

STAMP DUTIES (AMENDMENT) BILL 1992

SECOND READING SPEECH

LEGISLATIVE COUNCIL

Mr President

I move:

That this Bill be read a second time.

The Stamp Duties Bill now before the House ensures that loan security duty is payable where loan securities are transferred between lenders at the instigation of the borrower, simplifies the payment of the fee on cancelled agreements, allows agreements which have been varied to be stamped at the final purchase price, clarifies the provisions relating to loan securities which are used to secure bill facilities, exempts from stamp duty conveyances pursuant to separation agreements as defined in the De Facto Relationships Act, tightens the trust provisions to ensure that ad valorem duty is paid at least once on the original trust property or the re-investment of that property, provides the Chief

Commissioner with the authority to refund stamp duty under certain conditions, relaxes the requirements to obtain concessional rates of duty on conveyances of property to trustees, provides a concession where shares are transferred to trustees, exempts from conveyance and loan security duty Community Tenancy Scheme tenants who purchase their own home, exempts from duty any additional loan security taken out to further secure the obligations of First Home Purchase participants and Community Tenancy Scheme tenants and Department of Housing tenants, provides for relocatable home sites to be granted the same concession as residential leases, provides for the refund of stamp duty paid on a motor vehicle certificate of registration where the vehicle has been previously stolen prior to purchase and is repossessed, provides for the stamping of a document by the Chief Commissioner to be regarded as an assessment and makes number of other miscellaneous amendments.

The Stamp Duties Act currently provides that where agreements are rescinded or annulled, the ad valorem duty payable on the document is to be refunded less a fee of \$25.

However, agreements are often rescinded before they are lodged for stamping as there is a 2 month period after the date of signing when an agreement may be stamped without penalty.

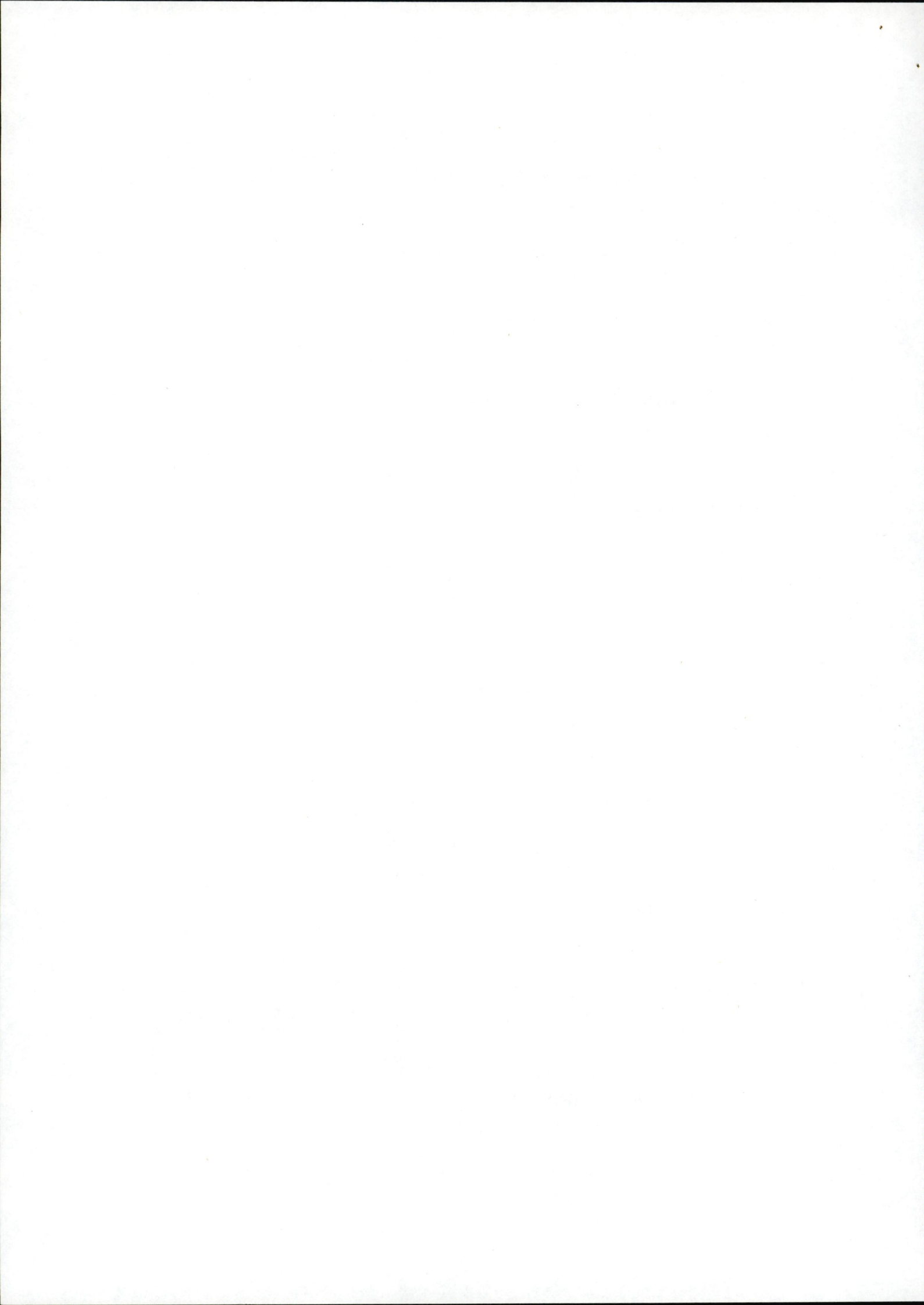
The process of having taxpayers pay the stamp duty on an agreement in the above circumstances and subsequently receive a refund, less the administration fee, is inequitable and onerous.

The Bill will allow for agreements which are rescinded or annulled within 2 months of signing and which have not been stamped, to be chargeable only with the administration fee of \$25, subject to the lodgement of satisfactory evidence as to cancellation.

At present, the Stamp Duties Act provides that stamp duty is assessed on documents in the form in which they are first executed.

Where there is an instrument of variation increasing the purchase price, stamp duty is payable on the higher amount, but where there is an instrument reducing the purchase price, the duty is still payable on the initial purchase price.

This practice is inequitable and the Bill will provide that prior to settlement, an agreement may be stamped with duty calculated on its final purchase price where there is an instrument of variation reducing the initial purchase price.



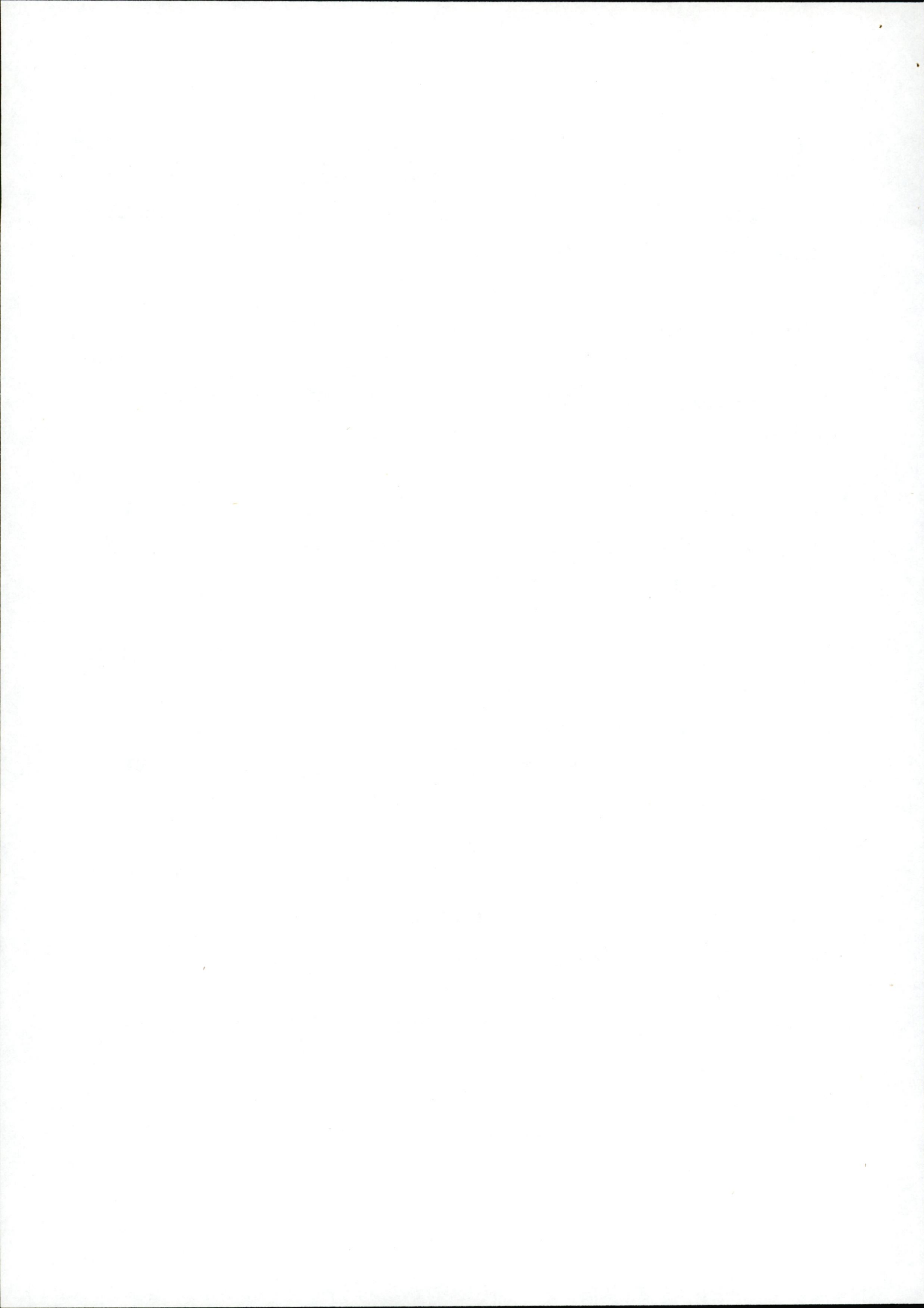
Under current legislation, conveyances of property made in accordance with a Court Order under the De Facto Relationships Act are exempt from stamp duty.

However, couples terminating their de facto relationship who choose to enter into a separation agreement, as provided for in the De Facto Relationship Act, rather than obtain a Court Order, are not eligible for exemption from stamp duty.

This is inequitable as couples entering into a separation agreement usually choose this option to settle their affairs as it is considerably less expensive than obtaining a Court Order.

The Bill will provide for an exemption from stamp duty on a separation agreement, and any documents pursuant to it, when evidence is produced to indicate that the parties to the de facto relationship have terminated that relationship at least 3 months prior to the lodgement of the documents for stamping.

This amendment will bring the provisions relating to the transfer of property following the breakdown of a de facto relationship more into line with those relating to marriage breakups while at the same time, ensuring that Separation Agreements are not used to convey property when no termination of the relationship is contemplated.



Under the current provisions, nominal duty is assessed in respect of an instrument of appointment in favour of persons specially named or described as the objects of a power of appointment contained in a conveyance, on which ad valorem duty has been paid, or in a will.

This concession should only apply where ad valorem duty has been paid on the conveyance establishing the trust or power and that property, or a direct re-investment of the proceeds, is being conveyed to the appointee or beneficiary.

