

FIRST PRINT

STAMP DUTIES (AMENDMENT) BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

- (a) to gather into one Division, and to extend, the provisions of the Principal Act relating to concessional duty for certain superannuation instruments (Schedule 1);
- (b) to impose duty on certain benefits attached to life insurance policies ("riders") at 5 per cent of the first year's premium (Schedule 2);
- (c) to remove from the Principal Act provisions relating to duties which have been abolished (Schedule 3);
- (d) to re-enact, as provisions of the Principal Act, certain provisions found in the regulations made under the Principal Act, this re-enactment arising as a consequence of the staged repeal program for subordinate legislation contained in the Subordinate Legislation Act 1989 (Schedule 4);
- (e) to make miscellaneous amendments to the Principal Act (Schedule 5).

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the provisions of the proposed Act on various days. Most amendments are to commence on the date of assent to the proposed Act or 1 January 1992, whichever is the later. If an amendment is to commence on another day, that day and the reason for it is given in the explanatory note relating to the amendment.

Clause 3 is a formal provision which gives effect to the Schedules of amendments to the Principal Act.

Stamp Duties (Amendment) 1991

Clause 4 repeals clause 13 of the Stamp Duties Regulation 1991. Clause 13 of that Regulation continued the effect of various regulations contained in the Stamp Duties Regulations 1934 despite the repeal of those Regulations as a consequence of the staged repeal program for subordinate legislation contained in the Subordinate Legislation Act 1989. Clause 13 is repealed as the substance of the regulations it continued is transferred, via Schedule 4 of the proposed Act, into the body of the Principal Act.

Clause 5 provides that explanatory notes appearing in the Bill do not form part of the proposed Act.

Schedules 1-5 make the amendments to the Principal Act described above. Each amendment is explained in detail in the explanatory note relating to the amendment concerned.

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STAMP DUTIES (AMENDMENT) BILL 1991

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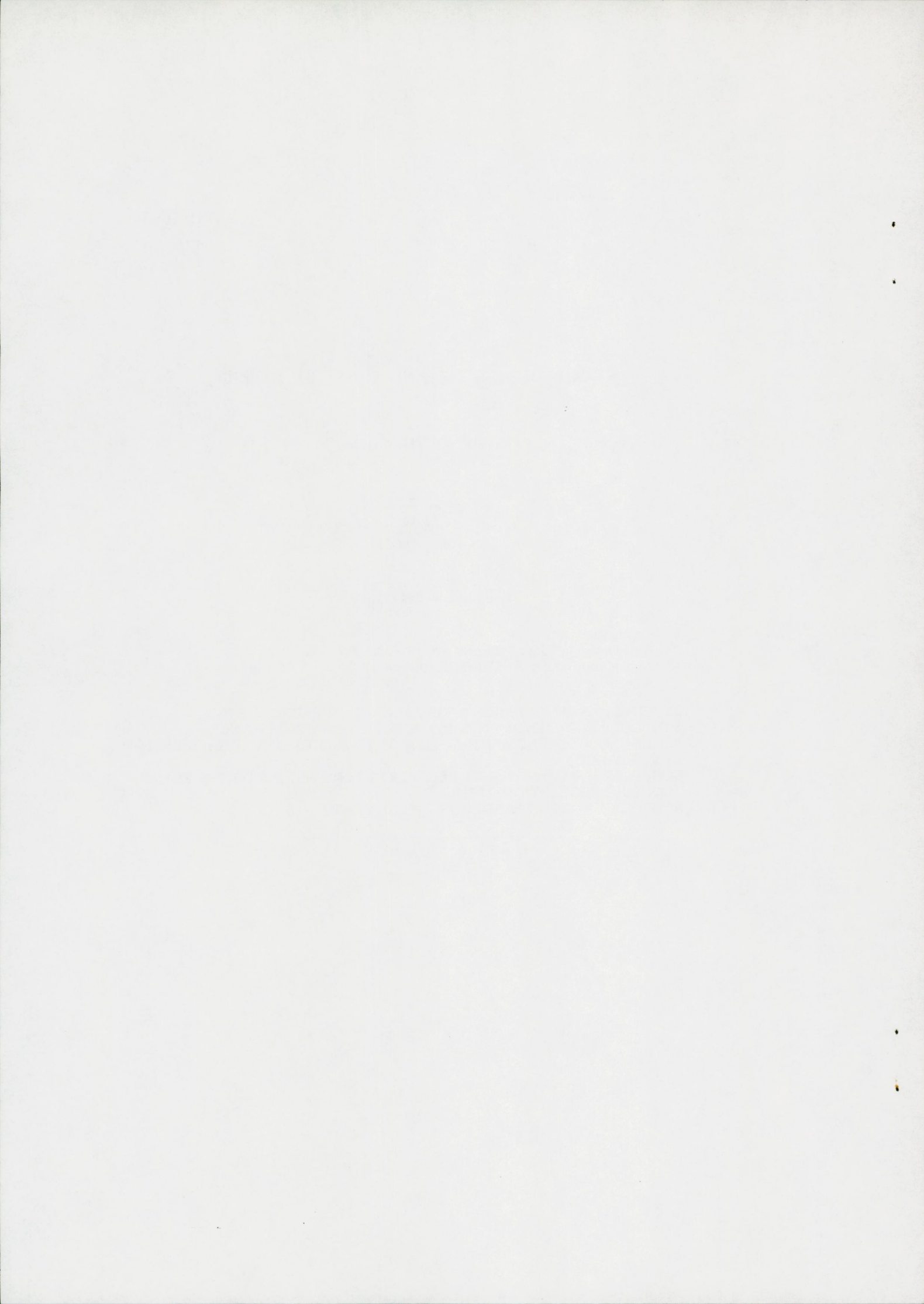
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STAMP DUTIES (AMENDMENT) BILL 1991

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Stamp Duties Act 1920 with respect to concessional duty for certain superannuation instruments; to make further provision with respect to the imposition of duties; and for other purposes.

Stamp Duties (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Stamp Duties (Amendment) Act 1991.

Commencement

2. (1) This Act commences on the date of assent or on 1 January 1992, whichever is the later, except as provided by this section.

(2) Schedule 2 (except item (3)) is taken to have commenced on 1 March 1991.

(3) Schedule 5 (1) is taken to have commenced on 5 July 1991.

(4) Schedule 5 (8) is taken to have commenced on 1 September 1991.

(5) Schedule 5 (11) is taken to have commenced on 23 April 1991.

(6) Schedule 5 (13) is taken to have commenced on 1 April 1991.

(7) Schedule 5 (16) is taken to have commenced on 3 April 1991.

(8) Schedule 5 (17) (d) is taken to have commenced on 24 March 1991.

(9) Schedule 5 (19) is taken to have commenced on 11 September 1990.

(10) Section 3 in its application to a provision of Schedules 1–5 commences or is taken to have commenced on the day on which the provision commences or is 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 1–5.

Amendment of Stamp Duties Regulation 1991

4. Clause 13 of the Stamp Duties Regulation 1991 is repealed.

Explanatory notes

5. Matter appearing under the heading “Explanatory note” in a Schedule does not form part of this Act.
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Stamp Duties (Amendment) 1991

**SCHEDULE 1—AMENDMENTS RELATING TO
SUPERANNUATION**

(Sec. 3)

- (1) Section 3 (**Definitions**):
- From section 3 (1), omit the definitions of “Complying approved deposit fund”, “Complying pooled superannuation trust” and “Complying superannuation fund”.
- (2) Section 44A (**Payment of duty on statements in absence of dutiable instruments**):
- (a) After section 44A (1), insert:
- (1A) A person, being a party to a transaction to which this Division applies which is not effected or evidenced by an instrument chargeable with duty in accordance with Division 19 shall, if the person would have been liable to pay such duty in respect of the transaction had such an instrument been executed, lodge with the Chief Commissioner a statement in respect of the transaction.
- (b) From section 44A (2B), omit “subsection (2)”, insert instead “subsection (1A), (2)”.
- (c) From section 44A (5), omit “referred to in subsection (1)”, insert instead “or duty referred to in subsection (1), (1A)”.
- (d) From section 44A (7), omit “the statement” where firstly occurring, insert instead “a statement”.
- (3) Section 73 (**Certain conveyances not chargeable with ad valorem duty**):
- Omit section 73 (2AA) (d), insert instead:
- (d) the trustees of a fund which is a complying superannuation fund within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth or which, in the opinion of the trustees, will become a complying superannuation fund within 12 months after the execution of the instrument referred to in subsection (1) (a) (i), (ii) or (iii).

Stamp Duties (Amendment) 1991

SCHEDULE 1—AMENDMENTS RELATING TO
SUPERANNUATION—*continued*

(4) Part 3, Division 19:

After Division 18, insert:

Division 19—Superannuation

Definitions

81. In this Division:

“**complying approved deposit fund**” means a fund which is a complying ADF within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth;

“**complying pooled superannuation trust**” means a trust which is a pooled superannuation trust within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth;

“**complying superannuation fund**” means a fund which is a complying superannuation fund within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth.

Duty on certain instruments relating to superannuation

81A. (1) The following instruments are liable to a stamp duty of \$20:

- (a) an instrument which contains or amends provisions governing a superannuation fund, an approved deposit fund or a pooled superannuation trust, being a fund or trust which, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund or a complying pooled superannuation trust within 12 months after the instrument or amending instrument takes effect;
- (b) an instrument under which an employer agrees to participate in or contribute to a complying superannuation fund or a superannuation fund which, in the opinion of the trustees, will become a complying superannuation fund within 12 months after the employer agrees to participate in or contribute to the fund.

(2) The persons primarily liable to pay the duty are the parties to the instrument.

(3) The duty may be denoted by adhesive stamp.

SCHEDULE 1—AMENDMENTS RELATING TO
SUPERANNUATION—*continued***Duty on certain conveyances of property between certain superannuation funds**

82. (1) This section applies to an instrument which the Chief Commissioner is satisfied is an agreement to convey or a conveyance of property between superannuation funds (which, in the opinion of the respective trustees, will be complying superannuation funds for the year in which the conveyance occurs) in connection with a person's ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, the transferor fund and becoming a member of, or otherwise becoming entitled to benefits in respect of, the transferee fund.

(2) The duty payable on an instrument to which this section applies is the ad valorem duty as a conveyance or \$200, whichever is the lesser.

(3) The person primarily liable to pay the duty is the transferee.

(4) An application for an assessment of duty in accordance with this section is to be accompanied by the following:

- (a) a brief explanation of the background to the conveyance and the entitlements to be extinguished and created;
- (b) copies of the governing rules of the complying superannuation funds concerned;
- (c) a statement of the property to be conveyed;
- (d) a copy of each instrument of conveyance;
- (e) a statutory declaration from a trustee (or a director of a corporate trustee) of each of the superannuation funds concerned stating that, in the opinion of the trustee (or director), the fund will be a complying superannuation fund for the year in which the conveyance occurs.

