STATE REVENUE LEGISLATION (FURTHER AMENDMENT) ACT 1992 No. 86

NEW SOUTH WALES

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STATE REVENUE LEGISLATION (FURTHER AMENDMENT) ACT 1992 No. 86

NEW SOUTH WALES

Act No. 86, 1992

An Act to make miscellaneous amendments to certain State revenue legislation, and for other purposes. [Assented to 27 November 1992]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the State Revenue Legislation (Further Amendment) Act 1992.

Commencement

2. (1) This Act commences on 1 January 1993, except as provided by this section.

(2) Schedule 1 commences on a day or days to be appointed by proclamation.

(3) Schedule 2 commences on a day or days to be appointed by proclamation.

(4) Schedule 3 commences on a day or days to be appointed by proclamation.

(5) Items (1)–(3) and (6) of Schedule 4 commence on 1 February 1993.

(6) Item (2) of Schedule 5 is taken to have commenced on 1 July 1990.

(7) Items (3) and (9) of Schedule 5 commence on 1 July 1993.

(8) Part 1 of Schedule 6 commences on a day or days to be appointed by proclamation.

(9) Item (8) of Part 2 of Schedule 6 is taken to have commenced on 4 August 1992.

(10) Item (16) of Part 2 of Schedule 6 is taken to have commenced on 16 June 1992.

(11) Item (24) (b) of Part 3 of Schedule 6 commences on a day to be appointed by proclamation.

(12) Item (31) of Part 3 of Schedule 6 is taken to have commenced on 1 January 1992.

(13) Part 4 of Schedule 6 commences on the date of assent to this Act.

(14) Section 9 commences on the date of assent to this Act.

(15) Sections 3–9, in their application to a provision of Schedules 1–6, commence or are taken to have commenced on the day the provision commences or is taken to have commenced.

Amendment of Business Franchise Licences (Petroleum Products) Act 1987 No. 94

3. The Business Franchise Licences (Petroleum Products) Act 1987 is amended in the manner set out in Schedule 1.

Amendment of Business Franchise Licences (Tobacco) Act 1987 No. 93

4. The Business Franchise Licences (Tobacco) Act 1987 is amended in the manner set out in Schedule 2.

Amendment of Debits Tax Act 1990 No. 112

5. The Debits Tax Act 1990 is amended in the manner set out in Schedule 3.

Amendment of Health Insurance Levies Act 1982 No. 159

6. The Health Insurance Levies Act 1982 is amended in the manner set out in Schedule 4.

Amendment of Pay-roll Tax Act 1971 No. 22

7. The Pay-roll Tax Act 1971 is amended in the manner set out in Schedule 5.

Amendment of Stamp Duties Act 1920 No. 47

8. The Stamp Duties Act 1920 is amended in the manner set out in Schedule 6.

Explanatory notes

9. The matter appearing under the heading "Explanatory note" in any of the Schedules does not form part of this Act.

SCHEDULE 1—AMENDMENT OF BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS) ACT 1987

(Sec. 3)

Part 1—Amendments relating to penalties

(1) Sections 28 (**Selling without licence**), 31 (**Selling on unlicensed premises**):

Omit "Penalty: $2,000" wherever occurring, insert instead "Maximum penalty: 100 penalty units".

SCHEDULE 1—AMENDMENT OF BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS) ACT 1987—*continued*

(2) Sections 29 (**Wholesaling without licence**), 30 (**Retailing without licence**), 59 (**Records to be kept**):

Omit "Penalty: $5,000" wherever occurring, insert instead "Maximum penalty: 100 penalty units".

(3) Section 36A (**Change of particulars to be notified**):

Omit "Penalty: $2,000", insert instead "Maximum penalty: 50 penalty units".

(4) Section 53 (**Access to premises, records etc.**):

From section 53 (6), omit "Penalty: $1,000", insert instead "Maximum penalty: 100 penalty units".

(5) Section 55 (**Particulars of dealings with petroleum products**):

From section 55 (4), omit "Penalty: $20,000", insert instead "Maximum penalty: 200 penalty units".

(6) Section 56 (**Transportation records**):

(a) From section 56 (6), omit "$2,000", insert instead "100 penalty units".

(b) From section 56 (8), omit "$1,000", insert instead "10 penalty units".

(7) Section 60 (**Invoices to be endorsed**):

Omit "Penalty: $5,000", insert instead "Maximum penalty: 100 penalty units".

(8) Section 61 (**False representations on invoices**):

Omit "Penalty: $5,000", insert instead "Maximum penalty: 100 penalty units".

(9) Section 62 (**Disclosure of information**):

Omit "Penalty: $10,000" wherever occurring, insert instead "Maximum penalty: 100 penalty units".

(10) Section 63 (**False or misleading statements**):

Omit "Penalty: $5,000" wherever occurring, insert instead "Maximum penalty: 100 penalty units".

(11) Section 66 (**Obstruction of Chief Commissioner or inspector**):

From section 66 (1), omit "Penalty: $1,000", insert instead "Maximum penalty: 100 penalty units".

SCHEDULE 1—AMENDMENT OF BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS) ACT 1987—*continued*

(12) Section 69 (**Proceedings for offences**):

Omit section 69 (2) (a), insert instead:

(a) 100 penalty units; or

(13) Section 72 (**Collection of debts from third parties**):

From section 72 (2), omit "Penalty: $1,000", insert instead "Maximum penalty: 50 penalty units".

(14) Section 74 (**Offences by bodies corporate**):

At the end of the section, insert:

(2) The maximum penalty applicable to a corporation convicted of an offence under this Act or the regulations is 5 times the maximum pecuniary penalty otherwise applying to the offence.

(15) Section 76 (**Regulations**):

From section 76 (4), omit "$2,000", insert instead "50 penalty units".

Part 2—Miscellaneous amendments

(16) Section 35 (**Grant of licences**):

(a) From section 35 (1), omit "The", insert instead "Except as provided by subsection (3), the".

(b) After section 35 (2), insert:

(3) The Chief Commissioner may refuse to authorise the granting of a licence if:

(a) in the case of an application for a licence other than a group licence—the applicant; or

(b) in the case of an application for a group licence—any member of the group on behalf of which the application is made,

has been convicted of an offence under this Act or the regulations after the commencement of this subsection.

(4) If an application for a licence is refused, the applicant is to be informed, by notice in writing, of the refusal and of the ground on which the refusal is based. Any such notice may be served by the Director of Business Licences on

SCHEDULE 1—AMENDMENT OF BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS) ACT 1987—*continued*

behalf of the Chief Commissioner or by the Chief Commissioner.

(5) Subsection (3) applies to an application whether made before or after the commencement of Schedule 1 (16) to the State Revenue Legislation (Further Amendment) Act 1992.

Explanatory note—item (16)

The amendments enable the Chief Commissioner for Business Franchise Licences (Petroleum Products) to refuse to authorise the granting of a licence if the applicant has been convicted of an offence under the Act or the regulations.

(17) Section 36 (**Particulars to be furnished by applicants for licences**):

At the end of the section, insert:

(2) The Chief Commissioner may, if the applicant for a licence is a corporation, require the applicant to furnish such relevant particulars relating to shareholdings in the corporation as are required by the Chief Commissioner. The particulars required may include particulars as to shareholders, such as any shareholder's name and that shareholder's percentage of voting shares in the corporation.

(3) Subsection (2) applies to an application whether made before or after the commencement of Schedule 1 (17) to the State Revenue Legislation (Further Amendment) Act 1992.

(18) Section 36A (**Change of particulars to be notified**):

Omit "section 36", insert instead "section 36 (1)".

(19) Section 36B:

After section 36A, insert:

Particulars relating to shareholders to be notified by corporate licensees

36B. (1) The Chief Commissioner may require a licensee that is a corporation to furnish such relevant particulars relating to shareholdings in the corporation as are required by the Chief Commissioner. The particulars required may include particulars as to shareholders, such as any shareholder's name and that shareholder's percentage of voting shares in the corporation.

SCHEDULE 1—AMENDMENT OF BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS) ACT 1987—*continued*

(2) A licensee must not without reasonable excuse fail to comply with a requirement made under this section.

Maximum penalty: 20 penalty units.

Explanatory note—items (17)–(19)

The amendments enable the Chief Commissioner to request a corporation that applies for a licence to furnish particulars about the shareholdings in the corporation (e.g. the name of shareholders and their voting shares in the corporation). The amendments also enable the Chief Commissioner to request such particulars from a corporate licensee (this will apply to a licensee whether the licence was granted before or after the commencement of the new section 36B).

(20) Section 39A:

After section 39, insert:

Cancellation of licence

39A. If a licensee or any member of the group in respect of which a group licence is held is convicted of an offence under this Act or the regulations, the Chief Commissioner may, by notice served on the licensee, cancel the licence as from a date specified in the notice.

Explanatory note—item (20)

The amendment enables the Chief Commissioner to cancel a licence if the licensee (or a group member in the case of a group licence) is convicted of an offence under the Act or the regulations.

(21) Section 40 (**Fees**):

Omit section 40 (4), insert instead:

(4) The value of any diesel fuel sold for off-road purposes in accordance with Part 5A is to be disregarded for the purposes of calculating any fee payable under this section.

Explanatory note—item (21)

The amendment in item (21) restates the existing provision that the value of diesel fuel used for off-road purposes is to be disregarded for the purposes of calculating the licence fee payable in respect of the fuel and is consequential on the amendment in item (22).

SCHEDULE 1—AMENDMENT OF BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS) ACT 1987—*continued*

(22) Part 5A:

After Part 5, insert:

PART 5A—OFF-ROAD DIESEL FUEL SCHEME

Definition

48B. In this Part:

"off-road purpose" means any purpose other than that of propelling diesel-engined road vehicles on roads.

Authorities to sell diesel fuel for off-road purposes

48C. (1) The Chief Commissioner may grant an authority to sell diesel fuel for off-road purposes to any licensee.

(2) An authority is subject to such conditions as may be imposed by the regulations and to such other conditions as the Chief Commissioner may specify in the authority.

(3) The regulations may make provision for or with respect to authorities granted under this section, including the cancellation of authorities and appeals to the Tribunal against cancellation.

Permits to purchase diesel fuel for off-road purposes

48D. (1) The Chief Commissioner may, on payment of the prescribed application fee, grant a permit to purchase diesel fuel for off-road purposes to any person who, in the opinion of the Chief Commissioner, uses diesel fuel for those purposes.

(2) A permit is subject to such conditions as may be imposed by the regulations and to such other conditions as the Chief Commissioner may specify in the permit.

(3) The regulations may make provision for or with respect to permits issued under this section, including the cancellation of permits and appeals to the Tribunal against cancellation.

Effect of authorities and permits

48E. (1) The holder of an authority is authorised to sell diesel fuel for off-road purposes to:

(a) any other holder of an authority; or

(b) the holder of a permit,

subject to and in accordance with the regulations and the conditions of the authority.

SCHEDULE 1—AMENDMENT OF BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS) ACT 1987—*continued*

(2) The holder of a permit is authorised to purchase diesel fuel for off-road purposes from the holder of an authority, subject to and in accordance with the regulations and the conditions of the permit.

