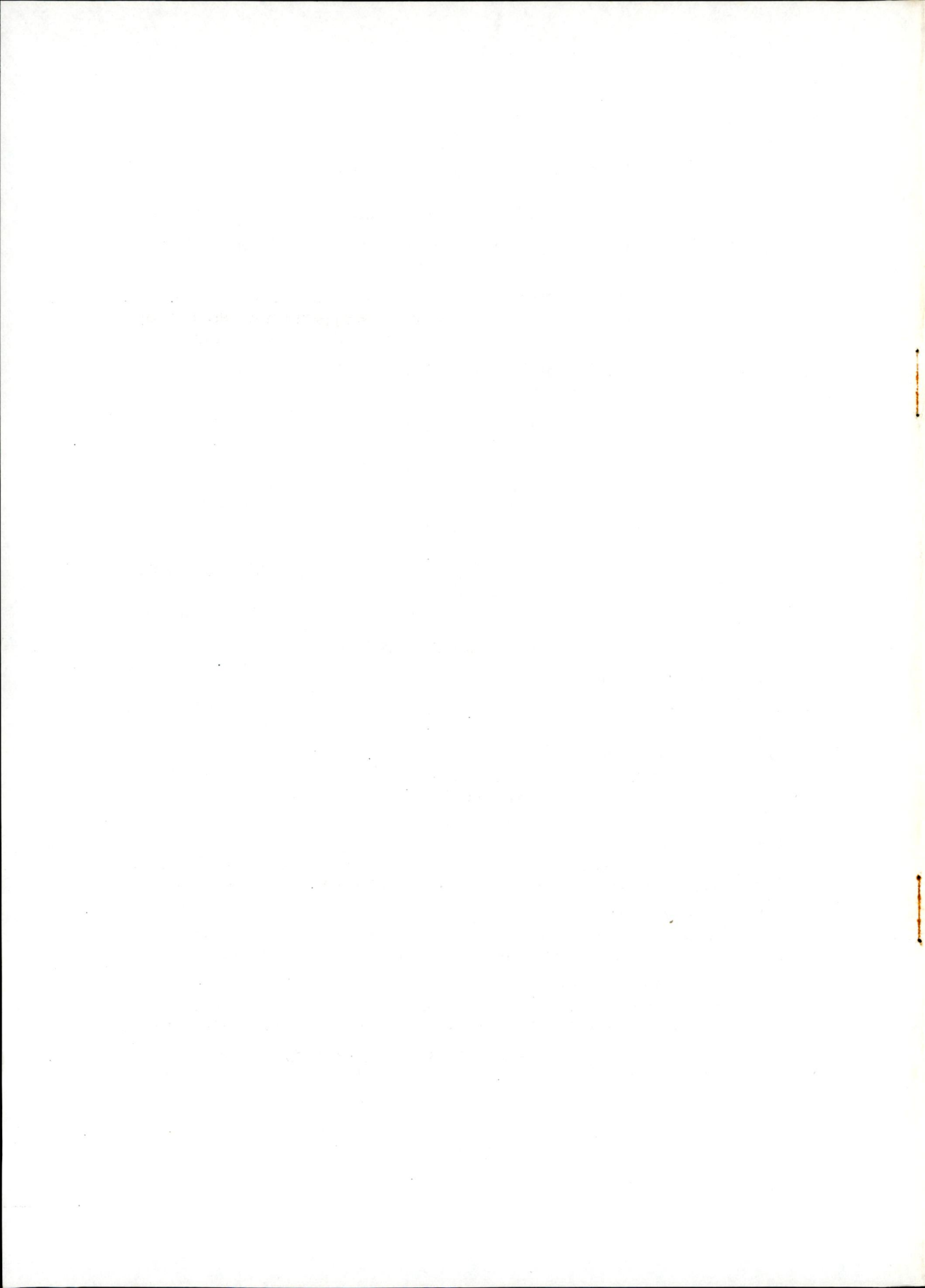
25 **Policies of marine insurance**

4. The amendment made by Schedule 1 (5) does not apply to a policy of marine insurance issued or renewed before the commencement of that amendment.

Goods, wares and merchandise

30 5. (1) The amendments made by Schedule 2 do not apply to agreements or arrangements made or entered into before the commencement of those amendments.

(2) A failure to disclose amounts or values before the date of assent to this Act does not give rise to an offence under section 43A of the Principal Act as inserted by Schedule 2.



STAMP DUTIES (FURTHER AMENDMENT) ACT 1986
No. 193

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 47, 1920
5. Repeal
6. Validation: payment of duty by return in certain cases
7. Transitional provisions

SCHEDULE 1—MISCELLANEOUS BUDGET AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 2—BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO GOODS, WARES OR MERCHANDISE

SCHEDULE 3—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE SECONDARY MORTGAGE MARKET

SCHEDULE 4—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO TRANSACTIONS ON THE LONDON STOCK EXCHANGE

SCHEDULE 5—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DE FACTO RELATIONSHIPS

