



New South Wales

State Revenue Legislation Amendment Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Stamp Duties Act 1920*:
 - (i) to enlarge the class of credit contracts that are exempt from loan security duty, and
 - (ii) to reduce, and in some cases dispense with, the duty payable in respect of hiring arrangements and refinancing loan securities, and
 - (iii) to enact provisions prescribing conditions of exemption from duty and other matters currently provided for in regulations made under the Act, and
 - (iv) to impose duty in connection with instalment receipts issued on behalf of the Commonwealth of Australia that confer ownership in shares, and
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- (b) amend the *Debits Tax Act 1990* to prescribe the rate (currently prescribed by regulation) at which unpaid taxes under that Act attract penalty interest, and
- (c) amend the *Business Franchise Licences (Tobacco) Act 1987* to enable the cancellation or suspension of licences under that Act, and in relation to licence conditions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 is a formal provision giving effect to the amendments to the *Stamp Duties Act 1920* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Debits Tax Act 1990* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Business Franchise Licences (Tobacco) Act 1987* set out in Schedule 3.

Schedule 1 amends the *Stamp Duties Act 1920* and is divided into four Parts.

Schedule 1.1 amends section 84EB of the Act so as to enlarge the class of credit contracts that are exempt from loan security duty. At present, only contracts worth \$25,000 or less are exempt. As a result of the amendment, contracts worth up to \$35,000 will get the benefit of the exemption.

Schedule 1.2 deals with hiring arrangements and with loan security refinancing.

Schedule 1.2 [1] inserts a definition of *equipment financing arrangement* into section 74D of the Act, and **Schedule 1.1 [6]** and **[7]** amend section 74F so as to provide that the duty on hiring arrangements (normally 1.5 per cent) is reduced to 0.75 per cent in the case of equipment financing arrangements (as defined in section 74D).

Schedule 1.2 [11] repeals sections 84CAA and 84CAB and replaces them with a new section 84CAA, which provides for a general exemption from duty on a mortgage or other loan security document the object of which is merely to refinance a loan. The exemption applies so long as the amount, or the total of amounts, financed under the new loan security does not exceed the amount financed under the original loan.

The other items in **Schedule 1.2** make consequential amendments.

Schedule 1.3 deals with the sale of shares on behalf of the Commonwealth Government.

Schedule 1.3 [1] inserts a definition of an *IR*. An IR, or “instalment receipt”, is a document (of the kind now being issued in connection with the sale of shares in the Commonwealth Bank) issued by a trustee in connection with a Commonwealth Government share sale, that conveys a beneficial interest in shares quoted on the stock exchange.

Schedule 1.3 [2] includes an IR in the definition of *marketable security*. As a consequence, duty is payable on IRs in the same way as on shares.

Schedule 1.4 amends the Act so as to include miscellaneous provisions prescribing matters that are currently prescribed by regulation under the Act and (in the case of **Schedule 1.4 [28]**) to make a consequential amendment.

Schedule 2 amends section 34 of the *Debits Tax Act 1990* so as to fix the rate of interest payable on overdue taxes under that Act at 20% per annum (the figure currently prescribed by regulation under the Act).

Schedule 3 contains amendments to the *Business Franchise Licences (Tobacco) Act 1987*.

Schedule 3 [1] and **[2]** amend section 36 of the Act so as to expand the grounds on which the Chief Commissioner for Business Franchise Licences (Tobacco) may decline to authorise the granting of a licence under the Act. **Schedule 3 [4]** and **[7]** make consequential amendments.

Schedule 3 [3] inserts a new section 36A which enables the Chief Commissioner to impose conditions on a licence under the Act. It is an offence to contravene any of those conditions.

Schedule 3 [6] amends section 50 of the Act to allow the Chief Commissioner to suspend the licence of a person who the Chief Commissioner believes has contravened a licence condition. Following the suspension, the licensee has 14 days to show cause why the licence should not be cancelled, and thereafter the Chief Commissioner, taking into account any representations made by the licensee, may reinstate or cancel the licence. **Schedule 3 [5]** makes a consequential amendment.

Schedule 3 [8] amends section 51 of the Act to provide for an appeal to the District Court against the cancellation of a licence under proposed section 50 (4) of the Act.

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Schedule 3 [9] amends section 57 of the Act so as to enable the Chief Commissioner to require an applicant for a licence or any other person to furnish such information as the Chief Commissioner may reasonably require in order to determine whether or not to refuse to authorise the granting of a licence and, if necessary, to require the applicant or other person to appear and give evidence.



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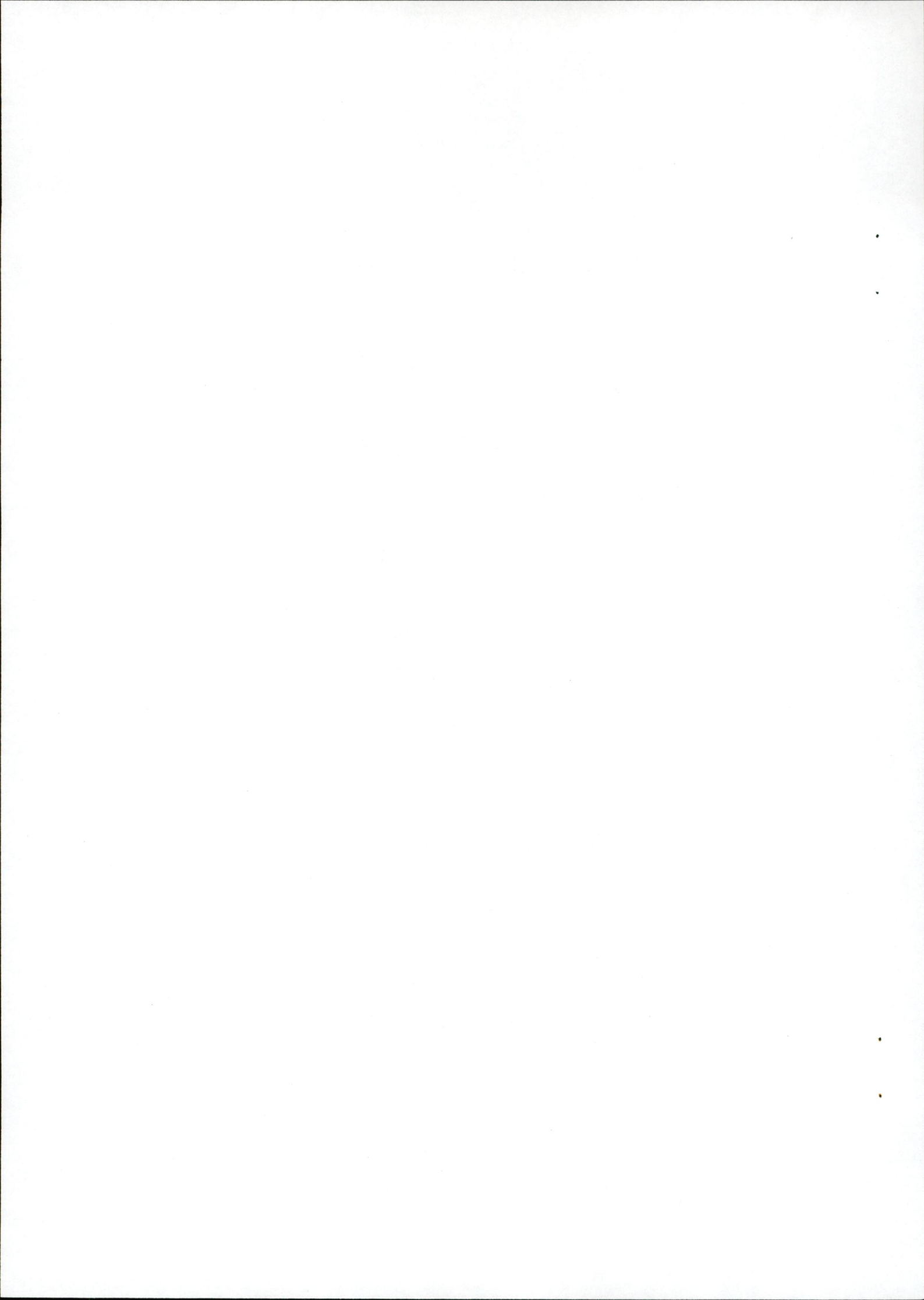
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State Revenue Legislation Amendment Bill 1996