Offences

48F. Any person who:

(a) makes a false or misleading statement in or in connection with an application for an authority or permit under this Part; or

(b) in or in connection with a purchase or proposed purchase of diesel fuel by the person:

(i) falsely represents that the person is the holder of a permit; or

(ii) falsely represents that the diesel fuel is to be used for off-road purposes; or

(iii) falsely represents that the purchase or proposed purchase is authorised by the permit; or

(c) makes a false or misleading statement in or in connection with any records required by the regulations to be kept in connection with the sale of diesel fuel for off-road purposes,

is guilty of an offence and liable to a penalty not exceeding 100 penalty units (or, in the case of an offence arising under paragraph (b) or (c), 3 times the value of the diesel fuel purchased or sold, whichever is the greater) or imprisonment for 12 months, or both.

Cancellation of diesel fuel certificates in existence as at 1 July 1993

48G. Any certificate issued under, or taken to be issued under, clause 11 of the Business Franchise Licences (Petroleum Products) Regulation 1987 and in force immediately before 1 July 1993 is automatically cancelled on that date (or such later date as may be prescribed by the regulations).

Explanatory note—item (22)

The amendment provides a modified scheme for the sale and purchase of diesel fuel for off-road use. Such a scheme is currently authorised by section 40 (4) of the Act and operates under the regulations.

SCHEDULE 1—AMENDMENT OF BUSINESS FRANCHISE LICENCES (PETROLEUM PRODUCTS) ACT 1987—*continued*

The purpose of the new scheme is to authorise the purchase of diesel fuel for off-road use at a "licence fee free" price. Under Part 5A, the Chief Commissioner may authorise licensees to sell diesel fuel for off-road purposes to holders of permits. Such permits may be issued to persons who, in the opinion of the Chief Commissioner, use diesel fuel for off-road purposes.

The new Part replaces all existing diesel fuel certificates which authorise the purchasing of diesel fuel for off-road use at a "licence fee free" price. Proposed section 48G provides for the cancellation of all such existing certificates as at 1 July 1993.

(23) Section 55 (**Particulars of dealings with petroleum products**)

(a) After "require any person" in section 55 (1), insert "to do either or both of the following".

(b) From section 55 (1) (a), omit "or".

Explanatory note—item (23)

The Chief Commissioner may presently require any person to furnish certain information or to attend and give evidence before the Chief Commissioner for the purpose of making inquiries or for ascertaining certain particulars of dealing with petroleum products. The amendment in item (23) makes it clear that the Chief Commissioner may request the person either to furnish the information or to attend and give evidence, or may require the person to do both such things.

SCHEDULE 2—AMENDMENT OF BUSINESS FRANCHISE LICENCES (TOBACCO) ACT 1987

(Sec. 4)

Part 1—Amendments relating to penalties

(1) Sections 28 (**Selling without licence**), 31 (**Selling on unlicensed premises**):

Omit "Penalty: $2,000" wherever occurring, insert instead "Maximum penalty: 100 penalty units".

(2) Sections 29 (**Wholesaling without licence**), 30 (**Retailing without licence**), 66 (**Records to be kept**):

Omit "Penalty: $5,000" wherever occurring, insert instead "Maximum penalty: 100 penalty units".

(3) Section 32 (**Vending machine to display licence particulars**):

Omit "Penalty: $1,000" wherever occurring, insert instead "Maximum penalty: 20 penalty units".

SCHEDULE 2—AMENDMENT OF BUSINESS FRANCHISE LICENCES (TOBACCO) ACT 1987—*continued*

(4) Section 37A (**Change of particulars to be notified**):

Omit "Penalty: $2,000", insert instead "Maximum penalty: 50 penalty units".

(5) Section 55 (**Access to premises, records etc.**):

From section 55 (6), omit "Penalty: $1,000", insert instead "Maximum penalty: 100 penalty units".

(6) Section 57 (**Particulars of dealings with tobacco**):

From section 57 (4), omit "Penalty: $20,000", insert instead "Maximum penalty: 200 penalty units".

(7) Section 63 (**Transportation records**):

(a) From section 63 (6), omit "$2,000", insert instead "100 penalty units".

(b) From section 63 (8), omit "$1,000", insert instead "10 penalty units".

(8) Section 67 (**Invoices to be endorsed**):

Omit "Penalty: $5,000", insert instead "Maximum penalty: 100 penalty units".

(9) Section 68 (**False representations on invoices**):

Omit "Penalty: $5,000", insert instead "Maximum penalty: 100 penalty units".

(10) Section 69 (**Disclosure of information**):

(a) From section 69 (1), omit "Penalty: $10,000", insert instead "Maximum penalty: 100 penalty units".

(b) From section 69 (3), omit "Penalty: $5,000", insert instead "Maximum penalty: 100 penalty units".

(11) Section 70 (**False or misleading statements**):

Omit "Penalty: $5,000" wherever occurring, insert instead "Maximum penalty: 100 penalty units".

(12) Section 73 (**Obstruction of Chief Commissioner or inspector**):

From section 73 (1), omit "Penalty: $1,000", insert instead "Maximum penalty: 100 penalty units".

SCHEDULE 2—AMENDMENT OF BUSINESS FRANCHISE LICENCES (TOBACCO) ACT 1987—*continued*

(13) Section 76 (**Proceedings for offences**):

Omit section 76 (2) (a), insert instead:

(a) 100 penalty units; or

(14) Section 79 (**Collection of debts from third parties**):

From section 79 (2), omit "Penalty: $1,000", insert instead "Maximum penalty: 50 penalty units".

(15) Section 81 (**Offences by bodies corporate**):

At the end of the section, insert:

(2) The maximum penalty applicable to a corporation convicted of an offence under this Act or the regulations is 5 times the maximum pecuniary penalty otherwise applying to the offence.

(16) Section 83 (**Regulations**):

From section 83 (4), omit "$2,000", insert instead "50 penalty units".

Part 2—Miscellaneous amendments

(17) Section 36 (**Grant of licences**):

Omit section 36 (2), insert instead:

(2) The Chief Commissioner may refuse to authorise the granting of a licence if:

(a) in the case of an application for a licence other than a group licence—the applicant; or

(b) in the case of an application for a group licence—any member of the group on behalf of which the application is made,

has been convicted of an offence under section 59 of the Public Health Act 1990 or has been convicted, after the commencement of this subsection (as substituted by the State Revenue Legislation (Further Amendment) Act 1992), of an offence under this Act or the regulations.

(2A) If an application for a licence is refused, the applicant is to be informed, by notice in writing, of the refusal and of the ground on which the refusal is based.

SCHEDULE 2—AMENDMENT OF BUSINESS FRANCHISE LICENCES (TOBACCO) ACT 1987—*continued*

(2B) Subsection (2) applies to an application whether made before or after the commencement of Schedule 2 (17) to the State Revenue Legislation (Further Amendment) Act 1992.

Explanatory note—item (17)

The amendment enables the Chief Commissioner for Business Franchise Licences (Tobacco) to refuse to authorise the granting of a licence if the applicant has been convicted of an offence under the Act or the regulations.

(18) Section 37 (**Particulars to be furnished by applicants for licences**):

At the end of the section, insert:

(2) The Chief Commissioner may, if the applicant for a licence is a corporation, require the applicant to furnish such relevant particulars relating to shareholdings in the corporation as are required by the Chief Commissioner. The particulars required may include particulars as to shareholders, such as any shareholder's name and that shareholder's percentage of voting shares in the corporation.

(3) Subsection (2) applies to an application whether made before or after the commencement of Schedule 2 (18) to the State Revenue Legislation (Further Amendment) Act 1992.

(19) Section 37A (**Change of particulars to be notified**):

Omit "section 37", insert instead "section 37 (1)".

(20) Section 37B:

After section 37A, insert:

Particulars relating to shareholders to be notified by corporate licensees

37B. (1) The Chief Commissioner may require a licensee that is a corporation to furnish such relevant particulars relating to shareholdings in the corporation as are required by the Chief Commissioner. The particulars required may include particulars as to shareholders, such as any shareholder's name and that shareholder's percentage of voting shares in the corporation.

SCHEDULE 2—AMENDMENT OF BUSINESS FRANCHISE LICENCES (TOBACCO) ACT 1987—*continued*

(2) A licensee must not without reasonable excuse fail to comply with a requirement made under this section.

Maximum penalty: 20 penalty units.

Explanatory note—items (18)–(20)

The amendments enable the Chief Commissioner to request a corporation that applies for a licence to furnish particulars about shareholdings in the corporation (e.g. the name of shareholders and their voting shares in the corporation). The amendments also enable the Chief Commissioner to request such particulars from a corporate licensee (this will apply to a licensee whether the licence was granted before or after the commencement of the new section 37B).

(21) Section 41 (**Fees**):

(a) From section 41 (1) (c) and (d), omit "other than" wherever occurring, insert instead "disregarding any such".

(b) After section 41 (2), insert:

(3) For the purposes of subsection (1) (c) and (d), the value of tobacco purchased from the holder of a wholesaler's licence or a group wholesaler's licence is to be disregarded only if the holder of the licence has paid or is liable to pay a licence fee in respect of that tobacco.

Explanatory note—item (21)

The amendments make it clear that a retailer is not liable to pay the licence fee in respect of tobacco purchased from a licensed wholesaler only if the wholesaler is liable to pay the licence fee in respect of that tobacco.

(22) Section 50 (**Cancellation of licence**):

After "1990", insert "or under this Act or the regulations".

Explanatory note—item (22)

The amendment in item (22) enables the Chief Commissioner to cancel a licence if the licensee (or a group member in the case of a group licence) is convicted of an offence under the Act or the regulations.

(23) Section 57 (**Particulars of dealings with tobacco to be notified**):

(a) After "require any person" in section 57 (1), insert "to do either or both of the following".

(b) From section 57 (1) (a), omit "or".

SCHEDULE 2—AMENDMENT OF BUSINESS FRANCHISE LICENCES (TOBACCO) ACT 1987—*continued*

Explanatory note—item (23)

The Chief Commissioner may presently require any person to furnish certain information or to attend and give evidence before the Chief Commissioner for the purpose of making inquiries or for ascertaining certain particulars of dealings with tobacco. The amendment in item (23) (a) makes it clear that the Chief Commissioner may request the person either to furnish the information or to attend and give evidence, or may require the person to do both such things.

SCHEDULE 3—AMENDMENT OF DEBITS TAX ACT 1990

(Sec. 5)

Exemption of debits connected with offshore banking activities

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

From the definition of "excluded debit" in section 3 (1), omit paragraph (d), insert instead:

(d) is made to an account kept with a financial institution that is an "offshore banking unit" (within the meaning of Division 11A of Part III of the Income Tax Assessment Act 1936 of the Commonwealth), being a debit made in relation to an "offshore banking activity" (within the meaning of section 121B of that Act); or

(e) that is included in a kind or class of debits that is prescribed for the purposes of this paragraph;

Explanatory note—item (1)

The amendment excludes from duty otherwise payable under the Debits Tax Act 1990 a debit made to an account kept with a financial institution that is an offshore banking unit, being a debit made in relation to an offshore banking activity carried on by the financial institution.

Under the Income Tax Assessment Act 1936 of the Commonwealth, as proposed to be amended by the Taxation Laws Amendment Bill (No. 4) 1992 of the Commonwealth, offshore banking activities of such financial institutions are to receive tax concessions on a range of activities defined in that legislation as "offshore banking activities". The amendment made by this item reflects the policy of encouraging such activities by financial institutions.