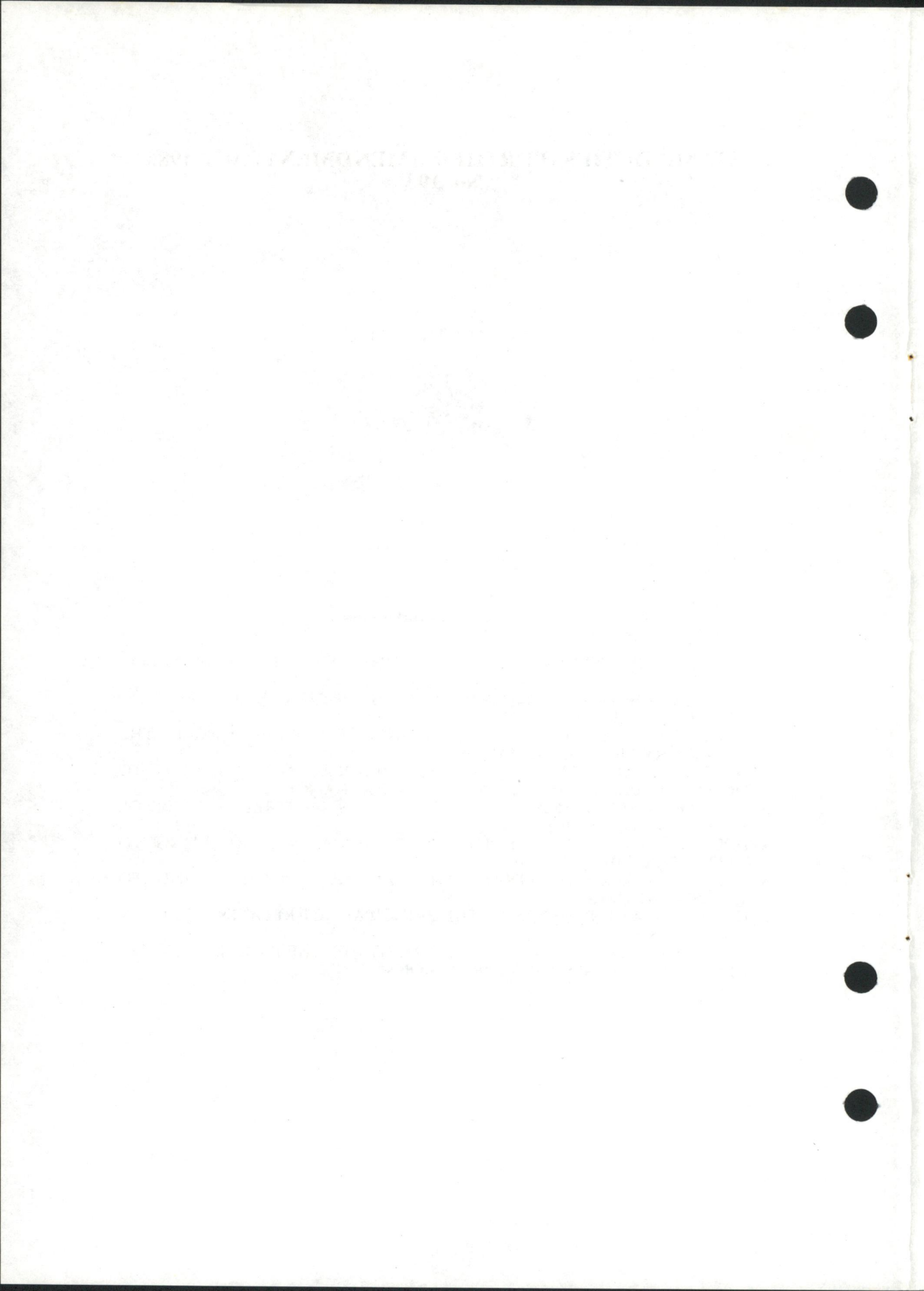
SCHEDULE 6—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CERTAIN EXEMPTIONS

SCHEDULE 7—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO ADHESIVE STAMPS

SCHEDULE 8—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN SECURITIES

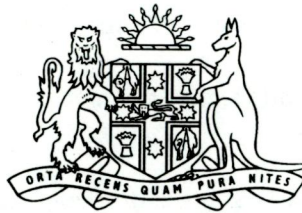
SCHEDULE 9—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 10—TRANSITIONAL PROVISIONS



STAMP DUTIES (FURTHER AMENDMENT) ACT 1986 No. 193

NEW SOUTH WALES



Act No. 193, 1986

An Act to amend the Stamp Duties Act 1920 with respect to the stamp duty payable on certain conveyances, loan securities and other instruments and with respect to certain exemptions from stamp duty; to repeal section 65 of the Valuation of Land Act 1916; and for other purposes. [Assented to 18 December 1986]

Stamp Duties (Further Amendment) 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Stamp Duties (Further Amendment) Act 1986".

Commencement

2. (1) Except as provided by this section, this Act shall commence on the date of assent to this Act.

(2) Section 5 shall commence on 1 January 1987.

(3) Schedule 1 (1), (4) and (5) shall be deemed to have commenced on 1 December 1986.

(4) Schedule 1 (2) and (3) shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

(5) Schedule 2 shall be deemed to have commenced on 1 December 1986.

(6) Schedule 4 shall be deemed to have commenced on 24 April 1986.

(7) Schedule 5 shall be deemed to have commenced on 1 August 1986.

(8) Schedule 6 (2) shall be deemed to have commenced on 1 July 1986.

(9) Schedule 6 (4) shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

(10) Schedules 7, 8 and 9 shall commence on 1 January 1987.

(11) Section 4, in its application to a provision of Schedules 1-9, shall commence on the day on which the provision commences or is deemed to have commenced.

Stamp Duties (Further Amendment) 1986

Principal Act

3. The Stamp Duties Act 1920 is referred to in this Act as the Principal Act.

Amendment of Act No. 47, 1920

4. The Principal Act is amended in the manner set forth in Schedules 1-9.

Repeal

5. Section 65 of the Valuation of Land Act 1916 is repealed.

Validation: payment of duty by return in certain cases

6. (1) In this section, "section 38C" means section 38C of the Principal Act, as amended by the Stamp Duties (Amendment) Act 1985.

(2) Anything done on or after 1 December 1985 and before 11 December 1985 that could have been done under section 38C on and after 11 December 1985 is validated.

Transitional provisions

7. Schedule 10 has effect.

SCHEDULE 1

(Sec. 4)

MISCELLANEOUS BUDGET AMENDMENTS TO THE PRINCIPAL
ACT

(1) Section 66E—

After section 66D, insert:

Conveyance between married couple

66E. (1) In this section—

“de facto married couple” means a man and a woman who, although not legally married to each other, are living with each other as husband and wife on a bona fide domestic basis;

“married couple” includes a de facto married couple;

“private dwelling house” includes a lot within the meaning of the Strata Titles Act 1973 used as a place of residence.

(2) A conveyance of property is exempt from stamp duty, if it is proved to the satisfaction of the Chief Commissioner that—

(a) as a result of the conveyance, the property is held by a married couple as joint tenants or tenants in common (whether or not in equal shares);

(b) the property has erected on it a private dwelling house and was solely or principally used, as at the date of the conveyance, as the married couple’s principal place of residence;

(c) the conveyor and the conveyee were the married couple, and there were no others; and

(d) in the case of a de facto married couple, the parties to the relationship have lived in the relationship for at least the 2 years before the date of the conveyance.