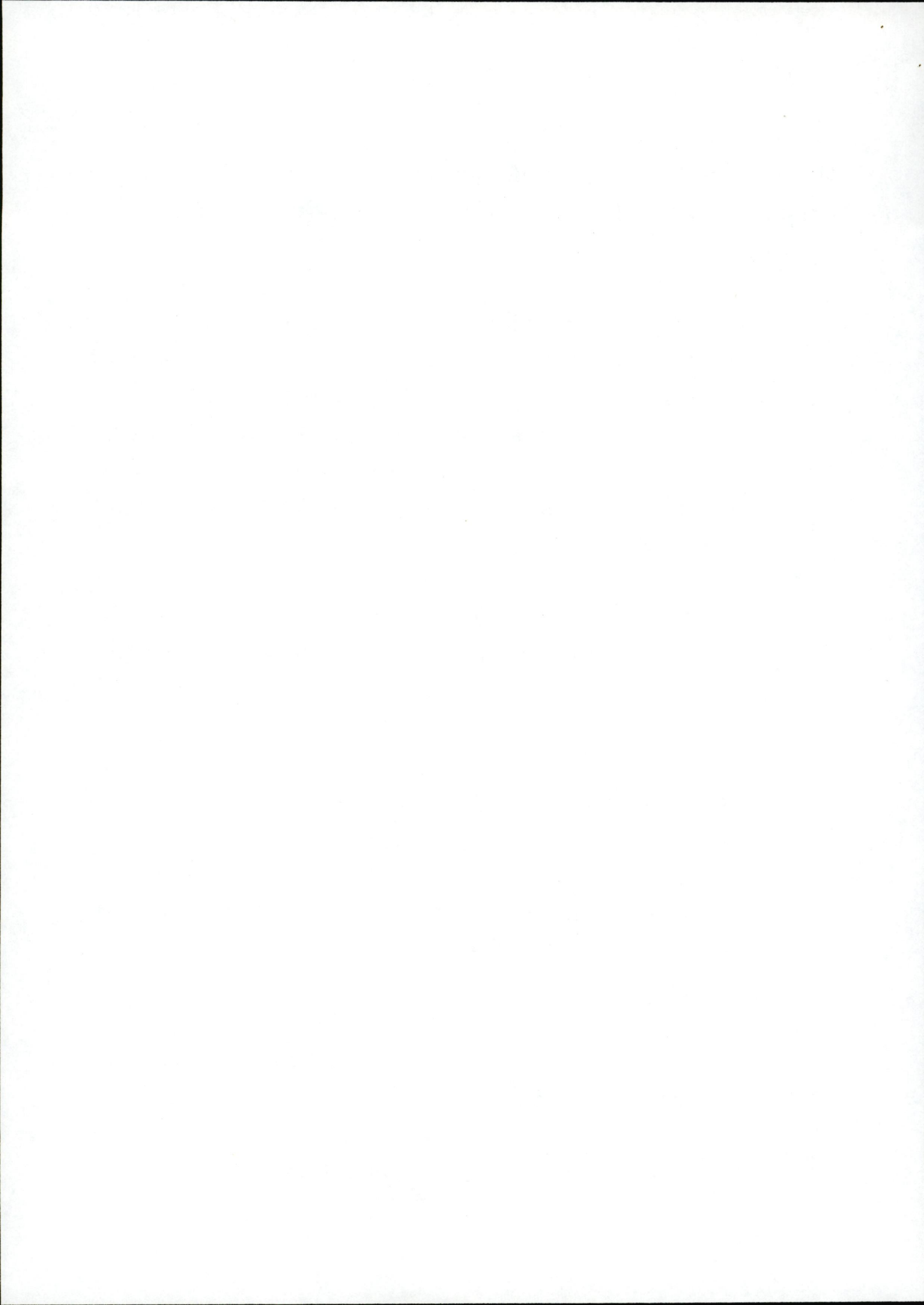
As an anti-avoidance measure, the Bill amends the trust provisions of the Act to ensure that ad valorem duty is paid at least once on the original trust property or the re-investment of that property.

The Crown Solicitor has advised that the refund provisions for overpaid stamp duty require clarification.

Furthermore, the Crown Solicitor has suggested that the provisions for objections to assessments need strengthening to provide an explicit authority for any refund necessary following a decision on an objection.

In order to ensure that all refunds from stamp duty can be properly made, the Stamp Duties Act is being amended to provide:-

- * the Chief Commissioner with authority to refund overpayments of duty within 2 years of payment, subject to a discretion in respect of duty paid by a taxpayer and then passed on to its customer, that a refund shall only be made if the Chief Commissioner is satisfied that the customer who ultimately paid the duty will receive the refund;
 - * the Chief Commissioner with authority to appropriate duty where duty has been overpaid on one transaction and underpaid on another;
 - * the Chief Commissioner with authority to reassess the duty payable within 2 years of the date of the original assessment;
 - * for amendment to the objection provisions to provide an authority for any refund necessary following a decision on an objection;
 - * that no refund should be payable if the assessment or return payment was made in accordance with the Chief Commissioner's interpretation of the Stamp Duties Act at the time of the assessment or return payment.
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Bill facility arrangements are frequently used for providing financial accommodation to large borrowers and a financier will accept or indorse a bill of exchange for a customer to facilitate a sale of the bill to a third party.

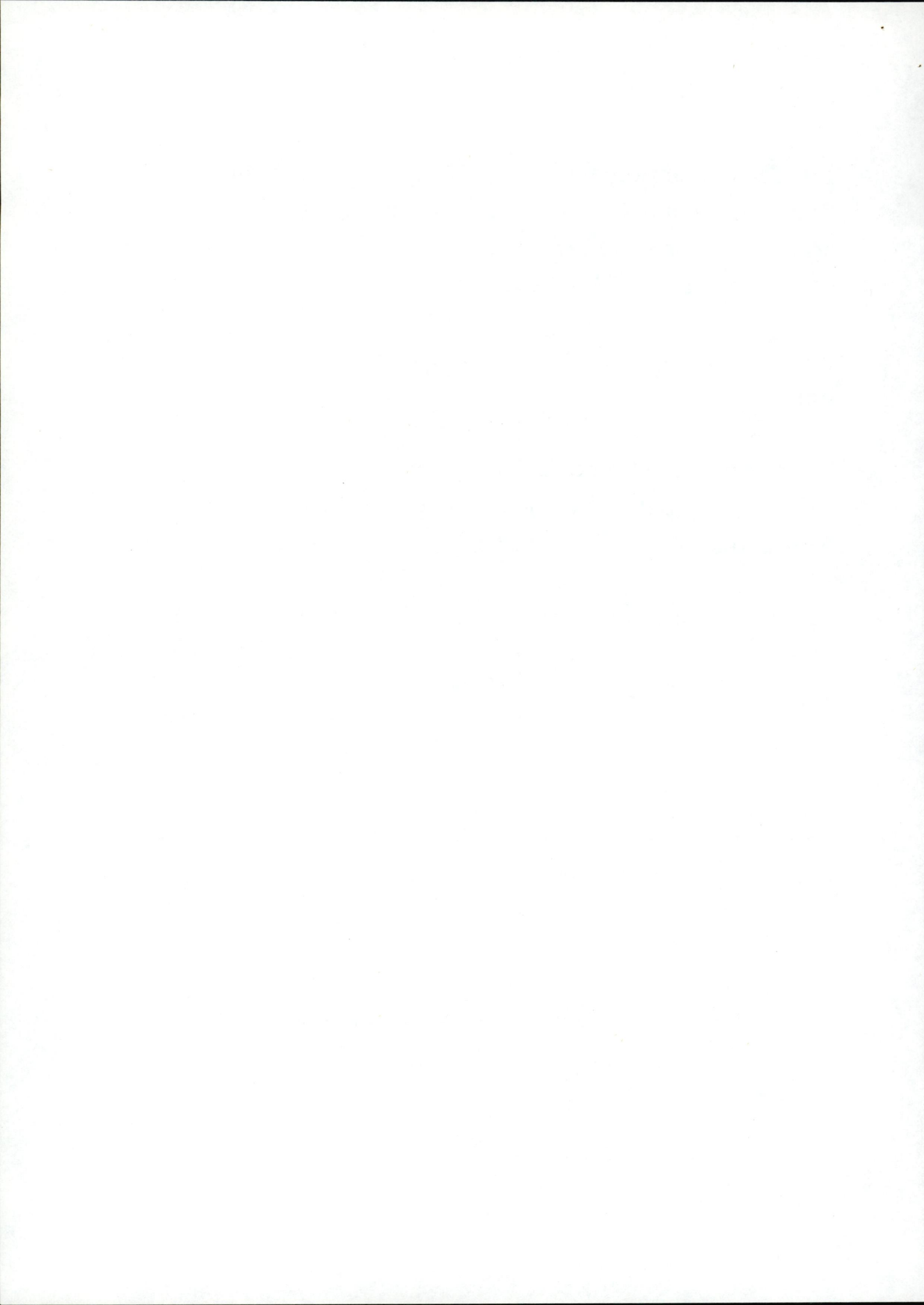
A loan security instrument is given to protect the exposure of the financier.

There has been some argument that the current bill facility definition is deficient and does not encompass the types of transactions for which it was originally intended.

The Bill amends these provisions to clarify where duty is payable and ensure that there is no revenue leakage due to varying interpretations of the Act.

Loan security duty is payable by the borrower on advances of funds made under or secured by instruments such as mortgages and company charges.

As a general rule, when a borrower refinances through another lender, the borrower will give that lender a new mortgage and ad valorem duty is payable on the amount advanced by the new lender.



However, there are a number of different methods used in the practice of refinancing which result in differing levels of stamp duty liability.

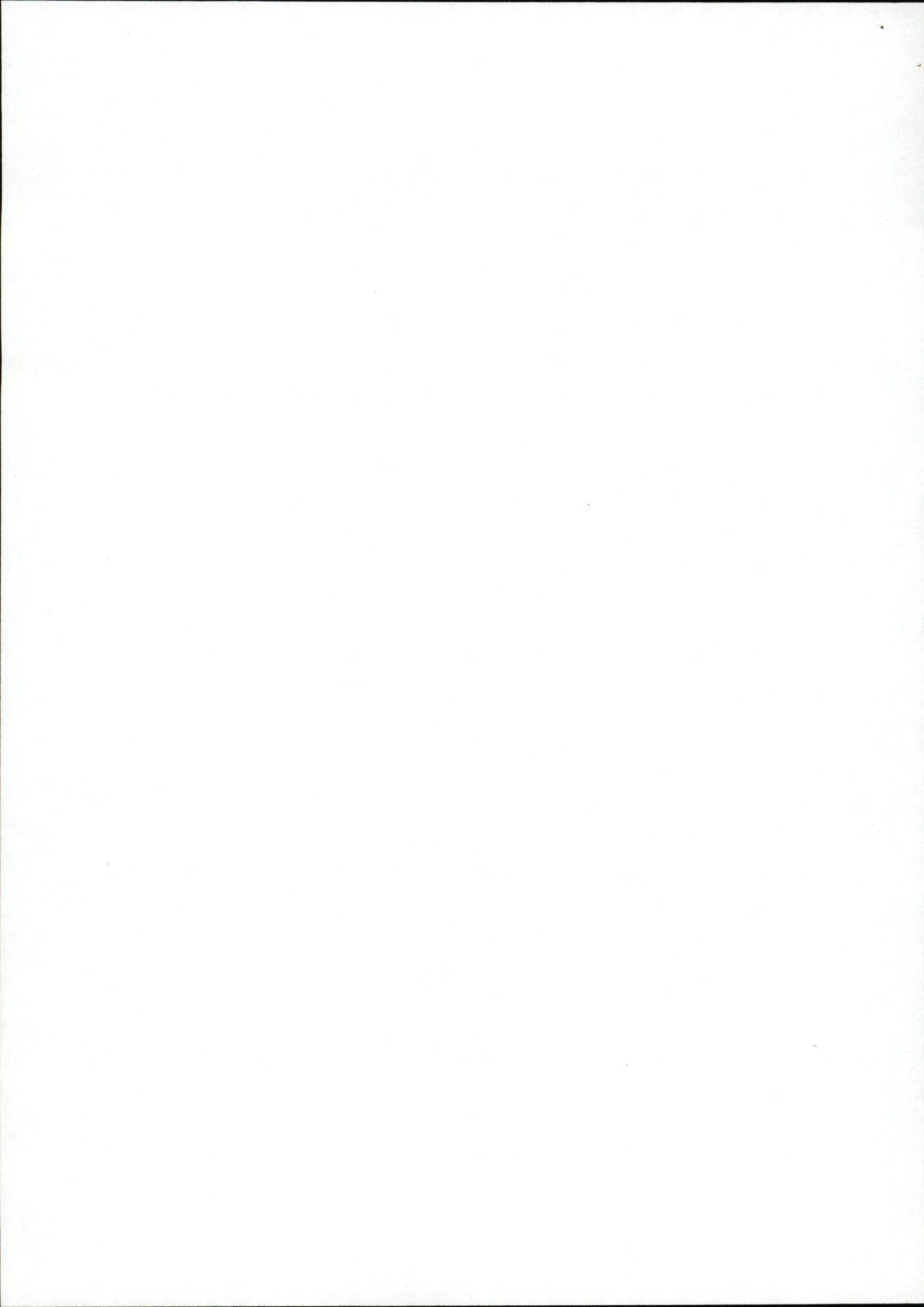
Because of this and the potential for loss of revenue, the Bill amends the Principal Act to ensure that loan security duty will be payable except where the transaction is instigated by the lender.

The current exemption provisions in respect of refinancing by primary producers will not be affected by this amendment.

In 1982, the Stamp Duties Act was amended to prevent the widespread avoidance of conveyance duty through the use of trusts and creative conveyancing practices.

These amendments have been effective in controlling avoidance practices, however, they have placed restrictions on transfers to new or additional trustees particularly where non-profit organisations or clubs are involved.

The current provisions require that in order to attract nominal duty, conveyances reflecting changing trustees must be, amongst other things, pursuant to a specific document which is liable to nominal duty.