The amendment will also allow the category of excluded debits to be extended by regulation.

SCHEDULE 3—AMENDMENT OF DEBITS TAX ACT 1990—*continued*

Exemption of debits for financial institutions duty

(2) Section 3 **(Definitions)**:

From the definition of "exempt debit" in section 3 (1), omit paragraph (d), insert instead:

(d) that is made for the purpose of recovering from the account holder an amount in respect of an amount of duty paid or payable under Division 29 of Part 3 of the Stamp Duties Act 1920; or

(e) that is included in a kind or class of debits that is prescribed for the purposes of this paragraph;

Explanatory note—item (2)

The amendment exempts from duty otherwise payable under the Debits Tax Act 1990 a debit made in order to compensate a financial institution for financial institutions duty paid or payable under the Stamp Duties Act 1920.

The amendment will also allow the category of exempt debits to be extended by regulation.

SCHEDULE 4—AMENDMENT OF HEALTH INSURANCE LEVIES ACT 1982

(Sec. 6)

Calculation of monthly levy

(1) Section 4 **(Definitions)**:

(a) In paragraph (a) of the definition of "contributor" in section 4 (1), after "the organisation", insert "(including a person who, in accordance with those rules, for the time being remains a contributor even though in arrears with his or her contributions)".

(b) From section 4 (1), omit the definition of "monthly levy".

(c) Omit section 4 (3)–(5).

SCHEDULE 4—AMENDMENT OF HEALTH INSURANCE LEVIES ACT 1982—*continued*

(2) Section 10A:

After section 10, insert:

Calculation of monthly levy

10A. (1) The monthly levy for any relevant month is the amount calculated in accordance with the following formula:

$$L = (S + 2F) \times C \times D \times 1/7$$

where:

L is the amount in dollars of the monthly levy to be obtained;

S is the number of single contributors at the beginning of the relevant month;

F is the number of contributing families at the beginning of the relevant month;

C is the prescribed rate in force during the relevant month;

D is the number of days in the relevant month.

(2) In subsection (1):

"contributing family" means a family or group whose members are contributors with respect to a health benefits fund by virtue of a single policy of insurance;

"relevant month" means a month during which an organisation carries on a business by reason of which it is liable to pay a monthly levy;

"single contributor" means a contributor who is not a member of a contributing family.

(3) In determining the values of S and F in the formula given in subsection (1), single contributors, or members of a contributing family all of whom:

(a) are permanently resident outside New South Wales; or

(b) are members of a class prescribed by the regulations for the purposes of this paragraph,

are not to be counted.

(4) If a monthly levy comprises, in addition to a number of dollars, a number of cents, the number of cents is to be disregarded.

SCHEDULE 4—AMENDMENT OF HEALTH INSURANCE LEVIES ACT 1982—*continued*

(3) Section 12 (**Assessment etc. of monthly levy**):

From section 12 (1) (a), omit "the amount of contributions received from contributors to", insert instead "the number of contributors in".

Explanatory note—items (1)–(3)

Item (2) varies the method of calculating the monthly levy. Instead of depending on the amount of contributions, the amount of the levy will depend on the number of single and family contributors covered by the health insurance fund at the beginning of the relevant month. A family covered by the fund is treated as the equivalent of 2 single contributors for the purposes of the formula.

Items (1) and (3) make consequential amendments.

Cessation of trading

(4) Section 10:

Omit the section, insert instead:

Monthly levy payable

10. (1) An organisation that in any month carries on the business in New South Wales of providing health benefits to contributors is liable to pay to the Chief Commissioner, on or before the 15th day of the third month following that month, the monthly levy.

(2) If, however, an organisation ceases to carry on that business, a monthly levy in respect of any month during which it did carry on business (and in respect of which no monthly levy has been paid) is payable to the Chief Commissioner immediately on the cessation of business.

(3) Subsection (2) does not apply to a cessation of business if the Chief Commissioner, being satisfied that the cessation is of a temporary nature, certifies in writing that it is a cessation of business to which that subsection does not apply.

(5) Section 11 (**Requirement to furnish monthly return**):

After "carries on", insert "(or has, within the previous 3 months, carried on)".

(6) Schedule 1 (**Relevant Months**):

Omit the Schedule.

SCHEDULE 4—AMENDMENT OF HEALTH INSURANCE LEVIES ACT 1982—*continued*

(7) Schedule 3 (**Transitional Provisions**):

After clause 3, insert:

Application of amendments made by State Revenue Legislation (Further Amendments) Act 1992

4. A variation, taking effect on or after 1 February 1993, of the prescribed rate:

(a) applies in relation to the month in which payment of the monthly levy is payable, in so far as it affects the calculation of the levy payable by reason of carrying on the business of providing health benefits to contributors during the 3 months immediately preceding that date; and

(b) applies in relation to the month during which such a business is carried on, in so far as it affects the calculation of the levy payable by reason of carrying on that business during any month after that date.

Explanatory note—items (4)–(7)

The purpose of the amendment made by item (4) is to ensure that the obligation of an organisation to pay the levy is not affected by a cessation of business.

The levy is payable 3 months after the month to which the levy relates. At present, a health insurer that ceases to trade (whether because the company goes bankrupt or is taken over by another insurer or for any other reason) avoids the obligation to pass on to the Government the levy it has collected during its last few months of trading.

Section 10 is rewritten so as to tie the obligation to pay the levy more closely to the period of carrying on business, and so as to require an organisation that ceases to carry on business as a provider of health benefits to pay any outstanding levies immediately.

Items (5), (6) and (7) make consequential amendments and provide for transitional arrangements.

Form of return

(8) Section 11 (**Requirement to furnish a monthly return**):

Omit "in or to the effect of the prescribed form", insert instead "in a form approved by the Chief Commissioner".

SCHEDULE 4—AMENDMENT OF HEALTH INSURANCE LEVIES ACT 1982—*continued*

Explanatory note—item (8)

The amendment made by item (8) dispenses with the requirement for a form of return to be prescribed by the regulations for the purposes of section 11. Instead, a form approved by the Chief Commissioner will be used, in keeping with the practice under other State revenue legislation.

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971

(Sec. 7)

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

Omit section 3 (4), insert instead:

(4) If:

(a) any money or other valuable consideration paid or given, or to be paid or given, to an employee, for the employee's services as an employee of an employer, by a person other than the employer; or

(b) any money or other valuable consideration paid or given, or to be paid or given, by an employer, for an employee's services as the employee of the employer, to a person other than the employee; or

(c) any money or other valuable consideration paid or given, or to be paid or given, by a person other than an employer, for an employee's services as an employee of the employer, to a person other than the employee,

would, if paid or given or to be paid or given directly to the employee, be regarded as wages paid or payable by the employer to the employee for the purposes of this Act, the money or other valuable consideration is taken to be wages paid or payable by the employer to the employee for those purposes.

Explanatory note—item (1)

Section 3 of the Pay-roll Tax Act 1971 defines various expressions used in that Act. Subsection (4) of that section is designed to prevent persons from avoiding liability for pay-roll tax by paying wages to a third party rather than the employee concerned or by having "wages" paid to an employee by a person other than the employee's employer. The amendment is designed to extend the operation of the subsection so as to ensure that money or other valuable

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971—*continued*

consideration paid or given or to be paid or given to a third party by a fourth party for an employee's services as an employee of an employer is treated as wages and thus liable to pay-roll tax.

(2) Section 3AA (**Wages**):

(a) In section 3AA (3), after "fringe benefits", insert ", but does not include benefits that are exempt benefits for the purposes of the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth, even though those exempt benefits would, apart from this subsection, be treated as wages for the purposes of this Act".

(b) Omit section 3AA (4), insert instead:

(4) Contributions to a superannuation fund or retirement benefit scheme are to be treated as wages for the purposes of this Act unless they are contributions made to an eligible superannuation fund (within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth) in respect of a member of the fund by an employer of the member or by any other person other than the member.

Explanatory note—item (2)

Section 3AA of the Pay-roll Tax Act 1971 defines "wages" for the purposes of that Act. Included within the ambit of that expression are fringe benefits within the meaning of the Commonwealth Fringe Benefits Tax Assessment Act 1986. The amendment to be made by item (2) (a) is designed to make it clear that benefits that are exempt benefits for the purposes of the Commonwealth Fringe Benefits Tax Assessment Act 1986 are, in all circumstances, also exempt from pay-roll tax under the Pay-roll Tax Act 1971.

The amendment to be made by item (2) (b) extends the ambit of subsection (4) of the section so that superannuation payments will be treated as wages for the purposes of the Act only if they are not contributions to an eligible superannuation fund (as defined by the Commonwealth Income Tax Assessment Act 1936) made in respect of a member of the fund by the employer of the member or by a third party.

(3) Section 3A (**Application of this Act to certain contracts**):

From section 3A (1) (e) (iv), omit "$500,000", insert instead "$800,000".

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971—*continued*

Explanatory note—item (3)

Section 3A of the Pay-roll Tax Act 1971 requires pay-roll tax to be paid on payments paid for the performance of services under contracts that are analogous to contracts of employment. The section also provides for some of those contracts to be exempt from pay-roll tax. Among the contracts exempt from pay-roll tax are contracts for the performance of services where the "employer" (referred to in section 3A as the "designated person") is supplied with services for the performance of work and the payment for those services is at a rate not less than $500,000 a year. The amendment, which is to take effect on 1 July 1993, raises this amount to $800,000.

(4) Section 6 (**Wages liable to pay-roll tax**):

Omit section 6 (1), insert instead:

(1) The wages liable to pay-roll tax under this Act are wages that are paid or payable by an employer for services performed or rendered during a month or part of a month and:

(a) are wages that are paid or payable in New South Wales, other than wages so paid or payable for:

- services performed or rendered wholly in one other State; or
- services performed or rendered by a person wholly outside Australia for more than 6 months after wages were first paid to that person for services so performed or rendered; or

(b) are wages that are paid or payable outside New South Wales for services performed or rendered wholly in New South Wales; or

(c) are wages that are paid or payable outside Australia for services performed or rendered mainly in New South Wales.

(1A) Subsection (1) applies to wages paid or payable after the commencement of that subsection (as substituted by the State Revenue Legislation (Further Amendment) Act 1992) for services performed or rendered by a person wholly outside Australia even though the first payment for services so performed or rendered was made before that commencement.

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971—*continued*

Explanatory note—item (4)

Section 6 of the Pay-roll Tax Act 1971 specifies the wages that are liable to pay-roll tax under that Act. The amendment replaces subsection (1) so as to provide that the tax is not payable for wages that are paid or payable in New South Wales where the wages are for services performed or rendered wholly outside Australia and the wages for those services first became payable more than 6 months previously.

(5) Section 7 (**Imposition of pay-roll tax on taxable wages**):

(a) After section 7 (a), (b), (c) and (d), insert "and".

(b) Omit section 7 (f), insert instead:

(f) ascertained in accordance with Schedule 4 in respect of such of those wages as are paid or payable after the month of June 1991 and before the month of July 1993 and are not liable to pay-roll tax at the rate prescribed in paragraph (a), (b), (c), (d) or (e); and

(g) ascertained in accordance with Schedule 5 in respect of such of those wages as are paid or payable after the month of June 1993 and are not liable to pay-roll tax at the rate prescribed in paragraph (a), (b), (c), (d), (e) or (f).