(2) Section 97AB (**Returns to be lodged and duty paid**)—

Section 97AB (2)—

Omit “two clear days” wherever occurring, insert instead “10 clear days”.

Stamp Duties (Further Amendment) 1986

SCHEDULE 1—*continued*

MISCELLANEOUS BUDGET AMENDMENTS TO THE PRINCIPAL
ACT—*continued*

(3) Section 97E (**Duty payable in relation to relevant transactions**)—

Section 97E (2)—

Omit “2 clear days” wherever occurring, insert instead “10 clear days”.

(4) Second Schedule, under the heading “CONVEYANCES OF ANY PROPERTY”—

Omit paragraph (1) (d), insert instead:

- | | |
|--|---|
| (d) where the amount of such consideration exceeds \$80,000 but does not exceed \$300,000 | \$1,290 plus \$3.50 for every \$100 or part thereof by which the amount exceeds \$80,000. |
| (e) where the amount of such consideration exceeds \$300,000 but does not exceed \$1,000,000 | \$8,990 plus \$4.50 for every \$100 or part thereof by which the amount exceeds \$300,000. |
| (f) where the amount of such consideration exceeds \$1,000,000 | \$40,490 plus \$5.50 for every \$100 or part thereof by which the amount exceeds \$1,000,000. |

(5) Second Schedule, under the heading “GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART III”—

After paragraph (26), insert:

(27) Any policy of insurance of—

- (a) the hull of a floating vessel used primarily for commercial purposes; or
- (b) goods or merchandise, or the freight of goods or merchandise, carried by sea, land or air,

or both, but only so far as the policy covers those matters.

SCHEDULE 2

(Sec. 4)

BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
GOODS, WARES OR MERCHANDISE(1) Section 3 (**Interpretation**)—

Section 3 (1), definition of “Agreement”—

Before the definition of “Appointed day”, insert:

“Agreement”, in relation to a sale or conveyance of goods, wares or merchandise, includes a memorandum relating to the sale or conveyance of goods, wares or merchandise.

(2) Section 41 (**Agreements for sale or conveyance to be chargeable as conveyances, etc.**)—

Section 41 (6)—

Omit the subsection.

(3) Sections 43–43B—

After section 42, insert:

Agreements for goods, wares or merchandise generally

43. (1) An agreement for the sale or conveyance of goods, wares or merchandise—

(a) if under seal—is chargeable with a duty of \$10 but is otherwise exempt from duty; or

(b) if under hand—is exempt from duty,

so far as the agreement relates to the goods, wares or merchandise only.

(2) Subsection (1) does not apply to any goods, wares or merchandise included in an agreement to which section 43A applies, unless they are goods, wares or merchandise referred to in section 43B.

(3) The parties to the agreement are primarily liable for the duty chargeable under this section.

Stamp Duties (Further Amendment) 1986

SCHEDULE 2—*continued*

BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
GOODS, WARES OR MERCHANDISE—*continued*

**Goods, wares or merchandise included in or connected with an
agreement for the sale or conveyance of other property**

43A. (1) In this section—

“arrangement” means a written or unwritten arrangement, and includes a written or unwritten agreement for the sale, conveyance, lease or use of goods, wares or merchandise;

“other property” means property that is not goods, wares or merchandise.

(2) If—

- (a) one agreement is made for the sale or conveyance of property (being goods, wares or merchandise) and other property; or
- (b) one agreement is made with respect to property (being goods, wares or merchandise) and other property and part of the agreement is for the sale or conveyance of some or all of the other property,

the agreement shall, except in so far as the Chief Commissioner is satisfied that it would not be just and reasonable in the circumstances, be charged with the same ad valorem duty (to be paid by the purchaser or person to whom the property is agreed to be conveyed) as if it were a conveyance of the whole of the property to which the agreement relates and shall be stamped accordingly.

(3) If—

- (a) 2 or more arrangements are entered into with respect to property (being goods, wares or merchandise) and other property—
 - (i) pursuant to one transaction relating to the whole of the property; or
 - (ii) that together, evidence or give effect to what is, substantially, one transaction relating to the whole of the property; and

Stamp Duties (Further Amendment) 1986

SCHEDULE 2—*continued*

BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
GOODS, WARES OR MERCHANDISE—*continued*

- (b) at least one of the arrangements is an agreement for the sale or conveyance of some or all of the other property,

the agreement, or one of the agreements, shall be charged with the same ad valorem duty (to be paid by a purchaser or person to whom the property is agreed to be conveyed) as if it were a conveyance of the whole of the property to which the transaction relates and shall be stamped accordingly and such of the other arrangements as are written shall be charged with the duty of \$10 each.

- (4) If—

- (a) the ad valorem duty to be charged under subsection (2) or (3) in respect of the whole of any property would, but for this subsection, be calculated separately in respect of different component parts of the property; and
- (b) the amount of duty would be greater if it were calculated on an aggregation of the relevant amounts or values applicable to those component parts,

the duty shall be calculated on the basis described in paragraph (b).

- (5) If 2 or more arrangements are entered into with respect to property (being goods, wares or merchandise) and other property—

- (a) between the same parties or between different parties who are not at arms' length; and
- (b) within, or apparently within, a period of 12 months of each other,

the arrangements shall, except in so far as the Chief Commissioner is satisfied that it would not be just and reasonable in the circumstances, be deemed to have been entered into pursuant to one transaction relating to the whole of the property.

Stamp Duties (Further Amendment) 1986

SCHEDULE 2—*continued*

BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
GOODS, WARES OR MERCHANDISE—*continued*

(6) A person—

- (a) who makes or is otherwise engaged or concerned in the preparation of an agreement referred to in subsection (2) or (3); and
- (b) who does not disclose, in writing to the Chief Commissioner—
 - (i) upon submission by the person or any other person of the agreement to the Chief Commissioner for stamping; or

- (ii) when required by the Chief Commissioner to do so, the relevant amounts or values on which subsection (2) or (3) requires ad valorem duty to be charged in respect of that agreement,

shall be guilty of an offence and liable to a fine not exceeding \$1,000.