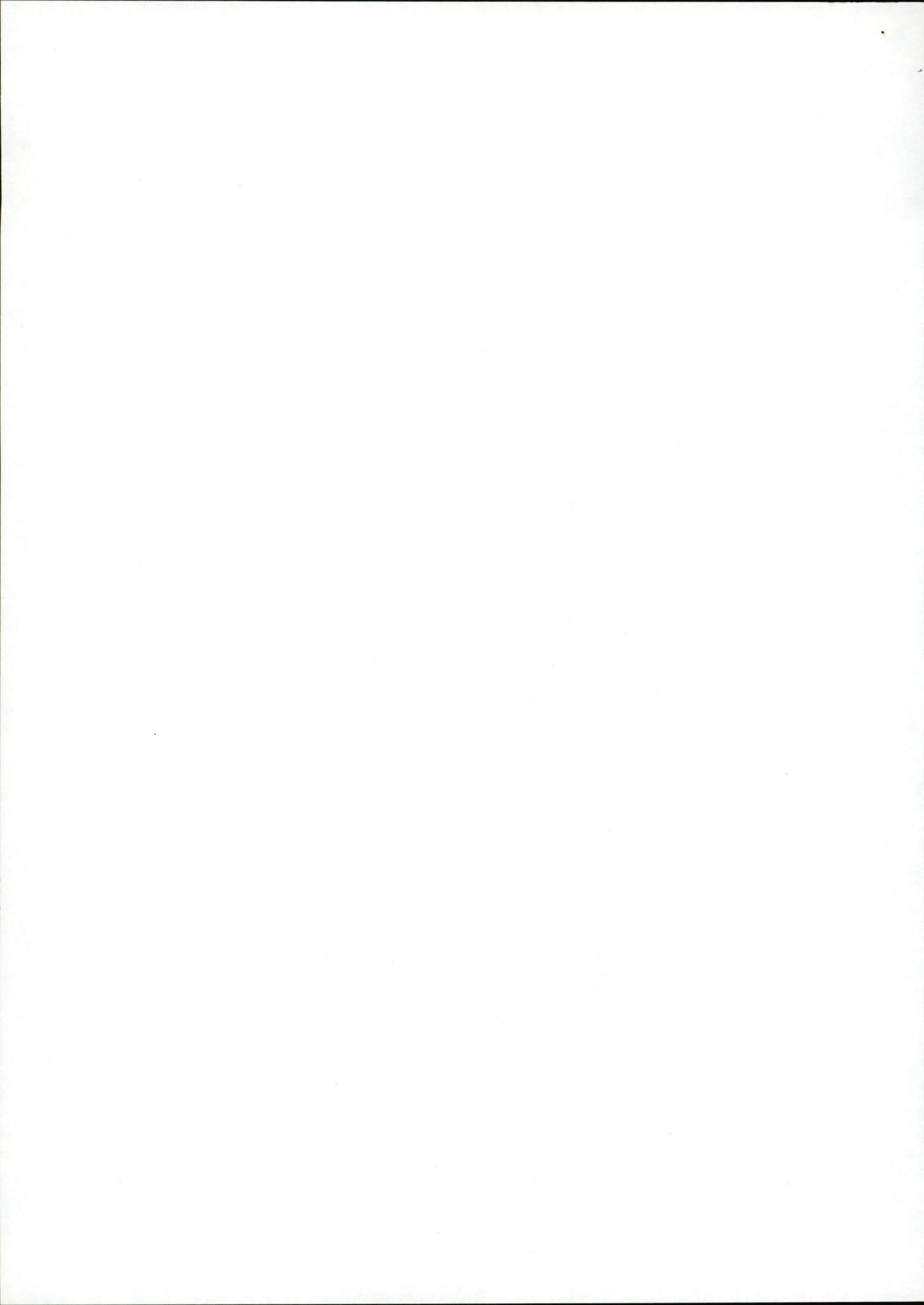


Many small organisations, such as clubs, do not execute documents reflecting changes in trustees but record them in other forms, such as letters or meeting minutes, thus falling outside the current concessional rate requirements.

The Bill relaxes this restriction to allow the concessional rate of duty on a conveyance which is pursuant to any instrument recording the appointment of new or additional trustees or the retirement of existing trustees.

This amendment will also benefit trustee companies who hold securities and other assets for clients as they will no longer be required to execute documents which attract nominal duty in order to gain a concession from the ad valorem rate of duty when changing trustees.

The Bill will also amend the trust provisions to allow for marketable securities to be transferred to a trustee without the payment of ad valorem duty provided that the Chief Commissioner is satisfied that the transfer was not effected to change the beneficial ownership or in contemplation of the change in beneficial ownership in the marketable securities.



Also, marketable securities held by a manager or trustee will be able to be transferred to a custodian without incurring ad valorem duty, enabling the commercial practice of nomineeing shares to operate more freely on those securities with a New South Wales nexus.

It is expected that there will be no significant effect on revenue as a result of these amendments.

For some time, there has been some doubt as to whether Community Tenancy Scheme tenants are eligible for the exemption from stamp duty available to Department of Housing tenants on the purchase of a property and the associated mortgage.

While Community Tenancy Scheme tenants must be on the Department of Housing waiting list for accommodation and are eligible for low interest loans, if they are wish to buy a property they are not strictly Department of Housing tenants and therefore do not fall within the exemption provisions.

This situation has placed Community Tenancy Scheme tenants at a disadvantage to those already living in Department of Housing rental accommodation when purchasing a home.

In order to overcome this anomaly, the Premier and Treasurer approved of the Stamp Duties Act being administered on the basis that Community Tenancy Scheme tenants be given the same concessions as Department of Housing tenants.

The Bill amends the Stamp Duties Act to validate this Variation to Statute.

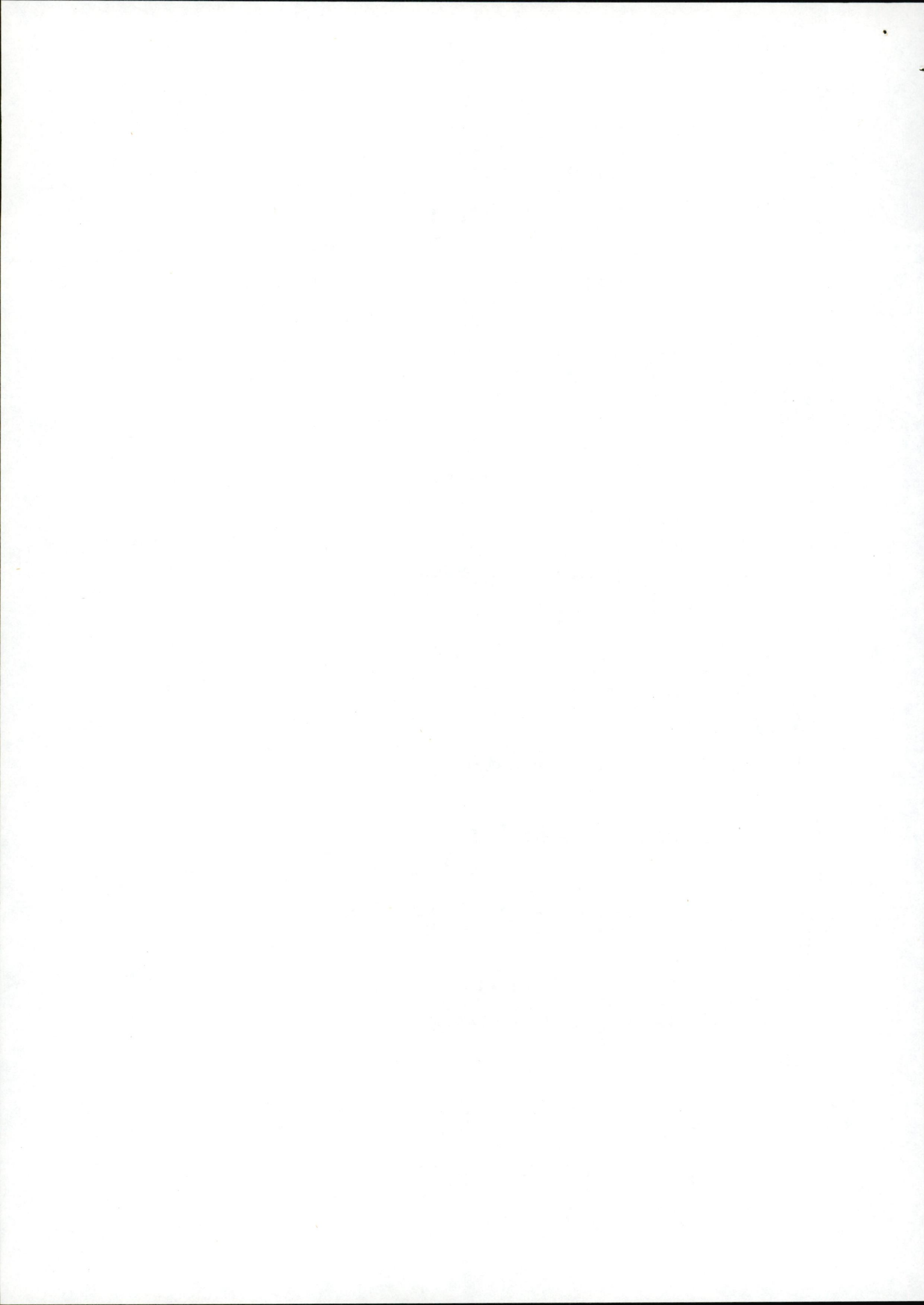
The Stamp Duties Act currently provides that a loan security taken out by a participant of the First Home Purchase Scheme is exempt from loan security duty.

Likewise, a tenant of the Department of Housing or a Community Tenancy Scheme is also eligible for an exemption from stamp duty on a loan security taken out to purchase a property.

However, some lenders to these purchasers require additional security for the loans made, which is usually a loan security over another property such as a parent's home.

Under the existing provisions of the Act, such an additional loan security attracts full loan security duty, creating an inequitable situation.

To overcome this anomaly, the Premier and Treasurer approved of the Stamp Duties Act being administered on the basis that any



additional loan security to secure a loan obtained by a participant in the First Home Purchase Scheme or a tenant of the Department of Housing or a Community Tenancy Scheme, is exempt from stamp duty.

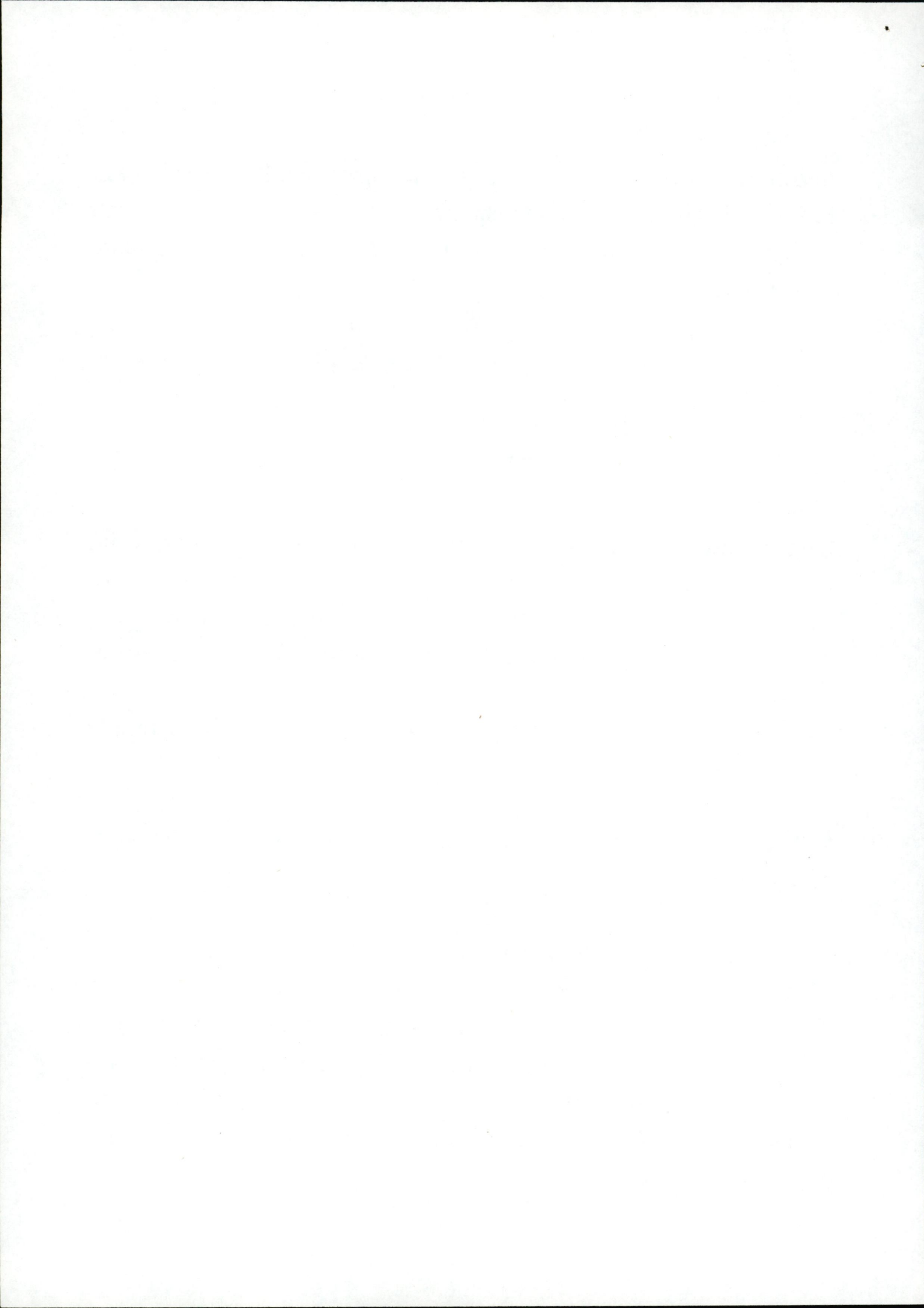
The Bill amends the Stamp Duties Act to validate this Variation to Statute.