No. , 1996

A Bill for

An Act to amend the *Stamp Duties Act 1920* with respect to an exemption from loan security duty and with respect to duty payable on share sales on behalf of the Commonwealth and other matters; to amend the *Debits Tax Act 1990* with respect to penalty interest payable on unpaid debits tax; to amend the *Business Franchise Licences (Tobacco) Act 1987* to permit cancellation and suspension of licences under that Act and with respect to the conditions attached to such licences; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue Legislation Amendment Act 1996*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsections (2) and (3). 5
- (2) Schedule 1.2 [10] and [11] are taken to have commenced on 1 June 1996.
- (3) Schedule 1.4 [22] is taken to have commenced on 14 January 1994. 10

3 Amendment of Stamp Duties Act 1920 No 47

The *Stamp Duties Act 1920* is amended as set out in Schedule 1.

4 Amendment of Debits Tax Act 1990 No 112

The *Debits Tax Act 1990* is amended as set out in Schedule 2.

5 Amendment of Business Franchise Licences (Tobacco) Act 1987 No 93 15

The *Business Franchise Licences (Tobacco) Act 1987* is amended as set out in Schedule 3.

Schedule 1 Amendment of Stamp Duties Act 1920

(Section 3)

1.1 Amendment relating to consumer credit contracts

Section 84EB Exemption of certain loan securities from duty

Omit paragraph (b) of the definition of *regulated contract* in section 84EB (1). 5

Insert instead:

- (b) a contract that would be a regulated contract referred to in paragraph (a):
 - (i) if section 18 (1) of that Act had not been enacted, and 10
 - (ii) if the amount of \$35,000 were prescribed for the purposes of section 5 (4) of that Act.

1.2 Amendments relating to hiring arrangements and loan security refinancing 15

[1] Section 74D Definitions

Insert in alphabetical order in section 74D (1):

Equipment financing arrangement means an arrangement entered into on or after 1 October 1996 under a hire purchase agreement or lease of goods, being an agreement or lease for a term of not less than 9 months. 20

[2] Section 74D (1), definition of "Hire purchase agreement"

Omit ", subject to subsections (2) and (3),".

[3] Section 74D (1), definition of "Hiring arrangement" 25

Insert "entered into before 1 October 1996" after "agreement" in paragraph (i).

[4] Section 74D (1), definition of "Hiring arrangement"

Insert at the end of the definition:

, or

- (vii) an arrangement under a credit contract within the meaning of the *Consumer Credit (New South Wales) Code*, or 5
- (viii) an arrangement prescribed by the regulations.

[5] Section 74D (2) and (3)

Omit the subsections. Insert instead: 10

(2) For the purposes of this section:

- (a) a hire purchase agreement entered into before 1 October 1996 under which goods are to be supplied or delivered on or after that date is taken to be entered into on the date on which the goods are to be supplied or delivered, and 15
- (b) an agreement entered into on or after 1 October 1996 for the purpose of refinancing an arrangement entered into before 1 October 1996 (being an arrangement that would have been an equipment financing arrangement if it had been entered into on or after 1 October 1996) is not an equipment financing arrangement. 20

[6] Section 74F Payment of duty on hiring arrangements by return

Omit "at the rate of 1½ per cent of" from section 74F (7) (b). 25
Insert instead "at the prescribed rate in respect of".

[7] Section 74F (7)

Insert at the end of the subsection:

The prescribed rate for the purposes of paragraph (b) is 0.75 per cent in relation to amounts received under an equipment financing arrangement and 1.5 per cent in any other case. 30

[8] Section 74F (7A)

Insert “(other than equipment financing arrangements)” after “hiring arrangements”.

[9] Section 74I

Insert after section 74H:

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74I Hire purchase agreements dutiable only under this Division

No duty is chargeable under this Act in respect of a hire purchase agreement except under this Division.

[10] Section 84 Limited and unlimited loan securities

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Omit section 84 (3AA).

[11] Sections 84CAA, 84CAB

Omit the sections. Insert instead:

84CAA Refinancing of loans

- (1) For the purpose of this section, a loan security is a *refinancing loan security* if it secures a balance outstanding under an existing loan security (the *previous loan security*) in the following circumstances: 15
- (a) the borrower under the loan security is the same as under the previous loan security, 20
 - (b) the security or securities for the advance made under the loan security are the same as for the advance made under the previous loan security.
- (2) No duty is chargeable in respect of a refinancing loan security unless the amount secured by it exceeds the maximum amount secured by the previous loan security. 25

- (3) If additional advances are made under a refinancing loan security, duty is not chargeable in respect of the additional advance or advances until the total amount secured exceeds the maximum amount secured by the previous loan security. 5
- (4) Duty on the amount by which the advance under a refinancing loan security exceeds the maximum amount secured under the previous loan security is payable at the rate of \$4 per \$1,000 or remaining part of \$1,000.
- (5) This section has effect in relation to refinancing loan securities dated on or after 1 June 1996. 10

1.3 Amendments relating to Commonwealth share sales

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

IR means any interest, issued by a trustee in connection with the disposal by the Commonwealth of Australia of shares, that provides beneficial ownership in respect of shares that are quoted on the market operated by Australian Stock Exchange Limited. 15

[2] Section 3 (1), definition of Marketable security 20

Insert "or IR" after "CUFS" in paragraph (c).

1.4 Miscellaneous amendments

[1] Section 12A

Insert after section 12:

12A Use of adhesive stamps 25

The following instruments may be stamped with adhesive stamps:

- (a) agreements under hand,
- (b) transfers of shares (or rights to shares) of any corporation listed on the Australian Stock 30

-
- Exchange Limited, where the transfer is effected pursuant to a sale of the shares (or rights to shares) for full consideration in money or money's worth,
- (c) transfers of units in any unit trust scheme listed on the Australian Stock Exchange Limited, where the transfer is effected pursuant to a sale of the units for full consideration in money or money's worth, 5
 - (d) leases in respect of greyhounds,
 - (e) leases in respect of racing or trotting horses,
 - (f) duplicates or counterparts of instruments that may themselves be stamped with adhesive stamps. 10

[2] Section 44 Transactions to which this Division applies

Omit section 44 (3). Insert instead:

- (3) This Division does not apply to:
 - (a) an SCH-regulated transfer within the meaning of section 9 of the *Corporations Law*, or 15
 - (b) a transaction that (by reason of the issue, surrender, exchange, transfer or other disposition of American Depositary Shares or of American Depositary Receipts that relate to American Depositary Shares) causes or results in a change in the beneficial ownership of an estate or interest in shares, or of rights to shares, in a corporation incorporated in New South Wales or a company incorporated outside Australia that has a register in New South Wales, or 20
 - (c) a transaction, or any property, prescribed by the regulations for the purposes of this subsection or that belongs to a class of transactions or property so prescribed. 30

