

**STAMP DUTIES (FURTHER AMENDMENT) ACT 1989**  
**No. 223**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Stamp Duties Act 1920 No. 47

SCHEDULE 1 - AMENDMENTS

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THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 435

LECTURE 10: QUANTUM MECHANICS

PROBLEM SET 10

**STAMP DUTIES (FURTHER AMENDMENT) ACT 1989**  
**No. 223**

NEW SOUTH WALES



**Act No. 223, 1989**

An Act to amend the Stamp Duties Act 1920 to abolish stamp duty on certain instruments; with respect to the payment of financial institutions duty on certain large receipts; to make further provision with respect to appeals; and for other purposes. [Assented to 21 December 1989]

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

**Short title**

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

**Commencement**

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

(2) Schedule 1 (3), (4) and (5) are to be taken to have commenced on 1 November 1989.

(3) Schedule 1 (6), (10) (g) and (h) and (11) commence or are to be taken to have commenced on 1 December 1989.

(4) Schedule 1 (7), (8) and (9) commence or are to be taken to have commenced on 1 January 1990.

(5) Section 3 in its application to a provision of Schedule 1 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 Schedule 1.

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**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

(1) Section 19 (**Facts and circumstances affecting duty to be set forth in instruments**):

From section 19 (2), omit "greater", insert instead "different".

(2) Part 3, Divisions 6 (**Bills of lading**), 7 (**Charter-parties**), 8 (**Companies - memorandum and articles**) and 19 (**Letters of allotment and letters of renunciation**):

Omit the Divisions.

SCHEDULE 1 - AMENDMENTS - *continued*

- (3) Section 88 (**Exemption from duty - property etc. outside New South Wales**):

In section 88 (b), after "risk", insert ", or that proportion of a risk,".

- (4) Section 88C (**Apportionment of premiums**):

(a) Omit section 88C (e), insert instead:

(e) insurance referred to in section 88,

(b) After "section 88B", insert "or 88D".

- (5) Section 88D (**Duty payable by insured in certain circumstances**):

From section 88D (1), omit:

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,

insert instead:

being insurance, other than insurance referred to in section 88,

- (6) Sections 98J (2) (b) (ii), 98K (2) (b) (ii), 98L (6) (c) (ii), 98LA (2) (b) (ii):

Omit "\$1,000,000" wherever occurring, insert instead "\$2,000,000".

- (7) Section 124 (**Objections and appeals**):

(a) From section 124 (1), omit "refunding of the whole or any part of the duty", insert instead "amount of duty refunded under this Act".



SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Omit section 124 (5)-(10), insert instead:

(5) An objector dissatisfied with the decision of the Chief Commissioner on an objection may request the Chief Commissioner to approve in writing of an appeal by the objector to the Supreme Court against the decision.

(6) Such a request must be in writing and be lodged with the Chief Commissioner within 30 days (or such longer period as the Chief Commissioner may allow for reasonable cause shown) after the objector is informed of the Chief Commissioner's decision on the objection.

(7) If the Chief Commissioner does not comply with a request under subsection (5) within 60 days after it is made and the objector:

(a) has provided the Chief Commissioner with any information required by the Chief Commissioner in relation to the assessment or decision with respect to the refund concerned; and

(b) lodges with the Chief Commissioner a notice in writing requiring the Chief Commissioner to comply with the request,

the Chief Commissioner must comply with the request not later than 30 days after the notice is lodged.

(8) The objector may appeal to the Supreme Court against the decision within 14 days after the Chief Commissioner grants approval under this section to the appeal.

- (8) Section 124A (**Assessment to be evidence**):

Renumber section 124A as section 124G.

- (9) Sections 124A-124F:

After section 124, insert:

**Nature of appeal**

124A. (1) An appeal to the Supreme Court under this Part is by way of rehearing of the original objection to the

SCHEDULE 1 - AMENDMENTS - *continued*

Chief Commissioner and is limited to the grounds of the original objection.

(2) On giving its decision, the Court may determine the amount of any duty payable as a result of the decision (including any fine).

(3) This Act applies to the Court's assessment of duty or decision with respect to the refunding of duty in the same way as it applies to the assessment of duty, or calculation of the amount of duty to be refunded, by the Chief Commissioner.

**Onus on objector**

124B. On an objection or appeal under this Part, the objector bears the onus of establishing on the balance of probabilities that the duty in question was incorrectly assessed or the amount of refund was incorrectly calculated.

