

FIRST PRINT

STAMP DUTIES (AMENDMENT) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are:

- (a) to change the basis on which stamp duty is assessed in relation to policies of insurance; and
- (b) to make other miscellaneous amendments to the Stamp Duties Act 1920, including amendments which:
 - (i) provide for an exemption from stamp duty on the conveyance of certain family homes and conveyances of certain land subject to special trusts (within the meaning of the Land Tax Management Act 1956);
 - (ii) provide for an exemption from loan security duty for securities executed to secure bail money;
 - (iii) enable the Chief Commissioner to make compromise assessments of stamp duty;
 - (iv) enable the Chief Commissioner to collect debts from third parties; and
 - (v) effect statute law revision; and
- (c) to make a consequential amendment to the Land Tax Management Act 1956.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent, subject to several exceptions. Those exceptions are summarised elsewhere in this Explanatory Note in relation to the provisions to which they apply.

Clause 3 gives effect to the Schedules of amendments.

Clause 4 makes an amendment to the Land Tax Management Act 1956 consequent on the amendment made by Schedule 2 (1).

Stamp Duties (Amendment) 1989

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE

The amendments made by this Schedule are to change the basis on which stamp duty is assessed in relation to insurance, other than life insurance.

At the present time, stamp duty on a policy of insurance is assessed according to the amount insured under the policy but so as not to exceed 25% of the premium. While the amendments will not affect the basis on which stamp duty is assessed in relation to policies of life insurance, for other forms of insurance, stamp duty will, as from 1 November 1989, be assessed according to the amount of the premium paid in respect of the policy. The relevant rates will be:

- . Class 1 insurance (that is, all insurance other than Class 2 insurance, life insurance or exempt insurance) 11.5%
- . Class 2 insurance (that is, motor vehicle insurance, aviation insurance, disability income insurance and occupational indemnity insurance, not being exempt insurance) 2.5%

Schedule 1 (1) substitutes Division 24 of Part 3 with a new Division which contains the following proposed sections:

Section 86 contains definitions for the purposes of the proposed Division.

Section 87 lists the types of insurance which are exempt from payment of stamp duty.

Section 88 provides that duty is not chargeable in respect of insurance in so far as it relates to property which is outside New South Wales or a risk which can only occur outside New South Wales.

Section 88A requires a person who carries on insurance business (not being life insurance business) to be registered under the proposed Division by the Chief Commissioner. A person does not carry on insurance business only because the person is an insurance broker. The section also specifies the circumstances in which a person's registration may be cancelled.

Section 88B requires a registered person to lodge a monthly return with the Chief Commissioner showing the total amount of premiums for Class 1 insurance and the total amount of premiums for Class 2 insurance received by the person for the month. The person is required to pay stamp duty on the return in respect of the premiums so shown (and in respect of policies of life insurance effected during the month).

Section 88C enables the Chief Commissioner to apportion a premium paid in respect of different types of insurance.

Section 88D requires a person (other than a registered person) who arranges with a person who is not a registered person insurance of property in New South Wales or against a risk which would normally occur in New South Wales to lodge a return with the Chief Commissioner and to pay duty on the return as if the person were a registered person.

Section 88E enables certain persons who are not required to be registered under the proposed Division to give an undertaking to the Chief Commissioner

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to pay the stamp duty those persons would be required to pay if they were registered under the proposed Division.

Section 88F enables the Chief Commissioner to vary the time for lodging returns under the proposed Division.

Sections 88G and 88H make provision for the lodging of a return with the Chief Commissioner and the payment of duty in respect of a policy of life insurance issued outside New South Wales which relates to the life of a person who, at the time the policy was effected, was domiciled within New South Wales. Section 88G imposes the obligation on a person resident in New South Wales who effects life insurance for which a policy is issued outside New South Wales. Section 88H imposes the obligation on a person who effects insurance for a person resident in New South Wales for which a policy is issued outside New South Wales.

Section 88I applies the provisions of sections 88G and 88H to companies which are registered under the Companies (New South Wales) Code and companies which carry on business in New South Wales.

Section 88J creates a liability to duty of a policy of insurance, and a renewal of any such policy, issued outside New South Wales and received in New South Wales.

Section 88K enables a reduction in duty in respect of so much of a policy to which section 88G, 88H or 88J applies as relates to the life of a person domiciled outside New South Wales.

Section 88L requires the making and keeping of records by registered persons of premiums received by or on their behalf.

Section 88M provides for the manner in which stamp duty paid on a return or a policy of life insurance is to be denoted.

Section 88N enables a set off of duty in respect of a premium, or part of a premium, which is refunded.

Section 88O makes it an offence to register or record an assignment or transfer of a policy of insurance before the assignment or transfer is duly stamped.

Section 88P provides that other forms of duty under the Principal Act (such as duty on an agreement under hand) are not chargeable in respect of policies of insurance issued or renewed on or after 1 November 1989 by a person who is liable to pay duty under the proposed Division.

Schedule 1 (2) and (3) make consequential amendments to the Second Schedule to the Principal Act.

Schedule 1 (4) enacts transitional provisions arising from the substitution of Division 24 of Part 3 of the Principal Act.

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS

Schedule 2 (1) inserts proposed section 73AA (Exemption from duty for certain conveyances). The section transfers from section 10A of the Land Tax Management Act 1956 to the Principal Act the provision that currently allows a refund of stamp duty paid on a conveyance of a family home from a company to the principal shareholders of the company. The relief from duty is now to be provided in the form

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of an exemption rather than a refund. The section also extends the exemption to certain conveyances of land which is subject to a special trust within the meaning of the Land Tax Management Act 1956 and which is conveyed to the settlor of that land, the person who actually paid the purchase price for the land or a person who, immediately before becoming the equitable owner of the land, was a beneficiary of the special trust.

Schedule 2 (2) amends section 74F (Payment of duty on hiring arrangements by return) to extend the credit allowed under section 74E for duty paid on a hiring arrangement which is liable to duty in more than one jurisdiction to duty paid on such a hiring arrangement by a person who is an approved person for the purposes of section 74F.

Schedule 2 (3) amends section 83 (Interpretation) to provide that paragraph (e) of the definition of "loan security" in that section (which relates to documents known as memoranda of deposit) does not apply to such memoranda executed by securities dealers or authorised money market operators. The amendment is to be taken to have commenced on 1 January 1989, being the date on which paragraph (e) commenced.

Schedule 2 (4) and (12) amend section 84CA (Unregistered mortgage protected by caveat) and the Second Schedule (in relation to the exemptions under the heading "Loan Security") to provide that securities executed solely in connection with the grant of bail in criminal proceedings are exempt from payment of duty. The amendments are to be taken to have commenced on 19 February 1989, being the date on which the Treasurer approved of the Principal Act being administered to grant the exemption.

Schedule 2 (5) and (6) make minor amendments to sections 97C (Definitions) and 97E (Duty payable in relation to relevant transactions) by way of statute law revision to adopt changes in nomenclature relating to the London Stock Exchange.

Schedule 2 (7) amends section 99A (Definitions) to extend the definition of "discretionary trust" to include a trust under which the whole or any part of the capital of the trust estate, or the whole or any part of the income of that capital, or both, will be divested from the person or persons in whom it is vested in the event that a discretion conferred under the trust is exercised.

Schedule 2 (8) amends section 99B (Acquisitions to which this Division does not apply) to prevent avoidance of Division 30 of Part 3 (Acquisitions of company and unit trust interests dutiable as conveyances of land) which might be achieved by the transfer of shares in a land-holding company to a register outside New South Wales prior to their acquisition. The amendment makes it clear that, in order to fall outside the provisions of Division 30, the land in respect of which an interest is acquired must have been capable of being transferred to the person acquiring the interest by means of an agreement or conveyance which is not chargeable with ad valorem duty.

Schedule 2 (9) amends section 127C (Fines in respect of returns and undertakings) to apply the late payment penalties under that section to undertakings under section 84D relating to the payment of loan security duty and to returns under the regulations.

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Schedule 2 (10) amends section 129 (Chief Commissioner may compromise a claim for duty) to enable the Chief Commissioner to make compromise assessments in relation to all stamp duties in the same way as is currently available under that section in relation to death duty.

Schedule 2 (11) inserts proposed section 129E (Collection of debts from third parties) to introduce garnishment provisions similar to those presently contained in the Pay-roll Tax Act 1971, the Business Franchise Licences (Petroleum Products) Act 1987 and the Business Franchise Licences (Tobacco) Act 1987.

Schedule 2 (13) amends clause 8 of Schedule 2A (First home purchase scheme) to make an amendment by way of statute law revision. The amendment is one necessitated by the raising from \$105,000 to \$125,000 of the maximum value of a home which is eligible for consideration under the scheme. The amendment is to be taken to have commenced on 2 June 1988, being the date on which the maximum value was increased.