[3] Section 84FA Charging of duty on issue etc of mortgage-backed securities

Insert in alphabetical order in section 84FA (1):

bank means a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth or a bank constituted under a law of a State or Territory. 5

prescribed property means assets of the kind specified in paragraph (b) (i)–(viii) of the definition of *pool of mortgages*, or prescribed under paragraph (b) (ix) of that definition. 10

[4] Section 84FA (1), definition of “mortgage-backed security”

Omit paragraph (c). Insert instead:

- (c) any of the following instruments or property:
 - (i) an instrument or property creating, conferring or comprising a right or interest (whether described as a unit, bond or otherwise) of or on a beneficiary in a scheme under which any profit or income in which the beneficiaries participate arises from the acquisition, holding, management or disposal of prescribed property, or any instrument that evidences such a right or interest, 15 20
 - (ii) a corporate debt security or other debt security the payments under which by the corporation (including a corporate trustee), company or society that issues or makes the instrument are derived substantially from the income or receipts of prescribed property, 25 30
 - (iii) an instrument, or any property, prescribed by the regulations to be a mortgage-backed security for the purposes of this definition or that belongs to a class of instruments or property so prescribed, or 35

[5] Section 84FA (1), definition of "pool of mortgages"

Omit "assets specified in subparagraph (ii), (iii) or (iv)" from paragraph (b).

Insert instead "assets specified in any of subparagraphs (ii)–(viii) or in assets prescribed under subparagraph (ix)".

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[6] Section 84FA (1), definition of "pool of mortgages"

Omit paragraph (b) (iv). Insert instead:

(iv) notes or other securities of the Commonwealth of Australia or the Government of New South Wales or the Government or Administration of any other State or any Territory of the Commonwealth, 10

(v) deposits with, or the acquisition of certificates of deposits or any other security issued by, a bank or a building society (whether expressed in Australian currency or otherwise), 15

(vi) bills of exchange, promissory notes or other negotiable instruments accepted, drawn or endorsed by a bank (whether expressed in Australian currency or otherwise), 20

(vii) a guaranteed investment contract (expressed in Australian currency) of a type approved by the Chief Commissioner, 25

(viii) mortgage-backed securities, mortgage-backed certificates within the meaning of Part 1B of the *Trustee Act 1958* of Victoria and marketable securities that are secondary mortgage market securities under section 29 (1) of the *Mortgages (Secondary Market) Act 1984* of Queensland, 30

(ix) assets prescribed by the regulations for the purposes of this subparagraph or belonging to a class or description so prescribed. 35

[7] Section 97A Definitions and application of Subdivision 3

Omit "a prescribed stock exchange" wherever occurring in the definitions of *Broker* and *Odd lot specialist* in subsection (1).
Insert instead "Australian Stock Exchange Limited".

[8] Section 97A, definition of "prescribed stock exchange" 5

Omit the definition.

[9] Section 97E Duty payable in relation to relevant transactions

Omit section 97E (6). Insert instead:

(6) In the case of a transfer of shares to or by a prescribed corporation that is exempted under paragraph (f) of the exemptions appearing under the heading "TRANSFER OF SHARES" in the Second Schedule, a prescribed corporation that, but for the exemption, would be liable to pay the duty must: 10

(a) endorse the instrument with the following words: 15

NO NEW SOUTH WALES STAMP DUTY IS PAYABLE

See paragraph (f) of the exemptions appearing under the heading "TRANSFER OF SHARES" in the Second Schedule to the *Stamp Duties Act 1920* 20

(b) affix its stamp to the instrument and note on the instrument the date of the endorsement.

[10] Section 98 Definitions

Insert in alphabetical order in section 98 (1):

charitable organisation means: 25

(a) a religious or public benevolent institution, or a public hospital, or

(b) a hospital that is carried on by a society or association otherwise than for the purpose of profit or gain to the individual members of the society or association, or 30

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- (c) a school or college that is carried on by a body corporate, society or association otherwise than for the purpose of profit or gain to the individual members of the body corporate, society or association, and that provides education at or below, but not above, the secondary level of education, or 5
- (d) a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose, or 10
- (e) an organisation that:
- (i) was, immediately before the repeal of the *Charitable Collections Act 1934*, a charity within the meaning of that Act and registered or exempted from registration under that Act, and 15
 - (ii) has not, since the repeal of that Act, altered its constitution in so far as its constitution relates to its charitable objects, or
- (f) a society or institution (other than a school or college or a statutory body): 20
- (i) that, in the opinion of the Chief Commissioner, is a charitable society or institution, and
 - (ii) that is for the time being approved by the Chief Commissioner for the purposes of this paragraph, or 25
- (g) a statutory body that:
- (i) in the opinion of the Minister, is a charitable statutory body, and 30
 - (ii) is for the time being approved by the Minister for the purposes of this paragraph.

corresponding Act means any of the following:

- (a) the *Financial Institutions Duty Act 1982* of Victoria, 35

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- (b) the *Financial Institutions Duty Act 1983* of South Australia,
- (c) the *Financial Institutions Duty Act 1983* of Western Australia,
- (d) the *Financial Institutions Duty Act 1986* of Tasmania, 5
- (e) the *Financial Institutions Duty Act 1987* of the Australian Capital Territory,
- (f) the *Financial Institutions Duty Act 1989* of the Northern Territory. 10

mortgage has the same meaning as in Division 21A.

mortgage-backed security has the same meaning as in Division 21A.

[11] Section 98 (1), definition of "short term dealing"

Insert "mortgage-backed securities," before "bills of exchange" in paragraph (c). 15

[12] Section 98 (2) (b) (vi)

Omit the subparagraph. Insert instead:

- (vi) a mortgage-backed security,

[13] Section 98A Receipts to which this Division does not apply 20

Omit "the Association of Central Credit Unions Limited" from section 98A (f).

Insert instead "Credit Union Financial Services (Australia) Limited,".

[14] Section 98A (ic), (ica)

Omit section 98A (ic). Insert instead:

- (ic) a receipt by a financial institution of:
 - (i) a payment of farm household support made under the *Farm Household Support Act 1992* of the Commonwealth, or 5
 - (ii) payment of a pension under the *Veterans' Entitlements Act 1986* of the Commonwealth or of a pension, benefit or allowance under the *Social Security Act 1991* of the Commonwealth, or 10
- (ica) a receipt by a bank that is the consequence of a loan repayment made in respect of a Defence Service Homes Corporation loan, or

[15] Section 98A (j) and (k)

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Omit the paragraphs. Insert instead:

- (j) a receipt by or to the credit of an account kept on behalf of a person with respect to the person's business of being a clearing house for, or of enabling or effecting settlements between, 2 or more persons, being: 20
 - (i) building societies, or
 - (ii) dealers within the meaning of section 97A (1), or
 - (iii) futures brokers, or 25
 - (iv) wool buyers or sellers, or
- (k) in relation to a dealer:
 - (i) a receipt of money by the dealer as a consequence of the transfer of the money from a trust account of the dealer to another account of the dealer, where the receipt of the money to the trust account of the dealer is included in a receipts return made out by the dealer in accordance with section 98J (1), or 30 35

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- (ii) a receipt of money by the dealer as a consequence of the transfer of the money to a trust account of the dealer from another account of the dealer, where the receipt of the money to the other account of the dealer is included in a receipts return made out by the dealer in accordance with section 98J (1), or 5
- (l) a receipt to the credit of a clients' segregated account (within the meaning of the *Corporations Law*) of a futures broker (within the meaning of that Law) with a bank, or 10
- (m) a receipt by a person (other than a bank) for the credit of an account kept on behalf of:
 - (i) a Department of the Government of the Commonwealth or of a State or Territory (other than a Department the sole or principal function of which is to carry on an activity in the nature of a business, whether or not for profit), or 15
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 - (ii) an authority of the Commonwealth or of a State or Territory (other than an authority the sole or principal function of which is to carry on an activity in the nature of a business, whether or not for profit), or 25
 - (iii) a local government council (other than a council the sole or principal function of which is to carry on an activity in the nature of a business, whether or not for profit),
not being an account kept in relation to a transaction or transactions entered into by or on behalf of the Department, authority or council in connection with the carrying on of an activity in the nature of a business, whether or not for profit, or 30
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- (n) a receipt of a foreign exchange dealer, being a receipt that forms part of a transaction entered into by the dealer under the general authority granted