**Payment of duty assessed and calculation of refund by Supreme Court**

124C. (1) If the duty assessed by the Supreme Court under this Part:

- (a) is greater than the amount paid by the objector, the objector is liable to pay the difference; or
- (b) is less than the amount paid by the objector, the Chief Commissioner is to refund the difference to the objector, together with interest on the difference at the prescribed rate.

(2) If the refund calculated by the Supreme Court under this Part:

- (a) is greater than the amount calculated by the Chief Commissioner, the Chief Commissioner is to refund the difference to the objector, together with interest on the difference at the prescribed rate; or
- (b) is less than the amount calculated by the Chief Commissioner, the objector is liable to pay the difference.

SCHEDULE 1 - AMENDMENTS - *continued*

(3) Interest payable under subsection (1) (b) or (2) (a) is payable from the date on which the amount concerned was paid by the objector until the date it is refunded.

**Liability not affected by objection etc.**

124D. (1) Except to the extent otherwise permitted by the Chief Commissioner, the lodging of an objection or an appeal to the Supreme Court does not affect any liability of an objector to pay duty in accordance with this Act.

(2) A permission under this section must be in writing.

**Lodgment with Chief Commissioner**

124E. For the purposes of this Part, something is lodged with the Chief Commissioner by being addressed to the Chief Commissioner and lodged at or sent by post to any office of the Chief Commissioner.

**Commissioner may state case**

124F. (1) The Chief Commissioner may, if the Chief Commissioner thinks fit, state a case on any question of law arising with regard to the assessment or refund of duty and forward that case to the Supreme Court for its opinion.

(2) The Supreme Court is to give its opinion on any case forwarded to it and cause the Chief Commissioner to be notified of that opinion.

(10) Second Schedule - Stamp Duties and Exemptions:

- (a) Omit the matter relating to AWARD.
- (b) Omit the matter relating to BILL OF LADING OR RECEIPT, CHARTER PARTY and COMPANIES.
- (c) Omit the matter relating to DUPLICATE OR COUNTERPART of an agreement for the hire of a motion picture film.



SCHEDULE 1 - AMENDMENTS - *continued*

- (d) Omit paragraph (8) of the matter appearing under the heading LEASE OR PROMISE OF OR AGREEMENT FOR LEASE OR HIRE of any Property not being a Ship or Vessel.
  - (e) Omit the matter relating to LETTER OF ALLOTMENT AND LETTER OF RENUNCIATION.
  - (f) Omit paragraphs (9), (10), (11), (12) and (13) appearing under the heading REAL PROPERTY ACT 1900, as amended, and the matter relating to those paragraphs.
  - (g) From paragraph (b) of the matter appearing under the heading RECEIPTS RETURN, omit "\$1,000,000", insert instead "\$2,000,000".
  - (h) From the matter relating to RECEIPTS RETURN in the Column headed "Amount of Duty", omit "300.00", insert instead "600.00".
- (11) Tenth Schedule (**Savings, transitional and other provisions**):

After Part 3, insert:

**PART 4 - STAMP DUTIES (FURTHER  
AMENDMENT) ACT 1989**

**Application of amendments relating to financial institutions duty**

10. The amendments made to this Act by section 3 of, and Schedule 1 (6) and (10) (g) and (h) to, the Stamp Duties (Further Amendment) Act 1989 do not apply to a dutiable receipt within the meaning of section 98 (1) which is received before 1 December 1989.

**Pending objections**

11. (1) In this clause:

"**former appeal provisions**" means the provisions of Part 5 as in force immediately before the commencement of Schedule 1 (7) (b) to the Stamp Duties (Further Amendment) Act 1989;

SCHEDULE 1 - AMENDMENTS - *continued*

"**new appeal provisions**" means the provisions of Part 5, as amended by the Stamp Duties (Further Amendment) Act 1989.

(2) An objection made under the former appeal provisions before the commencement of the new appeal provisions is to be dealt with as an objection under the new appeal provisions, unless subclause (3) otherwise provides.

(3) Subclause (2) does not apply to an objection made under the former appeal provisions if an objector has required a case to be stated to the Supreme Court before, or the time for requiring a case to be stated has expired before, the commencement of the new appeal provisions.