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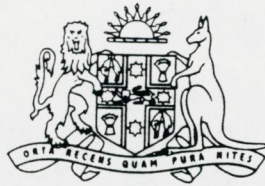
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STAMP DUTIES (AMENDMENT) BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Stamp Duties Act 1920 with respect to the payment of stamp duty relating to insurance and to facilitate the administration of that Act; to amend the Land Tax Management Act 1956; and for other purposes.

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Stamp Duties (Amendment) Act 1989.

Commencement

2. (1) This Act commences on the date of assent, except as provided by this section.

(2) Schedule 1 commences on 1 November 1989.

(3) Schedule 2 (3) is to be taken to have commenced on 1 January 1989.

(4) Schedules 2 (4) and (12) is to be taken to have commenced on 19 February 1989.

(5) Schedule 2 (13) is to be taken to have commenced on 2 June 1988.

(6) Section 3 in its application to a provision of Schedule 1 or 2 commences or is to be taken to have commenced on the day on which the provision commences or is to be taken to have commenced.

Amendment of Stamp Duties Act 1920 No. 47

3. The Stamp Duties Act 1920 is amended as set out in Schedules 1 and 2.

**Amendment of Land Tax Management Act 1956 No. 26, s. 10A
(Refund of stamp duty on certain conveyances)**

4. The Land Tax Management Act 1956 is amended by omitting section 10A.

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE

(Sec. 3)

(1) Part 3, Division 24:

Omit the Division, insert instead:

Division 24 - Policies of insurance etc.

Definitions

86. (1) In this Division:

"approved" means approved by the Chief Commissioner;

"exempt insurance" means insurance to which this Division does not apply by virtue of section 87;

"Class 1 insurance" means insurance, other than:

- (a) Class 2 insurance; or
- (b) life insurance; or
- (c) exempt insurance;

"Class 2 insurance" means:

- (a) motor vehicle insurance, being insurance covering any one or more of the following:
 - (i) the loss (including the loss by theft) of a motor vehicle;
 - (ii) damage to a motor vehicle;
 - (iii) loss of or damage to property by a motor vehicle;
- (b) aviation insurance, being insurance covering any one or more of the following:
 - (i) the loss (including the loss by theft) of an aircraft;
 - (ii) damage to an aircraft;
 - (iii) the death of or injury to a person by an aircraft or a thing falling from an aircraft;
 - (iv) the loss of or damage to property by an aircraft or a thing falling from an aircraft;

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

- (c) disability income insurance, being insurance effected by a policy of insurance under which an amount is payable in the event of disablement of the insured by accident or sickness;
- (d) occupational indemnity insurance, being insurance covering liability arising out of the provision by a person of professional services or other services; or
- (e) insurance of a class or description prescribed for the purposes of this definition, not being exempt insurance;

"insurance" includes assurance;

"life insurance" means insurance on a life or lives or on any event or contingency relating to or depending on a life or lives, but does not include insurance for any payment agreed to be made on the death of a person only from accident or violence or otherwise than from a natural cause or as compensation for personal injury;

"motor vehicle" has the same meaning as in the Motor Accidents Act 1988;

"premium" means the total amount paid in New South Wales or elsewhere to an insurer in respect of insurance effected in New South Wales or elsewhere by the insurer without any deduction for any amount paid or payable by way of discount to an agent, but does not include an amount paid in respect of stamp duty or by way of re-insurance;

"registered person" means a person registered for the time being under this Division;

"risk" includes contingency or event.

(2) A reference in this Division to the receipt of a premium includes a reference to the crediting of the amount of a premium to an account.

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

Insurance to which this Division does not apply

87. This Division does not apply to the following insurances:

- (a) insurance covering only property of the Crown;
- (b) insurance effected by a separate policy in a distinct sum against loss by fire on the tools, implements or work or labour used by any working mechanic, artificer, handcraftsman or labourer;
- (c) insurance taken out by or on behalf of a charity which is registered or which is exempted from registration under the Charitable Collections Act 1934;
- (d) insurance taken out by or on behalf of a society or institution for the time being approved for the purposes of this paragraph by the Chief Commissioner whose resources are, in accordance with its rules or objects, used wholly or predominantly for:
 - (i) the relief of poverty; or
 - (ii) the promotion of education; or
 - (iii) any purpose directly or indirectly connected with defence or the amelioration of the condition of past or present members of the Naval, Military or Air Forces of the Commonwealth or their dependants or any other patriotic object; or
 - (iv) such other purpose as, in the opinion of the Chief Commissioner, warrants the society or institution being taken to be a charitable society or institution;
- (e) insurance covering mortgages or pools of mortgages acquired for the purpose of issuing mortgage-backed securities within the meaning of section 84FA;

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

- (f) insurance effected by a policy issued by an organization registered under Part VI of the National Health Act 1953 of the Commonwealth, being a policy which provides hospital benefits or medical benefits (or both), whether or not other benefits are also provided;
- (g) insurance effected under the Workers Compensation Act 1987;
- (h) insurance effected under the Motor Accidents Act 1988;
- (i) re-insurance;
- (j) insurance of:
 - (i) the hull of a floating vessel used primarily for commercial purposes; or
 - (ii) goods or merchandise, or the freight of goods or merchandise, carried by sea, land or air,or both;
- (k) insurance effected by an instrument which is exempt under this Act (section 88P excepted) from the payment of stamp duty.

Exemption from duty - property etc. outside New South Wales

88. Notwithstanding any other provision of this Act, duty is not chargeable in respect of insurance, or the premium payable in respect of insurance, to the extent to which the insurance relates to:

- (a) property which, at the time of issue or renewal of the insurance, is outside New South Wales; or
- (b) a risk concerning an act or omission which, in the normal course of events, can only occur outside New South Wales.

Registration of persons carrying on insurance business

88A. (1) A person must not in New South Wales carry on or hold out that the person carries on insurance business

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

(not being life insurance business) unless the person is registered under this Division.

Maximum penalty: 50 penalty units.

(2) A person does not carry on insurance business for the purposes of this section only because the person is an insurance broker.

(3) The Chief Commissioner must register a person who applies in the approved form for registration under this Division.

(4) A person who carries on life insurance business may apply to the Chief Commissioner in the approved form for registration under this Division.

(5) The Chief Commissioner must issue a serial number to each registered person who effects or proposes to effect life insurance.

(6) The Chief Commissioner may, by notice in writing, cancel a person's registration under this Division for any reason the Chief Commissioner thinks sufficient.

(7) The cancellation of a person's registration by the Chief Commissioner has effect from the date specified for the purpose by the Chief Commissioner in the notice of cancellation.

(8) A registered person who ceases to carry on insurance business in New South Wales may cancel the person's registration under this Division by:

- (a) giving notice to the Chief Commissioner; and
- (b) lodging the return required to be lodged under this Division; and
- (c) paying the stamp duty payable on the return on or before the twenty-first day of the month after which the notice is given.

Monthly returns and payment of duty

88B. (1) A registered person must, on or before the twenty-first day of each month:

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

- (a) lodge with the Chief Commissioner a return in the approved form verified in the approved manner showing:
 - (i) the total amount of all premiums for Class 1 insurance received by or on behalf of the person in the preceding month (other than premiums for exempt insurance or insurance to which section 88 applies); and
 - (ii) the total amount of all premiums for Class 2 insurance received by or on behalf of the person in the preceding month (other than premiums for exempt insurance or insurance to which section 88 applies); and
 - (b) pay to the Chief Commissioner as stamp duty on the return:
 - (i) an amount equal to 11.5 per cent of the total amount of the premiums for Class 1 insurance; and
 - (ii) an amount equal to 2.5 per cent of the total amount of the premiums for Class 2 insurance; and
 - (iii) the amounts determined in accordance with the Second Schedule in respect of the policies of life insurance issued by or on behalf of the person in the preceding month; and
 - (c) in respect of each contract or agreement for life insurance effected by or on behalf of the person in the preceding month, make out and execute a policy of insurance and endorse on that policy the words "stamp duty" followed by the serial number issued to the registered person under section 88A.
- (2) A policy of life insurance endorsed in accordance with this section is to be taken to be duly stamped.

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

(3) A person (other than a registered person) who endorses on a policy of life insurance any words or numbers suggesting or implying that the policy is duly stamped under this section is guilty of an offence.

Maximum penalty: 2 penalty units.

Apportionment of premiums

88C. If the Chief Commissioner is not satisfied that the premium paid in respect of a policy of insurance which effects any 2 or more of the following types of insurance, namely:

- (a) Class 1 insurance;
- (b) Class 2 insurance;
- (c) life insurance;
- (d) exempt insurance;
- (e) insurance effected by an insurance policy to which section 88 applies,

has been properly apportioned for the purposes of a return under section 88B having regard to the property or risk concerned, the Chief Commissioner may determine the apportionment, reassess the liability to duty of the return and charge duty accordingly.