Under the current provisions of the Stamp Duties Act residential leases not exceeding 5 years are exempt from stamp duty and there is a general exemption from duty on leases where the annual rent does not exceed three thousand dollars per annum.

However, there are no similar provisions for the lease of relocatable homes and home sites.

While some of these leases may fall within the above categories, many others would not.

As a result of concerns raised by my colleague the Honourable Minister for Housing in respect of this issue, the Premier and Treasurer approved of the Act being amended to extend the current exemption for residential leases for a term of no more than 5 years, to include a lease of a site or a relocatable home in a caravan or relocatable home park where it is to be used as the principal place of residence of the lessee.



Stamp duty is payable on the issue of a motor vehicle certificate of registration as a result of the purchase of either a new or used vehicle.

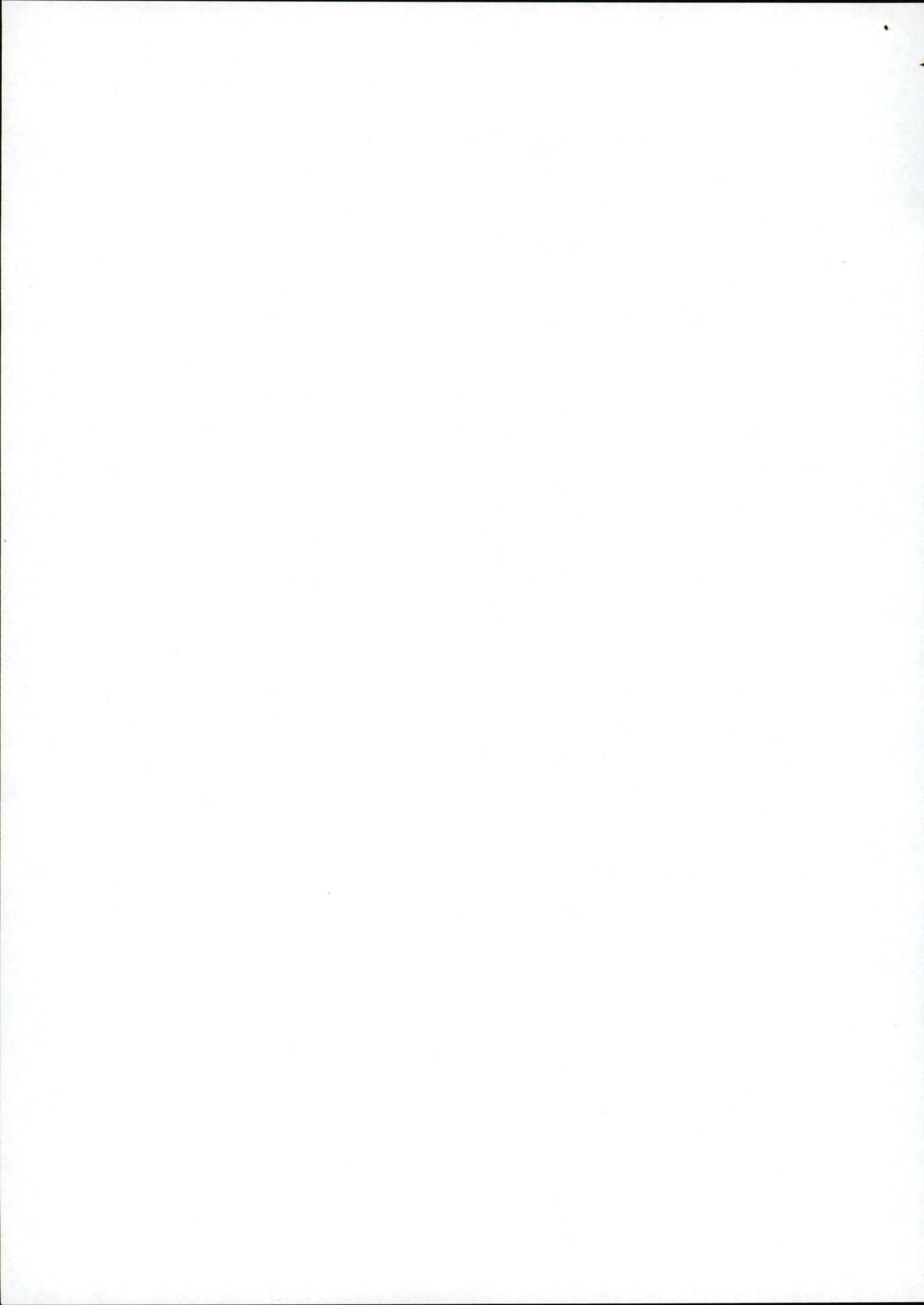
However, instances occur where persons have purchased motor vehicles which were stolen prior to that purchase.

Persons who buy motor vehicles from licenced dealers obtain a guarantee to the title and can recover the purchase price if the vehicle is subsequently found to have been stolen, but there is no provision in the Stamp Duties Act for these persons to obtain a refund of the stamp duty paid on the motor vehicle certificate of registration.

The Bill amends the Act to allow for the stamp duty to be refunded within one year from the date of purchase if the vehicle is re-possessed from the current owner as a result of having been previously stolen.

Under the current stamp duty provisions, documents stamped by the Chief Commissioner can be liable to further duty, if a Court subsequently disagrees with the Chief Commissioner's stamping.

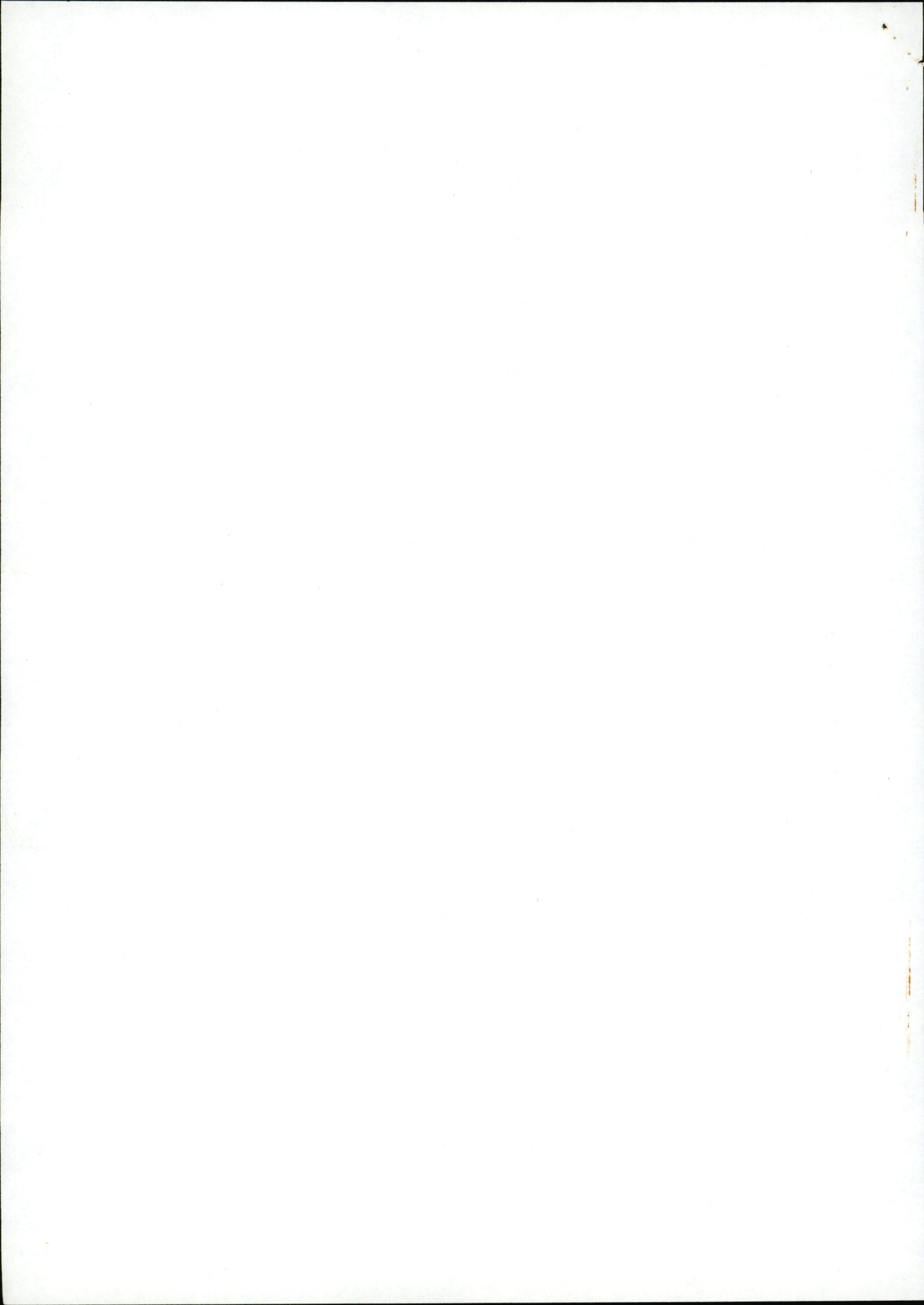
In order to provide better protection for taxpayers, the Bill amends the Act to provide that the stamping of a document by the Chief Commissioner is to be regarded as an assessment and it cannot be questioned unless there is an objection or appeal against it.



The Bill makes a number of other miscellaneous amendments to the Principal Act.

I table detailed explanations of the Bills for the assistance of Honourable Members, and seek their incorporation into Hansard.

I commend these Bills to the House.



STAMP DUTIES (AMENDMENT) ACT 1992 No. 33

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
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SCHEDULE 1—AMENDMENTS

STAMP DUTIES (AMENDMENT) ACT 1992 No. 33

NEW SOUTH WALES



Act No. 33, 1992

An Act to amend the Stamp Duties Act 1920 with respect to amendments of assessments and refunds of duty and other amounts; to make further provision concerning concessional rates of duty and exemptions from duty; and for other purposes. [Assented to 18 May 1992]

Stamp Duties (Amendment) Act 1992 No. 33

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Stamp Duties (Amendment) Act 1992.

Commencement

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

(2) Schedule 1 (19) and (20) are taken to have commenced on 1 January 1992.

(3) Schedule 1 (21) is taken to have commenced on 4 December 1991.

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

Explanatory notes

4. Matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act*.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

Refunds—failed instruments

- (1) Section 15 (**Refunds—failed instruments and spoiled or unused duty stamps**):

(a) After "5 per cent" in section 15 (8) (b), insert "of the duty paid in respect of the stamped instrument or".

(b) From section 15 (9), omit "for spoiled stamps".

Explanatory note—item (1)

Section 15 was substituted by the Stamp Duties (Amendment) Act 1991. It reproduced provisions which had previously been contained in the Stamp Duties Regulations 1934. It enables the Chief Commissioner to refund duty paid in respect of a stamped

* The matter marked "+" in the explanatory notes was inserted after the introduction of the Bill in the Legislative Assembly to explain amendments to the Bill that were moved in Committee.

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

instrument which has failed in its intended operation or has become useless or for spoiled or unused duty stamps. In granting a refund, the Chief Commissioner is entitled to commission of 5 per cent of the value of the spoiled or unused duty stamps.

The amendment made by item (1) is to make it clear that the entitlement to commission exists whether the spoiled or unused duty stamps are impressed stamps or adhesive stamps and whether they have become spoiled or unused because a stamped instrument has failed in its intended operation or become useless, or otherwise.

Amendment of assessments and refunds of duty and other amounts

(2) Sections 35A–35C:

After section 35, insert:

Stamping taken to constitute an assessment

35A. For the purposes of this Act, the stamping of an instrument (excluding a return) by the Chief Commissioner is taken to be an assessment of the duty (and, where relevant, of any fine) payable under this Act in respect of the instrument.

Amendment of assessment by Chief Commissioner

35B. (1) The Chief Commissioner may, in the Chief Commissioner's absolute discretion, amend an assessment, except as provided by this section.

(2) The amendment of an assessment may be made for any reason. In particular, an amendment may be made in connection with a reduction or refund of duty under section 35C.

(3) The Chief Commissioner must not amend an assessment in respect of an instrument (including a return) if the Chief Commissioner is satisfied that the assessment was made in accordance with the interpretation of this Act in respect of instruments of that kind commonly applied by the Chief Commissioner at the time the assessment was made.