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[*Minister's second reading speech made in -  
Legislative Assembly on 21 November 1989  
Legislative Council on 29 November 1989*]







FIRST PRINT

## STAMP DUTIES (FURTHER AMENDMENT) BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

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

This Bill is cognate with the Pay-roll Tax (Amendment) Bill 1989.

The object of this Bill is to amend the Stamp Duties Act 1920:

- (a) to make a minor amendment to the powers of the Chief Commissioner of Stamp Duties to assess and charge duty, and
- (b) to abolish stamp duty on a number of instruments where the duty has deteriorated to the status of a nuisance tax, and
- (c) to clarify, in 2 minor respects, the application of the provisions of Division 24 of Part 3 relating to insurance; and
- (d) with respect to the amount of financial institutions duty payable on receipts of a single amount of not less than \$1,000,000; and
- (e) to update the objection and appeal provisions of the Act to provide for appeals by summons along the lines of the Business Franchise Licences (Petroleum Products) Act 1987.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

### SCHEDULE 1 - AMENDMENTS

#### Assessing and charging duty

Under section 19, a dutiable instrument is to include, fully and truly within it, the facts and circumstances affecting its liability to duty. However, the Chief Commissioner is not prevented from assessing and charging a greater amount of duty

## *Stamp Duties (Further Amendment) 1989*

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than would appear to be chargeable and assessable by reference to the language and contents of the instrument.

Schedule 1 (1) amends section 19 to empower the Chief Commissioner to assess and charge a greater or a lesser amount.

### **Abolition of stamp duty on certain instruments**

Schedule 1 (2) and (10) (a) - (f) provide for the abolition of stamp duty on the following instruments:

- \* Bill of lading or receipt
- \* Charter party
- \* Letters of allotment and letters of renunciation
- \* Companies - memorandum and articles of association
- \* Award - whether under hand or seal
- \* Duplicate or counterpart of an agreement for the hire of a motion picture film
- \* Agreement for the hire of an electricity, gas or water meter

Instruments under the Real Property Act 1900, being:

- \* Application by tenant in tail for entry of title in fee simple
- \* Release or disclaimer of power
- \* Application for discharge or modification of restrictive covenant
- \* Application for entry of an estate in fee simple in enlargement of a long term under section 134 of the Conveyancing Act 1919
- \* Application to cancel notifications of leases or underleases as upon merger

### **Insurance**

Schedule 1 (3), (4) and (5) amend, in 2 minor respects, sections 88, 88C and 88D. The amendments effected by Schedule 1 (3), (4) (a) and (5) make amendments to cause the exemption granted in relation to insurance risks occurring outside New South Wales to be uniformly expressed in sections 88, 88C and 88D. The amendment effected by Schedule 1 (4) (b) extends the existing power of the Chief Commissioner of Stamp Duties to apportion an insurance premium where part of the property to which the insurance relates is outside New South Wales or where part of the insurance risk can only occur outside New South Wales so as to include insurance disclosed in a return to which section 88D applies.

### **Financial institutions duty**

At the present time, financial institutions duty is payable on dutiable receipts at the rate of 0.03 per cent, but if the amount received is a single amount of not less than \$1,000,000, the total amount of duty payable is \$300.

As from 1 December 1989, the amendments effected by Schedule 1 (6) and (10) (g) and (h) will increase the single amount to an amount of not less than \$2,000,000 and provide that the total amount of duty payable will be \$600.



## *Stamp Duties (Further Amendment) 1989*

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These amendments give effect to an announcement made by the Premier and Treasurer when delivering the 1989 Budget.

Schedule 1 (6) amends sections 98J, 98K, 98L and 98LA to provide that various returns required to be lodged to enable the assessment of duty are to include the number of single amounts received of not less than \$2,000,000.

Schedule 1 (10) (g) and (h) amend the Second Schedule to increase the amount of the single receipt and the amount of duty payable in relation to such a receipt in the manner described above.

The amendments relating to financial institutions duty do not apply to dutiable receipts that are received before the date of commencement of the amendments, namely, 1 December 1989. (Schedule 1 (11) - proposed clause 10 of the Tenth Schedule).