(7) It is a defence to a prosecution under subsection (6)—

- (a) that the defendant did not know and could not reasonably be expected to have known the relevant amounts or values required to be disclosed by that subsection; or
- (b) that a person to whom that subsection applies, other than the defendant, did, in relation to the agreement referred to in subsection (2) or (3) in respect of which the prosecution is brought, disclose the relevant amounts or values required to be disclosed by subsection (6).

(8) The provisions of section 41 (4), (5) and (7) apply to and in respect of an agreement duly stamped in accordance with this section in the same way as they apply to and in respect of an agreement duly stamped in accordance with section 41.

Stamp Duties (Further Amendment) 1986

SCHEDULE 2—*continued*

BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
GOODS, WARES OR MERCHANDISE—*continued*

Certain goods, wares or merchandise exempt from section 43A

43B. (1) Goods, wares or merchandise are exempt from section 43A, so far as they are—

- (a) stock-in-trade held or used in connection with a business;
- (b) goods, wares or merchandise held or used in connection with land used for primary production; or
- (c) goods, wares or merchandise of a prescribed class or description,

and section 43A accordingly does not apply to or in respect of the goods, wares or merchandise so exempt.

(2) If goods, wares or merchandise included in an agreement are eligible for the exemption, and the agreement also relates to another matter for which duty is payable, the exemption does not apply unless—

- (a) a claim is made for the exemption; and
- (b) particulars of and the respective values of the goods, wares and merchandise for which the exemption is claimed, and an apportionment of the purchase money, are fully set out in the agreement.

(3) The Chief Commissioner may exercise any of the powers conferred by section 68 with respect to the claim.

(4) The duty of \$10 under section 43 does not apply if other duty is payable because the exemption does not apply.

(5) In this section—

“land used for primary production” means land used primarily for—

- (a) the cultivation of the land for the purpose of selling the produce of the cultivation;

Stamp Duties (Further Amendment) 1986

SCHEDULE 2—*continued*

BUDGET AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
GOODS, WARES OR MERCHANDISE—*continued*

- (b) the maintenance of animals or poultry on the land for the purpose of selling them or their natural increase or bodily produce;
 - (c) the keeping of bees on the land for the purpose of selling their honey;
 - (d) a nursery within the meaning of the Horticultural Stock and Nurseries Act 1969, being a nursery in respect of which a person is registered under that Act as a nurseryman; or
 - (e) the propagation for sale of mushrooms, orchids or flowers.
- (4) Second Schedule, under the heading “AGREEMENT OR MEMORANDUM OF AN AGREEMENT, and not otherwise specifically charged with any duty”—

Omit subparagraph (a) of the exemptions in paragraph (1).

- (5) Second Schedule, under the heading “AGREEMENT FOR THE SALE OR CONVEYANCE (INCLUDING EXCHANGE) OF ANY PROPERTY”—

Omit the proviso.

SCHEDULE 3

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
SECONDARY MORTGAGE MARKET

- (1) Section 84FA (**Charging of duty on issue, etc., of mortgage-backed securities**)—
- (a) Section 84FA (2) (b)—
- Omit “or” where thirdly occurring.

Stamp Duties (Further Amendment) 1986

SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
SECONDARY MORTGAGE MARKET—*continued*

(b) Section 84FA (2) (c), (d)—

At the end of section 84FA (2) (c), insert:

; or

- (d) a mortgage or other charge executed on or after the date of assent to the Stamp Duties (Further Amendment) Act 1986 over the interest of a corporation, company or society in mortgages or in assets specified in paragraph (b) (i), (ii) or (iii), or prescribed for the purposes of paragraph (b) (iv), of the definition of “pool of mortgages” in subsection (1), being a mortgage or other charge relating to corporate debt securities that are mortgage-backed securities issued by the corporation, company or society to secure the repayment of financial accommodation provided to it,

(c) Section 84FA (2)—

Omit “, as the case may require,”, insert instead “referred to in paragraph (a), (b) or (c)”.

(2) Second Schedule, under the heading “GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART III”—

After paragraph (27), as inserted by this Act, insert:

- (28) Any instrument that, in the opinion of the Chief Commissioner, was executed for the purpose of creating, issuing or marketing mortgage-backed securities.
-

SCHEDULE 4

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS ON THE LONDON STOCK EXCHANGE(1) Section 97C (**Interpretation**)—

(a) Section 97C (1), definition of “corresponding law”—

Before the definition of “jobber”, insert:

“corresponding law” means a law of another State or a Territory of the Commonwealth that is declared by the Governor by an order for the time being in force under section 97D to be a corresponding law for the purposes of this Division;

(b) Section 97C (2)—

Omit the subsection, insert instead:

(2) In this Division, a reference to marketable securities is a reference to marketable securities, or rights to marketable securities, of—

- (a) a corporation which is incorporated in New South Wales;
- (b) a corporation which—
 - (i) is incorporated in another State or a Territory of the Commonwealth other than a State or Territory in which a corresponding law is in force; and
 - (ii) has a register in New South Wales in which the marketable securities or rights are registered;
- (c) a corporation which is incorporated outside Australia and is registered in New South Wales as a foreign company; or
- (d) a corporation which—
 - (i) is incorporated outside Australia;
 - (ii) is registered in another State or a Territory of the Commonwealth other than a State or Territory in which a corresponding law is in force; and
 - (iii) has a register in New South Wales in which the marketable securities or rights are registered.

Stamp Duties (Further Amendment) 1986

SCHEDULE 4—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS ON THE LONDON STOCK EXCHANGE—*continued*

(2) Section 97D (**Declarations by the Governor**)—

Section 97D (2), (3)—

At the end of section 97D, insert:

(2) The Governor may, by order published in the Gazette, declare a specified law in force in another State or a Territory of the Commonwealth to be a corresponding law for the purposes of this Division.

(3) The first order made under subsection (2) shall be deemed to have taken effect on a day specified in the order that is not earlier than 24 April 1986.

(3) Section 97E (4)—

Omit the subsection.