Explanatory note—item (5)

The amendment to be made by item (5) is consequential on the amendments to be made by items (10) and (18) of this Schedule.

(6) Section 10 (**Exemption from pay-roll tax**):

After section 10 (1) (m), insert:

; or

(n) to Aboriginal persons who are employed under the Community Development Employment Project administered by the Aboriginal and Torres Strait Islander Commission by an Aboriginal Corporation established under section 89 of the Aboriginal and Torres Strait Islander Commission Act 1989 of the Commonwealth or by any other body corporate, a majority of whose members are Aboriginal persons.

Explanatory note—item (6)

Section 10 of the Pay-roll Tax Act 1971 specifies the persons and bodies whose wage payments are exempt from the payment of pay-roll tax. The amendment to be made by item (6) amends the section so as to exempt wages paid by

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971—*continued*

certain Aboriginal organisations under the Community Development Employment Project administered by the Aboriginal and Torres Strait Islander Commission.

(7) Section 11B (**Annual adjustments**):

Omit paragraph (c) of the definition of "annual amount of pay-roll tax" in section 11B (1), insert instead:

(c) the amount ascertained in accordance with section 17 and Schedule 4 in respect of the employer for the financial years commencing on 1 July 1991 and 1 July 1992; and

(d) the amount ascertained in accordance with section 17 and Schedule 5 in respect of the employer for the financial year commencing on 1 July 1993 or any subsequent financial year.

Explanatory note—item (7)

The amendment to be made by item (7) is consequential on the amendments to be made by items (10) and (18) of this Schedule.

(8) Section 11C (**Adjustment of pay-roll tax when employer ceases to be an employer etc. during a financial year**):

Omit paragraph (c) of the definition of "total amount of pay-roll tax" in section 11C (1), insert instead:

(c) the amount ascertained in accordance with section 17 and Schedule 4 in respect of the employer for a prescribed period which falls within the financial years commencing on 1 July 1991 and 1 July 1992; and

(d) the amount ascertained in accordance with section 17 and Schedule 5 in respect of the employer for a prescribed period which falls within the financial year commencing on 1 July 1993 or any subsequent financial year.

Explanatory note—item (8)

The amendment to be made by item (8) is consequential on the amendments to be made by items (10) and (18) of this Schedule.

(9) Section 13 (**Returns**):

After section 13 (1), insert:

(1A) Two or more employers who are registered or required to be registered in accordance with the provisions of

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971—*continued*

section 12 may, with the approval of the Chief Commissioner, furnish a joint return for the purposes of this section. If a joint return is furnished and the return would, if furnished by a single employer, comply with subsection (1), then each of the employers concerned is taken to have complied with that subsection.

Explanatory note—item (9)

Section 13 of the Pay-roll Tax Act 1971 requires each employer who is registered or required to be registered under section 12 to furnish a monthly return to the Chief Commissioner. The amendment will allow 2 or more employers to furnish joint monthly returns if the Chief Commissioner so approves.

(10) Section 16I:

After section 16H, insert:

Designated group employers

16I. (1) The members of a group may designate a qualified member of the group to be the designated group employer for the group for the purposes of this Act.

(2) A member of a group is a qualified member if the member:

(a) has paid during the preceding financial year wages that exceeded $500,000; or

(b) is, in the opinion of the Chief Commissioner, likely to pay during the current financial year wages that are likely to exceed that amount.

(3) If none of the members of a group is a qualified member but the members together:

(a) have paid during the preceding financial year wages that exceeded $500,000; or

(b) are, in the opinion of the Chief Commissioner, likely to pay during the current financial year wages that will exceed that amount,

the members may, with the approval of the Chief Commissioner, designate 2 or more members of the group to be the designated group employer for the group for the purposes of this Act if those 2 or more members would, had they been a single employer, have been a qualified member.

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971—*continued*

(4) If the members of a group do not designate a member or members as the designated group employer before 7 July 1993 or, in the case of a group established on or after that date, within 7 days after the end of the month in which the group is established, the Chief Commissioner may (but is not obliged to) designate as the designated group employer:

(a) a qualified member of the group; or

(b) if none of the members of the group is a qualified member—2 or more members of the group who would, had they been a single employer, have been a qualified member.

(5) The designated group employer of a group stops being the designated group employer from and including the earlier of the following days:

(a) the first day of a return period during which there is a change in the membership of the group;

(b) the first day of a return period during which the members of the group revoke the designation.

(6) The designation of a designated group employer under subsection (2) or (3) must be by notice in writing.

(7) Such a notice must:

(a) be executed by or on behalf of each member of the group; and

(b) be served on the Chief Commissioner.

Explanatory note—item (10)

Item (10) inserts proposed section 16I, which will enable a member of a "group" of employers to be designated as the designated group employer. Normally, the designated group employer will have to be an employer whose annual wage bill is not less or is not likely to be less than $500,000. However, if there is no such member of the group, then it will be possible, with the approval of the Chief Commissioner, to designate 2 or more members of the group as the designated group employer. The Chief Commissioner will be able to designate a member of a group as the designated group employer if the members of the group fail to do so.

As a result of the amendment, a group member nominated as the designated group employer will be entitled to claim the whole of the group's tax exemption threshold of up to $500,000 and each of the other members of the group will be taxed at the flat rate of 7%.

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971—*continued*

(11) Section 16K (**Annual adjustments**):

Omit section 16K (2) (c), insert instead:

(c) the amount ascertained in accordance with section 17 and Schedule 4 in respect of that member for the financial years commencing on 1 July 1991 and 1 July 1992; and

(d) the amount ascertained in accordance with section 17 and Schedule 5 in respect of that member for the financial year commencing on 1 July 1993 or any subsequent financial year.

Explanatory note—item (11)

The amendment to be made by item (11) is consequential on the amendments to be made by items (10) and (18) of this Schedule.

(12) Section 16L (**Adjustment of pay-roll tax when members of a group cease to pay taxable wages or interstate wages during a financial year**):

Omit section 16L (3) (c), insert instead:

(c) the amount ascertained in accordance with section 17 and Schedule 4 in respect of that member for a prescribed period which falls within the financial years commencing on 1 July 1991 and 1 July 1992; and

(d) the amount ascertained in accordance with section 17 and Schedule 5 in respect of that member for a prescribed period which falls within the financial year commencing on 1 July 1993 or any subsequent financial year.

Explanatory note—item (12)

The amendment to be made by item (12) is consequential on the amendments to be made by items (10) and (18) of this Schedule.

(13) Section 17A (**Employer may elect to contribute to the Education and Training Foundation Fund**):

(a) From section 17A (3) (b), omit "31 July 1993" and "30 June 1993", insert instead "6 August 1992" in each case.

(b) Omit section 17A (3A).

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971—*continued*

Explanatory note—item (13) (See also item (15) of this Schedule)

Section 17A of the Pay-roll Tax Act 1971 provides for contributions to the Education and Training Foundation Fund. Subsection (2) of the section allows an employer to elect to have part of the pay-roll tax paid by the employer treated as a contribution to that Fund. Subsection (3) (b) of the section fixes the amount of the contribution at 2 per cent of the pay-roll tax paid by the employer for the period beginning on 1 May 1992 and ending on 31 July 1993 in respect of taxable wages paid or payable on or before 30 June 1993. The Treasurer has since made an order under subsection (3A) of the section reducing the contribution rate to nil for pay-roll tax paid during the period beginning on 7 August 1992 and ending on 31 July 1993 in respect of taxable wages paid or payable on or before 30 June 1993. The proposed amendment to subsection (3) (b) to be made by item (13) (a) supersedes this variation to the contribution rate by, in effect, providing for no contributions to be made to the Fund in respect of pay-roll tax paid after 6 August 1992. Item (13) (b) repeals subsection (3A) which is now no longer required.

(14) Section 31 (**Chief Commissioner may collect tax from person owing money to employer**):

After section 31 (6), insert:

(7) This section binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Explanatory note—item (14)

Item (14) amends section 31 of the Pay-roll Tax Act 1971, which empowers the Chief Commissioner of Pay-roll Tax to collect tax from a person who owes money to an employer who is liable to pay pay-roll tax. The amendment will make the section binding on the Crown in all its capacities (in so far as Parliament has legislative power to bind the Crown in those capacities).

(15) Section 31A (**Pay-roll Tax Suspense Account and Education and Training Foundation Fund**):

From section 31A (2), omit "31 July 1993", insert instead "18 August 1992".

Explanatory note—item (15) (See also item (13) of this Schedule)

Section 31A of the Pay-roll Tax Act 1971 provides for the establishment in the Special Deposits Account in the Treasury of the Pay-roll Tax Suspense Account and the New South Wales Education and Training Foundation Fund. The section also provides for the payment into the Suspense Account of all tax paid to the Chief Commissioner under that Act before 1 August 1991 and during the

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971—*continued*

period beginning on 1 May 1992 and ending on 31 July 1993 and for the transfer of funds within the Suspense Account in accordance with the Treasurer's directions. The amendment to be made by item (15) reflects the fact that payments of tax into the Suspense Account ended on 18 August 1992 instead of 31 July 1993 as originally envisaged. Tax collected since 18 August 1992 has been credited to the Consolidated Fund in accordance with section 7 of that Act.

(16) Section 48A:

After section 48, insert:

Limitation Act not to apply to recovery of further tax, additional tax and penal tax

48A. The reference to tax in section 10 (3) of the Limitation Act 1969 includes, and is taken always to have included, a reference to further tax, additional tax and penal tax imposed by or under this Act.

Explanatory note—item (16)

Section 10 of the Limitation Act 1969 provides for that Act to bind the Crown except for certain proceedings, including proceedings for the recovery of tax. Doubt has arisen as to whether the reference to "tax" in that Act includes further tax, additional tax and penal tax imposed by or under the Pay-roll Tax Act 1971. The amendment in item (16) is intended to remove this doubt.

(17) Schedule 4:

(a) Omit from the heading "FROM 1 JULY 1991", insert instead "FOR THE FINANCIAL YEARS COMMENCING ON 1 JULY 1991 AND 1 JULY 1992".

(b) From the definition of "financial year" in clause 1 of Schedule 4, omit "any subsequent financial year commencing on 1 July", insert instead "1 July 1992".

Explanatory note—item (17)

The amendment to be made by item (17) is consequential on the amendments to be made by items (10) and (18) of this Schedule.

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971—*continued*

(18) Schedule 5:

After Schedule 4, insert:

SCHEDULE 5—CALCULATION OF PAY-ROLL TAX LIABILITY FROM 1 JULY 1993

(Secs. 7, 11B, 11C, 16K, 16L)

PART 1—EMPLOYERS WHO ARE NOT MEMBERS OF A GROUP

Application of the Part

1. This Part applies only to an employer who is not a member of a group.

Definitions

2. In this Part:

"financial year" means the financial year commencing on 1 July 1993 or on 1 July in any subsequent financial year;

"IW" represents the total interstate wages paid or payable by the employer concerned during the financial year to which the calculation of the relevant pay-roll tax relates;

"TW" represents the total taxable wages paid or payable by the employer concerned during the financial year to which the calculation of the relevant pay-roll tax relates.