(5) The Chief Commissioner may require further information.

(6) An instrument on which duty of \$200 has been paid in accordance with an assessment under this section is taken to have been duly stamped with ad valorem duty as a conveyance.

Stamp Duties (Amendment) 1991

SCHEDULE 1—AMENDMENTS RELATING TO
SUPERANNUATION—*continued*

(7) In this section:

“**complying superannuation fund**” includes a complying approved deposit fund.

(5) Second Schedule—Stamp Duties and Exemptions:

- (a) Omit paragraph (4) (j) of the matter appearing under the heading CONVEYANCES OF ANY PROPERTY.
- (b) Omit paragraph (4) of the matter appearing under the heading DECLARATION OF TRUST.
- (c) Omit the matter relating to SUPERANNUATION FUND INSTRUMENTS.

Explanatory note—Schedule 1

Amendments were made to the Principal Act by the Stamp Duties (Miscellaneous Amendments) Act 1990 in relation to superannuation funds:

- to reduce in most cases the duty on instruments establishing and amending superannuation funds
- to provide for instruments whereby an employer adopts the rules of a superannuation fund to be liable to the same duty as instruments establishing or amending superannuation funds.

The amendments made by Schedule 1 will gather into one Division (Division 19 of Part 3) the amendments made by the 1990 Act.

In addition, a concessional maximum rate of duty of \$200 is being introduced to apply to the transfer of assets between superannuation funds if the Chief Commissioner is satisfied that the asset transfer is linked to a transfer of membership (proposed section 82).

SCHEDULE 2—AMENDMENTS RELATING TO LIFE
INSURANCE

(Sec. 3)

(1) Section 86 (**Definitions**):

- (a) In section 86 (1), after “Division” where firstly occurring, insert “and in the Second Schedule”.
- (b) Insert in section 86 (1), in alphabetical order:

“**life insurance rider**” means insurance (other than life insurance or disability income insurance referred to in paragraph (c) of the definition of “Class 2 insurance” in this subsection) which:

- (a) is attached to a policy of life insurance;

Stamp Duties (Amendment) 1991

SCHEDULE 2—AMENDMENTS RELATING TO LIFE
INSURANCE—*continued*

- (b) adds specified events and contingencies to those insured under the policy;
- (c) is subject to the terms and conditions of the policy; and
- (d) is not available separately from such a policy;
- (2) Section 88B (**Monthly returns and payment of duty**):
- (a) After section 88B (1) (a) (ii), insert:
- (iii) the total amount of all first year's premiums for life insurance riders 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) After section 88B (1) (b) (iii), insert:
- (iv) the amount determined in accordance with the Second Schedule in respect of the life insurance riders issued by or on behalf of the person in the preceding month; and
- (3) Section 88N (**Set-off of duty on refund of premium**):
- At the end of section 88N, insert:
- (2) If, in respect of life insurance, a registered person refunds any premium to a person because the person cancels a life insurance policy within 30 days after receiving the policy, 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 registered person.
- (4) Second Schedule—Stamp Duties and Exemptions:
- After the matter relating to POLICIES OF LIFE INSURANCE, insert:
- LIFE INSURANCE
RIDERS:
- | | | |
|---------------------------------|--|---|
| Upon every life insurance rider | Five per centum of the first year's premium on the life insurance rider. | The company or person issuing the life insurance rider. |
|---------------------------------|--|---|

Stamp Duties (Amendment) 1991

SCHEDULE 2—AMENDMENTS RELATING TO LIFE
INSURANCE—*continued*

Explanatory note—Schedule 2

The amendments made by this Schedule are:

- to clarify the amount of stamp duty payable on life insurance “riders”
- to provide that no insurance duty is payable where a life policy is cancelled within a “free look period” provided that the period does not exceed 30 days.

Item (1) inserts a definition of “life insurance rider” into section 86 of the Principal Act. A life insurance rider, generally speaking, is insurance attaching to a policy of life insurance whereby the events or contingencies insured under the policy include specified additional events or contingencies other than life insurance.

Instead of being liable to duty at general insurance rates, life insurance riders are to be liable to duty at the rate of 5 per cent of the first year’s premium on the rider—item (4).

Item (2) requires details of premiums for riders to be included in the monthly return of insurances that is required for stamp duty purposes.

Item (3) enables a set-off of duty to be made against a subsequent monthly return where a life policy in respect of which duty has been paid is cancelled within the first 30 days.

These amendments (except item (3)) are taken to have commenced as from 1 March 1991, being the date on which the Premier and Treasurer approved of the Principal Act being administered on this basis. The amendment made by item (3) is to commence on the date of assent to the proposed Act or 1 January 1992, whichever is the later.

**SCHEDULE 3—AMENDMENTS RELATING TO DUTIES
WHICH HAVE BEEN ABOLISHED**

(Sec. 3)

(1) Section 3 (**Definitions**):

From section 3 (1), omit the definitions of “Backer”, “Bet” (including the definition of “betting”), “Betting ticket”, “Bookmaker”, “Racecourse” and “Race meeting”.

(2) Part 3, Division 4 (**Betting tickets**):

Omit the Division.

(3) Section 74B (**Instrument to be made out**), section 74C (**Payment of duty on discount arrangements by return**):

Omit the sections.

Stamp Duties (Amendment) 1991

SCHEDULE 3—AMENDMENTS RELATING TO DUTIES WHICH
HAVE BEEN ABOLISHED—*continued*

(4) Section 74D (**Definitions**):

(a) Insert in section 74D, in alphabetical order:

“**Hire purchase agreement**” includes a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise), but, subject to subsections (2) and (3), does not include any agreement:

- (a) whereby the property in the goods comprised in the agreement passes at the time of the agreement or on or at any time before the delivery of the goods; or
- (b) for the letting of goods or an agreement for the purchase of goods together with real property or any estate or interest in real property or with any business or interest in a business.

(b) At the end of section 74D, insert:

(2) If by virtue of 2 or more agreements, none of which by itself constitutes a hire purchase agreement, there is a transaction which is in substance or effect a hire purchase agreement as defined in this section, the agreements are to be treated for the purposes of this Act as a single agreement entered into when the last of those agreements was entered into.

(3) An agreement for the letting of goods containing a provision or provisions to the effect that if the agreement is subsisting at a future date, whether that date is specified or not, an option to purchase either the goods the subject of the letting or other goods is or may be given or granted is taken to be a letting of goods with an option to purchase.

(5) Section 75A (**Interpretation and duty on instalment purchase arrangements**):

- (a) From section 75A (1), omit “and of the matter appearing under the heading “Instalment Purchase Arrangements” in the Second Schedule to this Act, unless inconsistent with the context or subject matter”.
- (b) Omit the proviso to the definition of “Credit purchase agreement” in section 75A (1).

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**SCHEDULE 3—AMENDMENTS RELATING TO DUTIES WHICH
HAVE BEEN ABOLISHED—*continued***

- (c) Omit the definition of "Hire purchase agreement" from section 75A (1).
 - (d) From the definition of "Instalment purchase arrangement" in section 75A (1), omit ", a credit purchase agreement or a hire purchase agreement", insert instead "or a credit purchase agreement".
 - (e) Omit the definitions of "Interest", "Purchase price", "Purchaser" and "Vendor" from section 75A (1).
 - (f) Omit section 75A (2)–(7).
- (6) Sections 75B–75E:
Omit the sections.
- (7) Section 75F (**Charging of duty on and application of Division to instruments etc. made on or after 1.1.1983**):
- (a) From section 75F (1) (a), omit "or a hire purchase agreement".
 - (b) From section 75F (1) (b), omit ", a hire purchase agreement".
- (8) Part 3, Division 20 (**Loans**):
Omit the Division.
- (9) Section 83 (**Definitions**):
- (a) From paragraph (a) of the definition of "Financial accommodation" in section 83 (1), omit "within the meaning of Division 20".
 - (b) Insert in section 83 (1), in alphabetical order:
"Loan" includes:
 - (a) an advance of money; and
 - (b) money paid for or on account of or on behalf of or at the request of any person; and
 - (c) a forbearance to require payment of money owing on any account whatever; and
 - (d) any transaction (whatever its terms or form) which in substance effects a loan of money.
- (10) Section 98 (**Definitions**):
From the definition of "loan" in section 98 (1), omit "section 82A (1)", insert instead "section 83 (1)".

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SCHEDULE 3—AMENDMENTS RELATING TO DUTIES WHICH
HAVE BEEN ABOLISHED—*continued*

- (11) Part 4 (**Death Duty**):
Omit the Part.
- (12) Sections 125AA, 137, 138, 140, 141, 145:
Omit the sections.
- (13) Second Schedule—Stamp Duties and Exemptions:
 (a) Omit the matter relating to BETTING TICKETS.
 (b) Omit the matter relating to DISCOUNT ARRANGEMENT other than a Short Term Discount Arrangement.
 (c) Omit the matter relating to INSTALMENT PURCHASE ARRANGEMENTS.
 (d) Omit the matter relating to LOAN INSTRUMENT.
- (14) Second Schedule—General Exemptions From Stamp Duty under Part 3:
 After paragraph (42), insert:
 (43) A hire purchase agreement within the meaning of section 74D.
- (15) Third Schedule, Fourth Schedule, Fifth Schedule, Seventh Schedule, Schedule 7A, Eighth Schedule, Schedule 8A, Ninth Schedule:
Omit the Schedules.

Explanatory note—Schedule 3

This Schedule removes from the Principal Act provisions relating to the following duties which have been abolished within the last 10 years:

- death duty
- betting tickets
- discount arrangements
- instalment purchase arrangements
- loan instalment duty.

Items (4) and (9) retain and relocate definitions contained within the repealed provisions which are required for the purposes of other continuing provisions of the Principal Act.

Items (5), (6) and (7) contain amendments to prevent credit arrangements and credit purchase arrangements from becoming liable to nominal duty.

Item (14) preserves the exemption from duty of hire purchase agreements.

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**SCHEDULE 4—AMENDMENTS RELATING TO PROVISIONS
OF THE STAMP DUTIES REGULATIONS 1934**

(Sec. 3)

(1) Section 15:

Omit the section, insert instead:

Refunds—failed instruments and spoiled or unused duty stamps

15. (1) A person having a stamped instrument which has failed in its intended operation and has become useless may apply, in the approved form, to the Chief Commissioner for a refund of the duty paid in respect of the instrument.

(2) An application under subsection (1) is to be made within 1 year after the date on which the instrument fails and becomes useless.

(3) A person having any spoiled or unused duty stamps may apply, in the approved form, to the Chief Commissioner for a refund of the duty paid for the spoiled or unused stamps.

(4) An application under subsection (3) is to be made:

- (a) in the case of an executed instrument—within 1 year after the date when the stamp was spoiled; or
- (b) in the case of an unexecuted instrument or an adhesive stamp which is not fixed to an instrument—within 1 year after the date when the stamp was rendered useless.