SCHEDULE 5

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DE
FACTO RELATIONSHIPS

(1) Section 74CA (**Interpretation**)—

(a) Section 74CA (1), definitions of “de facto partner”, “de facto relationship”—

After the definition of “Commonwealth Act”, insert:

“de facto partner” has the same meaning as it has in the De Facto Relationships Act 1984;

“de facto relationship” has the same meaning as it has in the De Facto Relationships Act 1984;

Stamp Duties (Further Amendment) 1986

SCHEDULE 5—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DE
FACTO RELATIONSHIPS—*continued*

(b) Section 74CA (1), definition of “partnership property”—

After the definition of “matrimonial property”, insert:

“partnership property”, in relation to a de facto relationship,
means property of the partners to the relationship or of either
of them.

(c) Section 74CA (2A)—

After section 74CA (2), insert:

(2A) A reference in this Division to a de facto partner includes
a reference to a person who was a de facto partner in a de facto
relationship that has ceased, whether the cessation took effect in
Australia or elsewhere.

(2) Section 74CB (**Certain instruments exempt from duty**)—

Section 74CB (2)—

At the end of section 74CB, insert:

(2) An instrument is exempt from duty to the extent that the
instrument makes provision for or with respect to the conveyance
to the de facto partners in a de facto relationship, or to either of
them, of partnership property, if—

(a) the de facto relationship ceases; and

(b) the instrument is an order of a court made under the De
Facto Relationships Act 1984 or is executed in accordance
with such an order.

Stamp Duties (Further Amendment) 1986

SCHEDULE 5—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO DE
FACTO RELATIONSHIPS—*continued*

(3) Section 74CC (**Special provisions as to motor vehicles**)—

Section 74CC (2)—

At the end of section 74CC, insert:

(2) A motor vehicle certificate of registration issued to the de facto partners in a de facto relationship or to either of them (and to no other person) pursuant to an application relating to the transfer of the vehicle concerned is exempt from duty to the extent that the vehicle was, at the time the application was made, partnership property, if—

- (a) the de facto relationship ceases; and
- (b) the application was made for the purposes of, or in accordance with, an order of a court made under the De Facto Relationships Act 1984.

SCHEDULE 6

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CERTAIN
EXEMPTIONS

(1) Section 97AC (**Endorsement of transfer as to payment of duty**)—

Section 97AC (1) (c)—

Omit the paragraph, insert instead:

- (c) effecting a transfer of shares for the sole purpose of—
 - (i) lending the shares to the transferee; or
 - (ii) replacing an identical parcel of shares previously borrowed from the transferee,

Stamp Duties (Further Amendment) 1986

SCHEDULE 6—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO CERTAIN
EXEMPTIONS—*continued*

- (2) Second Schedule, exemptions appearing under the heading
“POLICIES OF INSURANCE”—

After paragraph (i), insert:

- (j) Any policy covering mortgages or pools of mortgages acquired for the purpose of issuing mortgage-backed securities within the meaning of section 84FA.

- (3) Second Schedule, exemptions appearing under the heading
“TRANSFER OF SHARES”—

Omit paragraph (e), insert instead:

- (e) Any transfer of shares listed on a stock exchange in Australia if the transfer is for the sole purpose of—

(i) lending the shares to the transferee; or

(ii) replacing an identical parcel of shares previously borrowed from the transferee.

- (4) Second Schedule, exemptions appearing under the heading
“TRANSFER OF SHARES”—

After paragraph (f), insert:

- (g) A transfer to or by a prescribed nominee company of a marketable security or right in respect of shares.
-

Stamp Duties (Further Amendment) 1986

SCHEDULE 7

(Sec. 3)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ADHESIVE STAMPS(1) Section 22 (**Cancellation of adhesive stamps**)—

Section 22 (1)—

Omit “unless the person who first executes the instrument cancels the stamp at the time of the execution of the instrument by him,”, insert instead “until a person cancels the stamp”.

(2) Section 40 (**Duty on certain agreements under hand may be denoted by adhesive stamp**)—

(a) Section 40 (1)—

Omit “, which is to be cancelled by the person by whom the agreement is first executed”.

(b) Section 40 (2)—

Omit the subsection.

(3) Section 54 (**Executing bill of lading**)—

Section 54 (4)—

Omit “, which is to be affixed and cancelled before or at the time of execution by the person by whom the instrument is first executed”.

(4) Section 56 (**Adhesive stamps may be used**)—

Omit “, which is to be affixed and cancelled at the time of execution by the person by whom the instrument is first executed”.

(5) Section 62 (**Adhesive stamps may be used**)—

Section 62 (2)—

Omit the subsection.

(6) Section 81 (**Duty on letters of allotment and letters of renunciation**)—

Section 81 (2)—

Omit “which is to be cancelled by the person by whom the letter of allotment or letter of renunciation is executed”.

Stamp Duties (Further Amendment) 1986

SCHEDULE 7—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
ADHESIVE STAMPS—*continued*

- (7) Section 87 (**Duties may be denoted by adhesive stamps**)—
Section 87 (2), (3)—
Omit the subsections.
- (8) Second Schedule, under the heading “LOAN SECURITY”—
Omit “Adhesive”, insert instead “If the loan security is a debenture, an adhesive”.
-

SCHEDULE 8

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES

- (1) Section 3 (**Interpretation**)—
- (a) Section 3 (1), definition of “Mortgage”—
Omit “means”, insert instead “includes”.
- (b) Section 3 (1), definition of “Mortgage”—
Omit “; or”, insert instead “; and”.
- (2) Section 83 (**Interpretation**)—
- (a) Section 83 (1), definitions of “Advance”, “Bill facility”—
Before the definition of “Debenture”, insert:
- “Advance” includes the provision of funds by way of financial accommodation.
- “Bill facility” means an agreement, understanding or arrangement for the provision of funds under which a bill of exchange or promissory note—
- (a) is drawn, accepted, indorsed or made; and

Stamp Duties (Further Amendment) 1986

SCHEDULE 8—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

(b) is held by, or negotiated or discounted to, the person providing the funds.