Pay-roll of employer under $500,000

3. An employer is not liable to pay pay-roll tax for a financial year if the total taxable wages and interstate wages paid or payable by the employer during that year is less than $500,000.

Pay-roll of employer $500,000 or more

4. If the total taxable wages and interstate wages paid or payable by an employer during a financial year is $500,000 or more, the employer is liable to pay as pay-roll tax for that year the amount of dollars calculated in accordance with the following formula:

$$\left[TW - \left\{ \frac{TW}{TW + IW} \times 500{,}000 \right\} \right] \times \frac{7}{100}$$

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971—*continued*

PART 2—GROUPS WITH A DESIGNATED GROUP EMPLOYER

Application of the Part

5. This Part applies only to an employer who is a member of a group for which there is a designated group employer.

Definitions

6. In this Part:

"designated group employer" means a member designated for a group in accordance with section 16I;

"financial year" means the financial year commencing on 1 July 1993 or on 1 July in any subsequent financial year;

"group" means a group for which there is a designated group employer;

"GIW" represents the total interstate wages paid or payable by the group concerned during the financial year to which the calculation of the relevant pay-roll tax relates;

"GTW" represents the total taxable wages paid or payable by the group concerned during the financial year to which the calculation of the relevant pay-roll tax relates;

"TW" represents the total taxable wages paid or payable by the employer concerned during the financial year to which the calculation of the relevant pay-roll tax relates.

Pay-roll of group under $500,000

7. None of the members of a group is liable to pay pay-roll tax for a financial year if the total taxable wages and interstate wages paid or payable by the group during that year is less than $500,000.

Pay-roll of group $500,000 or more

8. (1) If the total taxable wages and interstate wages paid or payable by a group during a financial year is $500,000 or more, pay-roll tax is payable as provided by subclauses (2) and (3).

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971—*continued*

(2) The designated group employer for the group is liable to pay as pay-roll tax for the financial year the amount of dollars calculated in accordance with the following formula:

$$\left[TW - \left\{ \frac{GTW}{GTW + GIW} \times 500{,}000 \right\} \right] \times \frac{7}{100}$$

(3) Each member of the group (other than that designated group employer) is liable to pay as pay-roll tax for the financial year the amount of dollars calculated in accordance with the following formula:

$$TW \times \frac{7}{100}$$

PART 3—GROUPS WITH NO DESIGNATED GROUP EMPLOYER

Application of the Part

9. This Part applies only to an employer who is a member of a group for which there is no designated group employer.

Definitions

10. In this Part:

"designated group employer" means a member designated as the designated group employer for a group in accordance with section 16I;

"financial year" means the financial year commencing on 1 July 1993 or any subsequent financial year;

"GIW" represents the total interstate wages paid or payable by the group concerned during the financial year to which the calculation of the relevant pay-roll tax relates;

"group" means a group for which there is no designated group employer;

"GTW" represents the total taxable wages paid or payable by the group concerned during the financial year to which the calculation of the relevant pay-roll tax relates;

"TW" represents the total taxable wages paid or payable by the employer concerned during the financial year to which the calculation of the relevant pay-roll tax relates.

SCHEDULE 5—AMENDMENT OF PAY-ROLL TAX ACT 1971—*continued*

Pay-roll of group under $500,000

11. None of the members of a group is liable to pay pay-roll tax for a financial year if the total taxable wages and interstate wages paid or payable by the group during that year is less than $500,000.

Pay-roll of group $500,000 or more

12. If the total of the taxable wages and interstate wages paid or payable by a group during a financial year is $500,000 or more, each member of the group is liable to pay as pay-roll tax for that year the amount of dollars calculated in accordance with the following formula:

$$\left[TW - \left\{ \frac{TW}{GTW + GIW} \times 500{,}000 \right\} \right] \times \frac{7}{100}$$

Explanatory note—item (18)

The amendment inserts into the Pay-roll Tax Act 1971 proposed Schedule 5, which will provide for the calculation of pay-roll tax payable on wages paid or payable on and after 1 July 1993. Part 1 of the proposed Schedule sets out the formula for calculating the amount of pay-roll tax payable by an employer who is not member of a group. Part 2 of the proposed Schedule applies to a group for which there is a designated group employer nominated under proposed section 16I of the Act. (See item (10) of this Schedule.) The Part prescribes the formulae for respectively calculating the pay-roll tax payable by the designated group employer and by members of the group other than the designated group employer. Part 3 of the proposed Schedule applies to a group for which there is no designated group employer and prescribes the formula for calculating the pay-roll tax payable by each member of the group.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920

(Sec. 8)

Part 1—Amendments relating to loan securities

(1) Section 84B (**Collateral security**):

Omit the section.

(2) Section 84CAB (**Transfer of loan securities**):

From section 84CAB (6), omit "84B", insert instead "84ED".

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

(3) Sections 84ED–84EF:

After section 84EC, insert:

Loan securities over property wholly in the State

84ED. (1) **What loan securities does this section apply to?**

This section applies to 2 or more loan securities by or under which the money secured or to be ultimately recoverable is secured wholly on property in the State.

(2) **Assessment of duty on collateral loan securities**

If a loan security to which this section applies has been duly stamped under this Act (the **"stamped instrument"**) and there is another or other such loan securities which are security, wholly or partly, for the same money, the duty payable in respect of each of those other loan securities is to be reduced:

(a) if each other loan security is security for the whole of the same money, by the amount of duty paid on the stamped instrument; and

(b) if any of the other loan securities is security for part of the same money, according to the proportion that the amount of the same money for which the other loan security is security bears to the amount for which the stamped instrument is security.

(3) **Minimum duty of $10**

Duty may not be reduced under this section so as to cause the duty payable in respect of a loan security to be less than $10.

Loan securities over property partly in and partly out of the State

84EE. (1) **The concept of a package of securities**

In this section, a **"package of securities"** means either a single loan security or 2 or more instruments, at least one of which is a loan security, by or under which the same money is secured or is to be ultimately recoverable.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

(2) **What packages of securities does this section apply to?**

This section applies to a package of securities by or under which the money secured or to be ultimately recoverable is secured partly on property in the State and partly on property out of the State. It does not matter whether the property that is out of the State is or is not, wholly or partly, in a corresponding Australian jurisdiction.

(3) **This section modifies the application of the other loan securities provisions of this Act**

The other provisions of this Act that apply to loan securities apply to a loan security that is, or is part of, a package of securities to which this section applies, except to the extent to which this section otherwise provides.

(4) **How is duty assessed as at the date of first execution?**

When duty is to be assessed as at the date of first execution of an instrument in a package of securities, it is to be assessed at the appropriate loan security duty rate on the same proportion of the amount secured or to be ultimately recoverable by or under the instruments in the package as, at that date, the value of the New South Wales property secured by those instruments bears to the total of:

(a) that value; and

(b) the value of the property in each corresponding Australian jurisdiction secured by those instruments.

(5) **What is the date of first execution of instruments in a package of securities?**

Instruments in a package of securities that are executed within a period of not more than 14 days are taken, for the purposes of this Act, to have been first executed on the day on which the last of those instruments was executed.

(6) **How is duty assessed as at the date of an advance or additional advance?**

When duty is to be assessed because of an advance or additional advance relating to a package of securities, it is to be assessed at the rate of $4 per $1,000 on the same proportion of the amount of the advance or additional

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

advance as, at the date of the advance or additional advance, the value of the New South Wales property secured by those instruments bears to the total of:

(a) that value; and

(b) the value of the property in each corresponding Australian jurisdiction secured by those instruments.

(7) **Effect of advances not exceeding the maximum amount secured under a package of securities**

No further duty is payable under this Act because of an advance or additional advance under a package of securities if:

(a) the amount payable or repayable under or secured by the package following the advance or additional advance does not exceed the maximum amount payable or repayable under or secured by the package before the advance or additional advance was made (the **"maximum amount"**); and

(b) the appropriate amount of loan security duty payable under this Act and the Acts of each corresponding Australian jurisdiction has been paid on the maximum amount.

(8) **What duty is payable on the other instruments in the package that secure the whole of the same advance?**

If all the instruments in the package of securities secure the whole of the same advance and duty is paid in accordance with the foregoing provisions of this section on one of the instruments, the duty payable under this Act on each of the other instruments is $10.

(9) **What duty is payable on instruments that secure part of an advance secured under another package of securities?**

If a package of securities (the **"second package"**) is executed to secure, wholly or partly, the same money as another package of securities on which duty has been paid at the appropriate loan security duty rate under this Act (the **"first package"**), the duty payable under this Act on the instruments in the second package is to be reduced:

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

(a) if the second package is security for the whole of the same money, by the amount of duty paid at the appropriate loan security duty rate under this Act on the loan securities in the first package; or

(b) if the second package is security for part of the same money, according to the proportion that the amount of the same money for which the second package is security bears to the amount for which the first package is security.

The duty must not be reduced to an amount of less than $10 for each instrument in the second package.

(10) **Other definitions**

In this section:

"corresponding Australian jurisdiction" means another State or a Territory that, at the time when duty is to be assessed, has a law that corresponds to this section;

"property" in the State or a corresponding Australian jurisdiction includes shares in a company incorporated in the State or the corresponding Australian jurisdiction.

Loan securities over property wholly out of the State

84EF. (1) **Loan securities to which this section applies**

This section applies to a loan security by or under which money secured or to be ultimately recoverable is secured wholly on property outside the State.

(2) **Amount of duty payable**

The duty payable under this Act in respect of such a loan security is $10.

(3) **Effect of other exemptions under this Act**

This section has effect subject to any exemption under this Act.

(4) Section 84F (**Loan security in respect of property in and out of the State**):

Omit the section.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

(5) Tenth Schedule (**Savings, Transitional and Other Provisions**):

After clause 34, insert:

Collateral loan securities over property wholly in the State

35. Section 84ED applies to loan securities referred to in that section whether the loan security so referred to as the **"stamped instrument"** was duly stamped under this Act before or after the commencement of that section.

Loan securities over property partly in and partly out of the State

36. Sections 84EE and 84EF apply to instruments first executed after the commencement of those sections and to advances and additional advances made after that commencement, whether or not they are made under or secured by instruments first executed before or after that commencement.

Explanatory note—Part 1—Amendments relating to loan securities

Part 1 of Schedule 6 makes amendments to Division 21 of Part 3 of the Stamp Duties Act 1920 concerning loan securities. The amendments reorganise the scheme of Division 21 to some extent and they also change the way in which stamp duty is to be assessed on loan securities where the security consists of some New South Wales property and some non-New South Wales property.

The reorganised scheme for the assessment of duty on loan securities under Division 21 is as follows:

1. A single loan security where the security consists of only New South Wales property—s. 84 (no change).
2. Two or more loan securities where the security consists of only New South Wales property—s. 84ED (replacing in this respect s. 84B).
3. A single loan security or 2 or more loan securities where the security consists of some New South Wales property and some non-New South Wales property—s. 84EE (replacing in this respect ss. 84B and 84F).
4. A single loan security or 2 or more loan securities where the security consists of only non-New South Wales property—s. 84EF (replacing in this respect s. 84F).