(5) A person:

- (a) who has inadvertently used a stamp of greater value than was necessary for an instrument liable to duty; or
- (b) who has inadvertently used a stamp for an instrument not liable to duty; or
- (c) who has used an adhesive stamp where an adhesive stamp should not have been used,

may apply, in the approved form, to the Chief Commissioner to cancel the stamp misused and to treat it as spoiled.

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SCHEDULE 4—AMENDMENTS RELATING TO PROVISIONS OF
THE STAMP DUTIES REGULATIONS 1934—*continued*

- (6) An application under subsection (5) is to be made:
- (a) in the case of an instrument which is dated—within 1 year after the date of the instrument; or
 - (b) in the case of an instrument which is not dated—within 1 year after the date of first execution of the instrument.
- (7) The Chief Commissioner may grant or refuse to grant an application under this section.
- (8) The granting of an application is subject to:
- (a) the surrendering to the Chief Commissioner of the stamps or stamped instrument concerned, except in the case of an instrument which has been destroyed by the Registrar-General following the registration of the instrument by the Registrar-General; and
 - (b) the payment to the Chief Commissioner of commission of 5 per cent of the value of the spoiled or unused duty stamps.
- (9) The Chief Commissioner may destroy an instrument in respect of which an allowance has been made for spoiled stamps and which is not claimed within 3 months after the date of the allowance.
- (2) Section 38C (**Payment of duty by return in certain cases**):
- (a) From section 38C (8), omit “, together with such other matter as may be prescribed in respect of instruments of that class,”.
 - (b) At the end of section 38C (8), insert:
In the case of a loan security instrument, the approved person shall also stamp the instrument with the stamp or stamps issued to the person by the Chief Commissioner for the purposes of this section and complete the particulars specified in the stamp or stamps.
- (3) Section 74F (**Payment of duty on hiring arrangements by return**):
- Omit section 74F (7) (a), insert instead:

Stamp Duties (Amendment) 1991

SCHEDULE 4—AMENDMENTS RELATING TO PROVISIONS OF
THE STAMP DUTIES REGULATIONS 1934—*continued*

- (a) lodge a return in the approved form with the Chief Commissioner not later than the day notified to the approved person for the purposes of this subsection; and
- (4) Section 84G (**Duty on motor vehicle certificates of registration**):
- (a) Omit section 84G (1) (d).
- (b) At the end of section 84G (1) (f), insert:
- ; or
- (g) a motor vehicle certificate of registration issued in respect of a motor vehicle specially constructed for the work of conveying sick or injured persons or for mine rescue work in accordance with the Mines Rescue Act 1925, and the regulations under that Act, if the vehicle while on a public street is used solely for purposes connected with that work; or
- (h) a motor vehicle certificate of registration issued in respect of a motor vehicle which weighs not more than 255 kg when unladen and is specially constructed to be used, and while on a public street is used, solely for the conveyance of an invalid; or
- (i) a motor vehicle certificate of registration issued to a person who is a dealer in used or reconstructed motor vehicles solely in connection with the business of financing the purchase of those vehicles and who, in the course of that business, does not dispose of any such vehicle except through a dealer licensed under the Motor Dealers Act 1974, being a certificate that has been obtained for the purpose of the resale of the vehicle in respect of which the certificate is issued; or
- (j) a motor vehicle certificate of registration issued to:
- (i) a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose; or

Stamp Duties (Amendment) 1991

SCHEDULE 4—AMENDMENTS RELATING TO PROVISIONS OF
THE STAMP DUTIES REGULATIONS 1934—*continued*

- (ii) a charity which is registered or which is exempted from registration under the Charitable Collections Act 1934.

(5) Section 86 (**Definitions**):

Omit paragraph (e) of the definition of “Class 2 insurance” in section 86 (1), insert instead:

(e) crop insurance, being insurance covering:

- (i) loss due to the destruction of, or physical damage to, any pasturage or any crop of grain, fruit, vegetables or other plants, where the destruction or damage occurs while the pasturage or crop is being grown; or
- (ii) loss due to the destruction of, or physical damage to, the product of any such pasturage or crop, where the destruction or damage occurs while the product of the pasturage or crop is being stored or transported,

but not being insurance covering loss referred to in subparagraph (ii) unless the contract by which the insurance is effected also effects insurance covering the loss referred to in subparagraph (i); or

(f) livestock insurance, being insurance covering:

- (i) loss due to the death of, or physical damage to, any animal, whether domesticated or wild; or
- (ii) loss due to the death of, or physical damage to, any genetic material of any such animal; or
- (iii) loss due to the theft of any such animal or genetic material; or

(g) hospital and ancillary health benefits insurance, being insurance covering liability incurred in respect of fees or charges for hospital treatment, or for health care ancillary to hospital treatment, if the liability is not covered by an organisation registered under Part VI of the National Health Act 1953 of the Commonwealth;

*Stamp Duties (Amendment) 1991***SCHEDULE 4—AMENDMENTS RELATING TO PROVISIONS OF
THE STAMP DUTIES REGULATIONS 1934—*continued*****Explanatory note—Schedule 4**

The purpose of this Schedule is to re-enact, as provisions of the Principal Act, certain provisions contained in the regulations made under the Principal Act. The re-enactment has arisen as a consequence of the examination of the Stamp Duties Regulations 1934 in connection with their repeal on 1 September 1991 in accordance with the staged repeal program for subordinate legislation contained in the Subordinate Legislation Act 1989. When the Stamp Duties Regulation 1991 commenced on 1 September 1991, clause 13 of that Regulation continued the operation of several provisions of the 1934 Regulations until they could be transferred to the Principal Act. In some cases, the re-enacted provisions are modified to clarify their application.

The provisions re-enacted are:

Refund of duty—item (1)

Under proposed section 15, a person may apply for a refund of duty if the person:

- has a stamped instrument that has failed in its intended operation and has become useless
- has any spoiled or unused duty stamps
- has inadvertently used a stamp of greater value than was necessary
- has inadvertently used a stamp for an instrument not liable to duty
- has used an adhesive stamp where an adhesive stamp should not have been used.

The application is to be made in a form approved by the Chief Commissioner. The proposed section deals with the matters previously dealt with in regulations 26–32 of the Stamp Duties Regulations 1934.

Ordinarily, in applying for a refund in respect of a stamped instrument, the instrument would have to be produced with the application. However, cases arise where an application is made in respect of an instrument which has been destroyed by the Registrar-General after the instrument has been registered and microfilmed. Accordingly, proposed section 15 adds a provision to the effect that the stamped instrument is not required to be produced in such a case.

Loan security endorsements—item (2)

Item (2) transfers to the Principal Act the provisions of regulation 76 of the Stamp Duties Regulations 1934 which requires persons who are registered to pay duty on loan security instruments by way of return to endorse a loan security instrument with a stamp issued by the Chief Commissioner and to complete the particulars specified in the stamp.

Hiring arrangement returns—item (3)

Item (3) transfers to the Principal Act the provisions of regulation 63 of the Stamp Duties Regulations 1934 relating to the form of the return of a person approved to pay duty on the hiring of goods by way of return rather than by lodgement of the individual documents for each hire. The form is now to be a form approved by the Chief Commissioner (rather than a form as prescribed by the regulations).

Stamp Duties (Amendment) 1991

SCHEDULE 4—AMENDMENTS RELATING TO PROVISIONS OF
THE STAMP DUTIES REGULATIONS 1934—*continued*

Motor vehicle certificate of registration—item (4)

Item (4) amends section 84G of the Principal Act so that all classes of motor vehicle certificates of registration which are exempt from stamp duty will be found in the Principal Act. The amendment deals with the matter previously dealt with in regulation 56 of the Stamp Duties Regulations 1934.

Classes of insurance—item (5)

The Principal Act divides insurance into 2 classes for the purposes of the payment of stamp duty, different rates of duty applying to each class. The types of insurance in Class 2 have been extended by regulation.

Item (5) amends section 86 of the Principal Act so that all the categories of Class 2 insurance will be found in the Principal Act.

SCHEDULE 5—MISCELLANEOUS AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

In paragraph (b) (i) of the definition of “Public unit trust scheme” in section 3 (1), after “Code”, insert “or the corresponding provisions of a law in force in another State or a Territory”.

Explanatory note—item (1)

A concessional duty of \$200 applies to instruments which vary or amend a deed establishing a public unit trust scheme where the deed is approved under New South Wales law. The amendment made by this item will extend the concession where the deed establishing the scheme is approved under the corresponding law of another State or a Territory.

This amendment is taken to have commenced on 5 July 1991 in accordance with a Variation to Statute approved by the Premier and Treasurer.

(2) Section 22 (**Cancellation of adhesive stamps**):

(a) From section 22 (1), omit “Subject to sections 75A and 84G of this Act and to paragraph (1) of the matter appearing under the heading “Transfer of Shares” in the Second Schedule to this Act, an” insert instead “An”.

(b) Omit section 22 (2) and (3).

Explanatory note—item (2)

The amendments made by this item are for the purposes of statute law revision.

*Stamp Duties (Amendment) 1991***SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued***

The references in section 22 to sections 75A and 84G are now inappropriate. Section 75A refers to instalment purchase duty which has been abolished (see Schedule 3 (5)). Section 84G refers to motor vehicle certificates of registration which are not able to be stamped by affixing an adhesive stamp.

Section 22 (2) is omitted as it is unnecessary. Section 22 (3) is omitted as it has proved to be unenforceable.

(3) Section 29 (Inadmissibility of unstamped and other instruments):

In section 29 (4), after “instrument” where firstly occurring, insert “or a copy of an instrument”.

Explanatory note—item (3)

Item (3) amends section 29 of the Principal Act to enable a copy of an instrument which is not duly stamped to be admitted to evidence in court proceedings on the giving of appropriate undertakings as to stamping. Under the present provisions of section 29, only the original instrument may be so admitted.

(4) Section 38 (Stamp duty a debt to the Crown):

From section 38 (1), omit “the Second Schedule hereto”, insert instead “this Act”.

Explanatory note—item (4)

This amendment is to make it clear that all duties imposed by the Principal Act, and not only those mentioned in the Second Schedule, comprise a debt to the Crown.

(5) Section 40A (Options):

From section 40A (1), omit “other than stock or marketable security”, insert instead “(other than stock, a marketable security or a unit in a unit trust scheme)”.

Explanatory note—item (5)

Following the introduction of the specific charge for the transfer of units in a unit trust scheme, paragraph (c) of the definition of “Marketable security” in section 3 (1) of the Principal Act was removed. This had the effect of imposing duty at conveyance rates under section 40A on an option to purchase units. Stock or marketable securities are excluded from the operation of section 40A. This exclusion is extended to units in a unit trust scheme.

*Stamp Duties (Amendment) 1991*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*(6) Section 74D (**Definitions**):

At the end of paragraph (v) of the definition of "Hiring arrangement", insert:

; or

- (vi) an arrangement under which an operator is provided by the owner of the goods to operate the goods for the hirer.