(4) An application by a person for the amendment of an assessment may be made only within 2 years after the date of the assessment.

(5) The Chief Commissioner may amend an assessment, otherwise than on an application by a person, only within 2 years after the date of the assessment.

(6) More than one amendment of an assessment may be made in accordance with this section.

SCHEDULE 1—AMENDMENTS—*continued*

(7) It is not competent for a person to bring proceedings against the Chief Commissioner to require the Chief Commissioner to exercise the discretion under subsection (1).

Reduction and refunds of duty and other amounts

35C. (1) The Chief Commissioner may, in the Chief Commissioner's absolute discretion:

- (a) reduce the amount of duty to be paid in respect of an instrument; or
- (b) refund any amount which has been paid in respect of an instrument which is in excess of a requirement for payment under this Act,

except as provided by this section.

(2) The Chief Commissioner must not reduce or refund an amount in respect of an instrument if the Chief Commissioner is satisfied that the payment of the amount was made in accordance with the interpretation of this Act in respect of instruments of that kind commonly applied by the Chief Commissioner at the time the payment was made.

(3) An application for a reduction or refund of an amount may be made at any time within 2 years after the date of payment of the amount.

(4) A reduction or refund is subject to the production to the Chief Commissioner of the 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.

(5) The Chief Commissioner may refuse to make a refund if of the opinion that the person applying for the refund has passed the duty or other amount on to another person and the refund will not be paid to that other person.

(6) Instead of making a refund to a person, the Chief Commissioner may apply the amount that would otherwise be refunded to meet duty or any other amount payable (or which is likely to become payable) by the person in relation to any other instrument.

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

(7) It is not competent for a person to bring proceedings against the Chief Commissioner to require the Chief Commissioner to exercise the discretion under subsection (1).

(8) In this section, “**instrument**” includes a return.

Explanatory note—item (2)

Proposed sections 35A and 35B relate to assessments. Proposed section 35A provides that the stamping of an instrument constitutes an assessment for the purposes of the Principal Act. This will, for example, clarify the circumstances in which a person may bring an appeal under section 124 of the Principal Act. Proposed section 35B gives the Chief Commissioner an absolute discretion to amend an assessment in certain circumstances. An amendment is to be made or applied for within 2 years after the date of the assessment. An assessment may not be amended if the Chief Commissioner is of the opinion that the assessment was made in accordance with the interpretation commonly applied by the Chief Commissioner of the application of the Principal Act to instruments of the kind concerned at the time of making the assessment.

Under proposed section 35C, the Chief Commissioner is given an absolute discretion, in certain circumstances, to reduce an amount of duty (or another amount) to be paid or to refund an amount by which duty (or another amount) has been overpaid. An assessment may not be reduced if the Chief Commissioner is of the opinion that the assessment was made in accordance with the interpretation commonly applied by the Chief Commissioner of the application of the Principal Act to instruments of the kind concerned at the time of making the assessment. The Chief Commissioner may refuse to make a refund if it will not be passed on to the person who actually provided the payment.

Item (14) also deals with the circumstances in which a refund of an amount may be made.

Simplified arrangements for payment of duty on cancelled agreements

(3) Section 41 (**Agreements for sale or conveyance to be chargeable as conveyances etc.**):

After section 41 (7) (b), insert:

(ba) An agreement which is rescinded or annulled within 2 months after it was first executed and before it was duly stamped is liable to a payment of \$25 instead of ad valorem duty. The person primarily liable to make the payment is the purchaser.

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

(bb) An application for an agreement to be dealt with under paragraph (ba) is to be made in the approved form within 12 months after the rescission or annulment.

Explanatory note—item (3)

Section 41 of the Principal Act is amended to provide for the payment of a \$25 administration fee on agreements cancelled within 2 months after signing instead of requiring persons liable to duty to pay the full amount of the duty and to then be granted a refund, less the \$25 administration fee.

Property sales—effect of reduction in purchase price

(4) Section 41A:

After section 41, insert:

Effect of reduction in purchase price

41A. If the Chief Commissioner is satisfied that:

- (a) after an agreement for the sale or conveyance of property is first executed and before the property is conveyed, the consideration under the agreement is reduced by another instrument; and
 - (b) the reduced consideration is not less than the unencumbered value of the property to be conveyed as at the date of first execution of that other instrument,
- the Chief Commissioner must assess or reassess the liability of the agreement to duty in accordance with the reduced consideration.

Explanatory note—item (4)

Proposed section 41A confers on the Chief Commissioner the power to assess the liability to duty of an agreement for the sale or conveyance of property under which the consideration is reduced in accordance with the reduced consideration rather than in accordance with the consideration expressed in the agreement as at the date of first execution.

Objection to the Chief Commissioner's assessment following the valuation of property by the Chief Commissioner

(5) Section 68 (**Ascertainment of the value of property conveyed**):

Before "appeal" in section 68 (3), insert "objection and".

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

Explanatory note—item (5)

The amendment made by item (5) is to make it clear that a person who is dissatisfied with an assessment made by the Chief Commissioner because of a valuation of property made by the Chief Commissioner has the rights of objection (as well as the rights of appeal) provided under section 124 of the Principal Act.

Payment of concessional duty on certain instruments of appointment

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

Omit section 73 (1) (d), insert instead:

- (d) An instrument of appointment in favour of persons specially named or described as the objects of a power of appointment contained in a conveyance on which ad valorem stamp duty imposed by an Act in force at the time of its execution has been paid or which, by an Act so in force, was exempt from stamp duty, but only to the extent that property conveyed by exercise of the power of appointment is property that the Chief Commissioner is satisfied is wholly or substantially the same as:
- (i) property in respect of which that ad valorem duty was paid or that exemption applied; or
 - (ii) property representing the proceeds of re-investment of property referred to in subparagraph (i); or
 - (iii) property referred to in both subparagraph (i) and subparagraph (ii).

Explanatory note—item (6)

Section 73 (1) (d) of the Principal Act provides for nominal duty to be assessed in respect of an instrument of appointment in favour of persons specially named or described as the objects of a power of appointment contained in a conveyance, on which ad valorem duty has been paid, or in a will. This concession should only apply where ad valorem duty has been paid on the conveyance establishing the trust or power and that property, or a direct re-investment of the proceeds, is being conveyed to the appointee or beneficiary.

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

As an anti-avoidance measure, this item amends the Principal Act to ensure that ad valorem duty is paid at least once on the original trust property or the re-investment of that property or the transfer to the beneficiary.

Payment of concessional duty on certain transfers relating to changes in trustees

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

- (a) From section 73 (2A), (2AB) and (2AC), omit “the execution of an instrument referred to in subsection (1) (a) (i), (ii) or (iii) of this section” wherever occurring, insert instead “the making of a decision which is recorded in writing and which has the same effect as an instrument referred to in subsection (1) (a) (i), (ii) or (iii) or the execution of such an instrument”.
- (b) Before “the instrument” wherever occurring in section 73 (2A) (a), (b), (c) and (d) and (2AC), insert “the decision or”.
- (c) Before “the instrument” where firstly occurring in section 73 (2AB), insert “the decision or”.
- (d) From section 73 (2AD), omit “an instrument referred to in subsection (1) (a) (i), (ii) or (iii) of this section”, insert instead “a decision which is recorded in writing and which has the same effect as an instrument referred to in subsection (1) (a) (i), (ii) or (iii) or such an instrument”.
- (e) After section 73 (2AD), insert:
 - (2AE) A conveyance of a marketable security or a unit in a unit trust scheme or of a right to acquire a marketable security or a unit in a unit trust scheme, being a conveyance which the Chief Commissioner is satisfied:
 - (a) does not result in changing the persons who have a beneficial interest in the property conveyed; and
 - (b) does not result in any such person acquiring a greater interest in that property; and
 - (c) is not made in contemplation of any change in a beneficial interest in that property,
 is not to be charged with ad valorem duty as a conveyance but is to be charged with duty of \$2.

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

Explanatory note—item (7)

The amendment made by item (7) (a) will enable the concessional rate of duty under section 73 to apply in relation to a conveyance made for nominal consideration as the consequence of the appointment of a new trustee, the appointment of an additional trustee or the retirement of a trustee even though the change concerning the trustee is not effected by a duly executed instrument. It will be sufficient under the amendment if the change is evidenced by a written record of the change, such as a letter or the minutes of a meeting.

The amendments made by item (7) (b)–(d) are consequential on the amendment made by item (7) (a).

The amendment made by item (7) (e) will enable:

- (a) the beneficial owner of marketable securities or units in a unit trust scheme to transfer them to a trustee to be held by the trustee on the beneficial owner's behalf; and
- (b) marketable securities held by a manager or trustee to be transferred to a custodian (another trustee),

without incurring ad valorem duty as on a conveyance.

† The amendment made by item (7) (e) applies to rights to acquire marketable securities or units in unit trust schemes in the same way as it applies to marketable securities and units in unit trust schemes.

Exemption from duty—separation agreements between former de facto partners

(8) Section 74CB (Certain instruments exempt from duty):

After section 74CB (2), insert:

- (3) An instrument, being:
 - (a) a separation agreement within the meaning of section 44 of the De Facto Relationships Act 1984 which has been certified in accordance with section 47 of that Act; or
 - (b) a conveyance made in accordance with the separation agreement which conveys property to one of the former de facto partners or a child or children of either of them,

is exempt from duty if the Chief Commissioner is satisfied that the former de facto partners have been separated for at least 3 months before the instrument is lodged for stamping.

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

(4) For the purposes of subsection (3) and section 25 (2), the date of first execution of a separation agreement referred to in subsection (3) is taken to be 3 months after the actual date of first execution.

Explanatory note—item (8)

At present, the Principal Act provides for an exemption from duty on conveyances of property made in accordance with a court order under the De Facto Relationships Act 1984. The amendment made by this item will extend the exemption to separation agreements under that Act, and conveyances made in accordance with separation agreements, if the Chief Commissioner is satisfied that the former de facto partners have been separated for at least 3 months before the instrument is lodged for stamping.

Ordinarily, an instrument is required to be stamped within 2 months after the date of first execution in order to avoid the payment of a penalty. So that a penalty will not be incurred in a case where the separation agreement is first executed at the time the de facto partners separate, the date of first execution is taken to be 3 months after the actual date of first execution.

Exemption from duty—movable dwelling sites

(9) Section 78F (Exemption from duty—residential leases):

(a) After section 78F (1), insert:

(1A) Notwithstanding any other provision of this Act, duty is not chargeable in respect of the rent or other consideration payable under a lease of a movable dwelling site used, or intended to be used, as the principal place of residence of the lessee.

(b) Before the definition of “residential lease” in section 78F (2), insert:

“lease of a movable dwelling site” means an agreement under which a person has the right to occupy for a term (or a term together with any option period) not exceeding 5 years:

- (a) any land used, or intended to be used, as the site of a movable dwelling within the meaning of Division 5B of Part 10 of the Local Government Act 1919; or
- (b) any such movable dwelling on that site; or
- (c) both the land and any such movable dwelling;

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

Explanatory note—item (9)

The amendment made by item (9) will confer the same exemption from stamp duty on all residential leases as currently applies under section 78F for leases of premises. The amendment is intended to apply to leases of sites in caravan parks and relocatable home parks.

Bill facilities

(10) Section 83 (**Definitions**):

From section 83 (1), omit the definition of “Bill facility”, insert instead:

“**Bill facility**” means one or more agreements, understandings or arrangements as a consequence of which a bill of exchange or promissory note:

- (a) is drawn, accepted, endorsed or made; and
- (b) is held by, or negotiated or discounted to, a person,

to obtain the provision of funds from the person.

Explanatory note—item (10)

The current definition of bill facility means *an* agreement, understanding or arrangement for the provision of funds under which a bill of exchange or promissory note is drawn, accepted, endorsed or made and is held by, or negotiated or discounted to, the person providing the funds. It has been argued that, because there is more than one transaction in arranging a bill facility, rather than “*an* agreement, understanding or arrangement”, the normal arrangement falls outside the definition. While this argument is not accepted because it ignores the effect of section 8 (b) of the Interpretation Act 1987 (a reference to a word or expression in the singular form includes a reference to the word or expression in the plural form), the opportunity is being taken to put the matter beyond any such argument.

Loan securities—refinancing a loan at the instigation of the borrower

(11) Section 84CAB:

After section 84CAA, insert:

Refinancing of loans—generally

84CAB. (1) If a loan security is transferred to:

- (a) a person who, either in connection with the transfer or at a later time, makes an advance or additional advance under the loan security; or

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

- (b) a person who is a party to arrangements (within the meaning of section 84 (3C)) relating to such an advance or additional advance,

the transferred loan security is taken, for the purpose of determining its liability to duty under this Act, to be a new loan security on which no duty has been paid and is liable to duty accordingly.

(2) The date of first execution of the transferred loan security is taken to be:

- (a) in the case of a loan security where the advance or additional advance was made in connection with the transfer—the date of first execution of the transfer; and
(b) in the case of a loan security where the advance or additional advance was made at a later time—the date of the first such advance or additional advance.