At the present time, the legislation of the various Australian jurisdictions varies as to the assessment of loan security duty on loan securities affecting property in more than one jurisdiction. The amendments made in this Part, particularly the insertion of proposed section 84EE, are made in order to provide a uniform basis for legislation in these jurisdictions.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Item (1) omits section 84B.

Item (2) makes an amendment consequential on the omission of section 84B.

Item (3) inserts 3 new sections.

Proposed section 84ED is in the same terms as the omitted section 84B but is now to be limited to loan securities where the security consists of only New South Wales property.

EXAMPLE

The following example illustrates the application of section 84ED. It involves 2 loan securities under which an advance of $1m is made.

1st NSW Mortgage—property value $2m	
2nd NSW Mortgage—property value $1m	
Duty—	
1st Mortgage—paid on $1m	$3941
2nd Mortgage	no ad valorem duty

Proposed section 84EE deals with a single loan security or 2 or more loan securities where the security consists of some New South Wales property and some non-New South Wales property. The scheme in the proposed section has 3 basic principles:

(a) loan security duty is to be charged on that proportion of the advance that the New South Wales property bears, at the date of execution or the date of an advance, to the total value of the property secured in Australian jurisdictions where loan security duty is payable under a corresponding provision;

(b) loan securities executed after an advance are subject to collateral provisions (that is, a credit is given for duty paid on the prime documents);

(c) duty in respect of additional advances is to be assessed on the same basis as in paragraph (a) (that is, in accordance with the property mix at the date of the additional advance).

EXAMPLES

The following examples illustrate the application of section 84EE. Each example involves a package of securities under which an advance of $1m is made. The examples indicate how loan security duty is to be assessed in NSW and corresponding Australian jurisdictions on the assumption that all Australian States and Territories (except the ACT) are corresponding Australian jurisdictions.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Example 1

Deed of Company Charge securing—
NSW property—value $1/2m
SA property—value $1m
WA property—value $1m

Duty—

NSW payable on $200k	$741
SA payable on $400k	$1390
WA payable on $400k	$1547.50

Example 2

NSW Mortgage—property value $2m
WA Guarantee (no property secured)

Duty—

NSW payable on $1m	$3941
WA	no ad valorem duty

Example 3

NSW Mortgage—property value $1m
Vic Mortgage—property value $1m
WA Guarantee (no property secured)

Duty—

NSW payable on $1/2m	$1941
Vic payable on $1/2m	$1964
WA	no ad valorem duty

Example 4

NSW Mortgage—property value $1m
Vic Mortgage 1—property value $1m
Vic Mortgage 2—property value $1/2m
WA Guarantee (no property secured)

Duty—

NSW payable on $400k	$1541
Vic payable on $600k (Mortgage 1)	$2364
Vic (Mortgage 2)	no ad valorem duty
WA	no ad valorem duty

Example 5

Deed of Company Charge securing—
NSW property—value $1/4m
SA property—value $1/2m
WA property—value $1/2m
NSW Mortgage—value $1/2m
Vic Covenant (no property in Vic)

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Duty—	
Deed of Company Charge—	
NSW payable on $428k (42.8% approx.)	$1653
SA payable on $286k (28.6%)	$991
WA payable on $286k (28.6%)	$1091.50
NSW Mortgage	no ad valorem duty
Vic Covenant	no ad valorem duty

Example 6

Deed of Company Charge securing—
NSW property—value $1/2m
WA property—value $1/2m
NT property—value $1/2m
ACT Mortgage—property value $1/2m (disregard)

Duty—	
Deed of Company Charge—	
NSW payable on $333k (approx.)	$1273
WA payable on $333k	$1279.50
NT payable on $333k	$1282
ACT Mortgage (not liable to duty)	nil

Proposed section 84EF deals with a single loan security or 2 or more loan securities where the security consists of only non-New South Wales property. It reproduces, without change, the existing provisions in this regard of section 84F.

Item (4) omits section 84F.

Item (5) enacts transitional provisions consequent on the other amendments made in this Part.

Proposed clause 35 in the Tenth Schedule will enable concessional duty to be assessed in relation to a collateral loan security even if the prime document was stamped before the commencement of the amendments.

Proposed clause 36 captures advances and additional advances made after the commencement of the amendments even if the loan security was stamped before that commencement.

EXAMPLE

The following example illustrates the application of the transitional provision in clause 36.

Before new legislation
Qld Mortgage—property value $1m
NSW Mortgage—property value $1m

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Duty—	
Qld—paid in Qld on $1m	$4000
NSW—collateral (no ad valorem duty)	$10

After new legislation

A further advance of $1m is made so that the amount secured under the package of securities is now $2m. The property values in Qld and NSW remain unchanged. Provided that duty is paid up to the previous limit in the relevant corresponding Australian jurisdictions, duty is only payable on advances that exceed the previous limit.

Consequently, duty is payable on the further advance of $1m as follows:

Qld payable on $500k (50%)	$2000
NSW payable on $500k (50%)	$2000

Part 2—Amendments relating to exemptions

Agreements stamped on interim basis—admissibility in evidence

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

(a) From section 41 (5), omit "shall be admissible in evidence for the mere purpose of proceedings to enforce specific performance or enforce damages for the breach thereof", insert instead "may be admitted in evidence, subject to subsection (6).

(b) After section 41 (5), insert:

(6) An agreement may not be admitted in evidence under subsection (5) unless the Chief Commissioner has issued a certificate in writing to the effect that the full amount on which ad valorem duty is payable cannot be immediately ascertained, and that certificate is in force. Such a certificate remains in force for 3 months after it is issued, but a further certificate may be issued at any time.

Explanatory note—item (6)

Currently agreements for the sale or conveyance of property can be stamped "interim stamp only" if the full amount on which stamp duty is payable cannot be ascertained. The agreement can then be admitted in evidence in proceedings to enforce specific performance or enforce damages for breach.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

The amendment makes such an agreement admissible for all purposes but only if the Chief Commissioner has certified that the amount on which duty is payable cannot be ascertained. The Chief Commissioner's certificate remains in force for 3 months after it is issued but further certificates can be issued to cover the situation where the amount remains unascertainable after 3 months.

Exemption from duty—transfer into joint names of vacant land intended to be used as principal place of residence

(7) Section 66E (**Conveyance between married couple**):

(a) Omit section 66E (2) (b), insert instead:

(b) the property qualifies under subsection (2A);

(b) After subsection (2), insert:

(2A) Property qualifies under this subsection if:

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

(b) the property is vacant land and the married couple intend to use it as the site of a private dwelling house to be solely or principally used as the married couple's principal place of residence.

Explanatory note—item (7)

The Act currently contains special provisions covering a conveyance of property between marriage partners that results in the property being held in their joint names (either as joint tenants or tenants in common). There is an exemption from stamp duty when there is a private dwelling on the land that is used as the couple's principal place of residence. There is a refund of stamp duty when the land is vacant at the time of the conveyance and the couple subsequently build a house on the land and occupy it as their principal place of residence.

The amendment provides an additional "up-front" exemption for a conveyance of vacant land when there is an intention to build the couple's principal place of residence on the land. This is in addition to the current refund provisions for vacant land when stamp duty has already been paid.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Exemption for assignment of rent to vendor under contract for sale of land

(8) Section 66F:

After section 66E, insert:

Exemption for assignment of rent to vendor of land

66F. Notwithstanding any other provision of this Act, duty is not chargeable in respect of an assignment of, or agreement to assign, rent payable under a lease of property or premises on property if:

(a) the assignment is by, or the assignment provided for by the agreement is by, the purchaser to the vendor of the property under an agreement for the sale of the property; and

(b) the rent assigned or agreed to be assigned is rent payable in respect of a period for which allowance has been or is to be made between the vendor and the purchaser under that agreement for sale.

Explanatory note—item (8)

The amendment confers an exemption from stamp duty on an assignment of the rent payable under a lease of the property when the property is sold and the assignment is to the vendor by the purchaser of the property for the purpose of facilitating the apportionment of unpaid rent between the vendor and the purchaser. There is provision for such an assignment in the 1992 version of the standard (Law Society/REI) Agreement for Sale of Land. Rent is apportioned as if it had already been paid by the tenant to the vendor. The assignment from the purchaser is necessary to enable the vendor to recover unpaid rent from the tenant because section 144 (3) of the Conveyancing Act 1919 requires it to be paid to the purchaser.

Exemption for conveyance between marriage partners by auction under Family Law arrangements

(9) Section 74CB (**Certain instruments exempt from duty**):

At the end of section 74CB (1), insert:

; or

(c) the conveyance to either of the parties to a marriage which is dissolved or annulled (whether before or after the instrument is executed) of matrimonial property pursuant to a public auction of the property held:

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

(i) for the purposes of or in accordance with an instrument registered or approved under the Commonwealth Act; or

(ii) for the purposes of or in accordance with an order of a court under that Act; or

(d) the conveyance to either of the parties to a marriage of matrimonial property pursuant to a public auction of the property held:

(i) for the purposes of or in accordance with an instrument approved under the Commonwealth Act; or

(ii) for the purposes of or in accordance with an order of a court under that Act.

Explanatory note—item (9)

Currently there are exemptions from stamp duty for conveyances of matrimonial property pursuant to court orders and other procedures under the Family Law Act 1975 of the Commonwealth.

The amendment extends the exemptions to the situation where the matrimonial property is required to be auctioned and a party to the marriage is the purchaser.

Exemptions for motor vehicle certificate of registration

(10) Section 84G (**Duty on motor vehicle certificates of registration**):

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

; or

(k) a motor vehicle certificate of registration issued to a rural lands protection board established under the Rural Lands Protection Act 1989; or

(l) a motor vehicle certificate of registration issued in circumstances in which the Chief Commissioner considers it would not be just and reasonable to require the payment of stamp duty.

Explanatory note—item (10)

The amendment adds 2 new exemptions to the list of exemptions from the stamp duty payable on the issue of a motor vehicle certificate of registration.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

The first exempts rural lands protection boards from stamp duty on motor vehicle certificates of registration issued to them.

The second enables the Chief Commissioner to exempt certificates issued in circumstances in which it would not be just and reasonable to expect payment of stamp duty (such as when a new certificate is issued to correct any incorrect particulars or to note a change of address of the owner).

Exemption for purchase of marketable securities to support futures contracts

(11) Section 97A (**Definitions and application of ss. 97AA–97ADF**):

(a) From the definition of "Australian Options Market" in section 97A (1), omit "(Sydney)".

(b) Insert in section 97A (1), in alphabetical order:

"Futures broker" has the same meaning as in the Corporations Law.

"Futures contract" has the same meaning as in the Corporations Law.

"Options trader" means a person who is a registered trader or clearing member under the Business Rules of the Australian Stock Exchange.

(c) From section 97A (1), omit the definition of "Registered trader".

(d) From section 97A (2), omit "to 97ADC", insert instead "to 97ADF".

(e) From section 97A (2), omit "or 97ADC", insert instead ", 97ADC or 97ADF".