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- to the dealer, but not including, if the dealer is a bank, a receipt comprising the crediting of an account by the bank of a customer of the bank with the whole or any part of the proceeds of any such transaction, not being: 5
- (i) a receipt comprising the crediting of an exempt account, or
 - (ii) a receipt referred to in paragraph (z), or
- (o) a receipt by a bank that is a registered person, being a receipt that is the consequence of a customary general clearance: 10
- (i) of the kind referred to in section 64 of the *Banking Act 1959* of the Commonwealth, or
 - (ii) effected under an agreement between 2 or more banks for the settlement of balances arising between them, being an agreement contemplated by the terms and conditions of any agreement between banks relating to customary general clearance, or 15
 - (iii) effected under an agreement between a bank and a registered person (other than a bank that is a registered person) for the settlement of balances arising between them, being an agreement contemplated by the terms and conditions of any agreement between banks and registered persons (other than banks) relating to customary general clearance, or 20
- (p) a receipt received outside New South Wales by a New South Wales broker, being a receipt in respect of which a liability to pay duty under a corresponding Act exists, or 30
- (q) a receipt received outside New South Wales by a financial institution constituting a receipt referred to in section 98 (3) (c) (ii), being a receipt in respect of which a liability to pay duty under a corresponding Act exists, or 35

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- (r) a receipt by a financial institution, being a receipt that comprises the crediting of an account in New South Wales for the purpose only of recording, in accordance with the operation of a system of centralised data processing, a receipt of money first received by the financial institution outside New South Wales that is not a receipt referred to in section 98 (3) (c) (ii), or 5
- (s) a receipt by a financial institution that is the consequence of a person becoming the holder of shares in the capital of the financial institution, if: 10
 - (i) the financial institution is a company that has been formed by the registration of a building society as a company under the *Corporations Law*, and 15
 - (ii) the person has become the holder of the shares by reason only of being the holder of shares in the society immediately before its registration as the company, or
- (t) a receipt of money by a financial institution from or on behalf of a person for whose benefit the financial institution has drawn, accepted or endorsed a bill of exchange, being a receipt to satisfy the amount of the financial institution's engagement on the bill of exchange, if: 20
 - (i) the term of the bill of exchange is not more than 185 days, and 25
 - (ii) the face or nominal value of the bill of exchange is not less than \$50,000, or
- (u) a receipt by a financial institution (not being a fee, brokerage, commission or other charge made by the financial institution) from the initial issue or making of a mortgage-backed security, or 30
- (v) a receipt by a financial institution in respect of a payment to it by another financial institution under a mortgage or a mortgage-backed security, if the payment represents a receipt of the other financial institution: 35

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- (i) that is received under the mortgage or a mortgage in relation to which the mortgage-backed security has been issued, and
 - (ii) in respect of which duty under this Division has been paid or is liable to be paid by the other financial institution, or 5
 - (w) a receipt by a building society that is the consequence of:
 - (i) the conversion of withdrawable share capital of the society to a deposit with the society, or 10
 - (ii) the conversion of withdrawable share capital of the society to fixed share capital of the society, or 15
 - (iii) a redesignation in connection with or as a consequence of a transfer of engagements between, or the merger of, 2 or more building societies, or
 - (iv) the transfer between accounts of a society in connection with or as a consequence of any such transfer or merger, or 20
 - (x) a receipt by a building society or credit union (a **recognised financial institution**) that is the consequence of a customary general clearance: 25
 - (i) effected under an agreement between 2 or more recognised financial institutions (whether or not a bank that is a registered person is also party to that agreement) for the settlement of balances arising between them, being an agreement contemplated by the terms and conditions of any agreement between recognised financial institutions relating to customary general clearance, or 30

(ii) effected under an agreement between a recognised financial institution and a registered person (other than a recognised financial institution) for the settlement of balances arising between them, being an agreement contemplated by the terms and conditions of any agreement between recognised financial institutions and registered persons (other than recognised financial institutions) relating to customary general clearance, or 5

(y) a receipt by or to the credit of an account that is kept on behalf of, and to which payments are made only in respect of transactions wholly and exclusively in the furtherance of the objects of: 15

(i) the New South Wales Aboriginal Land Council, or

(ii) a Regional Aboriginal Land Council, or

(iii) a Local Aboriginal Land Council, or

(z) a receipt by or on behalf of a charitable organisation, being a receipt that is applied wholly and exclusively in the furtherance of the objects of the organisation. 20

[16] Section 98A (2)–(4)

Insert at the end of section 98A: 25

(2) For the purposes of subsection (1) (d) (ii), the prescribed circumstances, in relation to a receipt, are circumstances where the dealer, as a term or condition of acting as agent, has not been satisfied that, or has not received a certificate from the principal in or to the effect that, the receipt has been or will be paid into: 30

(a) if the principal is a registered person—an account kept by the principal, or

(b) whether or not the principal is a registered person—an account kept by a bank that is a registered person.

(3) This Division does not apply to or in respect of a receipt prescribed by the regulations for the purposes of this section, either generally or in relation to a specified person or class of persons. 5

(4) In this section:

foreign exchange dealer means a designated person in respect of whom a general authority is in force. 10

general authority means a general authority to engage in foreign currency transactions granted and issued under Regulation 38A of the *Banking (Foreign Exchange) Regulations* of the Commonwealth to a person named in the authority. 15

merger and *transfer of engagements* have the same meanings as in the *Financial Institutions (NSW) Code*.

redesignation means the process by which an account kept by a society on behalf of a person ceases to be kept by that society and is instead kept by another society on behalf of the same person and on the same terms and conditions as the account that ceased to be so kept. 20

[17] Section 98LA Liability to lodge or deposit money

Omit section 98LA (3) (b). Insert instead:

(b) except in so far as the regulations may otherwise provide, a receipt of a charitable organisation, being a receipt that may be applied wholly and exclusively in the furtherance of the objects of the organisation, 25

[18] Section 98LA (3) (e) and (f)

Omit the paragraphs. Insert instead:

- (e) a receipt by a person of the proceeds of an amount deposited or invested in that person's name with a registered person, or with a short term dealer, or 5
- (f) a receipt prescribed by the regulations for the purposes of this subsection, either generally or in relation to a specified person.