(3) If an insufficient amount of duty had been paid on a loan security to which this section applies before it is taken by this section to be a new loan security, the Chief Commissioner is not prevented from recovering at any time the amount with which, in the Chief Commissioner's opinion, the loan security was properly chargeable in respect of duty or fine, or both, from the person primarily liable in respect of the loan security.

(4) This section does not apply to a loan security to which section 84CAA applies.

Explanatory note—item (11)

The amendment made by the insertion of proposed section 84CAB is to make it clear that the refinancing of a loan through another lender at the instigation of the borrower is to be treated, for the purpose of payment of loan security duty, as if it were a new loan. The proposed section does not apply to the refinancing of a loan by a primary producer in the circumstances dealt with in section 84CAA.

A consequential amendment is made by item (13) to section 97AE to clarify the relationship between that section and the proposed section.

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

Refund of stamp duty—certificates of registration of stolen motor vehicles

(12) Section 84GA:

After section 84G, insert:

Refund of duty—certificates of registration of stolen motor vehicles

84GA. (1) A person may apply to the Chief Commissioner for a refund of duty paid by the person in respect of a motor vehicle certificate of registration if the motor vehicle concerned is repossessed from the person because, before the person acquired it, it had been stolen.

(2) An application must be made in the approved form within 1 year after the date of purchase of the motor vehicle concerned by the applicant.

(3) The Chief Commissioner may refund duty in accordance with an application made under this section.

Explanatory note—item (12)

Proposed section 84GA will enable a refund to be made of stamp duty paid on a motor vehicle certificate of registration if the vehicle concerned is repossessed because it had been stolen before its purchase by the person who paid the duty.

Refinancing and transfer of mortgages

(13) Section 97AE (**Charging of duty on transfer etc. of certain mortgages**):

Omit “in respect of”, insert instead “on”.

Explanatory note—item (13)

The amendment made to section 97AE is consequential on the insertion of proposed section 84CAB by item (11). The amendment is made to limit the exemption from duty under section 97AE to the actual instrument of assignment or transfer and thereby to avoid a potential conflict with the proposed section.

Refund of duty following reduction of assessment on appeal

(14) Section 124 (**Objections and appeals**):

After section 124 (4), insert:

(4A) The Chief Commissioner must make a refund of money overpaid following the modification of an assessment.

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

Explanatory note—item (14)

This item makes it clear that the Chief Commissioner is authorised to make a refund of duty and other money overpaid where an assessment is reduced as a consequence of a successful objection or appeal against the amount of the assessment.

Service of notices by delivery to a post office box or document exchange box

(15) Section 124E (**Lodgment with Chief Commissioner**):

After “Chief Commissioner” where thirdly occurring in section 124E, insert “or delivered to the facilities of a document exchange indicated by the Chief Commissioner (on any correspondence or otherwise) as an address at which the thing may be lodged”.

(16) Section 129C (**Service of notices etc.**):

Omit section 129C (1) (b), insert instead:

(b) if sent by post, addressed to that person at:

(i) the person’s last known place of business or residence in or out of the State; or

(ii) a post office box last indicated by that person (on any correspondence or otherwise) as an address to which postal articles may be sent; or

(c) if delivered to the facilities of a document exchange, addressed to that person at the facilities of a document exchange last indicated by that person (on any correspondence or otherwise) as an address to which documents may be delivered.

Explanatory note—items (15) and (16)

The amendment made by item (15) will enable the service of documents on the Chief Commissioner by delivery to a document exchange specified by the Chief Commissioner.

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

The amendment made by item (16) will enable the Chief Commissioner to serve documents on a person by posting them to a post office box, or by delivering them to a document exchange, specified by the person. These means of service are in addition to the means already provided for in the Principal Act.

Consequential amendment—payment of concessional duty on certain instruments of appointment

(17) Second Schedule—Stamp Duties and Exemptions:

Omit the matter relating to APPOINTMENT in execution of a power.

†Explanatory note—item (17)

The amendment made by this item is consequential on the amendment made by item (6). The matter omitted will now be dealt with, both as to the description of the instrument concerned and the amount of duty payable on the instrument, under section 73 of the Principal Act, as amended by item (6).

Amount of duty payable on transfers of certain shares

(18) Second Schedule—Stamp Duties and Exemptions:

From the matter appearing in the Column headed “Amount of Duty” opposite paragraph (1) (b) of the matter relating to TRANSFER OF SHARES, omit “, whichever is the greater”, insert instead “or ad valorem duty at the rate of 6c for every \$10 (or part thereof) of the consideration for the sale, whichever is the greatest”.

Explanatory note—item (18)

The amendment made by item (18) is to provide that the amount of duty payable on a transfer of shares of a corporation or company:

- (a) the shares of which are not listed on a recognised stock exchange; and
- (b) which is not the legal or beneficial owner of land in New South Wales,

is ad valorem duty at the rate of 6c for every \$10 (or part thereof) of the value of the shares or the consideration for the sale, whichever is the greater, with a minimum amount of duty of \$10.

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

Exemption from duty—loan securities in support of exempt mortgages

- (19) Second Schedule—General Exemptions From Stamp Duty Under Part 3:

After “that purchase)” in subparagraph (b) of paragraph (35), insert “and a loan security in support of that loan security”.

- (20) Schedule 2A—First Home Purchase Scheme:

After clause 25 (4), insert:

(5) A loan security in support of an eligible mortgage may also be exempted from payment of stamp duty.

Explanatory note—items (19) and (20)

A mortgage to secure a loan raised to enable the purchase of a home by a Department of Housing tenant or a participant in the Community Tenancy Scheme or the First Home Purchase Scheme is exempt from payment of stamp duty. However, additional securities in support of the loan attract full loan security duty. The amendments made by items (19) and (20) will confer the same exemption on a supporting loan security as on the principal loan security.

The amendments give effect to an approval of the Premier and Treasurer which has operated by way of a Variation to Statute since 1 January 1992.

These amendments, accordingly, are taken to have commenced on 1 January 1992.

Exemption from duty—persons under the Community Tenancy Scheme who buy their own homes

- (21) Second Schedule—General Exemptions From Stamp Duty Under Part 3:

After “Department of Housing” in paragraph (35) (c), insert “, or a tenant under the Community Tenancy Scheme administered within that Department,”.

Explanatory note—item (21)

Department of Housing tenants receive an exemption from stamp duty on the purchase of a dwelling and any associated mortgage in circumstances specified in paragraph (35) of the general exemptions from stamp duty set out in the Second Schedule to the Principal Act. Persons coming within the Community Tenancy Scheme do not qualify for this exemption as they are not Department of Housing tenants but only have their names on the Department’s waiting list for accommodation. The amendment made by item (21) will confer the same benefits on persons under the Community Tenancy Scheme as currently apply to Department of Housing tenants.

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

The amendment gives effect to an approval of the Premier and Treasurer which has operated by way of a Variation to Statute since 4 December 1991.

This amendment, accordingly, is taken to have commenced on 4 December 1991.

Savings and transitional provisions consequential on the amendments made in this Schedule

- (22) Tenth Schedule—Savings, Transitional and Other Provisions:
After Part 8, insert:

**PART 9—STAMP DUTIES (AMENDMENT)
ACT 1992**

Application of amendments—generally

29. (1) A provision of this Act as in force before the amendment of the provision by the Stamp Duties (Amendment) Act 1992 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 1992 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.

Objections to assessments—section 68

30. Section 68 (as amended by the Stamp Duties (Amendment) Act 1992) applies to assessments made before or after the commencement of the amendment.

Separation agreements between former de facto partners—section 74CB

31. Section 74CB (as amended by the Stamp Duties (Amendment) Act 1992) applies to separation agreements, and conveyances referred to in section 74CB (3) (as so amended), made within 3 months before the commencement of the amendment or at any time after that commencement.

Stamp Duties (Amendment) Act 1992 No. 33

SCHEDULE 1—AMENDMENTS—*continued*

Explanatory note—item (22)

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 29 April 1992
Legislative Council on 7 May 1992*]

STAMP DUTIES (AMENDMENT) BILL

Schedule of the amendments referred to in the Legislative Council's
Message of 7 May 1992

- No. 1 Page 2, clause 2, line 7. Omit "(18) and (19)", insert instead "(19) and (20)".
- No. 2 Page 2, clause 2, line 9. Omit "(20)", insert instead "(21)".
- No. 3 Page 8, Schedule 1, line 13. After "scheme", insert instead "or of a right to acquire a marketable security or a unit in a unit trust scheme".
- No. 4 Page 14, Schedule 1. After line 9, insert:

Consequential amendment—payment of concessional duty on certain instruments of appointment.

(17) Second Schedule—Stamp Duties and Exemptions:

Omit the matter relating to APPOINTMENT in execution of a power.

FIRST PRINT

STAMP DUTIES (AMENDMENT) BILL 1992

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:

- to enable the Chief Commissioner to reduce assessments and make refunds of duty and other amounts
- to clarify the circumstances in which the Chief Commissioner is entitled to commission when making a refund of duty
- to simplify the arrangements for the payment of duty on cancelled agreements
- to enable the Chief Commissioner to assess or reassess the liability to duty of an agreement under which the consideration is reduced before the agreement is completed
- to enable objections (as well as appeals) to be made against assessments based on valuations made by the Chief Commissioner
- to clarify the application of concessional provisions concerning instruments of appointment
- to relax the requirements for obtaining concessional rates of duty on certain conveyances of property to trustees and to provide a concession where shares are transferred to trustees
- to extend the exemption from duty on separation agreements made under the De Facto Relationships Act 1984
- to provide for leases of movable dwelling sites to be granted the same concession as residential leases
- to clarify the provisions relating to loan securities which are used to secure bill facility documents
- to ensure that loan security duty is payable where loan securities are transferred between lenders at the instigation of the borrower
- to provide for a refund of stamp duty on a motor vehicle certificate of registration if the motor vehicle is subsequently found to have been stolen prior to its purchase

Stamp Duties (Amendment) 1992

- to enable the Chief Commissioner to serve a notice to a person at the person's post office box or document exchange box
 - to provide that an additional loan security taken out to further secure the obligations of First Home Purchase Scheme participants, Department of Housing tenants or Community Tenancy Scheme tenants is exempt from duty
 - to provide an exemption from conveyance and loan security duty for Community Tenancy Scheme tenants who purchase their own homes
 - to enact appropriate savings and transitional provisions.
-

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides, generally, for the commencement of the provisions of the proposed Act on the date of assent. If a provision is to commence or be taken to have commenced on a day other than the date of assent, the day is also specified in the explanatory note relating to the provision.

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

Clause 4 provides that explanatory notes appearing in the Bill do not form part of the proposed Act.

Schedule 1 makes the amendments to the Principal Act described above. Each amendment is explained in detail in the explanatory note relating to the amendment concerned.

FIRST PRINT

STAMP DUTIES (AMENDMENT) BILL 1992

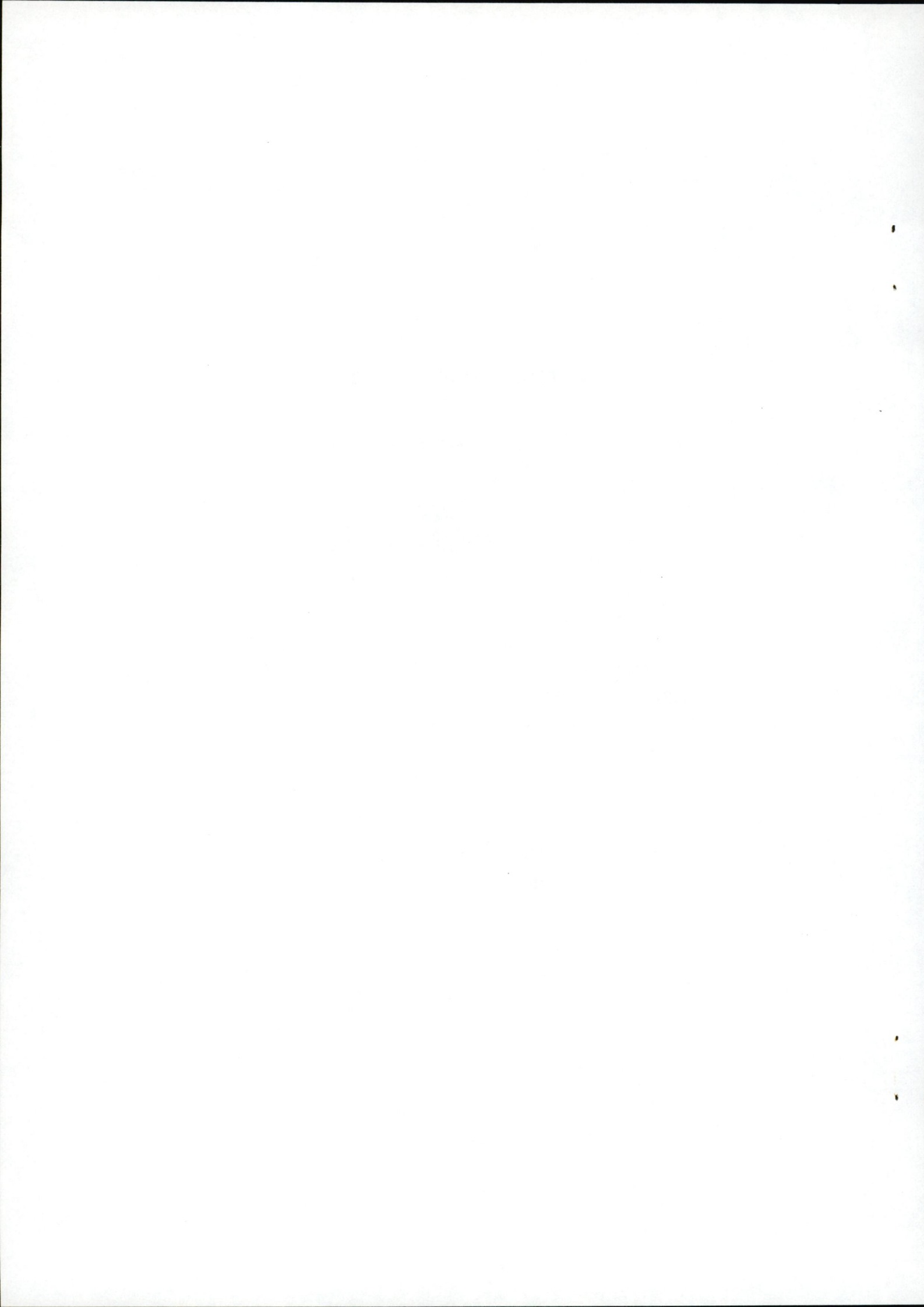
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
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4. Explanatory notes