Explanatory note—item (6)

This amendment excludes "wet hires" from hiring arrangement duty under the Principal Act. A wet hire is defined in proposed paragraph (vi) of the definition of "Hiring arrangement".

(7) Section 74H (**Exemption from duty**):

In section 74H (1), after "the acquisition of the goods", insert "by the owner at the request of the hirer".

Explanatory note—item (7)

In 1986, the Principal Act was amended to remove the concession available for goods, wares and merchandise. At this time a Variation to Statute was approved for the Principal Act to be administered on the basis that a hiring arrangement, where the owner at the request of the hirer acquired the goods for hire from the hirer and ad valorem duty under section 43A had been paid in respect of those goods, was not chargeable with stamp duty. However, when the amendment was passed, the restriction of "at the request of the hirer" was omitted. This has meant that if goods are purchased with a business and ad valorem duty is paid on the purchase, the hiring out of these goods is exempt. It is likely, however, that when goods are purchased under a sale of business, in most if not all cases, no ad valorem duty would be payable on these goods as they would be exempt as stock-in-trade.

To ensure that the original intention is reflected, section 74H is amended to make it clear that the exemption should only apply to goods purchased at the request of the hirer.

(8) Section 78FA (**Exemption from duty—leases of accommodation for aged and disabled persons**):

Omit section 78FA (1), insert instead:

(1) Despite any other provision of this Act, duty is not chargeable in respect of:

- (a) a lease granted by or on behalf of a corporation, society or institution if:

*Stamp Duties (Amendment) 1991*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*

- (i) the purpose of the lease is to grant a retired person or a disabled person the right to occupy residential accommodation; and
 - (ii) the lease has not been granted for the purpose of profit; or
- (b) a lease executed in accordance with Part V of the National Health Act 1953 of the Commonwealth.

Explanatory note—item (8)

This item amends section 78FA of the Principal Act to exempt from duty a lease which a resident of a nursing home is required to enter into because of the operation of Part V of the National Health Act 1953 of the Commonwealth.

This amendment is taken to have commenced on 1 September 1991.

(9) Section 83 (Definitions):

Omit section 83 (5), insert instead:

(5) For the purposes of this Division and of the matter appearing under the heading "Loan Security" in the Second Schedule to this Act, property is taken to be in New South Wales in so far as the property comprises shares in a company incorporated in New South Wales. However, if those shares are registered on a share register in another State or a Territory and duty as on a loan security has been paid in accordance with a corresponding law of that State or Territory in respect of a mortgage affecting those shares, the mortgage is exempt from payment of duty under this Act to the extent to which it relates to those shares.

Explanatory note—item (9)

The amendment made to section 83 (5) of the Principal Act is intended to overcome an argument that the provisions of that subsection, because they are expressed to apply "for the purposes of paragraph (c) of the definition of "Loan security" in subsection (1)", apply only for those purposes and not for the purposes of Division 21 as a whole.

The amendment also removes the possibility of duty being paid on a mortgage affecting shares in a New South Wales company under the Principal Act as well as under a corresponding Act of another State or a Territory of the Commonwealth of Australia.

Stamp Duties (Amendment) 1991

SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*

(10) Section 84 (**Limited and unlimited loan securities**):

After section 84 (3C), insert:

(3CA) A reference in subsection (3C) to a contingent liability is a reference to a contingent liability limited to the amount of any advance by any party to the arrangements referred to in that subsection and does not include a reference to any other kind of contingent liability.

Explanatory note—item (10)

Section 84 (3C) deals with the liability to stamp duty of a loan security which is used or is capable of being used (whether directly or through a chain of relationships) to recover the whole or any part of an amount payable by a guarantor, an indemnifying party or a party to another instrument. Under the subsection, stamp duty is imposed with respect to the whole of the contingent liability of the guarantor, indemnifying party or other party and is not limited to the liability which relates to advances with which the loan security is connected. The insertion of the proposed subsection (3CA) is intended to limit the liability to those advances.

(11) Section 84CAA (**Refinancing of loans to primary producers**):

At the end of section 84CAA, insert:

(2) This section also applies where a later loan security applies to additional land or additional assets other than land.

Explanatory note—item (11)

This amendment is to extend the exemption from duty to the refinancing of a loan by a primary producer granted under section 84CAA of the Principal Act so as to include cases where, in the course of the refinancing, additional land or other assets are included in the replacement or additional loan security.

This amendment is taken to have commenced on 23 April 1991 in accordance with a Variation to Statute approved by the Premier and Treasurer.

(12) Section 84D (**Duty on subscriptions under instruments which secure debentures**):

(a) At the end of section 84D (1), insert:

Any mortgage, not executed by the corporation, protecting the interests of the holders of the debentures shall be liable to duty of \$10.

(b) In section 84D (1), after “this Act” where secondly occurring, insert “if duty of a like nature under the law of the place where the amount is subscribed for has been paid”.

*Stamp Duties (Amendment) 1991*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*

- (c) From section 84D (2), omit “40 cents for every \$100 and any remaining fractional part of \$100”, insert instead “\$4 for every \$1,000 and any remaining fractional part of \$1,000”.
- (d) Omit section 84D (2A) (b), insert instead:
 - (b) the reference in that subsection to \$4 for every \$1,000 and any remaining fractional part of \$1,000 were:
 - (i) in the case of money that is repayable at or after the expiration of a period of not less than 30 days and not more than 3 months—a reference to \$2 for every \$10,000 and for any remaining fractional part of \$10,000; or
 - (ii) in the case of money that is repayable at or after the expiration of a period of not less than 3 months and not more than 6 months—a reference to \$2 for every \$1,000 and for any remaining fractional part of \$1,000.

Explanatory note—item (12)

Currently an instrument of trust pursuant to which a corporation issues debentures is not liable to ad valorem duty if an undertaking is received from the corporation and trustee to lodge an annual return and pay duty on debentures subscribed for in New South Wales. This provision has been used to avoid New South Wales duty by the use of an ACT company. At present the only deterrent to avoidance is the collateral security provisions introduced in June 1990 which ensure collateral securities from related companies are liable to ad valorem duty.

Section 84D is amended to ensure that the debentures issued pursuant to the instrument of trust are liable to loan security duty in New South Wales unless duty of a like nature is paid in another jurisdiction. The collateral securities from related corporations would be liable to nominal duty of \$10 only.

Section 84D is also amended to express the rate of duty in dollar amounts rather than in cents.

- (13) **Section 87 (Insurance to which this Division does not apply):**
 - After section 87 (k), insert:
 - (l) redundancy insurance in respect of a housing loan which does not exceed \$124,000.

*Stamp Duties (Amendment) 1991*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued***Explanatory note—item (13)**

Redundancy insurance is designed to assist home buyers by enabling their loan repayments to be paid from insurance should there be a loss of income through redundancy. This amendment exempts from duty redundancy insurance where the housing loan does not exceed \$124,000.

This amendment is taken to have effect from 1 April 1991 in accordance with a Variation to Statute approved by the Premier and Treasurer.

(14) Section 90 (Definitions):

- (a) From section 90 (1), omit “(5)”.
- (b) Insert in section 90 (2) in alphabetical order:

“unit” includes a right to a unit.

Explanatory note—item (14)

Division 25A of Part 3 of the Principal Act charges duty on a transfer of units in a unit trust scheme. For consistency with the transfer of shares provisions which charge duty on rights to shares (including options), and having regard to the amendment made to section 40A by item (5), the definition of “unit” in section 90 is added to include rights (and options) to units.

(15) Section 98 (Definitions):

- (a) In paragraph (c) of the definition of “short term dealing” in section 98 (1), after “\$50,000” where firstly occurring, insert “(except in the case of a securities lending arrangement)”.
- (b) From paragraph (d) (iv) of the definition of “short term dealing” in section 98 (1), omit “185 days; and”, insert instead “185 days, but the dealing is completed not later than 185 days after the date of deposit or investment of the amount;”.
- (c) Omit paragraph (e) of the definition of “short term dealing” in section 98 (1).
- (d) From the definition of “short term liability” in section 98 (1), omit “other than”, insert instead “except in the case of a securities lending arrangement or”.

Explanatory note—item (15)

Paragraphs (a) and (d) amend the definitions of “short term dealing” and “short term liability” in section 98 of the Principal Act. The amendments they make will enable scrip lending transactions for amounts of less than \$50,000 to qualify as short term dealings for the purposes of financial institutions duty.

Stamp Duties (Amendment) 1991

SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*

Paragraphs (b) and (c) amend the definition of "short term dealing" to make it clear that paragraph (e) of the definition was only intended to qualify the matter in paragraph (d) (iv) of the definition.

(16) Second Schedule—Stamp Duties and Exemptions:

After paragraph (g) of the *Exemptions* appearing under the heading TRANSFER OF SHARES, insert:

- (h) Any transfer of shares effecting a buy-back of shares in accordance with Division 4B of Part 2.4 of the Corporations Law.

Explanatory note—item (16)

This amendment provides an exemption from duty on a transfer of shares effecting a share buy-back.

The amendment is taken to have commenced on 3 April 1991 in accordance with a Variation to Statute approved by the Premier and Treasurer.

(17) Second Schedule—General Exemptions From Stamp Duty under Part 3:

- (a) From paragraphs (15A), (34), (36), (37) and (38), omit "State Compensation Board" wherever occurring, insert instead "WorkCover Authority".
- (b) From paragraphs (34), (36) and (38), omit "the Board" wherever occurring, insert instead "the Authority".
- (c) From the definition of "offshore borrowing" in paragraph (31), omit "(but excludes the interest on an offshore borrowing where section 128GB of that Act does not apply to that interest by virtue of subsection (3) of that section)", insert instead "(but excludes an offshore borrowing within that meaning where section 128GB of that Act does not apply to the interest on that offshore borrowing by virtue of subsection (3) of that section)".
- (d) After paragraph (41), insert:
- (42) The issue or transfer of a warrant (being a contract that is an option contract within the meaning of section 9 of the Corporations Law and that is admitted to trading status on the stock market of Australian Stock Exchange Limited in accordance with section 8 of the Business Rules of Australian Stock Exchange Limited).

*Stamp Duties (Amendment) 1991*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued***Explanatory note—item (17)**

Paragraphs (a) and (b) are amendments by way of statute law revision to replace references to the State Compensation Board with references to the WorkCover Authority following the enactment of the WorkCover Administration Act 1989 (see clauses 2 and 4 of Schedule 4 to that Act).

Paragraph (c) clarifies the offshore banking exemption to exclude certain borrowings rather than the interest on those borrowings.

Paragraph (d) excludes from liability to duty the transfer of a warrant traded on the stock market of the Australian Stock Exchange.

The amendment made by paragraph (d) is taken to have commenced on 24 March 1991 being the date on which this exemption was approved by the Premier and Treasurer.