[19] Section 98U Exempt accounts

Omit section 98U (1) (a). Insert instead: 10

- (a) an account with a bank that is a registered person, being an account of a registered person into which only receipts of that registered person are deposited, or

[20] Section 98U (1) (d) (vii) and (viii) 15

Omit section 98U (1) (d) (vii). Insert instead:

- (vii) livestock agents, or
- (viii) persons prescribed for the purposes of this paragraph, or

[21] Section 98U (1) (h)–(o) 20

Omit section 98U (1) (h). Insert instead:

- (h) an account of Flemington Markets Commercial Services Co-operative Limited with a bank that is a registered person, to the credit of which there is paid only receipts by the Co-operative of deposits: 25
 - (i) that are lodged with the Co-operative in respect of farm produce (within the meaning of the *Farm Produce Act 1983*) sold at Flemington Markets, and

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- (ii) that are to be paid to farm produce sellers or producers (within the meaning of that Act), or
 - (i) an account with a bank that is a registered person, being an account of an insurer (including any licensed insurer or former licensed insurer within the meaning of the *Workers Compensation Act 1987*), in which the insurer deposits only receipts arising directly or indirectly from the transfer to the insurer of the assets or the proceeds of the assets of another insurer, if the transfer is made under the *Workers Compensation Act 1987* and at the direction of the WorkCover Authority, or 5
10
 - (j) an account of Australian Stock Exchange Limited with a bank that is a registered person, being an account in which Australian Stock Exchange Limited deposits only: 15
 - (i) receipts by Australian Stock Exchange Limited of deposits lodged with it by its member organisations out of money in trust accounts of those organisations under Part 7.8 of the *Corporations Law*, and 20
 - (ii) receipts by Australian Stock Exchange Limited of repayments of such deposits invested by it under Part 7.8 of the *Corporations Law*, and 25
 - (iii) receipts by Australian Stock Exchange Limited by way of interest in respect of such deposits invested by it under Part 7.8 of the *Corporations Law*, or 30
 - (k) a clearing or settlement account kept by Combined Financial Processing Pty Ltd with a bank that is a registered person (being an account used solely for the clearing of direct entry transactions between the Reserve Bank of Australia and one or more credit unions), or 35

- (l) a clearing or settlement account kept with a bank that is a registered person by an SCH participant (as defined in section 9 of the *Corporations Law*) who is not a registered person, being an account:
 - (i) that is used solely for the purpose of depositing receipts from SCH-regulated transfers (as defined in section 9 of the *Corporations Law*) or depositing funds or transferring funds from another account for the purpose of meeting the SCH participant's settlement obligations, and 5
 - (ii) from which all funds are transferred on a daily basis to other accounts, or 10
- (m) an account with a bank that is a registered person, being an account that is kept by either the Sydney Organising Committee for the Olympic Games or by Sydney Paralympic Organising Committee Limited, or 15
- (n) an account with a bank that is a registered person, being an account: 20
 - (i) that is kept by either the Australian Olympic Committee Incorporated or the New South Wales Olympic Council Incorporated, and
 - (ii) that is used solely for the purpose of receipts in connection with the year 2000 Olympic Games (but not in connection with the administrative or operating costs of either account-holder), or 25
- (o) an account prescribed for the purposes of this paragraph, 30

[22] Section 124C Payment of duty assessed and calculation of refund by Supreme Court

Insert after section 124C (3):

- (4) For the purposes of this section, the prescribed rate of interest is: 35
 - (a) in relation to refunds made before 14 January 1994—20%, or

-
- (b) in relation to refunds made on or after that date—the rate for the time being prescribed under section 95 (1) of the *Supreme Court Act 1970* for payment of interest on a judgment debt.
- (5) An amount of interest calculated under subsection (4) that is not a multiple of 1 cent is to be increased or decreased, as the case requires, to the nearest multiple of 1 cent. An amount that is not a multiple of 1 cent but is a multiple of 0.5 cent is to be increased by 0.5 cent. 5
- [23] Section 129D Deferred payments for certain stamped instruments** 10
- Omit “in such circumstances as may be prescribed” from section 129D (1).
Insert instead “in the circumstances described in subsection (7)”.
- [24] Section 129D** 15
- Insert after section 129D (6):
- (7) For the purposes of subsection (1), the relevant circumstances are:
- (a) circumstances in which (in the course of an industrial dispute involving persons engaged in the administration of this Act) an instrument liable to duty under the Act is not stamped by reason of the refusal of those persons to exercise functions relating to the administration of this Act or of any other law, and 20
25
- (b) such other circumstances as the regulations may prescribe.
- (8) For the purposes of subsection (2), the following persons are prescribed persons:
- (a) a person who is primarily liable to pay duty in respect of an instrument, 30

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Schedule 1 Amendment of Stamp Duties Act 1920

- (b) a person who is authorised (whether by a person who is primarily liable to pay duty in respect of an instrument or by another person) to arrange for the stamping of the instrument on behalf of a person who is primarily liable. 5

[25] Second Schedule Stamp duties and exemptions

Omit paragraph (f) (ii) (D) of the exemptions appearing under the heading "TRANSFER OF SHARES".

Insert instead:

- (D) any of the following: 10
 - (1) a nominee corporation (being a corporation whose principal business is the business of holding shares as a trustee or nominee),
 - (2) a corporation, person or class of persons prescribed by the regulations, 15

[26] Second Schedule

Omit paragraph (f) (iv) (F) of the exemptions appearing under the heading "TRANSFER OF SHARES".

Insert instead:

- (F) any of the following: 20
 - (1) a nominee corporation (being a corporation whose principal business is the business of holding shares as a trustee or nominee),
 - (2) a corporation, person or class of persons prescribed by the regulations, 25

[27] Second Schedule

Omit paragraph (g) of the exemptions appearing under the heading "TRANSFER OF SHARES".

Insert instead:

- (g) A transfer, to or by any of the following nominee companies, of a marketable security or right in respect of shares: 5
 - (i) a nominee company that holds marketable securities solely for the purpose of facilitating marketable security transaction settlements by a broker as defined in section 97A, 10
 - (ii) SECH Nominees Pty Ltd,
 - (iii) CHESSE Depositary Nominees Pty Ltd,
 - (iv) a nominee company prescribed by the regulations. 15

[28] Second Schedule

Omit item (43) under the heading "GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART 3".

Schedule 2 Amendment of Debits Tax Act 1990

(Section 4)

[1] Section 34 Penalty for unpaid tax

Omit "the prescribed rate".

Insert instead "the rate of 20 per cent per annum".

5

[2] Section 34 (6)

Insert at the end of section 34:

- (6) An amount of interest calculated under subsection (1) that is not a multiple of 1 cent is to be increased or decreased, as the case requires, to the nearest multiple of 1 cent. An amount that is not a multiple of 1 cent but is a multiple of 0.5 cent is to be increased by 0.5 cent.

10

Schedule 3 Amendment of Business Franchise Licences (Tobacco) Act 1987

(Section 5)

[1] Section 36 Grant of licences

Omit "Except as provided by subsection (2), the Chief Commissioner shall" from section 36 (1). 5
Insert instead "The Chief Commissioner may".

[2] Section 36 (2AA), (2AB)

Insert before section 36 (2A):

(2AA) The Chief Commissioner may refuse to authorise the granting of a licence if the Chief Commissioner is satisfied that: 10

(a) the issue of the licence would be contrary to the public interest, or

(b) the licensee, having held a licence previously, has contravened one or more of the conditions of that licence. 15

(2AB) The Chief Commissioner may refuse to authorise the granting of a licence to a person if in respect of a previous or current licence period the person's licence has been suspended or cancelled. 20

[3] Section 36A

Insert after section 36:

36A Conditions of licences

(1) A licence is subject to such conditions as the Chief Commissioner thinks fit to impose. 25

State Revenue Legislation Amendment Bill 1996

Schedule 3 Amendment of Business Franchise Licences (Tobacco) Act 1987

- (2) The conditions that may be imposed by the Chief Commissioner include conditions for the purposes of:
- (a) regulating the distribution, sale and purchase of tobacco by a licensee, and
 - (b) preventing avoidance by a licensee or any other person of the operation of this Act or the regulations. 5
- (3) A licensee must comply with any conditions to which the licence is subject.
- Maximum penalty: 100 penalty units. 10

[4] Section 40 Grant of further licence

Insert “, unless notified under section 36 (2A) to the contrary” after “licence” where lastly occurring in section 40 (1) (b).