Duty payable by insured in certain circumstances

88D. (1) A person (other than a registered person) who obtains, effects or renews any insurance in New South Wales or elsewhere as an insured person with a person who is not a registered person, being insurance:

- (a) which relates in whole or in part to any property which, at the time of obtaining, effecting or renewing the insurance, is in New South Wales; or
- (b) which is against any risk concerning an act or omission which, in the normal course of events, can only occur in New South Wales,

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

must, within 1 month after obtaining, effecting or renewing the insurance, lodge with the Chief Commissioner a return in the approved form containing such particulars and information as to the premium and the insurance as the Chief Commissioner may require.

(2) A return under this section is liable to stamp duty at the rate of:

- (a) 11.5 per cent of the amount of any premium paid for Class 1 insurance to which subsection (1) applies; and
- (b) 2.5 per cent of the amount of any premium paid for Class 2 insurance to which subsection (1) applies.

(3) A person who lodges a return under this section must pay the stamp duty to which the return is liable when the return is lodged.

Giving of undertakings by certain persons

88E. (1) A person who is not a registered person and is not required to be registered under this Division may give an undertaking in the approved form to the Chief Commissioner in respect of such payments of stamp duty as the person would be required to make if the person were required to be registered under this Division.

(2) On receiving an undertaking under this section, the Chief Commissioner must determine whether or not to accept it.

(3) If the Chief Commissioner accepts an undertaking from a person, the person is to be taken to be a registered person.

(4) An undertaking from a person has effect from the date of its acceptance by the Chief Commissioner until:

- (a) the person withdraws it by notice in writing to the Chief Commissioner; or

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

- (b) the Chief Commissioner withdraws the acceptance of the undertaking by notice in writing to the person.

(5) A person whose undertaking has effect is not required to include in a return lodged under section 88B the amount of any premium received by the person and which is paid to another registered person.

Variation of time for furnishing returns

88F. (1) If the Chief Commissioner is of the opinion that it is unduly onerous to require a person to lodge returns within the time prescribed by this Division, the Chief Commissioner may by notice in writing given to the person vary the time.

(2) The person must, while the notice given to the person remains unrevoked, lodge returns accordingly.

(3) The Chief Commissioner may at any time by notice in writing revoke a notice given under this section.

Returns by certain New South Wales residents where life policy issued outside New South Wales

88G. (1) A person resident in New South Wales who effects any life insurance for which a policy of insurance is or is to be issued outside New South Wales must, unless duty has been paid on the policy in accordance with this Act:

- (a) lodge with the Chief Commissioner within 1 month after effecting the insurance a return in the approved form containing such particulars and information as the Chief Commissioner may require; and
- (b) when the person lodges the return, pay to the Chief Commissioner as stamp duty an amount equal to the amount of stamp duty that would have been payable in respect of each insurance to which the return relates if the insurance had been effected under a policy of insurance issued in New South Wales.

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

(2) A person who effects insurance to which this section applies and who fails or neglects:

- (a) to lodge a return as required by subsection (1) (a); or
- (b) to pay in accordance with subsection (1) (b) the duty chargeable on a return lodged by the person under subsection (1),

is guilty of an offence.

Maximum penalty: 2 penalty units.

(3) This section does not apply to a policy which relates solely to the life or lives of a person or persons who was or were, at the time the policy was effected, domiciled outside New South Wales.

Returns by certain New South Wales insurers where life policy issued outside New South Wales

88H. (1) A person:

- (a) with whom there is effected by any person resident in New South Wales any life insurance and who in connection with that insurance issues a policy outside New South Wales; or
- (b) who for or on behalf of any person resident in New South Wales arranges any life insurance for which a policy is issued outside New South Wales,

must lodge with the Chief Commissioner within 1 month of the insurance being effected a return in the approved form containing such particulars and information as to the insurance as the Chief Commissioner may require and pay as duty on the return the duty that would be chargeable on the policy if the policy had been issued in New South Wales.

(2) A return furnished under this section is admissible in evidence in any proceeding under section 88G or 88J and is evidence of the facts stated in the return.

(3) This section does not apply to a policy which relates solely to the life or lives of a person or persons who was or

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

were, at the time the policy was effected, domiciled outside New South Wales.

Application of ss. 88G and 88H to companies

88I. (1) For the purposes of sections 88G and 88H, "person resident in New South Wales" and "person" include, in the case of a company:

- (a) a company which is registered under any of the provisions of the Companies (New South Wales) Code, whether incorporated in New South Wales or not; and
- (b) a company which carries on business in New South Wales.

(2) This section is not to be construed as limiting the construction of any provision of this Act other than sections 88G and 88H.

Stamping of foreign policies

88J. (1) A policy of insurance, and a renewal of any such policy, issued outside New South Wales and received in New South Wales, is liable to duty as if:

- (a) it were a return under section 88B; and
- (b) the holder of the policy were a registered person; and
- (c) in the case of:
 - (i) a policy of Class 1 insurance or a policy of Class 2 insurance - the amount of the premium paid in respect of the policy, or its renewal, were the amount shown in the return; or
 - (ii) a policy of life insurance - the policy were issued in New South Wales.

(2) This section does not apply to a policy of life insurance which relates solely to the life or lives of a person or persons who was or were, at the time the policy was issued, domiciled outside New South Wales.

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

(3) A policy of insurance to which this section applies must, within 2 months after the policy is first received in New South Wales, be stamped by the holder of the policy with the duty chargeable under this section.

(4) A person who has in his or her possession or control, or who for any purpose avails himself or herself of any policy of insurance to which this section applies and which is not duly stamped in accordance with this section is guilty of an offence and is also liable, in addition to any fine, to pay an amount equivalent to the duty which would have been payable had the policy been duly stamped.

Maximum penalty: 1 penalty unit.

(5) Where duty has been paid under section 88B or 88D on a return furnished under either of those sections and the policy of insurance, or renewal of any such policy, in respect of the insurance to which the return relates is thereafter received in New South Wales, the duty so paid is to be allowed as a set-off against any duty payable under this section.

(6) Where duty has been paid under section 88G or 88H on a return furnished under either of those sections and the policy of life insurance to which the return relates is thereafter received in New South Wales, the duty so paid is to be allowed as a set-off against any duty payable pursuant to this section.

Reduction of duty on certain returns

88K. (1) Where a policy to which section 88G, 88H or 88J applies relates to the life or lives of a person or persons domiciled in New South Wales and partly to the life or lives of a person or persons domiciled outside New South Wales, the duty chargeable on the return required to be lodged under section 88G, 88H or 88J, as the case requires, may be reduced in accordance with this section.

(2) The duty may be reduced by such amount as, in the opinion of the Chief Commissioner, is referable to the

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

insurance which relates to the life or lives of the person or persons who was or were, at the time the policy was effected, domiciled outside New South Wales.

Keeping of records by registered persons

88L. (1) If any premium is received by or on behalf of a registered person for any insurance, the person must thereupon make a record of the receipt containing such particulars as the Chief Commissioner may, by notice in writing given to the person, require.

(2) The record is to be kept in New South Wales, or in such other place as the Chief Commissioner may approve, in a permanent form by the registered person for a period of not less than 3 years after it was made.

(3) A registered person must not fail to make or keep a record required to be made or kept under this section.

Maximum penalty: 50 penalty units.

Denotion of stamp duty

88M. (1) The stamp duty paid on a return under this Division is to be denoted on the return in such manner as the Chief Commissioner may determine.

(2) The stamp duty paid on a policy of life insurance may be denoted by adhesive stamps, or partly by adhesive stamps and partly by impressed stamps.

Set-off of duty on refund of premium

88N. If, in respect of insurance other than life insurance, a registered person refunds any premium or part of a premium, any duty paid under this Division by the registered person in respect of the amount refunded may be set off against the duty payable on a return required to be lodged under this Division by the person.

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

Penalty for registering unstamped assignment or transfer of policy

88O. A person who registers or records an assignment or transfer of a policy of insurance before the assignment or transfer has been duly stamped is guilty of an offence.

Maximum penalty: 1 penalty unit.