(18) Schedule 2A—First Home Purchase Scheme:

From clause 20 (5), omit “net” where secondly occurring.

Explanatory note—item (18)

This amendment corrects a minor error in the definition of “net taxable income”.

(19) Schedule 2D—Exemption From Duty For Certain Conveyances:

(a) In clause 6 (c), after “corporation”, insert “(or would, if the trustee were not a corporation, be a principal shareholder in the corporation)”.

(b) After clause 10, insert:

Application of scheme to company titles

11. This Schedule applies to the transfer of shares in a private company or units in a private trust scheme, the ownership of which entitles the owner to the exclusive possession, or substantially exclusive possession, of a dwelling in a building containing more than one separate dwelling, in the same way as it applies to a conveyance of land, with such modifications as may be necessary.

Explanatory note—item (19)

The Principal Act was amended in 1990 to exempt from duty certain transfers to persons of their principal places of residence where the property was held by a company or trust.

Paragraph (a) will enable a transfer to the beneficiary of a trust which has a corporate trustee to be exempt from duty.

*Stamp Duties (Amendment) 1991*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*

Paragraph (b) will extend the exemption to cases where the principal place of residence is held under company title.

These amendments are taken to have commenced on the same day as the 1990 amendments, namely 11 September 1990.

(20) Tenth Schedule—Savings, Transitional and Other Provisions:

After Part 7, insert:

PART 8—STAMP DUTIES (AMENDMENT) ACT 1991**Application of amendments—generally**

26. (1) A provision of this Act as in force before the amendment of the provision by the Stamp Duties (Amendment) Act 1991 continues to apply to an instrument referred to in the provision which was executed, or a transaction referred to in the provision which was entered into, before the date on which the amendment commenced or is taken to have commenced, except as provided by this Part.

(2) An amendment made by the Stamp Duties (Amendment) Act 1991 does not apply to an instrument which was executed, or a transaction which was entered into, before the date on which the amendment commenced or is taken to have commenced, except as provided by this Part.

Removal of provisions concerning abolished duties

27. Without limiting section 30 of the Interpretation Act 1987, an amendment made by section 3 of, and Schedule 3 to, the Stamp Duties (Amendment) Act 1991 does not affect a liability to duty existing before the date of assent to that Act of any instrument or in respect of death duty.

Refunds—failed instruments and spoiled or unused duty stamps

28. An application made under section 15 as in force immediately before 1 January 1992 which had not been finally determined before that date is taken to be an application under that section as in force after that date.

Explanatory note—item (20)

This item inserts into the Principal Act savings and transitional provisions consequent on the enactment of the proposed Act.

STAMP DUTIES (AMENDMENT) ACT 1991 No. 93

NEW SOUTH WALES



TABLE OF PROVISIONS

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STAMP DUTIES (AMENDMENT) ACT 1991 No. 93

NEW SOUTH WALES



Act No. 93, 1991

An Act to amend the Stamp Duties Act 1920 with respect to concessional duty for certain superannuation instruments; to make further provision with respect to the imposition of duties; and for other purposes. [Assented to 17 December 1991]

Stamp Duties (Amendment) 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Stamp Duties (Amendment) Act 1991.

Commencement

2. (1) This Act commences on the date of assent or on 1 January 1992, whichever is the later, except as provided by this section.
(2) Schedule 2 (except item (3)) is taken to have commenced on 1 March 1991.
(3) Schedule 5 (1) is taken to have commenced on 5 July 1991.
(4) Schedule 5 (8) is taken to have commenced on 1 September 1991.
(5) Schedule 5 (11) is taken to have commenced on 23 April 1991.
(6) Schedule 5 (13) is taken to have commenced on 1 April 1991.
(7) Schedule 5 (16) is taken to have commenced on 3 April 1991.
(8) Schedule 5 (17) (d) is taken to have commenced on 24 March 1991.
(9) Schedule 5 (19) is taken to have commenced on 11 September 1990.
(10) Section 3 in its application to a provision of Schedules 1-5 commences or is taken to have commenced on the day on which the provision commences or is 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 1-5.

Amendment of Stamp Duties Regulation 1991

4. Clause 13 of the Stamp Duties Regulation 1991 is repealed.

Explanatory notes

5. Matter appearing under the heading "Explanatory note" in a Schedule does not form part of this Act.
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**SCHEDULE 1—AMENDMENTS RELATING TO
SUPERANNUATION**

(Sec. 3)

(1) Section 3 (**Definitions**):

From section 3 (1), omit the definitions of “Complying approved deposit fund”, “Complying pooled superannuation trust” and “Complying superannuation fund”.

(2) Section 44A (**Payment of duty on statements in absence of dutiable instruments**):

(a) After section 44A (1), insert:

(1A) A person, being a party to a transaction to which this Division applies which is not effected or evidenced by an instrument chargeable with duty in accordance with Division 19 shall, if the person would have been liable to pay such duty in respect of the transaction had such an instrument been executed, lodge with the Chief Commissioner a statement in respect of the transaction.

(b) From section 44A (2B), omit “subsection (2)”, insert instead “subsection (1A), (2)”.

(c) From section 44A (5), omit “referred to in subsection (1)”, insert instead “or duty referred to in subsection (1), (1A)”.

(d) From section 44A (7), omit “the statement” where firstly occurring, insert instead “a statement”.

(3) Section 73 (**Certain conveyances not chargeable with ad valorem duty**):

Omit section 73 (2AA) (d), insert instead:

- (d) the trustees of a fund which is a complying superannuation fund within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth or which, in the opinion of the trustees, will become a complying superannuation fund within 12 months after the execution of the instrument referred to in subsection (1) (a) (i), (ii) or (iii).

Stamp Duties (Amendment) 1991

SCHEDULE 1—AMENDMENTS RELATING TO
SUPERANNUATION—*continued*

(4) Part 3, Division 19:

After Division 18, insert:

Division 19—Superannuation

Definitions

81. In this Division:

“complying approved deposit fund” means a fund which is a complying ADF within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth;

“complying pooled superannuation trust” means a trust which is a pooled superannuation trust within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth;

“complying superannuation fund” means a fund which is a complying superannuation fund within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth.

Duty on certain instruments relating to superannuation

81A. (1) The following instruments are liable to a stamp duty of \$20:

- (a) an instrument which contains or amends provisions governing a superannuation fund, an approved deposit fund or a pooled superannuation trust, being a fund or trust which, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund or a complying pooled superannuation trust within 12 months after the instrument or amending instrument takes effect;
- (b) an instrument under which an employer agrees to participate in or contribute to a complying superannuation fund or a superannuation fund which, in the opinion of the trustees, will become a complying superannuation fund within 12 months after the employer agrees to participate in or contribute to the fund.

(2) The persons primarily liable to pay the duty are the parties to the instrument.

(3) The duty may be denoted by adhesive stamp.

**SCHEDULE 1—AMENDMENTS RELATING TO
SUPERANNUATION—*continued*****Duty on certain conveyances of property between certain
superannuation funds**

82. (1) This section applies to an instrument which the Chief Commissioner is satisfied is an agreement to convey or a conveyance of property between superannuation funds (which, in the opinion of the respective trustees, will be complying superannuation funds for the year in which the conveyance occurs) in connection with a person's ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, the transferor fund and becoming a member of, or otherwise becoming entitled to benefits in respect of, the transferee fund.

(2) The duty payable on an instrument to which this section applies is the ad valorem duty as a conveyance or \$200, whichever is the lesser.

(3) The person primarily liable to pay the duty is the transferee.

(4) An application for an assessment of duty in accordance with this section is to be accompanied by the following:

- (a) a brief explanation of the background to the conveyance and the entitlements to be extinguished and created;
- (b) copies of the governing rules of the complying superannuation funds concerned;
- (c) a statement of the property to be conveyed;
- (d) a copy of each instrument of conveyance;
- (e) a statutory declaration from a trustee (or a director of a corporate trustee) of each of the superannuation funds concerned stating that, in the opinion of the trustee (or director), the fund will be a complying superannuation fund for the year in which the conveyance occurs.

(5) The Chief Commissioner may require further information.

(6) An instrument on which duty of \$200 has been paid in accordance with an assessment under this section is taken to have been duly stamped with ad valorem duty as a conveyance.

Stamp Duties (Amendment) 1991

SCHEDULE 1—AMENDMENTS RELATING TO
SUPERANNUATION—*continued*

(7) In this section:

“**complying superannuation fund**” includes a complying approved deposit fund.

(5) Second Schedule—Stamp Duties and Exemptions:

- (a) Omit paragraph (4) (j) of the matter appearing under the heading CONVEYANCES OF ANY PROPERTY.
- (b) Omit paragraph (4) of the matter appearing under the heading DECLARATION OF TRUST.
- (c) Omit the matter relating to SUPERANNUATION FUND INSTRUMENTS.

Explanatory note—Schedule 1

Amendments were made to the Principal Act by the Stamp Duties (Miscellaneous Amendments) Act 1990 in relation to superannuation funds:

- to reduce in most cases the duty on instruments establishing and amending superannuation funds
- to provide for instruments whereby an employer adopts the rules of a superannuation fund to be liable to the same duty as instruments establishing or amending superannuation funds.

The amendments made by Schedule 1 will gather into one Division (Division 19 of Part 3) the amendments made by the 1990 Act.

In addition, a concessional maximum rate of duty of \$200 is being introduced to apply to the transfer of assets between superannuation funds if the Chief Commissioner is satisfied that the asset transfer is linked to a transfer of membership (proposed section 82).

SCHEDULE 2—AMENDMENTS RELATING TO LIFE
INSURANCE

(Sec. 3)

(1) Section 86 (**Definitions**):

- (a) In section 86 (1), after “Division” where firstly occurring, insert “and in the Second Schedule”.
- (b) Insert in section 86 (1), in alphabetical order:

“**life insurance rider**” means insurance (other than life insurance or disability income insurance referred to in paragraph (c) of the definition of “Class 2 insurance” in this subsection) which:

- (a) is attached to a policy of life insurance;

Stamp Duties (Amendment) 1991

SCHEDULE 2—AMENDMENTS RELATING TO LIFE
INSURANCE—*continued*

- (b) adds specified events and contingencies to those insured under the policy;
- (c) is subject to the terms and conditions of the policy; and
- (d) is not available separately from such a policy;
- (2) Section 88B (**Monthly returns and payment of duty**):
- (a) After section 88B (1) (a) (ii), insert:
- (iii) the total amount of all first year's premiums for life insurance riders 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) After section 88B (1) (b) (iii), insert:
- (iv) the amount determined in accordance with the Second Schedule in respect of the life insurance riders issued by or on behalf of the person in the preceding month; and
- (3) Section 88N (**Set-off of duty on refund of premium**):
- At the end of section 88N, insert:
- (2) If, in respect of life insurance, a registered person refunds any premium to a person because the person cancels a life insurance policy within 30 days after receiving the policy, 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 registered person.
- (4) Second Schedule—Stamp Duties and Exemptions:
- After the matter relating to POLICIES OF LIFE INSURANCE, insert:

LIFE INSURANCE
RIDERS:

Upon every life insurance rider	Five per centum of the first year's premium on the life insurance rider.	The company or person issuing the life insurance rider.
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Stamp Duties (Amendment) 1991

**SCHEDULE 2—AMENDMENTS RELATING TO LIFE
INSURANCE—*continued***

Explanatory note—Schedule 2

The amendments made by this Schedule are:

- to clarify the amount of stamp duty payable on life insurance “riders”
- to provide that no insurance duty is payable where a life policy is cancelled within a “free look period” provided that the period does not exceed 30 days.