(b) Section 83 (1), definition of “Debenture”—

Omit the definition, insert instead:

“Debenture” includes debenture stock, bonds, notes and any other document evidencing or acknowledging a debt owed by a corporation in respect of money that is, or may be, deposited with, or lent to, the corporation, whether or not payment of the debt is secured by a charge on property of the corporation, but does not include—

- (a) a document that merely acknowledges the receipt of money by a corporation where, in respect of the money, the corporation issues in compliance with section 97 of the Companies (New South Wales) Code a document prescribed by section 97 (2) of that Code and complies with the other requirements of section 97 of that Code;
- (b) an order for the payment of money;
- (c) a bill of exchange or promissory note;
- (d) a document that merely evidences or acknowledges a debt owing by a bank or, within the meaning of Division 29, the short-term liability of a short-term dealer;
- (e) a document that does not create a debt but merely evidences or acknowledges a debt owing by a corporation in respect of money deposited with, or lent to, the corporation; or

Stamp Duties (Further Amendment) 1986

SCHEDULE 8—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

- (f) a document that merely evidences or acknowledges the receipt of money by a prescribed person within the meaning of the definition of that expression in this subsection, if the money is deposited with, or lent to, the prescribed person otherwise than—
 - (i) in the course of a business of lending money not limited to depositing money with, or lending money to, the prescribed person; and
 - (ii) in response to an invitation to the public to deposit or lend money within a specified period.

- (c) Section 83 (1), definition of “Financial accommodation”—

After the definition of “Debenture”, insert:

“Financial accommodation” includes—

- (a) funds provided by means of a loan within the meaning of Division 20 or a bill facility; and
- (b) funds provided under any other obligation except an obligation imposed by a lease.

- (d) Section 83 (1), definition of “Loan security”—

Omit the definition, insert instead:

“Loan security” means—

- (a) a mortgage or debenture executed in New South Wales;
- (b) a guarantee or indemnity securing an obligation to repay financial accommodation where the guarantor or person providing the indemnity is, in the case of a corporation, incorporated in New South Wales or is, in any other case, resident in New South Wales;
- (c) a mortgage that, at the time of its execution, affected property in New South Wales; or

*Stamp Duties (Further Amendment) 1986*SCHEDULE 8—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

(d) a mortgage (not being a floating charge) that did not affect property in New South Wales at the time of its execution but affects property in New South Wales at any time during the period of 12 months that next succeeds its execution.

(e) Section 83 (1), definition of “Prescribed person”—

After the definition of “Mortgage”, insert:

“Prescribed person” means—

- (a) a financial institution in accordance with the definition of that expression in section 98 (1);
- (b) a person prescribed for the purposes of that definition as not being a financial institution; or
- (c) a person prescribed for the purposes of this definition.

(f) Section 83 (2)—

Omit the subsection.

(3) Section 84 (**Limited and unlimited loan securities**)—

(a) Section 84 (1) (a), (2)—

Omit “expressed in the loan security to be” wherever occurring.

(b) Section 84 (1) (a)—

Omit “or is so expressed to be so limited”, insert instead “(whether or not it is expressed to be so limited)”.

(c) Section 84 (2)—

After “money” where thirdly occurring, insert “(whether or not it is expressed to be so limited)”.

(d) Section 84 (2)—

Omit “the amount so expressed”, insert instead “that total amount”.

Stamp Duties (Further Amendment) 1986

SCHEDULE 8—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

(e) Section 84 (2A)—

After section 84 (2), insert:

(2A) Where—

- (a) the total amount secured or to be ultimately recoverable by or under a loan security is limited to a definite and certain sum of money (whether or not it is expressed to be so limited); and
- (b) advances, or additional advances, are made under the loan security the total amount of which exceeds that definite and certain sum (even though the amount outstanding does not at any time exceed that definite and certain sum),

the loan security shall be stamped as a loan security with duty equal to the difference, if any, between—

- (c) the duty, as duty on a loan security, that would be payable if a loan security were executed in respect of the total amount of the advances; and
- (d) the duty, as duty on a loan security, already paid on the loan security.

(f) Section 84 (3)—

Omit “of an amount not less than \$5.”, insert instead:

- (a) of an amount not less than \$5; and
- (b) on an advance, or an additional advance, being made under the loan security—at the rate of 40 cents for each \$100, or remaining fractional part of \$100, of the advance or additional advance, whether or not the amount payable under the loan security after the making of the advance or additional advance is less than the amount in relation to which duty, as duty on a loan security, had previously been paid on the loan security.

SCHEDULE 8—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

(g) Section 84 (4), (4A)—

Omit section 84 (4), insert instead:

(4) A loan security referred to in this section is unenforceable unless it has been stamped as provided by this section, whether or not the amount in relation to which the loan security is sought to be enforced is less than the amount in relation to which it is required to be stamped.

(4A) The Chief Commissioner may, by notice in writing served on a party to a loan security, require the party to provide the Chief Commissioner, within a time specified in the notice, with a statutory declaration specifying the amount of each advance made under the loan security and the date on which it was made.

(h) Section 84 (6)—

Omit “Any advance referred to in subsection (4) of this section made in excess of the amount in respect of which duty, as duty on a loan security, has been paid on the loan security shall for the purposes only”, insert instead “An advance or additional advance referred to in subsection (2A) or (3) (b) shall for the purposes”.

(i) Section 84 (6)—

Omit “the advance”, insert instead “the advance or additional advance”.

(j) Section 84 (7)—

Omit “(4)”, insert instead “(3)”.

(k) Section 84 (7)—

Omit “or affixed to”.

Stamp Duties (Further Amendment) 1986

SCHEDULE 8—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

(4) Section 84B (**Collateral security**)—

Section 84B (3A) (a)—

Omit the paragraph, insert instead:

- (a) a loan security which is collateral security for the same moneys as are secured by a primary loan security not chargeable with duty under this Act, but only to the extent to which stamp duty has been paid, or is payable, in respect of the primary loan security under the law of another State or a Territory of the Commonwealth; or

(5) Section 84CA—

After section 84C, insert:

Unregistered mortgage protected by caveat

84CA. A caveat under the Real Property Act 1900 in which an estate or interest is claimed under an unregistered mortgage is chargeable with duty—

- (a) if the mortgage is stamped with ad valorem duty or is not chargeable with duty—of \$10; or
- (b) if the mortgage is chargeable, but not stamped, with ad valorem duty—of the same amount as is chargeable on the mortgage.