### **Objections and appeals**

Schedule 1 (7) - (9) update provisions dealing with objections and appeals against assessment of duty and calculation of refunds of duty under the Act. Currently, a dissatisfied objector has a right to require the Chief Commissioner to state a case for decision by the Supreme Court. Under the new provisions, a dissatisfied objector can appeal directly to the Supreme Court by filing a summons as provided in Part 51A of the Supreme Court Rules. The appeal cannot proceed unless the objector has given the Chief Commissioner the information requested in connection with the matter. If the objector is successful, the Chief Commissioner is required to pay interest on any duty that was overpaid or refund that was underpaid.

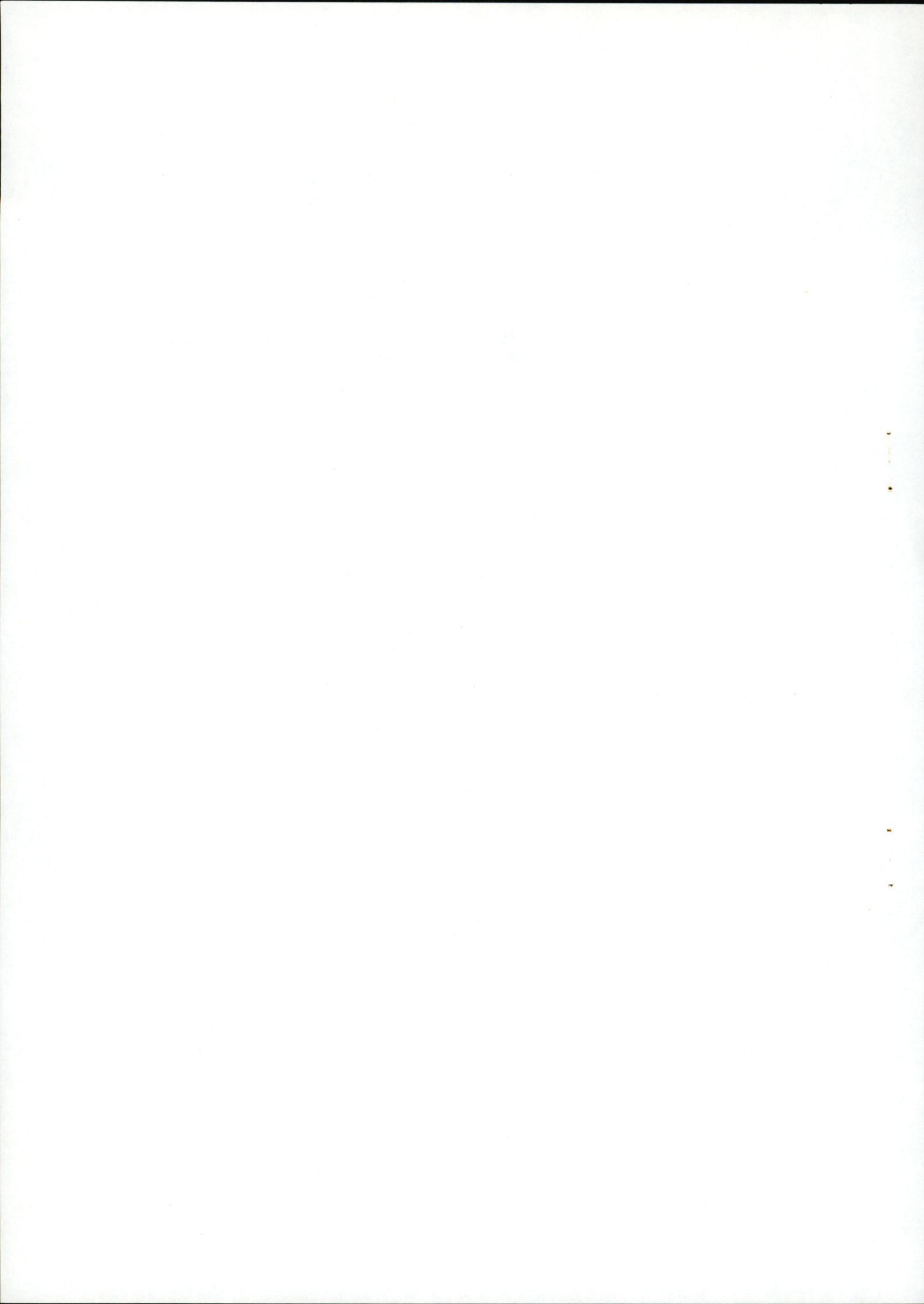
The onus of establishing that tax is incorrectly assessed or a refund incorrectly refused is placed on the objector.