SCHEDULE 1—AMENDMENTS



STAMP DUTIES (AMENDMENT) BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Stamp Duties Act 1920 with respect to amendments of assessments and refunds of duty and other amounts; to make further provision concerning concessional rates of duty and exemptions from duty; and for other purposes.

Stamp Duties (Amendment) 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Stamp Duties (Amendment) Act 1992.

Commencement

- 5 2. (1) This Act commences on the date of assent, except as provided by this section.
- (2) Schedule 1 (18) and (19) are taken to have commenced on 1 January 1992.
- (3) Schedule 1 (20) is taken to have commenced on 4 December 1991.
- 10 (4) Section 3 in its application to a provision of Schedule 1 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 Schedule 1.

15 **Explanatory notes**

4. Matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

20 **Refunds—failed instruments**

- (1) Section 15 (**Refunds—failed instruments and spoiled or unused duty stamps**):
- (a) After "5 per cent" in section 15 (8) (b), insert "of the duty paid in respect of the stamped instrument or".
- 25 (b) From section 15 (9), omit "for spoiled stamps".

Explanatory note—item (1)

- 30 Section 15 was substituted by the Stamp Duties (Amendment) Act 1991. It reproduced provisions which had previously been contained in the Stamp Duties Regulations 1934. It enables the Chief Commissioner to refund duty paid in respect of a stamped instrument which has failed in its intended operation or has become useless or for spoiled or unused duty stamps. In granting a refund, the Chief Commissioner is entitled to commission of 5 per cent of the value of the spoiled or unused duty stamps.

Stamp Duties (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

The amendment made by item (1) is to make it clear that the entitlement to commission exists whether the spoiled or unused duty stamps are impressed stamps or adhesive stamps and whether they have become spoiled or unused because a stamped instrument has failed in its intended operation or become useless, or otherwise.

5

Amendment of assessments and refunds of duty and other amounts

(2) Sections 35A–35C:

After section 35, insert:

Stamping taken to constitute an assessment

35A. For the purposes of this Act, the stamping of an instrument (excluding a return) by the Chief Commissioner is taken to be an assessment of the duty (and, where relevant, of any fine) payable under this Act in respect of the instrument.

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Amendment of assessment by Chief Commissioner

35B. (1) The Chief Commissioner may, in the Chief Commissioner's absolute discretion, amend an assessment, except as provided by this section.

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(2) The amendment of an assessment may be made for any reason. In particular, an amendment may be made in connection with a reduction or refund of duty under section 35C.

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(3) The Chief Commissioner must not amend an assessment in respect of an instrument (including a return) if the Chief Commissioner is satisfied that the assessment was made in accordance with the interpretation of this Act in respect of instruments of that kind commonly applied by the Chief Commissioner at the time the assessment was made.

25

(4) An application by a person for the amendment of an assessment may be made only within 2 years after the date of the assessment.

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(5) The Chief Commissioner may amend an assessment, otherwise than on an application by a person, only within 2 years after the date of the assessment.

(6) More than one amendment of an assessment may be made in accordance with this section.

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(7) It is not competent for a person to bring proceedings against the Chief Commissioner to require the Chief Commissioner to exercise the discretion under subsection (1).

Stamp Duties (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

Reduction and refunds of duty and other amounts

35C. (1) The Chief Commissioner may, in the Chief Commissioner's absolute discretion:

- 5 (a) reduce the amount of duty to be paid in respect of an instrument; or
- (b) refund any amount which has been paid in respect of an instrument which is in excess of a requirement for payment under this Act,

10 except as provided by this section.

(2) The Chief Commissioner must not reduce or refund an amount in respect of an instrument if the Chief Commissioner is satisfied that the payment of the amount was made in accordance with the interpretation of this Act in respect of instruments of that kind commonly applied by the Chief Commissioner at the time the payment was made.

15 (3) An application for a reduction or refund of an amount may be made at any time within 2 years after the date of payment of the amount.

20 (4) A reduction or refund is subject to the production to the Chief Commissioner of the 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.

25 (5) The Chief Commissioner may refuse to make a refund if of the opinion that the person applying for the refund has passed the duty or other amount on to another person and the refund will not be paid to that other person.

30 (6) Instead of making a refund to a person, the Chief Commissioner may apply the amount that would otherwise be refunded to meet duty or any other amount payable (or which is likely to become payable) by the person in relation to any other instrument.

35 (7) It is not competent for a person to bring proceedings against the Chief Commissioner to require the Chief Commissioner to exercise the discretion under subsection (1).

(8) In this section, "instrument" includes a return.

Stamp Duties (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

Explanatory note—item (2)

Proposed sections 35A and 35B relate to assessments. Proposed section 35A provides that the stamping of an instrument constitutes an assessment for the purposes of the Principal Act. This will, for example, clarify the circumstances in which a person may bring an appeal under section 124 of the Principal Act. Proposed section 35B gives the Chief Commissioner an absolute discretion to amend an assessment in certain circumstances. An amendment is to be made or applied for within 2 years after the date of the assessment. An assessment may not be amended if the Chief Commissioner is of the opinion that the assessment was made in accordance with the interpretation commonly applied by the Chief Commissioner of the application of the Principal Act to instruments of the kind concerned at the time of making the assessment.

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Under proposed section 35C, the Chief Commissioner is given an absolute discretion, in certain circumstances, to reduce an amount of duty (or another amount) to be paid or to refund an amount by which duty (or another amount) has been overpaid. An assessment may not be reduced if the Chief Commissioner is of the opinion that the assessment was made in accordance with the interpretation commonly applied by the Chief Commissioner of the application of the Principal Act to instruments of the kind concerned at the time of making the assessment. The Chief Commissioner may refuse to make a refund if it will not be passed on to the person who actually provided the payment.

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Item (14) also deals with the circumstances in which a refund of an amount may be made.

Simplified arrangements for payment of duty on cancelled agreements

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(3) Section 41 (Agreements for sale or conveyance to be chargeable as conveyances etc.):

After section 41 (7) (b), insert:

(ba) An agreement which is rescinded or annulled within 2 months after it was first executed and before it was duly stamped is liable to a payment of \$25 instead of ad valorem duty. The person primarily liable to make the payment is the purchaser.

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(bb) An application for an agreement to be dealt with under paragraph (ba) is to be made in the approved form within 12 months after the rescission or annulment.

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Explanatory note—item (3)

Section 41 of the Principal Act is amended to provide for the payment of a \$25 administration fee on agreements cancelled within 2 months after signing instead of requiring persons liable to duty to pay the full amount of the duty and to then be granted a refund, less the \$25 administration fee.

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Stamp Duties (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

Property sales—effect of reduction in purchase price

(4) Section 41A:

After section 41, insert:

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Effect of reduction in purchase price

41A. If the Chief Commissioner is satisfied that:

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(a) after an agreement for the sale or conveyance of property is first executed and before the property is conveyed, the consideration under the agreement is reduced by another instrument; and

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(b) the reduced consideration is not less than the unencumbered value of the property to be conveyed as at the date of first execution of that other instrument, the Chief Commissioner must assess or reassess the liability of the agreement to duty in accordance with the reduced consideration.

Explanatory note—item (4)

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Proposed section 41A confers on the Chief Commissioner the power to assess the liability to duty of an agreement for the sale or conveyance of property under which the consideration is reduced in accordance with the reduced consideration rather than in accordance with the consideration expressed in the agreement as at the date of first execution.

Objection to the Chief Commissioner's assessment following the valuation of property by the Chief Commissioner

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(5) Section 68 (Ascertainment of the value of property conveyed):

Before "appeal" in section 68 (3), insert "objection and".

Explanatory note—item (5)

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The amendment made by item (5) is to make it clear that a person who is dissatisfied with an assessment made by the Chief Commissioner because of a valuation of property made by the Chief Commissioner has the rights of objection (as well as the rights of appeal) provided under section 124 of the Principal Act.

Payment of concessional duty on certain instruments of appointment

35

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

Omit section 73 (1) (d), insert instead:

Stamp Duties (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (d) An instrument of appointment in favour of persons specially named or described as the objects of a power of appointment contained in a conveyance on which ad valorem stamp duty imposed by an Act in force at the time of its execution has been paid or which, by an Act so in force, was exempt from stamp duty, but only to the extent that property conveyed by exercise of the power of appointment is property that the Chief Commissioner is satisfied is wholly or substantially the same as: 5
- (i) property in respect of which that ad valorem duty was paid or that exemption applied; or
- (ii) property representing the proceeds of re-investment of property referred to in subparagraph (i); or 15
- (iii) property referred to in both subparagraph (i) and subparagraph (ii). 10
- Explanatory note—item (6)** 20
- Section 73 (1) (d) of the Principal Act provides for nominal duty to be assessed in respect of an instrument of appointment in favour of persons specially named or described as the objects of a power of appointment contained in a conveyance, on which ad valorem duty has been paid, or in a will. This concession should only apply where ad valorem duty has been paid on the conveyance establishing the trust or power and that property, or a direct re-investment of the proceeds, is being conveyed to the appointee or beneficiary. 25
- As an anti-avoidance measure, this item amends the Principal Act to ensure that ad valorem duty is paid at least once on the original trust property or the re-investment of that property or the transfer to the beneficiary.
- Payment of concessional duty on certain transfers relating to changes in trustees** 30
- (7) Section 73 (**Certain conveyances not chargeable with ad valorem duty**):
- (a) From section 73 (2A), (2AB) and (2AC), omit “the execution of an instrument referred to in subsection (1) (a) (i), (ii) or (iii) of this section” wherever occurring, insert instead “the making of a decision which is recorded in writing and which has the same effect as an instrument referred to in subsection (1) (a) (i), (ii) or (iii) or the execution of such an instrument”. 35 40

Stamp Duties (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

- (b) Before “the instrument” wherever occurring in section 73 (2A) (a), (b), (c) and (d) and (2AC), insert “the decision or”.
- 5 (c) Before “the instrument” where firstly occurring in section 73 (2AB), insert “the decision or”.
- (d) From section 73 (2AD), omit “an instrument referred to in subsection (1) (a) (i), (ii) or (iii) of this section”, insert instead “a decision which is recorded in writing and which has the same effect as an instrument referred to in subsection 10 (1) (a) (i), (ii) or (iii) or such an instrument”.
- (e) After section 73 (2AD), insert:
- (2AE) A conveyance of a marketable security or a unit in a unit trust scheme, being a conveyance which the Chief Commissioner is satisfied:
- 15 (a) does not result in changing the persons who have a beneficial interest in the property conveyed; and
- (b) does not result in any such person acquiring a greater interest in that property; and
- 20 (c) is not made in contemplation of any change in a beneficial interest in that property,
- is not to be charged with ad valorem duty as a conveyance but is to be charged with duty of \$2.

Explanatory note—item (7)

25 The amendment made by item (7) (a) will enable the concessional rate of duty under section 73 to apply in relation to a conveyance made for nominal consideration as the consequence of the appointment of a new trustee, the appointment of an additional trustee or the retirement of a trustee even though the change concerning the trustee is not effected by a duly executed instrument. It will be sufficient under the amendment if the change is evidenced by a written record of the change, such as a letter or the minutes of a meeting.