Item (1) inserts a definition of “life insurance rider” into section 86 of the Principal Act. A life insurance rider, generally speaking, is insurance attaching to a policy of life insurance whereby the events or contingencies insured under the policy include specified additional events or contingencies other than life insurance.

Instead of being liable to duty at general insurance rates, life insurance riders are to be liable to duty at the rate of 5 per cent of the first year’s premium on the rider—item (4).

Item (2) requires details of premiums for riders to be included in the monthly return of insurances that is required for stamp duty purposes.

Item (3) enables a set-off of duty to be made against a subsequent monthly return where a life policy in respect of which duty has been paid is cancelled within the first 30 days.

These amendments (except item (3)) are taken to have commenced as from 1 March 1991, being the date on which the Premier and Treasurer approved of the Principal Act being administered on this basis. The amendment made by item (3) is to commence on the date of assent to the proposed Act or 1 January 1992, whichever is the later.

**SCHEDULE 3—AMENDMENTS RELATING TO DUTIES
WHICH HAVE BEEN ABOLISHED**

(Sec. 3)

(1) Section 3 (**Definitions**):

From section 3 (1), omit the definitions of “Backer”, “Bet” (including the definition of “betting”), “Betting ticket”, “Bookmaker”, “Racecourse” and “Race meeting”.

(2) Part 3, Division 4 (**Betting tickets**):

Omit the Division.

(3) Section 74B (**Instrument to be made out**), section 74C (**Payment of duty on discount arrangements by return**):

Omit the sections.

Stamp Duties (Amendment) 1991

SCHEDULE 3—AMENDMENTS RELATING TO DUTIES WHICH
HAVE BEEN ABOLISHED—*continued*

(4) Section 74D (Definitions):

(a) Insert in section 74D, in alphabetical order:

“**Hire purchase agreement**” includes a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise), but, subject to subsections (2) and (3), does not include any agreement:

- (a) whereby the property in the goods comprised in the agreement passes at the time of the agreement or on or at any time before the delivery of the goods; or
- (b) for the letting of goods or an agreement for the purchase of goods together with real property or any estate or interest in real property or with any business or interest in a business.

(b) At the end of section 74D, insert:

(2) If by virtue of 2 or more agreements, none of which by itself constitutes a hire purchase agreement, there is a transaction which is in substance or effect a hire purchase agreement as defined in this section, the agreements are to be treated for the purposes of this Act as a single agreement entered into when the last of those agreements was entered into.

(3) An agreement for the letting of goods containing a provision or provisions to the effect that if the agreement is subsisting at a future date, whether that date is specified or not, an option to purchase either the goods the subject of the letting or other goods is or may be given or granted is taken to be a letting of goods with an option to purchase.

(5) Section 75A (Interpretation and duty on instalment purchase arrangements):

- (a) From section 75A (1), omit “and of the matter appearing under the heading “Instalment Purchase Arrangements” in the Second Schedule to this Act, unless inconsistent with the context or subject matter”.
- (b) Omit the proviso to the definition of “Credit purchase agreement” in section 75A (1).

Stamp Duties (Amendment) 1991

SCHEDULE 3—AMENDMENTS RELATING TO DUTIES WHICH
HAVE BEEN ABOLISHED—*continued*

- (c) Omit the definition of “Hire purchase agreement” from section 75A (1).
 - (d) From the definition of “Instalment purchase arrangement” in section 75A (1), omit “, a credit purchase agreement or a hire purchase agreement”, insert instead “or a credit purchase agreement”.
 - (e) Omit the definitions of “Interest”, “Purchase price”, “Purchaser” and “Vendor” from section 75A (1).
 - (f) Omit section 75A (2)–(7).
- (6) Sections 75B–75E:
Omit the sections.
- (7) Section 75F (**Charging of duty on and application of Division to instruments etc. made on or after 1.1.1983**):
- (a) From section 75F (1) (a), omit “or a hire purchase agreement”.
 - (b) From section 75F (1) (b), omit “, a hire purchase agreement”.
- (8) Part 3, Division 20 (**Loans**):
Omit the Division.
- (9) Section 83 (**Definitions**):
- (a) From paragraph (a) of the definition of “Financial accommodation” in section 83 (1), omit “within the meaning of Division 20”.
 - (b) Insert in section 83 (1), in alphabetical order:
“**Loan**” includes:
 - (a) an advance of money; and
 - (b) money paid for or on account of or on behalf of or at the request of any person; and
 - (c) a forbearance to require payment of money owing on any account whatever; and
 - (d) any transaction (whatever its terms or form) which in substance effects a loan of money.
- (10) Section 98 (**Definitions**):
From the definition of “loan” in section 98 (1), omit “section 82A (1)”, insert instead “section 83 (1)”.

Stamp Duties (Amendment) 1991

SCHEDULE 3—AMENDMENTS RELATING TO DUTIES WHICH
HAVE BEEN ABOLISHED—*continued*

- (11) Part 4 (**Death Duty**):
Omit the Part.
- (12) Sections 125AA, 137, 138, 140, 141, 145:
Omit the sections.
- (13) Second Schedule—Stamp Duties and Exemptions:
(a) Omit the matter relating to BETTING TICKETS.
(b) Omit the matter relating to DISCOUNT ARRANGEMENT other than a Short Term Discount Arrangement.
(c) Omit the matter relating to INSTALMENT PURCHASE ARRANGEMENTS.
(d) Omit the matter relating to LOAN INSTRUMENT.
- (14) Second Schedule—General Exemptions From Stamp Duty under Part 3:
After paragraph (42), insert:
(43) A hire purchase agreement within the meaning of section 74D.
- (15) Third Schedule, Fourth Schedule, Fifth Schedule, Seventh Schedule, Schedule 7A, Eighth Schedule, Schedule 8A, Ninth Schedule:
Omit the Schedules.

Explanatory note—Schedule 3

This Schedule removes from the Principal Act provisions relating to the following duties which have been abolished within the last 10 years:

- death duty
- betting tickets
- discount arrangements
- instalment purchase arrangements
- loan instalment duty.

Items (4) and (9) retain and relocate definitions contained within the repealed provisions which are required for the purposes of other continuing provisions of the Principal Act.

Items (5), (6) and (7) contain amendments to prevent credit arrangements and credit purchase arrangements from becoming liable to nominal duty.

Item (14) preserves the exemption from duty of hire purchase agreements.

Stamp Duties (Amendment) 1991

**SCHEDULE 4—AMENDMENTS RELATING TO PROVISIONS
OF THE STAMP DUTIES REGULATIONS 1934**

(Sec. 3)

(1) Section 15:

Omit the section, insert instead:

Refunds—failed instruments and spoiled or unused duty stamps

15. (1) A person having a stamped instrument which has failed in its intended operation and has become useless may apply, in the approved form, to the Chief Commissioner for a refund of the duty paid in respect of the instrument.

(2) An application under subsection (1) is to be made within 1 year after the date on which the instrument fails and becomes useless.

(3) A person having any spoiled or unused duty stamps may apply, in the approved form, to the Chief Commissioner for a refund of the duty paid for the spoiled or unused stamps.

(4) An application under subsection (3) is to be made:

- (a) in the case of an executed instrument—within 1 year after the date when the stamp was spoiled; or
- (b) in the case of an unexecuted instrument or an adhesive stamp which is not fixed to an instrument—within 1 year after the date when the stamp was rendered useless.

(5) A person:

- (a) who has inadvertently used a stamp of greater value than was necessary for an instrument liable to duty; or
- (b) who has inadvertently used a stamp for an instrument not liable to duty; or
- (c) who has used an adhesive stamp where an adhesive stamp should not have been used,

may apply, in the approved form, to the Chief Commissioner to cancel the stamp misused and to treat it as spoiled.

Stamp Duties (Amendment) 1991

SCHEDULE 4—AMENDMENTS RELATING TO PROVISIONS OF
THE STAMP DUTIES REGULATIONS 1934—*continued*

- (6) An application under subsection (5) is to be made:
- (a) in the case of an instrument which is dated—within 1 year after the date of the instrument; or
 - (b) in the case of an instrument which is not dated—within 1 year after the date of first execution of the instrument.
- (7) The Chief Commissioner may grant or refuse to grant an application under this section.
- (8) The granting of an application is subject to:
- (a) the surrendering to the Chief Commissioner of the stamps or stamped instrument concerned, except in the case of an instrument which has been destroyed by the Registrar-General following the registration of the instrument by the Registrar-General; and
 - (b) the payment to the Chief Commissioner of commission of 5 per cent of the value of the spoiled or unused duty stamps.
- (9) The Chief Commissioner may destroy an instrument in respect of which an allowance has been made for spoiled stamps and which is not claimed within 3 months after the date of the allowance.
- (2) Section 38C (**Payment of duty by return in certain cases**):
- (a) From section 38C (8), omit “, together with such other matter as may be prescribed in respect of instruments of that class,”.
 - (b) At the end of section 38C (8), insert:
In the case of a loan security instrument, the approved person shall also stamp the instrument with the stamp or stamps issued to the person by the Chief Commissioner for the purposes of this section and complete the particulars specified in the stamp or stamps.
- (3) Section 74F (**Payment of duty on hiring arrangements by return**):
- Omit section 74F (7) (a), insert instead:

Stamp Duties (Amendment) 1991

SCHEDULE 4—AMENDMENTS RELATING TO PROVISIONS OF
THE STAMP DUTIES REGULATIONS 1934—*continued*

- (a) lodge a return in the approved form with the Chief Commissioner not later than the day notified to the approved person for the purposes of this subsection; and
- (4) Section 84G (**Duty on motor vehicle certificates of registration**):
- (a) Omit section 84G (1) (d).
- (b) At the end of section 84G (1) (f), insert:
; or
- (g) a motor vehicle certificate of registration issued in respect of a motor vehicle specially constructed for the work of conveying sick or injured persons or for mine rescue work in accordance with the Mines Rescue Act 1925, and the regulations under that Act, if the vehicle while on a public street is used solely for purposes connected with that work; or
- (h) a motor vehicle certificate of registration issued in respect of a motor vehicle which weighs not more than 255 kg when unladen and is specially constructed to be used, and while on a public street is used, solely for the conveyance of an invalid; or
- (i) a motor vehicle certificate of registration issued to a person who is a dealer in used or reconstructed motor vehicles solely in connection with the business of financing the purchase of those vehicles and who, in the course of that business, does not dispose of any such vehicle except through a dealer licensed under the Motor Dealers Act 1974, being a certificate that has been obtained for the purpose of the resale of the vehicle in respect of which the certificate is issued; or
- (j) a motor vehicle certificate of registration issued to:
- (i) a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose; or

Stamp Duties (Amendment) 1991

 SCHEDULE 4—AMENDMENTS RELATING TO PROVISIONS OF
 THE STAMP DUTIES REGULATIONS 1934—*continued*

- (ii) a charity which is registered or which is exempted from registration under the Charitable Collections Act 1934.