Provision is also made to enable the Chief Commissioner to state a case on a question of law for decision by the Supreme Court.

Schedule 1 (7) amends section 124 (1) to make it clear that an objection with respect to the refunding of tax may be made only with respect to the amount of the refund calculated by the Chief Commissioner.

The new provisions will apply to an objection made before they commenced unless a case stated to the Supreme Court has already been stated or the time for stating a case has expired. (Schedule 1 (11) - proposed clause 11 of the Tenth Schedule).

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FIRST PRINT

**STAMP DUTIES (FURTHER AMENDMENT) BILL 1989**

NEW SOUTH WALES

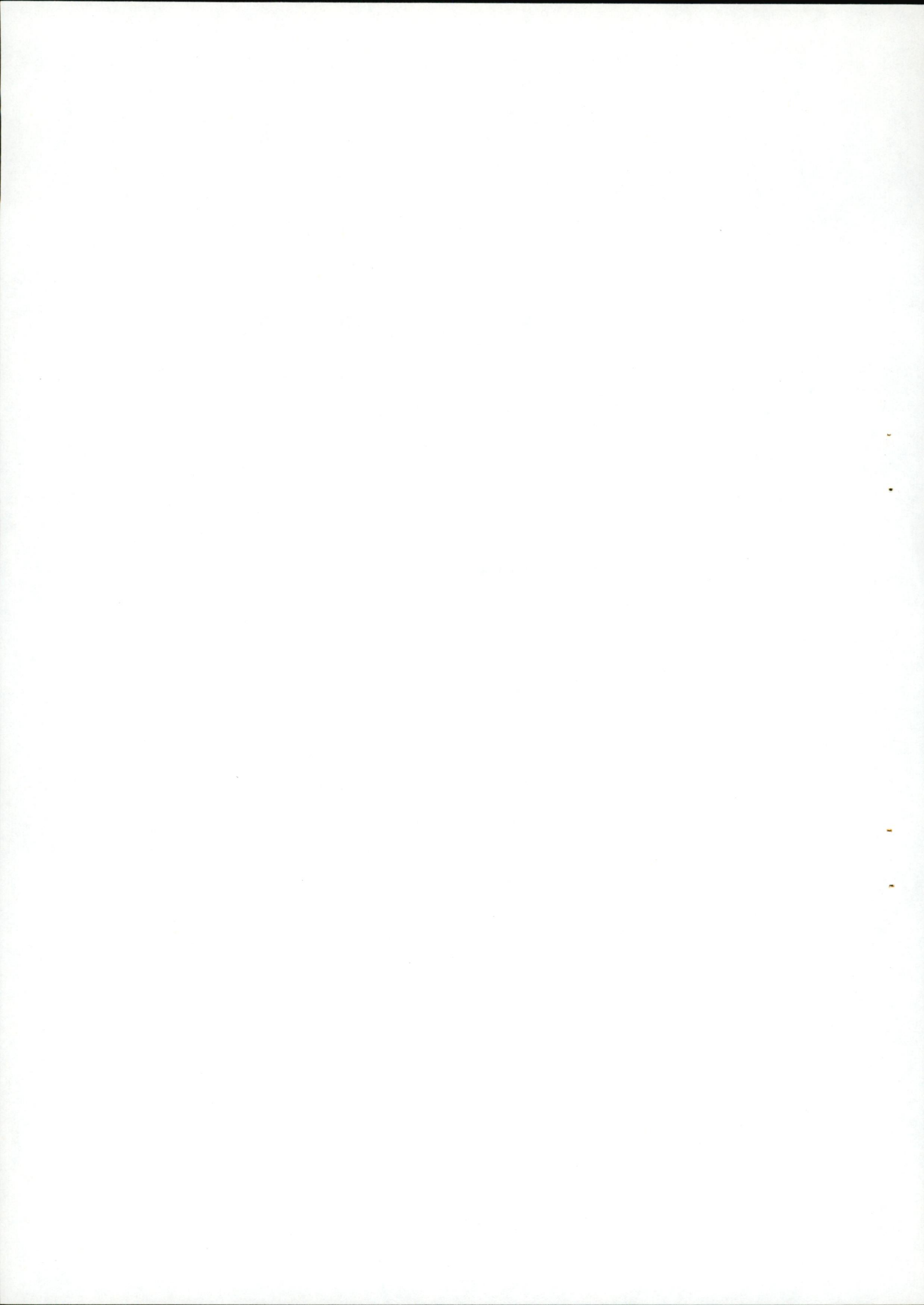


**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Stamp Duties Act 1920 No. 47

SCHEDULE 1 - AMENDMENTS

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**STAMP DUTIES (FURTHER AMENDMENT) BILL 1989**

NEW SOUTH WALES



No. , 1989

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**A BILL FOR**

An Act to amend the Stamp Duties Act 1920 to abolish stamp duty on certain instruments; with respect to the payment of financial institutions duty on certain large receipts; to make further provision with respect to appeals; and for other purposes.