(12) Sections 97ADA–97ADF:

Omit sections 97ADA–97ADC, insert instead:

Exemption from duty—sales and purchases on behalf of options traders as market makers

97ADA. No stamp duty is payable in accordance with the provisions of section 97AB (1) in respect of any sale or purchase of marketable securities or rights in respect of marketable securities if the sale or purchase:

(a) was made on behalf of an options trader in his or her capacity as such and as principal; and

(b) was made for hedging purposes; and

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

(c) was of marketable securities of a type, or rights in respect of marketable securities of a type, in respect of which options are traded on the Australian Options Market or the price of which is taken into account in calculating an index to which such an option relates.

Sales and purchases to be recorded by options traders

97ADB. (1) An options trader must, forthwith on a sale or purchase of marketable securities, or rights in respect of marketable securities, in respect of which no stamp duty is payable under section 97ADA being made by a dealer on behalf of the options trader in his or her capacity as such, make a record of the sale or purchase showing:

(a) the date of the sale or purchase; and

(b) the name of the dealer by whom the sale or purchase was effected; and

(c) the quantity and full description of the marketable securities or rights sold or purchased; and

(d) the purchase or selling price of each marketable security or right and in total; and

(e) in the case of the sale of marketable securities or rights, the date on which the marketable securities or rights were purchased.

(2) An options trader keeping the record may incorporate in it additional information for his or her own use.

(3) The record must be kept in a permanent form and must be retained by the options trader by whom it is made for a period of at least 3 years from the date of the sale or the purchase.

(4) The record required to be kept under this section by an options trader must be kept separately from any record required to be kept by the options trader in any capacity other than as an options trader.

(5) The Chief Commissioner may require an options trader to keep such additional records, as the Chief Commissioner considers necessary, of sales or purchases.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

(6) An options trader who, in contravention of the provisions of this section, fails to make or keep and retain any such record or additional records is liable to a fine for each such offence not exceeding 5 penalty units.

Returns to be lodged and duty paid

97ADC. (1) An options trader must, not later than 7 days after the end of each month:

(a) lodge with the Chief Commissioner a return, in a form approved by the Chief Commissioner, of sales and purchases details of which have been recorded in accordance with section 97ADB being:

(i) in the case of a sale of marketable securities or rights, those sales during the month which have occurred more than 3 months after the purchase of the marketable securities or rights; and

(ii) in the case of the purchase of marketable securities or rights, those marketable securities or rights which, during the month, have been held for more than 3 months from the date of their purchase; and

(b) pay to the Chief Commissioner as stamp duty, in respect of the sales and purchases included in the return, an amount calculated on the consideration for each such sale and each such purchase for which duty has not previously been paid:

(i) if the consideration is less than $100, at the rate of 7 cents for every $25 and also for any remaining fractional part of $25; and

(ii) if the consideration is $100 or more, at the rate of 30 cents for every $100 and also for any remaining fractional part of $100,

of the sale price or the purchase price, as the case may be.

(2) A registered trader is not required to lodge a return if a "NIL" return would otherwise be lodged.

(3) A person who contravenes this section is liable to a fine not exceeding 5 penalty units.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Exemption from duty—sales and purchases on behalf of futures brokers as market makers

97ADD. No stamp duty is payable in accordance with the provisions of section 97AB (1) in respect of any sale or purchase of marketable securities or rights in respect of marketable securities if the sale or purchase:

(a) was made on behalf of a futures broker in his or her capacity as a futures broker and as principal;

(b) was made for hedging purposes; and

(c) was of marketable securities of a type, or rights in respect of marketable securities of a type, the price of which is taken into account in calculating an index to which a futures contract relates.

Sales and purchases to be recorded by futures brokers

97ADE. (1) A futures broker must, forthwith on a sale or purchase of marketable securities, or rights in respect of marketable securities, in respect of which no stamp duty is payable under section 97ADD being made by a dealer on behalf of the futures broker as principal, make a record of the sale or purchase showing:

(a) the date of the sale or purchase; and

(b) the name of the dealer by whom the sale or purchase was effected; and

(c) the quantity and full description of the marketable securities or rights sold or purchased; and

(d) the purchase or selling price of each marketable security or right and in total; and

(e) in the case of the sale of marketable securities or rights, the date on which the marketable securities or rights were purchased.

(2) A futures broker keeping the record may incorporate in it additional information for his or her own use.

(3) The record must be kept in a permanent form and must be retained by the futures broker by whom it is made for a period of at least 3 years from the date of the sale or purchase.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

(4) The record required to be kept under this section by a futures broker must be kept separately from any record required to be kept by the futures broker in any capacity other than as a futures broker.

(5) The Chief Commissioner may require a futures broker to keep such additional records, as the Chief Commissioner considers necessary, of sales or purchases.

(6) A futures broker who, in contravention of the provisions of this section, fails to make, keep or retain any such record or additional records is liable to a fine for each such offence not exceeding $500.

Returns to be lodged and duty paid

97ADF. (1) A futures broker must, not later than 7 days after the end of each month:

(a) lodge with the Chief Commissioner a return, in a form approved by the Chief Commissioner, of sales and purchases details of which have been recorded in accordance with section 97ADE, being:

(i) in the case of a sale of marketable securities or rights in respect of marketable securities, those sales during the month which have occurred more than 3 months after the purchase of the marketable securities or rights; and

(ii) in the case of the purchase of marketable securities or rights in respect of marketable securities, those marketable securities or rights which, during the month, have been held for more than 3 months from the date of their purchase; and

(b) pay to the Chief Commissioner, as stamp duty in respect of the sales and purchases included in the return, an amount calculated on the consideration for each such sale and each such purchase for which duty has not previously been paid:

(i) if the consideration is less than $100, at the rate of 7 cents for every $25 and also for any remaining fractional part of $25; and

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

(ii) if the consideration is $100 or more, at the rate of 30 cents for every $100 and also for any remaining fractional part of $100, of the sale price or the purchase price, as the case may be.

(2) A futures broker is not required to lodge a return if a "NIL" return would otherwise be lodged.

(3) A person who contravenes this section is liable to a fine not exceeding 5 penalty units.

Explanatory note—items (11) and (12)

The amendments clarify and extend an existing exemption from stamp duty for sales and purchases of shares on behalf of options traders for hedging purposes, and create a parallel exemption for sales and purchases on behalf of futures brokers.

The existing exemption for options traders is contained in sections 97ADA–97ADC. The amendments substitute those sections and amend them to make it clear that they apply only to sales and purchases on behalf of options dealers as principals (i.e. as market makers). The provisions are also extended to transactions on behalf of clearing members of the Australian Options Market. For consistency with other provisions, the exemption is extended to marketable securities and rights (not just shares, as at present).

The amendments also clarify the connection between the securities that are the subject of the transaction and the options involved (the connection is indirect in that the price of the securities is used to calculate an index on which the option is based).

New sections 97ADD–97ADF are inserted to apply a similar exemption scheme for the sale and purchase of securities and rights on behalf of futures brokers for hedging purposes. This exemption is also limited to transactions on behalf of futures brokers when acting as market makers.

Exemption for scrip lending arrangements

(13) Section 97AA (**Sales and purchases to be recorded**):

From section 97AA (3) (g), omit "which comprises a transfer", insert instead "which is a securities lending transaction or which comprises a transfer".

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

(14) Section 97AC (**Endorsement of transfer as to payment of duty**):

At the end of section 97AC (1) (c) (ii), insert:

; or

(iii) a securities lending transaction,

(15) Second Schedule (**Stamp Duties and Exemptions**):

At the end of paragraph (e) (ii) of the exemptions appearing under the heading "TRANSFER OF SHARES", insert:

; or

(iii) a securities lending transaction.

Explanatory note—items (13)–(15)

Currently there is an exemption from duty on share transfers for the purpose of lending the shares to the transferee. The amendments extend this exemption to any share transfer for the purpose of a bona fide securities lending transaction. The exemption will then cover loans to nominees of transferees.

Exemption from duty—agreements for financial assistance under the Aged or Disabled Persons Care Assistance Scheme

(16) Second Schedule—General Exemptions from Stamp Duty Under Part 3:

After paragraph (43), insert:

(44) An agreement executed under the Aged or Disabled Persons Care Act 1954 of the Commonwealth between an organisation and the Minister administering that Act.

Explanatory note—item (16)

The Aged or Disabled Persons Care Act 1954 of the Commonwealth provides for the giving of financial assistance by way of capital grants and recurrent subsidies for nursing homes and hostels for aged and disabled persons. That Act requires that the assistance be the subject of an agreement between the recipient and the Minister administering that Act.

The purpose of the amendment is to exempt those agreements from stamp duty.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Part 3—Miscellaneous amendments

Adhesive stamps—adjustment of amount of duty in certain cases

(17) Section 6A:

After section 6, insert:

Adhesive stamps—adjustment of duty

6A. (1) This section applies to an instrument or transaction in respect of which duty may be denoted by an adhesive stamp.

(2) If the amount of duty payable in respect of an instrument or transaction is not a multiple of 5 cents, the amount payable may be rounded down to the nearest multiple of 5 cents. The amount so rounded down is taken to be the duty payable to the Chief Commissioner in respect of that instrument or transaction.

(3) This section has effect despite any other provision of this Act or the regulations.

Explanatory note—item (17)

Item (17) allows an amount of stamp duty paid by way of adhesive stamps to be rounded down to the nearest 5 cents so as to be consistent with the withdrawal from circulation of one and 2 cent coins.

Payment of concessional duty on certain transfers relating to trustees

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

In section 73 (2AE) (b), after "acquiring", insert "a legal or".

Explanatory note—item (18)

Section 73 (2AE) was inserted to enable the transfer of marketable securities by a person having a beneficial interest in the securities to a trustee or by a trustee or manager to another trustee to be liable only to duty of $2. The amendment makes it clear that the concession does not apply to a transfer back to a person having a beneficial interest in the property by a trustee or manager of the legal interest in any such security, unit or right.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Clarification—statute law revision

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

From section 74H (1), omit "as".

Explanatory note—item (19)

The amendment removes an unnecessary word to make it clear that the exemption from duty on a hiring arrangement applies if duty has already been paid on a conveyance of property in connection with the acquisition of the goods involved in the hiring arrangement.

Transfer of loan securities

(20) Section 84CAB (**Transfer of loan securities**):

(a) Omit section 84CAB (1), insert instead:

(1) If a loan security is transferred (whether or not at the request or direction of any party) to:

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

(b) a person who is a party to arrangements (referred to in 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 in respect of the advance or additional advance accordingly.

(b) After section 84CAB (4), insert:

(5) This Division applies to a loan security to which this section applies in the same way as it applies to any other loan security, except as provided by subsection (6).

(6) Duty paid or payable on a transferred loan security before its transfer is to be disregarded for the purpose of determining, at any time after the transfer, any reduction of duty under section 84B in relation to the transferred loan security or any other instrument referred to in that section.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Explanatory note—item (20)

Section 84CAB was intended to enable loan securities transferred at the borrower's instigation to be treated in the same way as if they were new loans in respect of advances made after or in connection with the transfer. The amendment made by item (20) (a) extends this principle to all transferred loan securities, no matter which party instigates the transfer.

The amendment also makes it clear that duty is payable only in respect of advances made in connection with the transfer or additional advances made after the transfer.

Section 84B provides for a credit of duty for certain collateral securities.

Section 84CAB (5) as inserted by item (20) (b) makes it clear that the provisions of the Division apply to transferred loan securities in the same way as they apply to loan securities.