[5] Section 40 (5)

Insert “, suspension” after “cancellation”. 15

[6] Section 50 Suspension and cancellation of licences

Insert at the end of the section:

- (2) If the Chief Commissioner is satisfied that a licensee has contravened a condition to which the licence is subject, the Chief Commissioner may, by notice served on the licensee, suspend the licence as from the date on which the notice is served (or such later date as may be specified in the notice). 20
- (3) Any such notice suspending a licence is to invite the licensee, within 14 days of the date on which the suspension takes effect, to make submissions as to why the licence should not be cancelled by the Chief Commissioner. 25

-
- (4) After taking into consideration any submissions made by or on behalf of the licensee, the Chief Commissioner may, by notice served on the licensee:
- (a) lift the suspension and reinstate the licence, or
 - (b) cancel the licence on the grounds that the licensee has contravened a condition of the licence. 5

Any such reinstatement or cancellation takes effect on the date on which the notice is served (or such later date as may be specified in the notice).

- (5) A person whose licence is suspended is for all purposes (including the construction of any reference to a licensee in section 41) to be regarded as having ceased to be a licensee for the duration of the suspension. 10

[7] Section 51 Appeals against licensing decisions

Insert "(including an application taken by virtue of section 40 (1) (a) to have been made)" after "licence" in section 51 (1). 15

[8] Section 51 (2A) and (2B)

Insert after section 51 (2):

(2A) If a licence is cancelled under section 50 (4), the licensee may appeal to the District Court. The Court may determine any such appeal, and may direct the Chief Commissioner to take such action as the Court thinks appropriate to dispose of the matter. 20

(2B) If, while an appeal under subsection (2A) is pending, the term of the licence concerned has expired, the appeal is to be treated as an appeal against a refusal of the Chief Commissioner to authorise the granting of a further licence for the next licence period. 25

[9] Section 57 Power to require attendance and evidence

Insert after section 57 (1) (e):

, or

- (f) inquiring into any matter the Chief Commissioner considers relevant to the exercise by the Chief Commissioner of any power, authority or discretion under section 36, 5



New South Wales

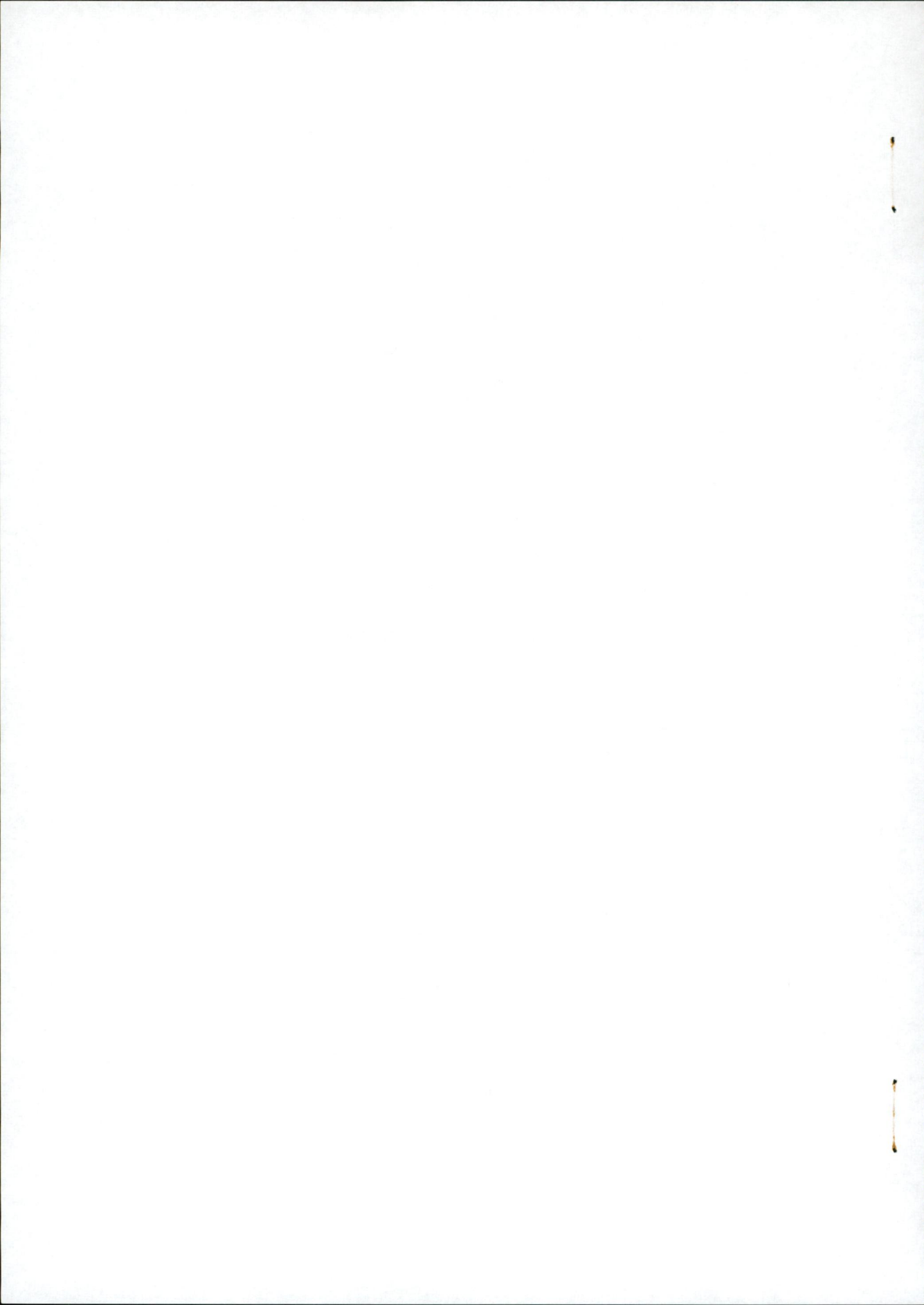
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New South Wales

State Revenue Legislation Amendment Act 1996 No 34

Act No 34, 1996

An Act to amend the *Stamp Duties Act 1920* with respect to an exemption from loan security duty and with respect to duty payable on share sales on behalf of the Commonwealth and other matters; to amend the *Debits Tax Act 1990* with respect to penalty interest payable on unpaid debits tax; to amend the *Business Franchise Licences (Tobacco) Act 1987* to permit cancellation and suspension of licences under that Act and with respect to the conditions attached to such licences; and for other purposes. [Assented to 24 June 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue Legislation Amendment Act 1996*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsections (2) and (3).
- (2) Schedule 1.2 [10] and [11] are taken to have commenced on 1 June 1996.
- (3) Schedule 1.4 [22] is taken to have commenced on 14 January 1994.

3 Amendment of Stamp Duties Act 1920 No 47

The *Stamp Duties Act 1920* is amended as set out in Schedule 1.

4 Amendment of Debits Tax Act 1990 No 112

The *Debits Tax Act 1990* is amended as set out in Schedule 2.

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

The *Business Franchise Licences (Tobacco) Act 1987* is amended as set out in Schedule 3.

Schedule 1 Amendment of Stamp Duties Act 1920

(Section 3)

1.1 Amendment relating to consumer credit contracts

Section 84EB Exemption of certain loan securities from duty

Omit paragraph (b) of the definition of *regulated contract* in section 84EB (1).

Insert instead:

- (b) a contract that would be a regulated contract referred to in paragraph (a):
 - (i) if section 18 (1) of that Act had not been enacted, and
 - (ii) if the amount of \$35,000 were prescribed for the purposes of section 5 (4) of that Act.