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*Stamp Duties (Further Amendment) 1989*

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

**Short title**

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

**Commencement**

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

(2) Schedule 1 (3), (4) and (5) are to be taken to have commenced on 1 November 1989.

(3) Schedule 1 (6), (10) (g) and (h) and (11) commence or are to be taken to have commenced on 1 December 1989.

(4) Schedule 1 (7), (8) and (9) commence or are to be taken to have commenced on 1 January 1990.

(5) Section 3 in its application to a provision of Schedule 1 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 Schedule 1.

---

**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

(1) Section 19 (**Facts and circumstances affecting duty to be set forth in instruments**):

From section 19 (2), omit "greater", insert instead "different".

(2) Part 3, Divisions 6 (**Bills of lading**), 7 (**Charter-parties**), 8 (**Companies - memorandum and articles**) and 19 (**Letters of allotment and letters of renunciation**):

Omit the Divisions.



SCHEDULE 1 - AMENDMENTS - *continued*

- (3) Section 88 (**Exemption from duty - property etc. outside New South Wales**):  
In section 88 (b), after "risk", insert ", or that proportion of a risk,".
- (4) Section 88C (**Apportionment of premiums**):  
(a) Omit section 88C (e), insert instead:  
(e) insurance referred to in section 88,  
(b) After "section 88B", insert "or 88D".
- (5) Section 88D (**Duty payable by insured in certain circumstances**):  
From section 88D (1), omit:  
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,  
insert instead:  
being insurance, other than insurance referred to in section 88,
- (6) Sections 98J (2) (b) (ii), 98K (2) (b) (ii), 98L (6) (c) (ii), 98LA (2) (b) (ii):  
Omit "\$1,000,000" wherever occurring, insert instead "\$2,000,000".
- (7) Section 124 (**Objections and appeals**):  
(a) From section 124 (1), omit "refunding of the whole or any part of the duty", insert instead "amount of duty refunded under this Act".

SCHEDULE 1 - AMENDMENTS - *continued*

- (b) Omit section 124 (5)-(10), insert instead:

(5) An objector dissatisfied with the decision of the Chief Commissioner on an objection may request the Chief Commissioner to approve in writing of an appeal by the objector to the Supreme Court against the decision.

(6) Such a request must be in writing and be lodged with the Chief Commissioner within 30 days (or such longer period as the Chief Commissioner may allow for reasonable cause shown) after the objector is informed of the Chief Commissioner's decision on the objection.

(7) If the Chief Commissioner does not comply with a request under subsection (5) within 60 days after it is made and the objector:

(a) has provided the Chief Commissioner with any information required by the Chief Commissioner in relation to the assessment or decision with respect to the refund concerned; and

(b) lodges with the Chief Commissioner a notice in writing requiring the Chief Commissioner to comply with the request,

the Chief Commissioner must comply with the request not later than 30 days after the notice is lodged.

(8) The objector may appeal to the Supreme Court against the decision within 14 days after the Chief Commissioner grants approval under this section to the appeal.

- (8) Section 124A (**Assessment to be evidence**):

Renumber section 124A as section 124G.

- (9) Sections 124A-124F:

After section 124, insert:

**Nature of appeal**

124A. (1) An appeal to the Supreme Court under this Part is by way of rehearing of the original objection to the

SCHEDULE 1 - AMENDMENTS - *continued*

Chief Commissioner and is limited to the grounds of the original objection.

(2) On giving its decision, the Court may determine the amount of any duty payable as a result of the decision (including any fine).

(3) This Act applies to the Court's assessment of duty or decision with respect to the refunding of duty in the same way as it applies to the assessment of duty, or calculation of the amount of duty to be refunded, by the Chief Commissioner.