(5) Section 86 (Definitions):

Omit paragraph (e) of the definition of “Class 2 insurance” in section 86 (1), insert instead:

- (e) crop insurance, being insurance covering:

- (i) loss due to the destruction of, or physical damage to, any pasturage or any crop of grain, fruit, vegetables or other plants, where the destruction or damage occurs while the pasturage or crop is being grown; or

- (ii) loss due to the destruction of, or physical damage to, the product of any such pasturage or crop, where the destruction or damage occurs while the product of the pasturage or crop is being stored or transported,

but not being insurance covering loss referred to in subparagraph (ii) unless the contract by which the insurance is effected also effects insurance covering the loss referred to in subparagraph (i); or

- (f) livestock insurance, being insurance covering:

- (i) loss due to the death of, or physical damage to, any animal, whether domesticated or wild; or

- (ii) loss due to the death of, or physical damage to, any genetic material of any such animal; or

- (iii) loss due to the theft of any such animal or genetic material; or

- (g) hospital and ancillary health benefits insurance, being insurance covering liability incurred in respect of fees or charges for hospital treatment, or for health care ancillary to hospital treatment, if the liability is not covered by an organisation registered under Part VI of the National Health Act 1953 of the Commonwealth;

Stamp Duties (Amendment) 1991

SCHEDULE 4—AMENDMENTS RELATING TO PROVISIONS OF
THE STAMP DUTIES REGULATIONS 1934—*continued*

Explanatory note—Schedule 4

The purpose of this Schedule is to re-enact, as provisions of the Principal Act, certain provisions contained in the regulations made under the Principal Act. The re-enactment has arisen as a consequence of the examination of the Stamp Duties Regulations 1934 in connection with their repeal on 1 September 1991 in accordance with the staged repeal program for subordinate legislation contained in the Subordinate Legislation Act 1989. When the Stamp Duties Regulation 1991 commenced on 1 September 1991, clause 13 of that Regulation continued the operation of several provisions of the 1934 Regulations until they could be transferred to the Principal Act. In some cases, the re-enacted provisions are modified to clarify their application.

The provisions re-enacted are:

Refund of duty—item (1)

Under proposed section 15, a person may apply for a refund of duty if the person:

- has a stamped instrument that has failed in its intended operation and has become useless
- has any spoiled or unused duty stamps
- has inadvertently used a stamp of greater value than was necessary
- has inadvertently used a stamp for an instrument not liable to duty
- has used an adhesive stamp where an adhesive stamp should not have been used.

The application is to be made in a form approved by the Chief Commissioner. The proposed section deals with the matters previously dealt with in regulations 26–32 of the Stamp Duties Regulations 1934.

Ordinarily, in applying for a refund in respect of a stamped instrument, the instrument would have to be produced with the application. However, cases arise where an application is made in respect of an instrument which has been destroyed by the Registrar-General after the instrument has been registered and microfilmed. Accordingly, proposed section 15 adds a provision to the effect that the stamped instrument is not required to be produced in such a case.

Loan security endorsements—item (2)

Item (2) transfers to the Principal Act the provisions of regulation 76 of the Stamp Duties Regulations 1934 which requires persons who are registered to pay duty on loan security instruments by way of return to endorse a loan security instrument with a stamp issued by the Chief Commissioner and to complete the particulars specified in the stamp.

Hiring arrangement returns—item (3)

Item (3) transfers to the Principal Act the provisions of regulation 63 of the Stamp Duties Regulations 1934 relating to the form of the return of a person approved to pay duty on the hiring of goods by way of return rather than by lodgement of the individual documents for each hire. The form is now to be a form approved by the Chief Commissioner (rather than a form as prescribed by the regulations).

Stamp Duties (Amendment) 1991

SCHEDULE 4—AMENDMENTS RELATING TO PROVISIONS OF
THE STAMP DUTIES REGULATIONS 1934—*continued*

Motor vehicle certificate of registration—item (4)

Item (4) amends section 84G of the Principal Act so that all classes of motor vehicle certificates of registration which are exempt from stamp duty will be found in the Principal Act. The amendment deals with the matter previously dealt with in regulation 56 of the Stamp Duties Regulations 1934.

Classes of insurance—item (5)

The Principal Act divides insurance into 2 classes for the purposes of the payment of stamp duty, different rates of duty applying to each class. The types of insurance in Class 2 have been extended by regulation.

Item (5) amends section 86 of the Principal Act so that all the categories of Class 2 insurance will be found in the Principal Act.

SCHEDULE 5—MISCELLANEOUS AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

In paragraph (b) (i) of the definition of “Public unit trust scheme” in section 3 (1), after “Code”, insert “or the corresponding provisions of a law in force in another State or a Territory”.

Explanatory note—item (1)

A concessional duty of \$200 applies to instruments which vary or amend a deed establishing a public unit trust scheme where the deed is approved under New South Wales law. The amendment made by this item will extend the concession where the deed establishing the scheme is approved under the corresponding law of another State or a Territory.

This amendment is taken to have commenced on 5 July 1991 in accordance with a Variation to Statute approved by the Premier and Treasurer.

(2) Section 22 (**Cancellation of adhesive stamps**):

(a) From section 22 (1), omit “Subject to sections 75A and 84G of this Act and to paragraph (1) of the matter appearing under the heading “Transfer of Shares” in the Second Schedule to this Act, an” insert instead “An”.

(b) Omit section 22 (2) and (3).

Explanatory note—item (2)

The amendments made by this item are for the purposes of statute law revision.

*Stamp Duties (Amendment) 1991*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*

The references in section 22 to sections 75A and 84G are now inappropriate. Section 75A refers to instalment purchase duty which has been abolished (see Schedule 3 (5)). Section 84G refers to motor vehicle certificates of registration which are not able to be stamped by affixing an adhesive stamp.

Section 22 (2) is omitted as it is unnecessary. Section 22 (3) is omitted as it has proved to be unenforceable.

- (3) Section 29 (**Inadmissibility of unstamped and other instruments**):

In section 29 (4), after “instrument” where firstly occurring, insert “or a copy of an instrument”.

Explanatory note—item (3)

Item (3) amends section 29 of the Principal Act to enable a copy of an instrument which is not duly stamped to be admitted to evidence in court proceedings on the giving of appropriate undertakings as to stamping. Under the present provisions of section 29, only the original instrument may be so admitted.

- (4) Section 38 (**Stamp duty a debt to the Crown**):

From section 38 (1), omit “the Second Schedule hereto”, insert instead “this Act”.

Explanatory note—item (4)

This amendment is to make it clear that all duties imposed by the Principal Act, and not only those mentioned in the Second Schedule, comprise a debt to the Crown.

- (5) Section 40A (**Options**):

From section 40A (1), omit “other than stock or marketable security”, insert instead “(other than stock, a marketable security or a unit in a unit trust scheme)”.

Explanatory note—item (5)

Following the introduction of the specific charge for the transfer of units in a unit trust scheme, paragraph (c) of the definition of “Marketable security” in section 3 (1) of the Principal Act was removed. This had the effect of imposing duty at conveyance rates under section 40A on an option to purchase units. Stock or marketable securities are excluded from the operation of section 40A. This exclusion is extended to units in a unit trust scheme.

*Stamp Duties (Amendment) 1991*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*(6) Section 74D (**Definitions**):

At the end of paragraph (v) of the definition of "Hiring arrangement", insert:

; or

- (vi) an arrangement under which an operator is provided by the owner of the goods to operate the goods for the hirer.

Explanatory note—item (6)

This amendment excludes "wet hires" from hiring arrangement duty under the Principal Act. A wet hire is defined in proposed paragraph (vi) of the definition of "Hiring arrangement".

(7) Section 74H (**Exemption from duty**):

In section 74H (1), after "the acquisition of the goods", insert "by the owner at the request of the hirer".

Explanatory note—item (7)

In 1986, the Principal Act was amended to remove the concession available for goods, wares and merchandise. At this time a Variation to Statute was approved for the Principal Act to be administered on the basis that a hiring arrangement, where the owner at the request of the hirer acquired the goods for hire from the hirer and ad valorem duty under section 43A had been paid in respect of those goods, was not chargeable with stamp duty. However, when the amendment was passed, the restriction of "at the request of the hirer" was omitted. This has meant that if goods are purchased with a business and ad valorem duty is paid on the purchase, the hiring out of these goods is exempt. It is likely, however, that when goods are purchased under a sale of business, in most if not all cases, no ad valorem duty would be payable on these goods as they would be exempt as stock-in-trade.

To ensure that the original intention is reflected, section 74H is amended to make it clear that the exemption should only apply to goods purchased at the request of the hirer.

(8) Section 78FA (**Exemption from duty—leases of accommodation for aged and disabled persons**):

Omit section 78FA (1), insert instead:

(1) Despite any other provision of this Act, duty is not chargeable in respect of:

- (a) a lease granted by or on behalf of a corporation, society or institution if:

 SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*

- (i) the purpose of the lease is to grant a retired person or a disabled person the right to occupy residential accommodation; and
 - (ii) the lease has not been granted for the purpose of profit; or
- (b) a lease executed in accordance with Part V of the National Health Act 1953 of the Commonwealth.

Explanatory note—item (8)

This item amends section 78FA of the Principal Act to exempt from duty a lease which a resident of a nursing home is required to enter into because of the operation of Part V of the National Health Act 1953 of the Commonwealth.

This amendment is taken to have commenced on 1 September 1991.

(9) Section 83 (Definitions):

Omit section 83 (5), insert instead:

(5) For the purposes of this Division and of the matter appearing under the heading "Loan Security" in the Second Schedule to this Act, property is taken to be in New South Wales in so far as the property comprises shares in a company incorporated in New South Wales. However, if those shares are registered on a share register in another State or a Territory and duty as on a loan security has been paid in accordance with a corresponding law of that State or Territory in respect of a mortgage affecting those shares, the mortgage is exempt from payment of duty under this Act to the extent to which it relates to those shares.

Explanatory note—item (9)

The amendment made to section 83 (5) of the Principal Act is intended to overcome an argument that the provisions of that subsection, because they are expressed to apply "for the purposes of paragraph (c) of the definition of "Loan security" in subsection (1)", apply only for those purposes and not for the purposes of Division 21 as a whole.