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The amendments made by item (7) (b)–(d) are consequential on the amendment made by item (7) (a).

The amendment made by item (7) (e) will enable:

- 35 (a) the beneficial owner of marketable securities or units in a unit trust scheme to transfer them to a trustee to be held by the trustee on the beneficial owner’s behalf; and
- (b) marketable securities held by a manager or trustee to be transferred to a custodian (another trustee),

without incurring ad valorem duty as on a conveyance.

Stamp Duties (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

Exemption from duty—separation agreements between former de facto partners

(8) Section 74CB (Certain instruments exempt from duty):

After section 74CB (2), insert:

(3) An instrument, being:

(a) a separation agreement within the meaning of section 44 of the De Facto Relationships Act 1984 which has been certified in accordance with section 47 of that Act; or

(b) a conveyance made in accordance with the separation agreement which conveys property to one of the former de facto partners or a child or children of either of them,

is exempt from duty if the Chief Commissioner is satisfied that the former de facto partners have been separated for at least 3 months before the instrument is lodged for stamping.

(4) For the purposes of subsection (3) and section 25 (2), the date of first execution of a separation agreement referred to in subsection (3) is taken to be 3 months after the actual date of first execution.

Explanatory note—item (8)

At present, the Principal Act provides for an exemption from duty on conveyances of property made in accordance with a court order under the De Facto Relationships Act 1984. The amendment made by this item will extend the exemption to separation agreements under that Act, and conveyances made in accordance with separation agreements, if the Chief Commissioner is satisfied that the former de facto partners have been separated for at least 3 months before the instrument is lodged for stamping.

Ordinarily, an instrument is required to be stamped within 2 months after the date of first execution in order to avoid the payment of a penalty. So that a penalty will not be incurred in a case where the separation agreement is first executed at the time the de facto partners separate, the date of first execution is taken to be 3 months after the actual date of first execution.

Exemption from duty—movable dwelling sites

(9) Section 78F (Exemption from duty—residential leases):

(a) After section 78F (1), insert:

(1A) Notwithstanding any other provision of this Act, duty is not chargeable in respect of the rent or other consideration

Stamp Duties (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

payable under a lease of a movable dwelling site used, or intended to be used, as the principal place of residence of the lessee.

- 5 (b) Before the definition of “residential lease” in section 78F (2), insert:

10 “lease of a movable dwelling site” means an agreement under which a person has the right to occupy for a term (or a term together with any option period) not exceeding 5 years:

- (a) any land used, or intended to be used, as the site of a movable dwelling within the meaning of Division 5B of Part 10 of the Local Government Act 1919; or
- 15 (b) any such movable dwelling on that site; or
- (c) both the land and any such movable dwelling;

Explanatory note—item (9)

20 The amendment made by item (9) will confer the same exemption from stamp duty on all residential leases as currently applies under section 78F for leases of premises. The amendment is intended to apply to leases of sites in caravan parks and relocatable home parks.

Bill facilities

- (10) Section 83 (Definitions):

25 From section 83 (1), omit the definition of “Bill facility”, insert instead:

“Bill facility” means one or more agreements, understandings or arrangements as a consequence of which a bill of exchange or promissory note:

- (a) is drawn, accepted, endorsed or made; and
- 30 (b) is held by, or negotiated or discounted to, a person,

to obtain the provision of funds from the person.

Explanatory note—item (10)

35 The current definition of bill facility means *an* agreement, understanding or arrangement for the provision of funds under which a bill of exchange or promissory note is drawn, accepted, endorsed or made and is held by, or negotiated or discounted to, the person providing the funds. It has been argued that, because there is more than one transaction

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SCHEDULE 1—AMENDMENTS—*continued*

in arranging a bill facility, rather than “an agreement, understanding or arrangement”, the normal arrangement falls outside the definition. While this argument is not accepted because it ignores the effect of section 8 (b) of the Interpretation Act 1987 (a reference to a word or expression in the singular form includes a reference to the word or expression in the plural form), the opportunity is being taken to put the matter beyond any such argument. 5

Loan securities—refinancing a loan at the instigation of the borrower

(11) Section 84CAB:

After section 84CAA, insert: 10

Refinancing of loans—generally

84CAB. (1) If a loan security is transferred to:

- (a) a person who, either in connection with the transfer or at a later time, makes an advance or additional advance under the loan security; or 15
- (b) a person who is a party to arrangements (within the meaning of section 84 (3C)) relating to such an advance or additional advance,

the transferred loan security is taken, for the purpose of determining its liability to duty under this Act, to be a new loan security on which no duty has been paid and is liable to duty accordingly. 20

(2) The date of first execution of the transferred loan security is taken to be:

- (a) in the case of a loan security where the advance or additional advance was made in connection with the transfer—the date of first execution of the transfer; and 25
- (b) in the case of a loan security where the advance or additional advance was made at a later time—the date of the first such advance or additional advance. 30

(3) If an insufficient amount of duty had been paid on a loan security to which this section applies before it is taken by this section to be a new loan security, the Chief Commissioner is not prevented from recovering at any time the amount with which, in the Chief Commissioner’s opinion, the loan security was properly chargeable in respect of duty or fine, or both, from the person primarily liable in respect of the loan security. 35

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SCHEDULE 1—AMENDMENTS—*continued*

(4) This section does not apply to a loan security to which section 84CAA applies.

Explanatory note—item (11)

- 5 The amendment made by the insertion of proposed section 84CAB is to make it clear that the refinancing of a loan through another lender at the instigation of the borrower is to be treated, for the purpose of payment of loan security duty, as if it were a new loan. The proposed section does not apply to the refinancing of a loan by a primary producer in the circumstances dealt with in section 84CAA.
- 10 A consequential amendment is made by item (13) to section 97AE to clarify the relationship between that section and the proposed section.

Refund of stamp duty—certificates of registration of stolen motor vehicles

(12) Section 84GA:

- 15 After section 84G, insert:
Refund of duty—certificates of registration of stolen motor vehicles
- 20 84GA. (1) A person may apply to the Chief Commissioner for a refund of duty paid by the person in respect of a motor vehicle certificate of registration if the motor vehicle concerned is repossessed from the person because, before the person acquired it, it had been stolen.
- 25 (2) An application must be made in the approved form within 1 year after the date of purchase of the motor vehicle concerned by the applicant.
- (3) The Chief Commissioner may refund duty in accordance with an application made under this section.

Explanatory note—item (12)

- 30 Proposed section 84GA will enable a refund to be made of stamp duty paid on a motor vehicle certificate of registration if the vehicle concerned is repossessed because it had been stolen before its purchase by the person who paid the duty.

Refinancing and transfer of mortgages

- (13) Section 97AE (Charging of duty on transfer etc. of certain mortgages):
- 35 Omit “in respect of”, insert instead “on”.

Stamp Duties (Amendment) 1992

SCHEDULE 1—AMENDMENTS—*continued*

Explanatory note—item (13)

The amendment made to section 97AE is consequential on the insertion of proposed section 84CAB by item (11). The amendment is made to limit the exemption from duty under section 97AE to the actual instrument of assignment or transfer and thereby to avoid a potential conflict with the proposed section.

5

Refund of duty following reduction of assessment on appeal

(14) Section 124 (Objections and appeals):

After section 124 (4), insert:

(4A) The Chief Commissioner must make a refund of money overpaid following the modification of an assessment.

10

Explanatory note—item (14)

This item makes it clear that the Chief Commissioner is authorised to make a refund of duty and other money overpaid where an assessment is reduced as a consequence of a successful objection or appeal against the amount of the assessment.

15

Service of notices by delivery to a post office box or document exchange box

(15) Section 124E (Lodgment with Chief Commissioner):

After “Chief Commissioner” where thirdly occurring in section 124E, insert “or delivered to the facilities of a document exchange indicated by the Chief Commissioner (on any correspondence or otherwise) as an address at which the thing may be lodged”.

20

(16) Section 129C (Service of notices etc.):

Omit section 129C (1) (b), insert instead:

25

(b) if sent by post, addressed to that person at:

(i) the person’s last known place of business or residence in or out of the State; or

(ii) a post office box last indicated by that person (on any correspondence or otherwise) as an address to which postal articles may be sent; or

30

(c) if delivered to the facilities of a document exchange, addressed to that person at the facilities of a document exchange last indicated by that person (on any correspondence or otherwise) as an address to which documents may be delivered.

35

*Stamp Duties (Amendment) 1992***SCHEDULE 1—AMENDMENTS—*continued*****Explanatory note—items (15) and (16)**

5 The amendment made by item (15) will enable the service of documents on the Chief Commissioner by delivery to a document exchange specified by the Chief Commissioner.

The amendment made by item (16) will enable the Chief Commissioner to serve documents on a person by posting them to a post office box, or by delivering them to a document exchange, specified by the person. These means of service are in addition to the means already provided for in the Principal Act.

10 Amount of duty payable on transfers of certain shares**(17) Second Schedule—Stamp Duties and Exemptions:**

15 From the matter appearing in the Column headed “Amount of Duty” opposite paragraph (1) (b) of the matter relating to TRANSFER OF SHARES, omit “, whichever is the greater”, insert instead “or ad valorem duty at the rate of 6c for every \$10 (or part thereof) of the consideration for the sale, whichever is the greatest”.

Explanatory note—item (17)

20 The amendment made by item (17) is to provide that the amount of duty payable on a transfer of shares of a corporation or company:

- (a) the shares of which are not listed on a recognised stock exchange; and
 - (b) which is not the legal or beneficial owner of land in New South Wales,
- 25 is ad valorem duty at the rate of 6c for every \$10 (or part thereof) of the value of the shares or the consideration for the sale, whichever is the greater, with a minimum amount of duty of \$10.

Exemption from duty—loan securities in support of exempt mortgages**(18) Second Schedule—General Exemptions From Stamp Duty Under Part 3:**

30 After “that purchase)” in subparagraph (b) of paragraph (35), insert “and a loan security in support of that loan security”.

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

After clause 25 (4), insert:

35 (5) A loan security in support of an eligible mortgage may also be exempted from payment of stamp duty.

*Stamp Duties (Amendment) 1992***SCHEDULE 1—AMENDMENTS—continued****Explanatory note—items (18) and (19)**

A mortgage to secure a loan raised to enable the purchase of a home by a Department of Housing tenant or a participant in the Community Tenancy Scheme or the First Home Purchase Scheme is exempt from payment of stamp duty. However, additional securities in support of the loan attract full loan security duty. The amendments made by items (18) and (19) will confer the same exemption on a supporting loan security as on the principal loan security. 5

The amendments give effect to an approval of the Premier and Treasurer which has operated by way of a Variation to Statute since 1 January 1992. 10

These amendments, accordingly, are taken to have commenced on 1 January 1992.

Exemption from duty—persons under the Community Tenancy Scheme who buy their own homes**(20) Second Schedule—General Exemptions From Stamp Duty Under Part 3:** 15

After “Department of Housing” in paragraph (35) (c), insert “, or a tenant under the Community Tenancy Scheme administered within that Department,”.

Explanatory note—item (20)

Department of Housing tenants receive an exemption from stamp duty on the purchase of a dwelling and any associated mortgage in circumstances specified in paragraph (35) of the general exemptions from stamp duty set out in the Second Schedule to the Principal Act. Persons coming within the Community Tenancy Scheme do not qualify for this exemption as they are not Department of Housing tenants but only have their names on the Department’s waiting list for accommodation. The amendment made by item (20) will confer the same benefits on persons under the Community Tenancy Scheme as currently apply to Department of Housing tenants. 20 25

The amendment gives effect to an approval of the Premier and Treasurer which has operated by way of a Variation to Statute since 4 December 1991.

This amendment, accordingly, is taken to have commenced on 4 December 1991. 30

Savings and transitional provisions consequential on the amendments made in this Schedule**(21) Tenth Schedule—Savings, Transitional and Other Provisions:**

After Part 8, insert:

*Stamp Duties (Amendment) 1992***SCHEDULE 1—AMENDMENTS—continued****PART 9—STAMP DUTIES (AMENDMENT)
ACT 1992****Application of amendments—generally**

5 29. (1) A provision of this Act as in force before the
amendment of the provision by the Stamp Duties
(Amendment) Act 1992 continues to apply to an instrument
referred to in the provision which was executed, or a
10 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 1992 does not apply to an instrument
which was executed, or a transaction which was entered into,
15 before the date on which the amendment commenced or is
taken to have commenced, except as provided by this Part.

Objections to assessments—section 68

 30. Section 68 (as amended by the Stamp Duties
(Amendment) Act 1992) applies to assessments made before
20 or after the commencement of the amendment.

**Separation agreements between former de facto
partners—section 74CB**

 31. Section 74CB (as amended by the Stamp Duties
(Amendment) Act 1992) applies to separation agreements,
25 and conveyances referred to in section 74CB (3) (as so
amended), made within 3 months before the commencement
of the amendment or at any time after that commencement.

Explanatory note—item (21)

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