**Onus on objector**

124B. On an objection or appeal under this Part, the objector bears the onus of establishing on the balance of probabilities that the duty in question was incorrectly assessed or the amount of refund was incorrectly calculated.

**Payment of duty assessed and calculation of refund by Supreme Court**

124C. (1) If the duty assessed by the Supreme Court under this Part:

- (a) is greater than the amount paid by the objector, the objector is liable to pay the difference; or
- (b) is less than the amount paid by the objector, the Chief Commissioner is to refund the difference to the objector, together with interest on the difference at the prescribed rate.

(2) If the refund calculated by the Supreme Court under this Part:

- (a) is greater than the amount calculated by the Chief Commissioner, the Chief Commissioner is to refund the difference to the objector, together with interest on the difference at the prescribed rate; or
- (b) is less than the amount calculated by the Chief Commissioner, the objector is liable to pay the difference.



SCHEDULE 1 - AMENDMENTS - *continued*

(3) Interest payable under subsection (1) (b) or (2) (a) is payable from the date on which the amount concerned was paid by the objector until the date it is refunded.

**Liability not affected by objection etc.**

124D. (1) Except to the extent otherwise permitted by the Chief Commissioner, the lodging of an objection or an appeal to the Supreme Court does not affect any liability of an objector to pay duty in accordance with this Act.

(2) A permission under this section must be in writing.

**Lodgment with Chief Commissioner**

124E. For the purposes of this Part, something is lodged with the Chief Commissioner by being addressed to the Chief Commissioner and lodged at or sent by post to any office of the Chief Commissioner.

**Commissioner may state case**

124F. (1) The Chief Commissioner may, if the Chief Commissioner thinks fit, state a case on any question of law arising with regard to the assessment or refund of duty and forward that case to the Supreme Court for its opinion.

(2) The Supreme Court is to give its opinion on any case forwarded to it and cause the Chief Commissioner to be notified of that opinion.

(10) Second Schedule - Stamp Duties and Exemptions:

- (a) Omit the matter relating to AWARD.
- (b) Omit the matter relating to BILL OF LADING OR RECEIPT, CHARTER PARTY and COMPANIES.
- (c) Omit the matter relating to DUPLICATE OR COUNTERPART of an agreement for the hire of a motion picture film.



SCHEDULE 1 - AMENDMENTS - *continued*

- (d) Omit paragraph (8) of the matter appearing under the heading LEASE OR PROMISE OF OR AGREEMENT FOR LEASE OR HIRE of any Property not being a Ship or Vessel.
  - (e) Omit the matter relating to LETTER OF ALLOTMENT AND LETTER OF RENUNCIATION.
  - (f) Omit paragraphs (9), (10), (11), (12) and (13) appearing under the heading REAL PROPERTY ACT 1900, as amended, and the matter relating to those paragraphs.
  - (g) From paragraph (b) of the matter appearing under the heading RECEIPTS RETURN, omit "\$1,000,000", insert instead "\$2,000,000".
  - (h) From the matter relating to RECEIPTS RETURN in the Column headed "Amount of Duty", omit "300.00", insert instead "600.00".
- (11) Tenth Schedule (**Savings, transitional and other provisions**):

After Part 3, insert:

**PART 4 - STAMP DUTIES (FURTHER  
AMENDMENT) ACT 1989**

**Application of amendments relating to financial institutions duty**

10. The amendments made to this Act by section 3 of, and Schedule 1 (6) and (10) (g) and (h) to, the Stamp Duties (Further Amendment) Act 1989 do not apply to a dutiable receipt within the meaning of section 98 (1) which is received before 1 December 1989.

**Pending objections**

11. (1) In this clause:

**"former appeal provisions"** means the provisions of Part 5 as in force immediately before the commencement of Schedule 1 (7) (b) to the Stamp Duties (Further Amendment) Act 1989;

SCHEDULE 1 - AMENDMENTS - *continued*

"**new appeal provisions**" means the provisions of Part 5, as amended by the Stamp Duties (Further Amendment) Act 1989.

(2) An objection made under the former appeal provisions before the commencement of the new appeal provisions is to be dealt with as an objection under the new appeal provisions, unless subclause (3) otherwise provides.

(3) Subclause (2) does not apply to an objection made under the former appeal provisions if an objector has required a case to be stated to the Supreme Court before, or the time for requiring a case to be stated has expired before, the commencement of the new appeal provisions.

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