1.2 Amendments relating to hiring arrangements and loan security refinancing

[1] Section 74D Definitions

Insert in alphabetical order in section 74D (1):

Equipment financing arrangement means an arrangement entered into on or after 1 October 1996 under a hire purchase agreement or lease of goods, being an agreement or lease for a term of not less than 9 months.

[2] Section 74D (1), definition of "Hire purchase agreement"

Omit ", subject to subsections (2) and (3),".

[3] Section 74D (1), definition of "Hiring arrangement"

Insert "entered into before 1 October 1996" after "agreement" in paragraph (i).

[4] Section 74D (1), definition of "Hiring arrangement"

Insert at the end of the definition:

, or

(vii) an arrangement under a credit contract within the meaning of the *Consumer Credit (New South Wales) Code*, or

(viii) an arrangement prescribed by the regulations.

[5] Section 74D (2) and (3)

Omit the subsections. Insert instead:

(2) For the purposes of this section:

(a) a hire purchase agreement entered into before 1 October 1996 under which goods are to be supplied or delivered on or after that date is taken to be entered into on the date on which the goods are to be supplied or delivered, and

(b) an agreement entered into on or after 1 October 1996 for the purpose of refinancing an arrangement entered into before 1 October 1996 (being an arrangement that would have been an equipment financing arrangement if it had been entered into on or after 1 October 1996) is not an equipment financing arrangement.

[6] Section 74F Payment of duty on hiring arrangements by return

Omit "at the rate of 1½ per cent of" from section 74F (7) (b).
Insert instead "at the prescribed rate in respect of".

[7] Section 74F (7)

Insert at the end of the subsection:

The prescribed rate for the purposes of paragraph (b) is 0.75 per cent in relation to amounts received under an equipment financing arrangement and 1.5 per cent in any other case.

[8] Section 74F (7A)

Insert “(other than equipment financing arrangements)” after “hiring arrangements”.

[9] Section 74I

Insert after section 74H:

74I Hire purchase agreements dutiable only under this Division

No duty is chargeable under this Act in respect of a hire purchase agreement except under this Division.

[10] Section 84 Limited and unlimited loan securities

Omit section 84 (3AA).

[11] Sections 84CAA, 84CAB

Omit the sections. Insert instead:

84CAA Refinancing of loans

- (1) For the purpose of this section, a loan security is a *refinancing loan security* if it secures a balance outstanding under an existing loan security (the *previous loan security*) in the following circumstances:
 - (a) the borrower under the loan security is the same as under the previous loan security,
 - (b) the security or securities for the advance made under the loan security are the same as for the advance made under the previous loan security.
- (2) No duty is chargeable in respect of a refinancing loan security unless the amount secured by it exceeds the maximum amount secured by the previous loan security.

- (3) If additional advances are made under a refinancing loan security, duty is not chargeable in respect of the additional advance or advances until the total amount secured exceeds the maximum amount secured by the previous loan security.
- (4) Duty on the amount by which the advance under a refinancing loan security exceeds the maximum amount secured under the previous loan security is payable at the rate of \$4 per \$1,000 or remaining part of \$1,000.
- (5) This section has effect in relation to refinancing loan securities dated on or after 1 June 1996.

1.3 Amendments relating to Commonwealth share sales

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

IR means any interest, issued by a trustee in connection with the disposal by the Commonwealth of Australia of shares, that provides beneficial ownership in respect of shares that are quoted on the market operated by Australian Stock Exchange Limited.

[2] Section 3 (1), definition of Marketable security

Insert "or IR" after "CUFS" in paragraph (c).

1.4 Miscellaneous amendments

[1] Section 12A

Insert after section 12:

12A Use of adhesive stamps

The following instruments may be stamped with adhesive stamps:

- (a) agreements under hand,
- (b) transfers of shares (or rights to shares) of any corporation listed on the Australian Stock

Exchange Limited, where the transfer is effected pursuant to a sale of the shares (or rights to shares) for full consideration in money or money's worth,

- (c) transfers of units in any unit trust scheme listed on the Australian Stock Exchange Limited, where the transfer is effected pursuant to a sale of the units for full consideration in money or money's worth,
- (d) leases in respect of greyhounds,
- (e) leases in respect of racing or trotting horses,
- (f) duplicates or counterparts of instruments that may themselves be stamped with adhesive stamps.

[2] Section 44 Transactions to which this Division applies

Omit section 44 (3). Insert instead:

- (3) This Division does not apply to:
 - (a) an SCH-regulated transfer within the meaning of section 9 of the *Corporations Law*, or
 - (b) a transaction that (by reason of the issue, surrender, exchange, transfer or other disposition of American Depositary Shares or of American Depositary Receipts that relate to American Depositary Shares) causes or results in a change in the beneficial ownership of an estate or interest in shares, or of rights to shares, in a corporation incorporated in New South Wales or a company incorporated outside Australia that has a register in New South Wales, or
 - (c) a transaction, or any property, prescribed by the regulations for the purposes of this subsection or that belongs to a class of transactions or property so prescribed.

[3] Section 84FA Charging of duty on issue etc of mortgage-backed securities

Insert in alphabetical order in section 84FA (1):

bank means a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth or a bank constituted under a law of a State or Territory.

prescribed property means assets of the kind specified in paragraph (b) (i)–(viii) of the definition of *pool of mortgages*, or prescribed under paragraph (b) (ix) of that definition.

[4] Section 84FA (1), definition of “mortgage-backed security”

Omit paragraph (c). Insert instead:

- (c) any of the following instruments or property:
 - (i) an instrument or property creating, conferring or comprising a right or interest (whether described as a unit, bond or otherwise) of or on a beneficiary in a scheme under which any profit or income in which the beneficiaries participate arises from the acquisition, holding, management or disposal of prescribed property, or any instrument that evidences such a right or interest,
 - (ii) a corporate debt security or other debt security the payments under which by the corporation (including a corporate trustee), company or society that issues or makes the instrument are derived substantially from the income or receipts of prescribed property,
 - (iii) an instrument, or any property, prescribed by the regulations to be a mortgage-backed security for the purposes of this definition or that belongs to a class of instruments or property so prescribed, or

[5] Section 84FA (1), definition of "pool of mortgages"

Omit "assets specified in subparagraph (ii), (iii) or (iv)" from paragraph (b).

Insert instead "assets specified in any of subparagraphs (ii)–(viii) or in assets prescribed under subparagraph (ix)".

[6] Section 84FA (1), definition of "pool of mortgages"

Omit paragraph (b) (iv). Insert instead:

- (iv) notes or other securities of the Commonwealth of Australia or the Government of New South Wales or the Government or Administration of any other State or any Territory of the Commonwealth,
- (v) deposits with, or the acquisition of certificates of deposits or any other security issued by, a bank or a building society (whether expressed in Australian currency or otherwise),
- (vi) bills of exchange, promissory notes or other negotiable instruments accepted, drawn or endorsed by a bank (whether expressed in Australian currency or otherwise),
- (vii) a guaranteed investment contract (expressed in Australian currency) of a type approved by the Chief Commissioner,
- (viii) mortgage-backed securities, mortgage-backed certificates within the meaning of Part 1B of the *Trustee Act 1958* of Victoria and marketable securities that are secondary mortgage market securities under section 29 (1) of the *Mortgages (Secondary Market) Act 1984* of Queensland,
- (ix) assets prescribed by the regulations for the purposes of this subparagraph or belonging to a class or description so prescribed.

[7] Section 97A Definitions and application of Subdivision 3

Omit "a prescribed stock exchange" wherever occurring in the definitions of *Broker* and *Odd lot specialist* in subsection (1).
Insert instead "Australian Stock Exchange Limited".