Exemption from duty of certain instruments

88P. Notwithstanding any other provision of this Act (except this Division and the matter relating to policies of life insurance under the heading "Stamp Duties and Exemptions" in the Second Schedule), duty is not chargeable in respect of:

- (a) a policy of insurance issued on or after 1 November 1989 by a registered person or the renewal of which by a registered person takes effect on or after 1 November 1989; or
 - (b) a policy of insurance issued on or after 1 November 1989 to, or renewed so as to take effect on or after 1 November 1989 by, a person who has lodged a return and paid the requisite stamp duty under section 88D.
- (2) Second Schedule, under the heading "Stamp Duties and Exemptions":
- (a) Omit paragraph (1) of the matter relating to Policies of Insurance not being a policy of life insurance.
 - (b) Omit the matter relating to Exemptions from the matter relating to Policies of Insurance not being a policy of life insurance.
- (3) Second Schedule, under the heading "General Exemptions from Stamp Duty under Part 3":

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SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

Omit paragraph (27).

(4) Tenth Schedule, Part 3:

After Part 2, insert:

PART 3 - STAMP DUTIES (AMENDMENT) ACT 1989

Application of Div. 24 of Part 3

8. (1) Division 24 of Part 3 (as inserted by the Stamp Duties (Amendment) Act 1989) applies in respect of a premium payable for a policy of insurance issued on or after 1 November 1989 or the renewal of which takes effect on or after that day.

(2) If a policy of insurance took effect before 1 November 1989 but is varied on or after that day, the policy is, in respect of any premium payable because of the variation, to be taken for the purposes of Division 24 of Part 3 (as inserted by the Stamp Duties (Amendment) Act 1989) to have taken effect on the date of the variation.

(3) Except as provided by this clause, Division 24 of Part 3, as in force before 1 November 1989, continues to apply to and in respect of insurance which took effect before that day.

Persons taken to be registered under Div. 24 of Part 3

9. A person who, immediately before 1 November 1989, was an approved person under section 88AA and who, after that day, is required to be a registered person for the purposes of Division 24 of Part 3 or carries on business as a life insurer is to be taken, on and from that day (subject to this Act), to be such a registered person.

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS

(Sec. 3)

(1) Section 73AA:

After section 73, insert:

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

Exemption from duty for certain conveyances

73AA. (1) In this section:

"corporation" has the same meaning as it has in the Companies (New South Wales) Code;

"eligible person" means a person to whom subsection (2) or (3) applies;

"land tax" has the same meaning as in the Land Tax Management Act 1956;

"principal shareholder", in relation to a corporation, means:

- (a) a shareholder (not being a corporation) in the corporation who, disregarding any proxies or other authorities to vote held by the shareholder, is entitled at general meetings of the corporation to exercise voting rights that together amount to more than one-half of the total voting rights of all shareholders entitled to vote at general meetings of the corporation; or
 - (b) a shareholder (not being a corporation) in the corporation where, if no proxies or other authorities to vote are allowed, no shareholder in the corporation is entitled at general meetings of the corporation to exercise more voting rights than any other shareholder in the corporation.
- (2) This subsection applies to a person in respect of land if:
- (a) the land was owned by a corporation on 31 December 1975 and was conveyed after that date by the corporation to that person as equitable owner, or to that person and any other principal shareholder or principal shareholders in the corporation jointly as equitable owners, after that date; and
 - (b) at the time at which that person became the equitable owner, he or she was a principal

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

- shareholder in the corporation so referred to;
and
- (c) the land was, at all times during the period that commenced on 31 December 1975 and ended when that person became the equitable owner, used and occupied by that person as his or her principal place of residence and for no other purpose; and
 - (d) had the person been the owner within the meaning of the Land Tax Management Act 1956 on 31 December that last preceded the date on which the person became the equitable owner:
 - (i) the land conveyed would, by the operation of section 10 (l) (r) or (u) of the Land Tax Management Act 1956, be exempt from land tax in respect of the year in which the person became the equitable owner; or
 - (ii) land tax that, but for section 10 (4) or (5) of the Land Tax Management Act 1956, would be leviable or payable in respect of the land for the year in which the person became the equitable owner would be reduced by the operation of section 10 (4) or (5) of that Act.
- (3) This subsection applies to a person in respect of land if:
- (a) the land was subject to a special trust within the meaning of the Land Tax Management Act 1956 on 1 January 1987 and was conveyed after that date to that person as equitable owner; and
 - (b) that person was:
 - (i) the settlor of or the person who actually paid the purchase price for the land; or
 - (ii) immediately before the time at which that person became the equitable owner, a beneficiary of the special trust; and

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

(c) that person, at the time at which that person became the equitable owner, was not acting in the capacity of trustee of another special trust.

(4) An eligible person may apply to the Chief Commissioner in a form approved by the Chief Commissioner for an exemption from payment of duty on a conveyance of land to the eligible person in the person's capacity as an eligible person.

(5) An application must be accompanied, if the land to which the conveyance relates is or includes land under the Real Property Act 1900, by an undertaking from the eligible person in a form approved by the Chief Commissioner that:

(a) the duty which would be payable on the conveyance but for the granting of an exemption under this section will be paid if the eligible person does not become the registered proprietor of the land within 2 months (or such longer period as the Chief Commissioner may at any time determine and notify in writing to the eligible person) after the conveyance is stamped as exempt from the payment of duty; and

(b) the eligible person will, within 1 month after becoming the registered proprietor of the land (or such longer period as the Chief Commissioner may at any time determine and notify in writing to the eligible person), provide evidence of that fact to the satisfaction of the Chief Commissioner.

(6) The Chief Commissioner, if satisfied that:

(a) the application complies with this section; and

(b) the conveyance of the land is to an eligible person in the person's capacity as an eligible person,

must stamp the conveyance as exempt from the payment of duty and mark the conveyance accordingly.

(7) If a requirement of an undertaking of an eligible person is not met, the Chief Commissioner may recover

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

from the person, as a debt in a court of competent jurisdiction, the duty which, but for this section, would be payable on the conveyance.

(8) Section 10A of the Land Tax Management Act 1956, as in force immediately before the commencement of this section, continues to apply to a conveyance executed before that commencement.

(2) Section 74F (**Payment of duty on hiring arrangements by return**):

(a) Section 74F (7) (b):

Before "when", insert "subject to subsection (7C),".

(b) After section 74F (7B), insert:

(7C) In the case of a hiring arrangement to which section 74E (2) or (3) applies, the Chief Commissioner must credit in respect of the duty that would otherwise be payable an amount equal to the lesser of:

(a) the amount of the duty; or

(b) the amount of stamp duty (or duty of a like nature) paid or payable on the hiring arrangement in accordance with the provisions of any law of the Commonwealth, a Territory or another State.

(3) Section 83 (**Interpretation**):

Section 83 (1), definition of "Loan security":

After "mortgage" where secondly occurring in paragraph (e), insert ", but does not include an instrument which is executed by a person for the purpose of conducting the person's money market trading operations".

(4) Section 84CA (**Unregistered mortgage protected by caveat**):

After section 84CA (3), insert:

(4) This section does not apply to a caveat lodged in respect of a mortgage which is created solely for the purpose of providing security in accordance with a condition

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

imposed on the grant of bail in connection with criminal proceedings.

- (5) Section 97C (**Definitions**):
 - (a) Section 97C (1), definition of "jobber":
Omit the definition.
 - (b) Section 97C (1), definition of "London Stock Exchange":
Omit "The Stock Exchange of the United Kingdom",
insert instead "The International Stock Exchange of the
United Kingdom and the Republic of Ireland Limited".
 - (c) Section 97C (1):
After the definition of "London Stock Exchange", insert:
"market maker" means a person who is a market
marker according to the rules and practices of the
London Stock Exchange and who is acting in the
capacity of such a market maker;
- (6) Section 97E (**Duty payable in relation to relevant transactions**):
Omit "jobber" wherever occurring, insert instead "market
maker".
- (7) Section 99A (**Definitions**):
Section 99A (1), definition of "discretionary trust":
After paragraph (a) (ii), insert:
 - (iii) has occurred but under which the whole or any
part of that capital or the whole or any part of
that income, or both, will be divested from the
person or persons in whom it is vested in the
event that a discretion conferred under the
trust is exercised; or
- (8) Section 99B (**Acquisitions to which this Division does not apply**):

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

Omit section 99B (d), insert instead:

- (d) the land to which the land use entitlement, prior land use entitlement or interest relates could have been acquired by the person under an agreement or conveyance which is not chargeable with ad valorem duty.

(9) Section 127C (**Fines in respect of returns and undertakings**):

(a) Section 127C (1):

After "Act", insert "or the regulations".

(b) After section 127C (1), insert:

(1A) Where a person lodges an undertaking under section 84D with the Chief Commissioner and neglects or fails to pay the whole of the amount of the duty required to be paid to the Chief Commissioner in accordance with the undertaking on or before the day by which the amount is required to be paid, the person is liable to pay, in addition to:

(a) the unpaid amount of duty; and

(b) any amount of fine payable in respect of that duty under subsection (2),

a fine or fines, determined in accordance with subsection (3), on the unpaid amount of duty.