Section 84CAB (6) as inserted by item (20) (b) makes it clear that duty paid on a transferred loan security before its transfer is irrelevant in assessing duty payable after the transfer in relation to collateral securities.

Refund of stamp duty—overpayment of insurance premiums

(21) Section 88N (**Set-off or refund of duty on refund of premium**):

At the end of section 88N, insert:

(3) A person who has lodged a return under section 88D and has received a refund of any premium (or part of a premium) may apply to the Chief Commissioner for a refund of the duty paid under this Division in respect of the amount refunded to the person.

(4) An application for a refund of duty must be made within 1 year after the date the amount of premium was refunded to the person.

Explanatory note—item (21)

Currently the Stamp Duties Act 1920 provides that where a person obtains, effects or renews any insurance with a person who is not a registered person under the Stamp Duties Act 1920 and the risk is in New South Wales, the insured must pay duty under the Act. There is no provision whereby duty, paid in respect of a premium that is refunded, can be refunded.

The proposed amendment will allow a refund to be made in such cases.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Updating references etc.

(22) Section 98 **(Definitions)**:

(a) In section 98 (1), from paragraph (e) of the definition of "financial institution", omit "Division 6 of Part IV of the Companies (New South Wales) Code", insert instead "Division 5 of Part 7.12 of the Corporations Law or a corresponding previous law".

(b) From section 98 (1), omit the definition of "month", insert instead:

"month" means January, February, March, April, May, June, July, August, September, October, November or December;

Explanatory note—item (22)

Item (22) (a) replaces a reference to provisions of the Companies (New South Wales) Code with a reference to the appropriate provisions of the Corporations Law.

Item (22) (b) replaces the definition of month so as to remove an outdated reference.

Financial institutions duty on purchase of cash management trust units

(23) Section 98 **(Definitions)**:

(a) After the definition of "building society" in section 98 (1), insert:

"cash management trust unit" means any right or interest (whether described as a unit or a sub-unit or otherwise) of a beneficiary in an undertaking, scheme, enterprise, contract or arrangement of the kind commonly known as a cash management trust;

(b) In section 98 (1), in the definition of "short term liability", after "issued)", insert "or for the acquisition of a cash management trust unit".

(c) In section 98 (1), after paragraph (b) of the definition of "short term liability", insert:

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

; or

(c) in the case of an amount received for the acquisition of a cash management trust unit, that amount is repayable at call or within a term not exceeding 185 days or within a term not exceeding 185 days and thereafter at call,

Explanatory note—item (23)

The amendments ensure that the receipts of money for the acquisition of cash management trust units are treated as short term liabilities for the purposes of obtaining the concessional rate of financial institutions duty on those transactions.

Exemption of certain receipts from duty

(24) Section 98A **(Receipts to which this Division does not apply)**:

(a) In section 98A (d) (iii), after the words "marketable security", insert "or a right or interest (whether described as a unit or sub-unit or otherwise) of a beneficiary under a unit trust scheme".

(b) After section 98A (d), insert:

(da) a receipt in relation to an "offshore banking activity" (within the meaning of section 121B of the Income Tax Assessment Act 1936 of the Commonwealth) of a designated person who is an "offshore banking unit" (within the meaning of Division 11A of Part III of that Act);

(c) Omit section 98A (g) and (h), insert instead:

(g) a receipt in relation to any one of, or a combination of 2 or more of, the following transactions (not being a receipt comprising the crediting of an account of a customer of a bank with the proceeds of any such transaction or transactions):

- an interest rate, currency or commodity swap;
- an interest rate, currency or commodity option;
- a forward exchange rate agreement;
- a forward interest rate agreement;
- a futures contract traded on the Sydney Futures Exchange;

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

(h) a receipt by the manager or trustee of assets the subject of a deed approved under Division 5 of Part 7.12 of the Corporations Law or a previous corresponding law of another State or a Territory, being a receipt of money for the purpose of:

- subsequent payment, or reimbursement of payment, to holders of prescribed interests (within the meaning of the Corporations Law) under the deed; or
- reimbursement of money expended by the manager or trustee on behalf of the trust, not being a receipt for a fee, brokerage or commission or other charge made by the manager or trustee; or

(i) a receipt by the manager of assets the subject of a deed approved under Division 5 of Part 7.12 of the Corporations Law or a previous corresponding law of another State or a Territory (not being a receipt for a fee, brokerage, commission or other charge made by the manager), being a receipt that is subsequently to be paid to the trustee of the assets; or

(j) a receipt prescribed for the purposes of this section; or

(k) a receipt prescribed for the purposes of this section in relation to a designated person prescribed for the purposes of this section.

Explanatory note—item (24)

Dealings with unit trusts

Item (24) (a) exempts from financial institutions duty otherwise payable under the Act a receipt by a dealer in securities from a dealing with a right or interest of a beneficiary under a unit trust where stamp duty has already been paid or is payable for the dealing.

Offshore banking activities

Item (24) (b) exempts from financial institutions duty otherwise payable under the Act a receipt of a designated person who is an offshore banking unit, being a receipt in relation to an offshore banking activity.

Under the Income Tax Assessment Act 1936 of the Commonwealth, as proposed to be amended by the Taxation Laws Amendment Bill (No. 4) 1992 of the Commonwealth, offshore banking activities of financial institutions are to receive tax concessions on a range of activities defined in that legislation as

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

"offshore banking activities". The amendment made by this item reflects the policy of encouraging such activities by financial institutions.

Treasury products

Proposed section 98A (g) as inserted by item 24 (c) exempts from financial institutions duty otherwise payable under the Act receipts in relation to interest rate, currency or commodity swaps or options, forward exchange rate agreements, forward interest rate agreements and certain futures contracts.

Receipts by certain managers or trustees

Proposed section 98A (h) as inserted by item (24) (c) exempts from financial institutions duty receipts credited to the accounts of both managers and trustees under deeds relating to prescribed interests under the Corporations Law, where the money received is to be paid to holders of those interests or reimburses such a payment or money spent on behalf of the trust.

Proposed section 98A (i) as inserted by item (24) (c) exempts from financial institutions duty receipts credited to the accounts of such managers, where the money received is to be paid to the trustee and is not a receipt for a fee, brokerage, commission or other charge.

Short term dealers' gains and profits dutiable

(25) Section 98S (**Exemption from payment of certain duty**):

Omit "interest", insert instead "any profit or other gain or interest".

Explanatory note—item (25)

Section 98S exempts receipts received by a short term dealer that are related to repayment of the amount invested from liability for financial institutions duty. However, any receipts received by such a dealer for fees, brokerage, commission or interest are dutiable.

Item (25) amends section 98S to provide that receipts received by such a dealer comprising any profit or other gain received otherwise than as an integral part of the repayment of principal are also dutiable.

Exempt accounts

(26) Section 98U (**Exempt accounts**):

From section 98U (1) (e), omit "Division 6 of Part IV of the Companies (New South Wales) Code or under a corresponding law of another State or a Territory", insert instead "Division 5 of Part 7.12 of the Corporations Law or a previous corresponding law of another State or a Territory".

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Explanatory note—(26)

Item (26) replaces a reference to provisions of the Companies (New South Wales) Code with a reference to the appropriate provisions of the Corporations Law.

Rearrangement of Part 5

(27) Part 5:

Omit the heading to Part 5, insert instead:

PART 5—OBJECTIONS AND APPEALS

(28) After section 124G, insert:

PART 6—MISCELLANEOUS

Explanatory note—items (27) and (28)

At present, the provisions relating to objections and appeals (sections 124–124G) are contained in Part 5, dealing with miscellaneous provisions.

The amendments divide the existing Part 5 into 2 new Parts, Part 5—Objections and Appeals and Part 6—Miscellaneous, so as to create a new Part 5 that relates only to objections and appeals.

Duty payable on company title dwellings

(29) Second Schedule—Stamp Duties and Exemptions:

From the matter appearing in the Column headed "Nature of Instrument", under the heading "CONVEYANCES OF ANY PROPERTY", omit paragraph (3B), insert instead:

(3B) On the transfer of shares of any company, being shares which confer an entitlement to exclusive possession of a company title dwelling, whether or not the company is incorporated in New South Wales or has a register of members in New South Wales.

Explanatory note—item (29)

The amendment makes it clear that duty as set out in the Second Schedule is payable, as for a conveyance of real property, on the transfer of shares in a company title dwelling situated in New South Wales even though the company is not incorporated in or has no register of members in New South Wales.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Amount of duty payable on primary application which also results in grant of possessory title

(30) Second Schedule—Stamp Duties and Exemptions:

Omit paragraph (1) of the matter relating to REAL PROPERTY ACT 1900, insert instead:

(1) Application to bring land under the Act or to be registered under the Act as the proprietor of an estate in land where not otherwise liable to stamp duty not being a transmission application and not containing an application based on a possessory title.	10.00	The applicant.
(1A) An application referred to in paragraph (1) which also contains an application based on a possessory title.	The same duty as on a possessory application.	The applicant.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

(1B) An application referred to in paragraph (1) which also contains an application based on a possessory title, where ad valorem duty is paid for a conveyance of the land.	10.00	The applicant.

Explanatory note—item (30)

Currently nominal duty of $10 applies to an instrument which is used to bring old system land under the provisions of the Real Property Act 1900.

Item (30) makes it clear that if such an instrument is used for this purpose and at the same time it is also used to claim a possessory title to the land, it will be liable to ad valorem duty on the unencumbered value of the land and not to the nominal duty of $10.

First Home Purchase Scheme—net taxable income of eligible single person

(31) Schedule 2A (First Home Purchase Scheme):

Clause 20 (**Eligible persons—net taxable income**):

From clause 20 (4), omit "$27,000", insert instead "$33,000".

Explanatory note—item (31)

The First Home Purchase Scheme established under Part 2 of Schedule 2A to the Act enables eligible persons (including single first home buyers) to choose to receive a 30% discount on stamp duty or to pay it by way of five equal annual instalments. Clause 20 imposes a means test on eligible persons. The amendment will increase the means test for the eligibility of a single person with no dependants from $27,000 to $33,000 net taxable income per year.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Part 4—Savings and transitional provisions

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

Tenth Schedule—Savings, Transitional and Other Provisions:

After Part 9, insert:

PART 10—STATE REVENUE LEGISLATION (FURTHER AMENDMENT) ACT 1992

Application of amendments—generally

32. (1) A provision of this Act as in force before the amendment of the provision by the State Revenue Legislation (Further 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 to this Act by the State Revenue Legislation (Further 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.

Duty on unit trust dealings—section 98A

33. Section 98A (d) (iii) (as amended by the State Revenue Legislation (Further Amendment) Act 1992) applies to a dealing carried out before or after the commencement of the provision.

SCHEDULE 6—AMENDMENT OF STAMP DUTIES ACT 1920—*continued*

Admissibility in evidence

34. Section 41, as amended by the State Revenue Legislation (Further Amendment) Act 1992, applies to an agreement executed before or after the commencement of the amendment, but not so as to affect the use of evidence admitted before that commencement.

[*Minister's second reading speech made in—*
Legislative Assembly on 29 October 1992
Legislative Council on 19 November 1992]

BY AUTHORITY
R. J. MILLIGAN, ACTING GOVERNMENT PRINTER—1992