(6) Section 84EB (**Exemption of certain loan securities from duty**)—

Section 84EB (1)—

Omit the subsection, insert instead:

(1) For the purposes of this section—

“regulated contract” means—

- (a) a regulated contract within the meaning of the Credit Act 1984 other than a contract deemed by section 73 of that Act to be a regulated contract that would not otherwise be a regulated contract; or

*Stamp Duties (Further Amendment) 1986*SCHEDULE 8—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

- (b) a contract that, but for section 18 (1) of that Act, would be a regulated contract referred to in paragraph (a).

(7) Section 84F—

Omit the section, insert instead:

Credit for duty paid outside New South Wales on loan security

84F. If—

- (a) property that is wholly or partly within another State or a Territory of the Commonwealth is the subject of a loan security; and
- (b) the Chief Commissioner is provided with such information as the Chief Commissioner requires for the purposes of this section,

the Chief Commissioner shall credit in respect of the duty that would otherwise be payable an amount equal to the lesser of—

- (c) the amount of the duty; and
- (d) the amount of stamp duty paid or payable on the loan security under the law of the other State or the Territory.

(8) Second Schedule, under the heading “LOAN SECURITY”—

- (a) Omit “Upon every loan security, including a foreign security—”, insert instead:

(1) Upon every loan security other than a mortgage referred to in paragraph (2)—

- (b) Omit “payable or repayable under or secured by the loan security does not exceed \$15,000 or, if that amount is not fixed, where”, insert instead “or”.

- (c) Before the heading “*Exemptions*”, insert:

(2) A mortgage that is the subject of a caveat on which ad valorem duty has been paid	The mortgagor
.....	10.00

*Stamp Duties (Further Amendment) 1986*SCHEDULE 8—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

- (d) From the matter under the heading "*Exemptions*", omit "or any foreign security".
- (9) Second Schedule, under the heading "GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART III"—

From paragraphs (13) and (14), omit ", including any foreign security," wherever occurring.

SCHEDULE 9

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

- (1) Section 5 (**Duties and other moneys recoverable summarily**)—
- (a) After "Act", insert "are payable to the Chief Commissioner and".
- (b) Omit "His Majesty", insert instead "the Crown".
- (c) Omit "proceedings", insert instead "the Chief Commissioner suing by his or her official title".
- (2) Section 10 (**Fines**)—
- Section 10 (1) (b)—
- Omit the paragraph.
- (3) Section 73A (**Valuation of land in possessory application**)—
- Omit "and section 65 of the Valuation of Land Act, 1916".

Stamp Duties (Further Amendment) 1986

SCHEDULE 9—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(4) Section 74F (**Payment of duty on hiring arrangements by return**)—

Section 74F (7B)—

After “arrangement”, insert “but only if the hiring arrangement precludes the inclusion within it of other goods in replacement of, or in addition to, the original goods to which it relates (whether the other goods are of a class the same as, or of a class different from, the original goods)”.

(5) Section 74G (**Total amount not readily ascertainable**)—

Section 74G (2)—

Omit the subsection.

(6) Section 78B (**Refund of part of duty on early determination of certain leases**)—

(a) Section 78B (1)—

Omit “three”, insert instead “12”.

(b) Section 78B (1)—

After “him” where secondly occurring, insert “or, upon the Chief Commissioner being provided with such documents and information as the Chief Commissioner may require”.

(c) Section 78B (2)—

Omit “3”, insert instead “12”.

(d) Section 78B (2)—

After “Commissioner” where lastly occurring, insert “or, upon the Chief Commissioner being provided with such documents and information as the Chief Commissioner may require”.

Stamp Duties (Further Amendment) 1986

SCHEDULE 9—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(7) Section 78F—

After section 78E, insert:

Lease under section 5A of the Landlord and Tenant (Amendment) Act 1948

78F. (1) Notwithstanding any other provision of this Act including the Second Schedule—

- (a) a lease under section 5A of the Landlord and Tenant (Amendment) Act 1948 is liable to duty of \$10; and
- (b) a copy of such a lease in respect of which the duty imposed by paragraph (a) has been paid is liable to duty of 50 cents.

(2) Duty payable under subsection (1) may be denoted by adhesive stamps.

(8) Section 124—

Omit the section, insert instead:

Objections and appeals

124. (1) A person liable to pay duty who is dissatisfied with an assessment of the duty made by the Chief Commissioner may, within the period of 60 days that next succeeds the date of issue of the assessment, object to the assessment by lodging, at an office at which the Chief Commissioner accepts instruments for stamping, a statement in writing of the grounds of the objection.

(2) A person entitled to make an objection may, whether before or after the expiration of the time for making the objection, apply for an extension of time and the Chief Commissioner may, for reasonable cause shown, extend the time for making the objection for such period as the Chief Commissioner considers to be reasonable.

(3) The Chief Commissioner shall consider any objection and may—

- (a) allow the objection wholly or in part and modify the assessment to which it relates; or

Stamp Duties (Further Amendment) 1986

SCHEDULE 9—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) disallow the objection and confirm the assessment to which it relates.

(4) Upon making a decision on an objection, the Chief Commissioner shall inform the objector in writing of the decision and the reasons for the decision.

(5) An objector dissatisfied with the decision of the Chief Commissioner on the objection may, within the next succeeding period of 30 days after being informed under subsection (4) of the decision (or such longer period as the Chief Commissioner may allow), require the Chief Commissioner to state a case for the opinion of the Supreme Court.

(6) If the Chief Commissioner does not state a case for the opinion of the Supreme Court within 60 days of being required to do so under subsection (5) and the objector—

- (a) has paid the amount of the assessment the subject of the objection or has arranged with the Chief Commissioner for its payment;
- (b) has provided the Chief Commissioner with any information required by the Chief Commissioner in relation to the assessment the subject of the objection; and
- (c) lodges at an office at which the Chief Commissioner accepts instruments for stamping a notice in writing requiring the Chief Commissioner to state such a case,

the Chief Commissioner shall comply with the requirement of the notice not later than 30 days after the notice is lodged.

(7) The Supreme Court may extend the time for doing anything under this section.

*Stamp Duties (Further Amendment) 1986*SCHEDULE 9—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(8) On giving its decision on a stated case, the Supreme Court may determine the amount of any duty and fine payable as a result of the decision and—

- (a) if the assessment of the Supreme Court is less than that of the Chief Commissioner—shall order the Chief Commissioner to pay the difference to the objector, together with interest at the prescribed rate; or
- (b) if the assessment of the Supreme Court is greater than that of the Chief Commissioner—shall order the objector to pay the difference to the Chief Commissioner, together with any fine.