(c) Section 127C (3):

After "subsections (1)", insert ", (1A)".

(10) Section 129 (**Chief Commissioner may compromise a claim for duty**):

From section 129 (1), omit "death".

(11) Section 129E:

After section 129D, insert:

Collection of debts from third parties

129E. (1) If an amount is payable (whether as duty or otherwise) to the Chief Commissioner under or by virtue of this Act or the regulations by a person (in this section called

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

the "debtor"), the Chief Commissioner may, by notice in writing, require:

- (a) any person by whom any money is due or accruing or may become due to the debtor;
- (b) any person who holds or may subsequently hold money for or on account of the debtor;
- (c) any person who holds or may subsequently hold money on account of some other person for payment to the debtor; or
- (d) any person having authority from some other person to pay money to the debtor,

to pay to the Chief Commissioner forthwith on the money becoming due or being held, or within such further time as the Chief Commissioner allows:

- (e) if the amount of the money so due or held or authorised to be paid does not exceed the amount payable by the debtor to the Chief Commissioner - all the money; or
- (f) if the amount of the money exceeds the amount so payable - sufficient money to pay the amount so payable.

(2) A person must comply with a notice under this section served on the person.

Maximum penalty: 10 penalty units.

(3) A copy of a notice under this section must be served on the debtor.

(4) A person making any payment in pursuance of this section is to be taken to have been acting under the authority of the debtor and of all other persons concerned, and is by this subsection indemnified in respect of the payment.

(5) If the Chief Commissioner receives any payment in respect of the amount payable by the debtor before payment is made by a person required under this section to make any payment, the Chief Commissioner must forthwith

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

notify the person of the receipt of the payment and the notice under this section served on the person is to be taken to be amended accordingly.

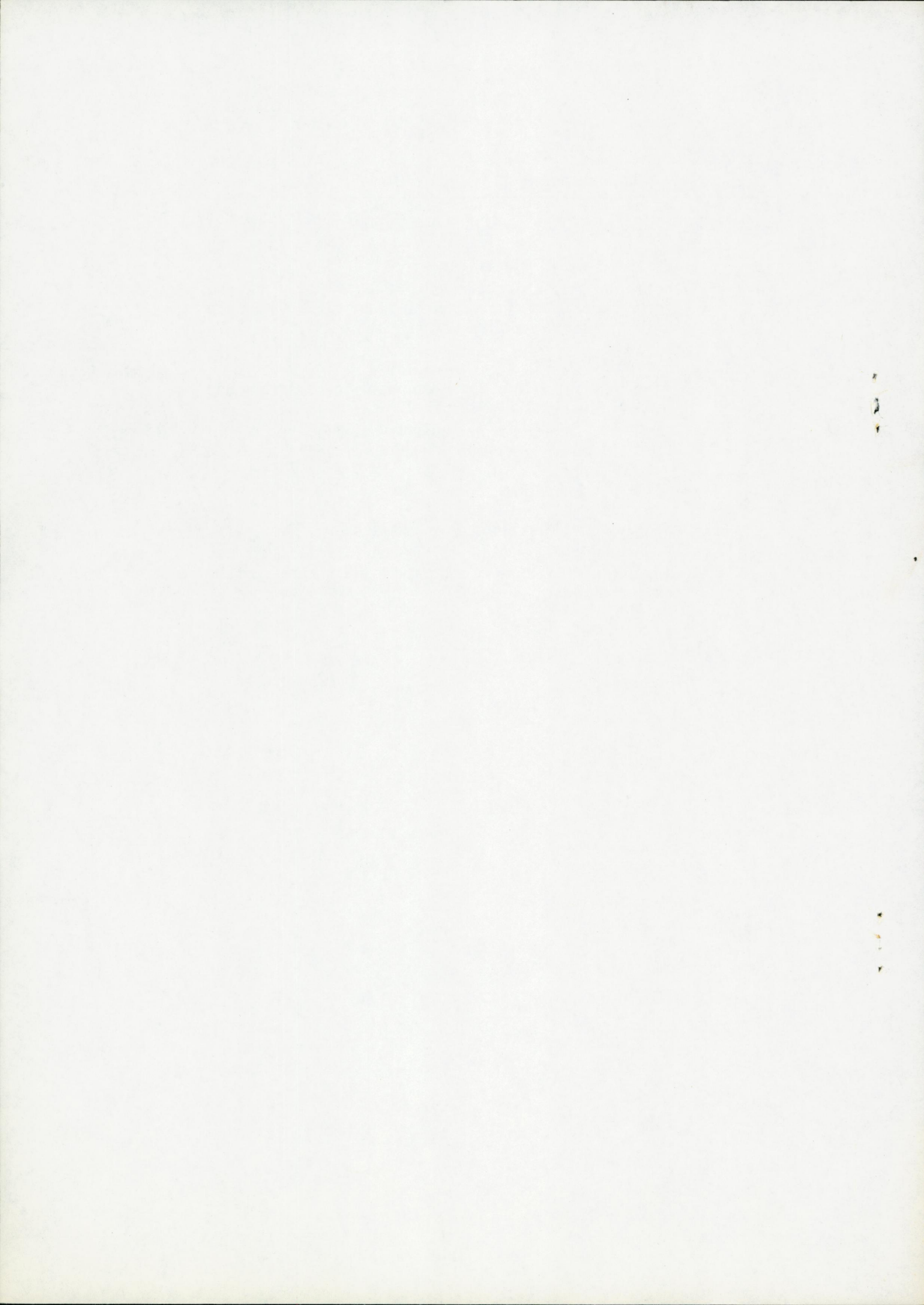
(12) Second Schedule:

After paragraph (b) of the Exemptions under the heading "LOAN SECURITY", insert:

- (c) A mortgage created solely for the purpose of providing security in accordance with a condition imposed on the grant of bail in connection with criminal proceedings.

(13) Schedule 2A (**First Home Purchase Scheme**):

From clause 8 (2), omit "\$105,000", insert instead "the amount of the total consideration which must not be exceeded under clause 5 (2)".



STAMP DUTIES (AMENDMENT) ACT 1989 No. 113

NEW SOUTH WALES



TABLE OF PROVISIONS

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SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS



STAMP DUTIES (AMENDMENT) ACT 1989 No. 113

NEW SOUTH WALES



Act No. 113, 1989

An Act to amend the Stamp Duties Act 1920 with respect to the payment of stamp duty relating to insurance and to facilitate the administration of that Act; to amend the Land Tax Management Act 1956; and for other purposes. [Assented to 24 August 1989]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Stamp Duties (Amendment) Act 1989.

Commencement

2. (1) This Act commences on the date of assent, except as provided by this section.

(2) Schedule 1 commences on 1 November 1989.

(3) Schedule 2 (3) is to be taken to have commenced on 1 January 1989.

(4) Schedules 2 (4) and (12) is to be taken to have commenced on 19 February 1989.

(5) Schedule 2 (13) is to be taken to have commenced on 2 June 1988.

(6) Section 3 in its application to a provision of Schedule 1 or 2 commences or is to be taken to have commenced on the day on which the provision commences or is to be taken to have commenced.

Amendment of Stamp Duties Act 1920 No. 47

3. The Stamp Duties Act 1920 is amended as set out in Schedules 1 and 2.

**Amendment of Land Tax Management Act 1956 No. 26, s. 10A
(Refund of stamp duty on certain conveyances)**

4. The Land Tax Management Act 1956 is amended by omitting section 10A.

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE

(Sec. 3)

(1) Part 3, Division 24:

Omit the Division, insert instead:

Division 24 - Policies of insurance etc.

Definitions

86. (1) In this Division:

"approved" means approved by the Chief Commissioner;

"exempt insurance" means insurance to which this Division does not apply by virtue of section 87;

"Class 1 insurance" means insurance, other than:

- (a) Class 2 insurance; or
- (b) life insurance; or
- (c) exempt insurance;

"Class 2 insurance" means:

- (a) motor vehicle insurance, being insurance covering any one or more of the following:
 - (i) the loss (including the loss by theft) of a motor vehicle;
 - (ii) damage to a motor vehicle;
 - (iii) loss of or damage to property by a motor vehicle;
- (b) aviation insurance, being insurance covering any one or more of the following:
 - (i) the loss (including the loss by theft) of an aircraft;
 - (ii) damage to an aircraft;
 - (iii) the death of or injury to a person by an aircraft or a thing falling from an aircraft;
 - (iv) the loss of or damage to property by an aircraft or a thing falling from an aircraft;

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

- (c) disability income insurance, being insurance effected by a policy of insurance under which an amount is payable in the event of disablement of the insured by accident or sickness;
- (d) occupational indemnity insurance, being insurance covering liability arising out of the provision by a person of professional services or other services; or
- (e) insurance of a class or description prescribed for the purposes of this definition, not being exempt insurance;

"insurance" includes assurance;

"life insurance" means insurance on a life or lives or on any event or contingency relating to or depending on a life or lives, but does not include insurance for any payment agreed to be made on the death of a person only from accident or violence or otherwise than from a natural cause or as compensation for personal injury;

"motor vehicle" has the same meaning as in the Motor Accidents Act 1988;

"premium" means the total amount paid in New South Wales or elsewhere to an insurer in respect of insurance effected in New South Wales or elsewhere by the insurer without any deduction for any amount paid or payable by way of discount to an agent, but does not include an amount paid in respect of stamp duty or by way of re-insurance;

"registered person" means a person registered for the time being under this Division;

"risk" includes contingency or event.