The amendment also removes the possibility of duty being paid on a mortgage affecting shares in a New South Wales company under the Principal Act as well as under a corresponding Act of another State or a Territory of the Commonwealth of Australia.

*Stamp Duties (Amendment) 1991*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*(10) Section 84 (**Limited and unlimited loan securities**):

After section 84 (3C), insert:

(3CA) A reference in subsection (3C) to a contingent liability is a reference to a contingent liability limited to the amount of any advance by any party to the arrangements referred to in that subsection and does not include a reference to any other kind of contingent liability.

Explanatory note—item (10)

Section 84 (3C) deals with the liability to stamp duty of a loan security which is used or is capable of being used (whether directly or through a chain of relationships) to recover the whole or any part of an amount payable by a guarantor, an indemnifying party or a party to another instrument. Under the subsection, stamp duty is imposed with respect to the whole of the contingent liability of the guarantor, indemnifying party or other party and is not limited to the liability which relates to advances with which the loan security is connected. The insertion of the proposed subsection (3CA) is intended to limit the liability to those advances.

(11) Section 84CAA (**Refinancing of loans to primary producers**):

At the end of section 84CAA, insert:

(2) This section also applies where a later loan security applies to additional land or additional assets other than land.

Explanatory note—item (11)

This amendment is to extend the exemption from duty to the refinancing of a loan by a primary producer granted under section 84CAA of the Principal Act so as to include cases where, in the course of the refinancing, additional land or other assets are included in the replacement or additional loan security.

This amendment is taken to have commenced on 23 April 1991 in accordance with a Variation to Statute approved by the Premier and Treasurer.

(12) Section 84D (**Duty on subscriptions under instruments which secure debentures**):

(a) At the end of section 84D (1), insert:

Any mortgage, not executed by the corporation, protecting the interests of the holders of the debentures shall be liable to duty of \$10.

(b) In section 84D (1), after “this Act” where secondly occurring, insert “if duty of a like nature under the law of the place where the amount is subscribed for has been paid”.

*Stamp Duties (Amendment) 1991*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*

- (c) From section 84D (2), omit “40 cents for every \$100 and any remaining fractional part of \$100”, insert instead “\$4 for every \$1,000 and any remaining fractional part of \$1,000”.
- (d) Omit section 84D (2A) (b), insert instead:
 - (b) the reference in that subsection to \$4 for every \$1,000 and any remaining fractional part of \$1,000 were:
 - (i) in the case of money that is repayable at or after the expiration of a period of not less than 30 days and not more than 3 months—a reference to \$2 for every \$10,000 and for any remaining fractional part of \$10,000; or
 - (ii) in the case of money that is repayable at or after the expiration of a period of not less than 3 months and not more than 6 months—a reference to \$2 for every \$1,000 and for any remaining fractional part of \$1,000.

Explanatory note—item (12)

Currently an instrument of trust pursuant to which a corporation issues debentures is not liable to ad valorem duty if an undertaking is received from the corporation and trustee to lodge an annual return and pay duty on debentures subscribed for in New South Wales. This provision has been used to avoid New South Wales duty by the use of an ACT company. At present the only deterrent to avoidance is the collateral security provisions introduced in June 1990 which ensure collateral securities from related companies are liable to ad valorem duty.

Section 84D is amended to ensure that the debentures issued pursuant to the instrument of trust are liable to loan security duty in New South Wales unless duty of a like nature is paid in another jurisdiction. The collateral securities from related corporations would be liable to nominal duty of \$10 only.

Section 84D is also amended to express the rate of duty in dollar amounts rather than in cents.

(13) Section 87 (Insurance to which this Division does not apply):

After section 87 (k), insert:

- (l) redundancy insurance in respect of a housing loan which does not exceed \$124,000.

*Stamp Duties (Amendment) 1991*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued***Explanatory note—item (13)**

Redundancy insurance is designed to assist home buyers by enabling their loan repayments to be paid from insurance should there be a loss of income through redundancy. This amendment exempts from duty redundancy insurance where the housing loan does not exceed \$124,000.

This amendment is taken to have effect from 1 April 1991 in accordance with a Variation to Statute approved by the Premier and Treasurer.

(14) Section 90 (Definitions):

- (a) From section 90 (1), omit “(5)”.
- (b) Insert in section 90 (2) in alphabetical order:
 “unit” includes a right to a unit.

Explanatory note—item (14)

Division 25A of Part 3 of the Principal Act charges duty on a transfer of units in a unit trust scheme. For consistency with the transfer of shares provisions which charge duty on rights to shares (including options), and having regard to the amendment made to section 40A by item (5), the definition of “unit” in section 90 is added to include rights (and options) to units.

(15) Section 98 (Definitions):

- (a) In paragraph (c) of the definition of “short term dealing” in section 98 (1), after “\$50,000” where firstly occurring, insert “(except in the case of a securities lending arrangement)”.
- (b) From paragraph (d) (iv) of the definition of “short term dealing” in section 98 (1), omit “185 days; and”, insert instead “185 days, but the dealing is completed not later than 185 days after the date of deposit or investment of the amount;”.
- (c) Omit paragraph (e) of the definition of “short term dealing” in section 98 (1).
- (d) From the definition of “short term liability” in section 98 (1), omit “other than”, insert instead “except in the case of a securities lending arrangement or”.

Explanatory note—item (15)

Paragraphs (a) and (d) amend the definitions of “short term dealing” and “short term liability” in section 98 of the Principal Act. The amendments they make will enable scrip lending transactions for amounts of less than \$50,000 to qualify as short term dealings for the purposes of financial institutions duty.

Stamp Duties (Amendment) 1991

SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*

Paragraphs (b) and (c) amend the definition of "short term dealing" to make it clear that paragraph (e) of the definition was only intended to qualify the matter in paragraph (d) (iv) of the definition.

(16) Second Schedule—Stamp Duties and Exemptions:

After paragraph (g) of the *Exemptions* appearing under the heading TRANSFER OF SHARES, insert:

- (h) Any transfer of shares effecting a buy-back of shares in accordance with Division 4B of Part 2.4 of the Corporations Law.

Explanatory note—item (16)

This amendment provides an exemption from duty on a transfer of shares effecting a share buy-back.

The amendment is taken to have commenced on 3 April 1991 in accordance with a Variation to Statute approved by the Premier and Treasurer.

(17) Second Schedule—General Exemptions From Stamp Duty under Part 3:

- (a) From paragraphs (15A), (34), (36), (37) and (38), omit "State Compensation Board" wherever occurring, insert instead "WorkCover Authority".
- (b) From paragraphs (34), (36) and (38), omit "the Board" wherever occurring, insert instead "the Authority".
- (c) From the definition of "offshore borrowing" in paragraph (31), omit "(but excludes the interest on an offshore borrowing where section 128GB of that Act does not apply to that interest by virtue of subsection (3) of that section)", insert instead "(but excludes an offshore borrowing within that meaning where section 128GB of that Act does not apply to the interest on that offshore borrowing by virtue of subsection (3) of that section)".
- (d) After paragraph (41), insert:
- (42) The issue or transfer of a warrant (being a contract that is an option contract within the meaning of section 9 of the Corporations Law and that is admitted to trading status on the stock market of Australian Stock Exchange Limited in accordance with section 8 of the Business Rules of Australian Stock Exchange Limited).

*Stamp Duties (Amendment) 1991*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued***Explanatory note—item (17)**

Paragraphs (a) and (b) are amendments by way of statute law revision to replace references to the State Compensation Board with references to the WorkCover Authority following the enactment of the WorkCover Administration Act 1989 (see clauses 2 and 4 of Schedule 4 to that Act).

Paragraph (c) clarifies the offshore banking exemption to exclude certain borrowings rather than the interest on those borrowings.

Paragraph (d) excludes from liability to duty the transfer of a warrant traded on the stock market of the Australian Stock Exchange.

The amendment made by paragraph (d) is taken to have commenced on 24 March 1991 being the date on which this exemption was approved by the Premier and Treasurer.

(18) Schedule 2A—First Home Purchase Scheme:

From clause 20 (5), omit “net” where secondly occurring.

Explanatory note—item (18)

This amendment corrects a minor error in the definition of “net taxable income”.

(19) Schedule 2D—Exemption From Duty For Certain Conveyances:

(a) In clause 6 (c), after “corporation”, insert “(or would, if the trustee were not a corporation, be a principal shareholder in the corporation)”.

(b) After clause 10, insert:

Application of scheme to company titles

11. This Schedule applies to the transfer of shares in a private company or units in a private trust scheme, the ownership of which entitles the owner to the exclusive possession, or substantially exclusive possession, of a dwelling in a building containing more than one separate dwelling, in the same way as it applies to a conveyance of land, with such modifications as may be necessary.

Explanatory note—item (19)

The Principal Act was amended in 1990 to exempt from duty certain transfers to persons of their principal places of residence where the property was held by a company or trust.

Paragraph (a) will enable a transfer to the beneficiary of a trust which has a corporate trustee to be exempt from duty.

*Stamp Duties (Amendment) 1991*SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*

Paragraph (b) will extend the exemption to cases where the principal place of residence is held under company title.

These amendments are taken to have commenced on the same day as the 1990 amendments, namely 11 September 1990.

(20) Tenth Schedule—Savings, Transitional and Other Provisions:

After Part 7, insert:

PART 8—STAMP DUTIES (AMENDMENT) ACT 1991**Application of amendments—generally**

26. (1) A provision of this Act as in force before the amendment of the provision by the Stamp Duties (Amendment) Act 1991 continues to apply to an instrument referred to in the provision which was executed, or a transaction referred to in the provision which was entered into, before the date on which the amendment commenced or is taken to have commenced, except as provided by this Part.

(2) An amendment made by the Stamp Duties (Amendment) Act 1991 does not apply to an instrument which was executed, or a transaction which was entered into, before the date on which the amendment commenced or is taken to have commenced, except as provided by this Part.

Removal of provisions concerning abolished duties

27. Without limiting section 30 of the Interpretation Act 1987, an amendment made by section 3 of, and Schedule 3 to, the Stamp Duties (Amendment) Act 1991 does not affect a liability to duty existing before the date of assent to that Act of any instrument or in respect of death duty.

Refunds—failed instruments and spoiled or unused duty stamps

28. An application made under section 15 as in force immediately before 1 January 1992 which had not been finally determined before that date is taken to be an application under that section as in force after that date.

Stamp Duties (Amendment) 1991

SCHEDULE 5—MISCELLANEOUS AMENDMENTS—*continued*

Explanatory note—item (20)

This item inserts into the Principal Act savings and transitional provisions consequent on the enactment of the proposed Act.

[*Minister's second reading speech made in—
Legislative Assembly on 9 December 1991
Legislative Council on 11 December 1991*]