(9) If the Supreme Court orders the Chief Commissioner to refund to an objector any amount of excess duty, the Chief Commissioner shall also pay interest on the amount from the date on which it was paid to the Chief Commissioner until the date it is refunded.

(10) Except to the extent otherwise arranged with the Chief Commissioner under this section, the lodging of an objection or the stating of a case does not affect any liability of an objector to pay duty in accordance with this Act.

(9) Section 125 (**Valuation of property**)—

- (a) Section 125 (1)—

Omit “subsections (1A) and (1B) of this section and”.

- (b) Section 125 (1)—

Omit “, subject in the case of land or any interest therein the value of which exceeds \$2,000 to the Valuation of Land Act, 1916”, insert instead “including the service of a notice under section 129A”.

- (c) Section 125 (1A), (1B)—

Omit the subsections.

Stamp Duties (Further Amendment) 1986

SCHEDULE 9—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(10) Section 129A (**Chief Commissioner may obtain information**)—

(a) Section 129A (1) (a)—

After “requires”, insert “and to do so within such time as is specified in the notice or, if the Chief Commissioner by instrument in writing extends that time, within the extended time”.

(b) Section 129A (1) (b)—

After “behalf,”, insert “at such time and place as is specified in the notice or as may be arranged with, and confirmed in writing by, the Chief Commissioner or the officer”.

(11) Section 129B (**Offences**)—

(a) Section 129B (1) (b)—

Omit “fails”, insert instead “within the time required by, or arranged with and confirmed in writing by, the Chief Commissioner, fails, refuses”.

(b) Section 129B (1) (c)—

After “him” where firstly occurring, insert “fails,”.

(c) Section 129B (1) (c) (i)—

Omit “when required by the Chief Commissioner”, insert instead “within the time and at the place required by the Chief Commissioner or arranged with, and confirmed in writing by, the Chief Commissioner or the officer”.

(d) Section 129B (1)—

Omit “\$2,000 and in the case of a continuing offence to a fine of not more than \$50 for each day on which the offence continues”, insert instead “\$5,000 in the case of a corporation or \$2,000 in any other case”.

Stamp Duties (Further Amendment) 1986

SCHEDULE 9—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(e) Section 129B (1A), (1B)—

After section 129B (1), insert:

(1A) If a person is convicted of an offence under subsection (1) (b) or (c) (iii) or is charged with such an offence and the charge is dealt with under section 556A of the Crimes Act 1900, the obligation to comply with the requirement to which the offence relates continues, except in relation to the time for performance.

(1B) If a person referred to in subsection (1A) fails for 14 days to discharge the obligation imposed by that subsection, the Supreme Court may, on the application of the Chief Commissioner, grant an injunction restraining a continuation of the failure to discharge the obligation.

(12) Section 145 (**Regulations**)—

Section 145 (2) (g)—

Omit “, and where the breach is a continuing one, a penalty not exceeding ten dollars for each day during which the breach continues”.

(13) Second Schedule, under the heading “CONVEYANCES OF ANY PROPERTY”—

After paragraph (4) (j), insert:

Stamp Duties (Further Amendment) 1986

SCHEDULE 9—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

<p>(k) Any instrument (being an instrument which, but for this subparagraph, would be chargeable with ad valorem duty) which amends or varies the effect of an instrument establishing an approved deposit fund as defined in section 27A of the Income Tax Assessment Act 1936 of the Commonwealth, where the firstmentioned instrument—</p> <p>(i) is not an instrument of the kind referred to in subparagraph (a); and</p> <p>(ii) does not convey, or have the effect of conveying, any part of the fund to a trustee under the fund or to a person who is not a depositor with the fund</p>	<p>200.00</p>	<p>The parties to the instrument.</p>
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(14) Second Schedule, under the heading “GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART III”—

After “nature” in paragraph (24) (b), insert “, or has as its primary object the promotion of the interests of Aborigines”.

(15) Second Schedule, under the heading “GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART III”—

After paragraph (28), as inserted by this Act, insert:

(29) In the case of an organisation that is the New South Wales Aboriginal Land Council, or a Regional Aboriginal Land Council, or a Local Aboriginal Land Council, within the meaning of the Aboriginal Land Rights Act 1983—

- (a) a bill of exchange or order issued or given by the organisation;
- (b) a motor vehicle certificate of registration issued to the organisation;

Stamp Duties (Further Amendment) 1986

SCHEDULE 9—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (c) an instrument executed by the organisation, or on its behalf, in respect of which the organisation would, but for this subparagraph, be primarily liable for duty; and
- (d) a policy of insurance taken out by or on behalf of the organisation.

(30) If such information and documents as the Chief Commissioner may require are given to the Chief Commissioner—any instrument executed for the purpose of giving effect to an order under section 17A of the Registered Clubs Act 1976 for the amalgamation of 2 clubs or for the dissolution of 2 clubs and the formation of a new club.

SCHEDULE 10

(Sec. 7)

TRANSITIONAL PROVISIONS

Conveyances between married couple

1. Section 66E of the Principal Act (as inserted by this Act) applies to conveyances executed after, but not before, the commencement of Schedule 1 (1).

Sales or purchases by stockbrokers

2. The amendments made by Schedule 1 (2) and (3) do not apply to sales or purchases made or deemed to have been made before the commencement of those amendments.

Duty on conveyances

3. The amendment made by Schedule 1 (4) does not apply to a conveyance executed or agreement made before the commencement of that amendment.

Policies of marine insurance

4. The amendment made by Schedule 1 (5) does not apply to a policy of marine insurance issued or renewed before the commencement of that amendment.

Stamp Duties (Further Amendment) 1986

SCHEDULE 10—*continued*

TRANSITIONAL PROVISIONS—*continued*

Goods, wares and merchandise

5. (1) The amendments made by Schedule 2 do not apply to agreements or arrangements made or entered into before the commencement of those amendments.

(2) A failure to disclose amounts or values before the date of assent to this Act does not give rise to an offence under section 43A of the Principal Act as inserted by Schedule 2.