(2) A reference in this Division to the receipt of a premium includes a reference to the crediting of the amount of a premium to an account.

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

Insurance to which this Division does not apply

87. This Division does not apply to the following insurances:

- (a) insurance covering only property of the Crown;
- (b) insurance effected by a separate policy in a distinct sum against loss by fire on the tools, implements of work or labour used by any working mechanic, artificer, handcraftsman or labourer;
- (c) insurance taken out by or on behalf of a charity which is registered or which is exempted from registration under the Charitable Collections Act 1934;
- (d) insurance taken out by or on behalf of a society or institution for the time being approved for the purposes of this paragraph by the Chief Commissioner whose resources are, in accordance with its rules or objects, used wholly or predominantly for:
 - (i) the relief of poverty; or
 - (ii) the promotion of education; or
 - (iii) any purpose directly or indirectly connected with defence or the amelioration of the condition of past or present members of the Naval, Military or Air Forces of the Commonwealth or their dependants or any other patriotic object; or
 - (iv) such other purpose as, in the opinion of the Chief Commissioner, warrants the society or institution being taken to be a charitable society or institution;
- (e) insurance covering mortgages or pools of mortgages acquired for the purpose of issuing mortgage-backed securities within the meaning of section 84FA;

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

- (f) insurance effected by a policy issued by an organization registered under Part VI of the National Health Act 1953 of the Commonwealth, being a policy which provides hospital benefits or medical benefits (or both), whether or not other benefits are also provided;
- (g) insurance effected under the Workers Compensation Act 1987;
- (h) insurance effected under the Motor Accidents Act 1988;
- (i) re-insurance;
- (j) insurance of:
 - (i) the hull of a floating vessel used primarily for commercial purposes; or
 - (ii) goods or merchandise, or the freight of goods or merchandise, carried by sea, land or air,or both;
- (k) insurance effected by an instrument which is exempt under this Act (section 88P excepted) from the payment of stamp duty.

Exemption from duty - property etc. outside New South Wales

88. Notwithstanding any other provision of this Act, duty is not chargeable in respect of insurance, or the premium payable in respect of insurance, to the extent to which the insurance relates to:

- (a) property which, at the time of issue or renewal of the insurance, is outside New South Wales; or
- (b) a risk concerning an act or omission which, in the normal course of events, can only occur outside New South Wales.

Registration of persons carrying on insurance business

88A. (1) A person must not in New South Wales carry on or hold out that the person carries on insurance business

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

(not being life insurance business) unless the person is registered under this Division.

Maximum penalty: 50 penalty units.

(2) A person does not carry on insurance business for the purposes of this section only because the person is an insurance broker.

(3) The Chief Commissioner must register a person who applies in the approved form for registration under this Division.

(4) A person who carries on life insurance business may apply to the Chief Commissioner in the approved form for registration under this Division.

(5) The Chief Commissioner must issue a serial number to each registered person who effects or proposes to effect life insurance.

(6) The Chief Commissioner may, by notice in writing, cancel a person's registration under this Division for any reason the Chief Commissioner thinks sufficient.

(7) The cancellation of a person's registration by the Chief Commissioner has effect from the date specified for the purpose by the Chief Commissioner in the notice of cancellation.

(8) A registered person who ceases to carry on insurance business in New South Wales may cancel the person's registration under this Division by:

- (a) giving notice to the Chief Commissioner; and
- (b) lodging the return required to be lodged under this Division; and
- (c) paying the stamp duty payable on the return on or before the twenty-first day of the month after which the notice is given.

Monthly returns and payment of duty

88B. (1) A registered person must, on or before the twenty-first day of each month:

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

- (a) lodge with the Chief Commissioner a return in the approved form verified in the approved manner showing:
 - (i) the total amount of all premiums for Class 1 insurance received by or on behalf of the person in the preceding month (other than premiums for exempt insurance or insurance to which section 88 applies); and
 - (ii) the total amount of all premiums for Class 2 insurance received by or on behalf of the person in the preceding month (other than premiums for exempt insurance or insurance to which section 88 applies); and
 - (b) pay to the Chief Commissioner as stamp duty on the return:
 - (i) an amount equal to 11.5 per cent of the total amount of the premiums for Class 1 insurance; and
 - (ii) an amount equal to 2.5 per cent of the total amount of the premiums for Class 2 insurance; and
 - (iii) the amounts determined in accordance with the Second Schedule in respect of the policies of life insurance issued by or on behalf of the person in the preceding month; and
 - (c) in respect of each contract or agreement for life insurance effected by or on behalf of the person in the preceding month, make out and execute a policy of insurance and endorse on that policy the words "stamp duty" followed by the serial number issued to the registered person under section 88A.
- (2) A policy of life insurance endorsed in accordance with this section is to be taken to be duly stamped.

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

(3) A person (other than a registered person) who endorses on a policy of life insurance any words or numbers suggesting or implying that the policy is duly stamped under this section is guilty of an offence.

Maximum penalty: 2 penalty units.

Apportionment of premiums

88C. If the Chief Commissioner is not satisfied that the premium paid in respect of a policy of insurance which effects any 2 or more of the following types of insurance, namely:

- (a) Class 1 insurance;
- (b) Class 2 insurance;
- (c) life insurance;
- (d) exempt insurance;
- (e) insurance effected by an insurance policy to which section 88 applies,

has been properly apportioned for the purposes of a return under section 88B having regard to the property or risk concerned, the Chief Commissioner may determine the apportionment, reassess the liability to duty of the return and charge duty accordingly.

Duty payable by insured in certain circumstances

88D. (1) A person (other than a registered person) who obtains, effects or renews any insurance in New South Wales or elsewhere as an insured person with a person who is not a registered person, being insurance:

- (a) which relates in whole or in part to any property which, at the time of obtaining, effecting or renewing the insurance, is in New South Wales;
or
- (b) which is against any risk concerning an act or omission which, in the normal course of events, can only occur in New South Wales,

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

must, within 1 month after obtaining, effecting or renewing the insurance, lodge with the Chief Commissioner a return in the approved form containing such particulars and information as to the premium and the insurance as the Chief Commissioner may require.

(2) A return under this section is liable to stamp duty at the rate of:

- (a) 11.5 per cent of the amount of any premium paid for Class 1 insurance to which subsection (1) applies; and
- (b) 2.5 per cent of the amount of any premium paid for Class 2 insurance to which subsection (1) applies.

(3) A person who lodges a return under this section must pay the stamp duty to which the return is liable when the return is lodged.

Giving of undertakings by certain persons

88E. (1) A person who is not a registered person and is not required to be registered under this Division may give an undertaking in the approved form to the Chief Commissioner in respect of such payments of stamp duty as the person would be required to make if the person were required to be registered under this Division.

(2) On receiving an undertaking under this section, the Chief Commissioner must determine whether or not to accept it.

(3) If the Chief Commissioner accepts an undertaking from a person, the person is to be taken to be a registered person.

(4) An undertaking from a person has effect from the date of its acceptance by the Chief Commissioner until:

- (a) the person withdraws it by notice in writing to the Chief Commissioner; or

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

- (b) the Chief Commissioner withdraws the acceptance of the undertaking by notice in writing to the person.

(5) A person whose undertaking has effect is not required to include in a return lodged under section 88B the amount of any premium received by the person and which is paid to another registered person.

Variation of time for furnishing returns

88F. (1) If the Chief Commissioner is of the opinion that it is unduly onerous to require a person to lodge returns within the time prescribed by this Division, the Chief Commissioner may by notice in writing given to the person vary the time.

(2) The person must, while the notice given to the person remains unrevoked, lodge returns accordingly.

(3) The Chief Commissioner may at any time by notice in writing revoke a notice given under this section.

Returns by certain New South Wales residents where life policy issued outside New South Wales

88G. (1) A person resident in New South Wales who effects any life insurance for which a policy of insurance is or is to be issued outside New South Wales must, unless duty has been paid on the policy in accordance with this Act:

- (a) lodge with the Chief Commissioner within 1 month after effecting the insurance a return in the approved form containing such particulars and information as the Chief Commissioner may require; and
- (b) when the person lodges the return, pay to the Chief Commissioner as stamp duty an amount equal to the amount of stamp duty that would have been payable in respect of each insurance to which the return relates if the insurance had been effected under a policy of insurance issued in New South Wales.

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

(2) A person who effects insurance to which this section applies and who fails or neglects:

- (a) to lodge a return as required by subsection (1) (a); or
- (b) to pay in accordance with subsection (1) (b) the duty chargeable on a return lodged by the person under subsection (1),

is guilty of an offence.

Maximum penalty: 2 penalty units.

(3) This section does not apply to a policy which relates solely to the life or lives of a person or persons who was or were, at the time the policy was effected, domiciled outside New South Wales.

Returns by certain New South Wales insurers where life policy issued outside New South Wales

88H. (1) A person:

- (a) with whom there is effected by any person resident in New South Wales any life insurance and who in connection with that insurance issues a policy outside New South Wales; or
- (b) who for or on behalf of any person resident in New South Wales arranges any life insurance for which a policy is issued outside New South Wales,

must lodge with the Chief Commissioner within 1 month of the insurance being effected a return in the approved form containing such particulars and information as to the insurance as the Chief Commissioner may require and pay as duty on the return the duty that would be chargeable on the policy if the policy had been issued in New South Wales.

(2) A return furnished under this section is admissible in evidence in any proceeding under section 88G or 88J and is evidence of the facts stated in the return.

(3) This section does not apply to a policy which relates solely to the life or lives of a person or persons who was or

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

were, at the time the policy was effected, domiciled outside New South Wales.

Application of ss. 88G and 88H to companies

88I. (1) For the purposes of sections 88G and 88H, "person resident in New South Wales" and "person" include, in the case of a company:

- (a) a company which is registered under any of the provisions of the Companies (New South Wales) Code, whether incorporated in New South Wales or not; and
- (b) a company which carries on business in New South Wales.

(2) This section is not to be construed as limiting the construction of any provision of this Act other than sections 88G and 88H.

Stamping of foreign policies

88J. (1) A policy of insurance, and a renewal of any such policy, issued outside New South Wales and received in New South Wales, is liable to duty as if:

- (a) it were a return under section 88B; and
- (b) the holder of the policy were a registered person; and
- (c) in the case of:
 - (i) a policy of Class 1 insurance or a policy of Class 2 insurance - the amount of the premium paid in respect of the policy, or its renewal, were the amount shown in the return; or
 - (ii) a policy of life insurance - the policy were issued in New South Wales.

(2) This section does not apply to a policy of life insurance which relates solely to the life or lives of a person or persons who was or were, at the time the policy was issued, domiciled outside New South Wales.

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

(3) A policy of insurance to which this section applies must, within 2 months after the policy is first received in New South Wales, be stamped by the holder of the policy with the duty chargeable under this section.

(4) A person who has in his or her possession or control, or who for any purpose avails himself or herself of any policy of insurance to which this section applies and which is not duly stamped in accordance with this section is guilty of an offence and is also liable, in addition to any fine, to pay an amount equivalent to the duty which would have been payable had the policy been duly stamped.

Maximum penalty: 1 penalty unit.

(5) Where duty has been paid under section 88B or 88D on a return furnished under either of those sections and the policy of insurance, or renewal of any such policy, in respect of the insurance to which the return relates is thereafter received in New South Wales, the duty so paid is to be allowed as a set-off against any duty payable under this section.

(6) Where duty has been paid under section 88G or 88H on a return furnished under either of those sections and the policy of life insurance to which the return relates is thereafter received in New South Wales, the duty so paid is to be allowed as a set-off against any duty payable pursuant to this section.

Reduction of duty on certain returns

88K. (1) Where a policy to which section 88G, 88H or 88J applies relates to the life or lives of a person or persons domiciled in New South Wales and partly to the life or lives of a person or persons domiciled outside New South Wales, the duty chargeable on the return required to be lodged under section 88G, 88H or 88J, as the case requires, may be reduced in accordance with this section.

(2) The duty may be reduced by such amount as, in the opinion of the Chief Commissioner, is referable to the

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

insurance which relates to the life or lives of the person or persons who was or were, at the time the policy was effected, domiciled outside New South Wales.

Keeping of records by registered persons

88L. (1) If any premium is received by or on behalf of a registered person for any insurance, the person must thereupon make a record of the receipt containing such particulars as the Chief Commissioner may, by notice in writing given to the person, require.

(2) The record is to be kept in New South Wales, or in such other place as the Chief Commissioner may approve, in a permanent form by the registered person for a period of not less than 3 years after it was made.

(3) A registered person must not fail to make or keep a record required to be made or kept under this section.

Maximum penalty: 50 penalty units.

Denotion of stamp duty

88M. (1) The stamp duty paid on a return under this Division is to be denoted on the return in such manner as the Chief Commissioner may determine.

(2) The stamp duty paid on a policy of life insurance may be denoted by adhesive stamps, or partly by adhesive stamps and partly by impressed stamps.

Set-off of duty on refund of premium

88N. If, in respect of insurance other than life insurance, a registered person refunds any premium or part of a premium, any duty paid under this Division by the registered person in respect of the amount refunded may be set off against the duty payable on a return required to be lodged under this Division by the person.

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

Penalty for registering unstamped assignment or transfer of policy

88O. A person who registers or records an assignment or transfer of a policy of insurance before the assignment or transfer has been duly stamped is guilty of an offence.

Maximum penalty: 1 penalty unit.

Exemption from duty of certain instruments

88P. Notwithstanding any other provision of this Act (except this Division and the matter relating to policies of life insurance under the heading "Stamp Duties and Exemptions" in the Second Schedule), duty is not chargeable in respect of:

- (a) a policy of insurance issued on or after 1 November 1989 by a registered person or the renewal of which by a registered person takes effect on or after 1 November 1989; or
 - (b) a policy of insurance issued on or after 1 November 1989 to, or renewed so as to take effect on or after 1 November 1989 by, a person who has lodged a return and paid the requisite stamp duty under section 88D.
- (2) Second Schedule, under the heading "Stamp Duties and Exemptions":
- (a) Omit paragraph (1) of the matter relating to Policies of Insurance not being a policy of life insurance.
 - (b) Omit the matter relating to Exemptions from the matter relating to Policies of Insurance not being a policy of life insurance.
- (3) Second Schedule, under the heading "General Exemptions from Stamp Duty under Part 3":

SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE -
continued

Omit paragraph (27).

- (4) Tenth Schedule, Part 3:
After Part 2, insert:

PART 3 - STAMP DUTIES (AMENDMENT) ACT 1989

Application of Div. 24 of Part 3

8. (1) Division 24 of Part 3 (as inserted by the Stamp Duties (Amendment) Act 1989) applies in respect of a premium payable for a policy of insurance issued on or after 1 November 1989 or the renewal of which takes effect on or after that day.

(2) If a policy of insurance took effect before 1 November 1989 but is varied on or after that day, the policy is, in respect of any premium payable because of the variation, to be taken for the purposes of Division 24 of Part 3 (as inserted by the Stamp Duties (Amendment) Act 1989) to have taken effect on the date of the variation.

(3) Except as provided by this clause, Division 24 of Part 3, as in force before 1 November 1989, continues to apply to and in respect of insurance which took effect before that day.

Persons taken to be registered under Div. 24 of Part 3

9. A person who, immediately before 1 November 1989, was an approved person under section 88AA and who, after that day, is required to be a registered person for the purposes of Division 24 of Part 3 or carries on business as a life insurer is to be taken, on and from that day (subject to this Act), to be such a registered person.

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS

(Sec. 3)

- (1) Section 73AA:
After section 73, insert:

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

Exemption from duty for certain conveyances

73AA. (1) In this section:

"corporation" has the same meaning as it has in the Companies (New South Wales) Code;

"eligible person" means a person to whom subsection (2) or (3) applies;

"land tax" has the same meaning as in the Land Tax Management Act 1956;

"principal shareholder", in relation to a corporation, means:

- (a) a shareholder (not being a corporation) in the corporation who, disregarding any proxies or other authorities to vote held by the shareholder, is entitled at general meetings of the corporation to exercise voting rights that together amount to more than one-half of the total voting rights of all shareholders entitled to vote at general meetings of the corporation; or
- (b) a shareholder (not being a corporation) in the corporation where, if no proxies or other authorities to vote are allowed, no shareholder in the corporation is entitled at general meetings of the corporation to exercise more voting rights than any other shareholder in the corporation.

(2) This subsection applies to a person in respect of land if:

- (a) the land was owned by a corporation on 31 December 1975 and was conveyed after that date by the corporation to that person as equitable owner, or to that person and any other principal shareholder or principal shareholders in the corporation jointly as equitable owners, after that date; and
- (b) at the time at which that person became the equitable owner, he or she was a principal

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

- shareholder in the corporation so referred to;
and
- (c) the land was, at all times during the period that commenced on 31 December 1975 and ended when that person became the equitable owner, used and occupied by that person as his or her principal place of residence and for no other purpose; and
 - (d) had the person been the owner within the meaning of the Land Tax Management Act 1956 on 31 December that last preceded the date on which the person became the equitable owner:
 - (i) the land conveyed would, by the operation of section 10 (l) (r) or (u) of the Land Tax Management Act 1956, be exempt from land tax in respect of the year in which the person became the equitable owner; or
 - (ii) land tax that, but for section 10 (4) or (5) of the Land Tax Management Act 1956, would be leviable or payable in respect of the land for the year in which the person became the equitable owner would be reduced by the operation of section 10 (4) or (5) of that Act.
- (3) This subsection applies to a person in respect of land if:
- (a) the land was subject to a special trust within the meaning of the Land Tax Management Act 1956 on 1 January 1987 and was conveyed after that date to that person as equitable owner; and
 - (b) that person was:
 - (i) the settlor of or the person who actually paid the purchase price for the land; or
 - (ii) immediately before the time at which that person became the equitable owner, a beneficiary of the special trust; and

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

- (c) that person, at the time at which that person became the equitable owner, was not acting in the capacity of trustee of another special trust.

(4) An eligible person may apply to the Chief Commissioner in a form approved by the Chief Commissioner for an exemption from payment of duty on a conveyance of land to the eligible person in the person's capacity as an eligible person.

(5) An application must be accompanied, if the land to which the conveyance relates is or includes land under the Real Property Act 1900, by an undertaking from the eligible person in a form approved by the Chief Commissioner that:

- (a) the duty which would be payable on the conveyance but for the granting of an exemption under this section will be paid if the eligible person does not become the registered proprietor of the land within 2 months (or such longer period as the Chief Commissioner may at any time determine and notify in writing to the eligible person) after the conveyance is stamped as exempt from the payment of duty; and
- (b) the eligible person will, within 1 month after becoming the registered proprietor of the land (or such longer period as the Chief Commissioner may at any time determine and notify in writing to the eligible person), provide evidence of that fact to the satisfaction of the Chief Commissioner.

(6) The Chief Commissioner, if satisfied that:

- (a) the application complies with this section; and
- (b) the conveyance of the land is to an eligible person in the person's capacity as an eligible person,

must stamp the conveyance as exempt from the payment of duty and mark the conveyance accordingly.

(7) If a requirement of an undertaking of an eligible person is not met, the Chief Commissioner may recover

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

from the person, as a debt in a court of competent jurisdiction, the duty which, but for this section, would be payable on the conveyance.

(8) Section 10A of the Land Tax Management Act 1956, as in force immediately before the commencement of this section, continues to apply to a conveyance executed before that commencement.

(2) Section 74F (**Payment of duty on hiring arrangements by return**):

(a) Section 74F (7) (b):

Before "when", insert "subject to subsection (7C)".

(b) After section 74F (7B), insert:

(7C) In the case of a hiring arrangement to which section 74E (2) or (3) applies, the Chief Commissioner must credit in respect of the duty that would otherwise be payable an amount equal to the lesser of:

(a) the amount of the duty, or

(b) the amount of stamp duty (or duty of a like nature) paid or payable on the hiring arrangement in accordance with the provisions of any law of the Commonwealth, a Territory or another State.

(3) Section 83 (**Interpretation**):

Section 83 (1), definition of "Loan security":

After "mortgage" where secondly occurring in paragraph (e), insert ", but does not include an instrument which is executed by a person for the purpose of conducting the person's money market trading operations".

(4) Section 84CA (**Unregistered mortgage protected by caveat**):

After section 84CA (3), insert:

(4) This section does not apply to a caveat lodged in respect of a mortgage which is created solely for the purpose of providing security in accordance with a condition

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

imposed on the grant of bail in connection with criminal proceedings.

(5) Section 97C (**Definitions**):

(a) Section 97C (1), definition of "jobber":

Omit the definition.

(b) Section 97C (1), definition of "London Stock Exchange":

Omit "The Stock Exchange of the United Kingdom", insert instead "The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited".

(c) Section 97C (1):

After the definition of "London Stock Exchange", insert:

"market maker" means a person who is a market marker according to the rules and practices of the London Stock Exchange and who is acting in the capacity of such a market maker;

(6) Section 97E (**Duty payable in relation to relevant transactions**):

Omit "jobber" wherever occurring, insert instead "market maker".

(7) Section 99A (**Definitions**):

Section 99A (1), definition of "discretionary trust":

After paragraph (a) (ii), insert:

(iii) has occurred but under which the whole or any part of that capital or the whole or any part of that income, or both, will be divested from the person or persons in whom it is vested in the event that a discretion conferred under the trust is exercised; or

(8) Section 99B (**Acquisitions to which this Division does not apply**):

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

Omit section 99B (d), insert instead:

- (d) the land to which the land use entitlement, prior land use entitlement or interest relates could have been acquired by the person under an agreement or conveyance which is not chargeable with ad valorem duty.

(9) Section 127C (**Fines in respect of returns and undertakings**):

(a) Section 127C (1):

After "Act", insert "or the regulations".

(b) After section 127C (1), insert:

(1A) Where a person lodges an undertaking under section 84D with the Chief Commissioner and neglects or fails to pay the whole of the amount of the duty required to be paid to the Chief Commissioner in accordance with the undertaking on or before the day by which the amount is required to be paid, the person is liable to pay, in addition to:

(a) the unpaid amount of duty; and

(b) any amount of fine payable in respect of that duty under subsection (2),

a fine or fines, determined in accordance with subsection (3), on the unpaid amount of duty.

(c) Section 127C (3):

After "subsections (1)", insert ", (1A)".

(10) Section 129 (**Chief Commissioner may compromise a claim for duty**):

From section 129 (1), omit "death".

(11) Section 129E:

After section 129D, insert:

Collection of debts from third parties

129E. (1) If an amount is payable (whether as duty or otherwise) to the Chief Commissioner under or by virtue of this Act or the regulations by a person (in this section called

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

the "debtor"), the Chief Commissioner may, by notice in writing, require:

- (a) any person by whom any money is due or accruing or may become due to the debtor;
- (b) any person who holds or may subsequently hold money for or on account of the debtor;
- (c) any person who holds or may subsequently hold money on account of some other person for payment to the debtor; or
- (d) any person having authority from some other person to pay money to the debtor,

to pay to the Chief Commissioner forthwith on the money becoming due or being held, or within such further time as the Chief Commissioner allows:

- (e) if the amount of the money so due or held or authorised to be paid does not exceed the amount payable by the debtor to the Chief Commissioner - all the money; or
- (f) if the amount of the money exceeds the amount so payable - sufficient money to pay the amount so payable.

(2) A person must comply with a notice under this section served on the person.

Maximum penalty: 10 penalty units.

(3) A copy of a notice under this section must be served on the debtor.

(4) A person making any payment in pursuance of this section is to be taken to have been acting under the authority of the debtor and of all other persons concerned, and is by this subsection indemnified in respect of the payment.

(5) If the Chief Commissioner receives any payment in respect of the amount payable by the debtor before payment is made by a person required under this section to make any payment, the Chief Commissioner must forthwith

SCHEDULE 2 - MISCELLANEOUS AMENDMENTS - *continued*

notify the person of the receipt of the payment and the notice under this section served on the person is to be taken to be amended accordingly.

(12) Second Schedule:

After paragraph (b) of the Exemptions under the heading "LOAN SECURITY", insert:

- (c) A mortgage created solely for the purpose of providing security in accordance with a condition imposed on the grant of bail in connection with criminal proceedings.

(13) Schedule 2A (**First Home Purchase Scheme**):

From clause 8 (2), omit "\$105,000", insert instead "the amount of the total consideration which must not be exceeded under clause 5 (2)".

[*Minister's second reading speech made in -
Legislative Assembly on 25 July 1989
Legislative Council on 3 August 1989 a.m.*]

MEMORANDUM FOR THE RECORD

The following information was received from the [redacted] on [redacted] regarding [redacted].

On [redacted] at [redacted] [redacted] advised that [redacted] had been [redacted] by [redacted].

A copy of the [redacted] report is being furnished to you for your information. The [redacted] report is being [redacted] to [redacted].

(2) A copy of the [redacted] report is being furnished to you for your information. The [redacted] report is being [redacted] to [redacted].

Very truly yours,
[redacted]

Approved: [redacted]