[8] Section 97A, definition of "prescribed stock exchange"

Omit the definition.

[9] Section 97E Duty payable in relation to relevant transactions

Omit section 97E (6). Insert instead:

- (6) In the case of a transfer of shares to or by a prescribed corporation that is exempted under paragraph (f) of the exemptions appearing under the heading "TRANSFER OF SHARES" in the Second Schedule, a prescribed corporation that, but for the exemption, would be liable to pay the duty must:

- (a) endorse the instrument with the following words:

NO NEW SOUTH WALES STAMP DUTY IS PAYABLE

See paragraph (f) of the exemptions appearing under the heading "TRANSFER OF SHARES" in the Second Schedule to the *Stamp Duties Act 1920*

- (b) affix its stamp to the instrument and note on the instrument the date of the endorsement.

[10] Section 98 Definitions

Insert in alphabetical order in section 98 (1):

charitable organisation means:

- (a) a religious or public benevolent institution, or a public hospital, or
- (b) a hospital that is carried on by a society or association otherwise than for the purpose of profit or gain to the individual members of the society or association, or

-
- (c) a school or college that is carried on by a body corporate, society or association otherwise than for the purpose of profit or gain to the individual members of the body corporate, society or association, and that provides education at or below, but not above, the secondary level of education, or
 - (d) a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose, or
 - (e) an organisation that:
 - (i) was, immediately before the repeal of the *Charitable Collections Act 1934*, a charity within the meaning of that Act and registered or exempted from registration under that Act, and
 - (ii) has not, since the repeal of that Act, altered its constitution in so far as its constitution relates to its charitable objects, or
 - (f) a society or institution (other than a school or college or a statutory body):
 - (i) that, in the opinion of the Chief Commissioner, is a charitable society or institution, and
 - (ii) that is for the time being approved by the Chief Commissioner for the purposes of this paragraph, or
 - (g) a statutory body that:
 - (i) in the opinion of the Minister, is a charitable statutory body, and
 - (ii) is for the time being approved by the Minister for the purposes of this paragraph.

corresponding Act means any of the following:

- (a) the *Financial Institutions Duty Act 1982* of Victoria,

- (b) the *Financial Institutions Duty Act 1983* of South Australia,
- (c) the *Financial Institutions Duty Act 1983* of Western Australia,
- (d) the *Financial Institutions Duty Act 1986* of Tasmania,
- (e) the *Financial Institutions Duty Act 1987* of the Australian Capital Territory,
- (f) the *Financial Institutions Duty Act 1989* of the Northern Territory.

mortgage has the same meaning as in Division 21A.

mortgage-backed security has the same meaning as in Division 21A.

[11] Section 98 (1), definition of “short term dealing”

Insert “mortgage-backed securities,” before “bills of exchange” in paragraph (c).

[12] Section 98 (2) (b) (vi)

Omit the subparagraph. Insert instead:

- (vi) a mortgage-backed security,

[13] Section 98A Receipts to which this Division does not apply

Omit “the Association of Central Credit Unions Limited” from section 98A (f).

Insert instead “Credit Union Financial Services (Australia) Limited,”.

[14] Section 98A (ic), (ica)

Omit section 98A (ic). Insert instead:

- (ic) a receipt by a financial institution of:
 - (i) a payment of farm household support made under the *Farm Household Support Act 1992* of the Commonwealth, or
 - (ii) payment of a pension under the *Veterans' Entitlements Act 1986* of the Commonwealth or of a pension, benefit or allowance under the *Social Security Act 1991* of the Commonwealth, or
- (ica) a receipt by a bank that is the consequence of a loan repayment made in respect of a Defence Service Homes Corporation loan, or

[15] Section 98A (j) and (k)

Omit the paragraphs. Insert instead:

- (j) a receipt by or to the credit of an account kept on behalf of a person with respect to the person's business of being a clearing house for, or of enabling or effecting settlements between, 2 or more persons, being:
 - (i) building societies, or
 - (ii) dealers within the meaning of section 97A (1), or
 - (iii) futures brokers, or
 - (iv) wool buyers or sellers, or
- (k) in relation to a dealer:
 - (i) a receipt of money by the dealer as a consequence of the transfer of the money from a trust account of the dealer to another account of the dealer, where the receipt of the money to the trust account of the dealer is included in a receipts return made out by the dealer in accordance with section 98J (1), or

- (ii) a receipt of money by the dealer as a consequence of the transfer of the money to a trust account of the dealer from another account of the dealer, where the receipt of the money to the other account of the dealer is included in a receipts return made out by the dealer in accordance with section 98J (1), or
- (l) a receipt to the credit of a clients' segregated account (within the meaning of the *Corporations Law*) of a futures broker (within the meaning of that Law) with a bank, or
- (m) a receipt by a person (other than a bank) for the credit of an account kept on behalf of:
 - (i) a Department of the Government of the Commonwealth or of a State or Territory (other than a Department the sole or principal function of which is to carry on an activity in the nature of a business, whether or not for profit), or
 - (ii) an authority of the Commonwealth or of a State or Territory (other than an authority the sole or principal function of which is to carry on an activity in the nature of a business, whether or not for profit), or
 - (iii) a local government council (other than a council the sole or principal function of which is to carry on an activity in the nature of a business, whether or not for profit),
not being an account kept in relation to a transaction or transactions entered into by or on behalf of the Department, authority or council in connection with the carrying on of an activity in the nature of a business, whether or not for profit, or
- (n) a receipt of a foreign exchange dealer, being a receipt that forms part of a transaction entered into by the dealer under the general authority granted

to the dealer, but not including, if the dealer is a bank, a receipt comprising the crediting of an account by the bank of a customer of the bank with the whole or any part of the proceeds of any such transaction, not being:

- (i) a receipt comprising the crediting of an exempt account, or
- (ii) a receipt referred to in paragraph (z), or
- (o) a receipt by a bank that is a registered person, being a receipt that is the consequence of a customary general clearance:
 - (i) of the kind referred to in section 64 of the *Banking Act 1959* of the Commonwealth, or
 - (ii) effected under an agreement between 2 or more banks for the settlement of balances arising between them, being an agreement contemplated by the terms and conditions of any agreement between banks relating to customary general clearance, or
 - (iii) effected under an agreement between a bank and a registered person (other than a bank that is a registered person) for the settlement of balances arising between them, being an agreement contemplated by the terms and conditions of any agreement between banks and registered persons (other than banks) relating to customary general clearance, or
- (p) a receipt received outside New South Wales by a New South Wales broker, being a receipt in respect of which a liability to pay duty under a corresponding Act exists, or
- (q) a receipt received outside New South Wales by a financial institution constituting a receipt referred to in section 98 (3) (c) (ii), being a receipt in respect of which a liability to pay duty under a corresponding Act exists, or

- (r) a receipt by a financial institution, being a receipt that comprises the crediting of an account in New South Wales for the purpose only of recording, in accordance with the operation of a system of centralised data processing, a receipt of money first received by the financial institution outside New South Wales that is not a receipt referred to in section 98 (3) (c) (ii), or
- (s) a receipt by a financial institution that is the consequence of a person becoming the holder of shares in the capital of the financial institution, if:
 - (i) the financial institution is a company that has been formed by the registration of a building society as a company under the *Corporations Law*, and
 - (ii) the person has become the holder of the shares by reason only of being the holder of shares in the society immediately before its registration as the company, or
- (t) a receipt of money by a financial institution from or on behalf of a person for whose benefit the financial institution has drawn, accepted or endorsed a bill of exchange, being a receipt to satisfy the amount of the financial institution's engagement on the bill of exchange, if:
 - (i) the term of the bill of exchange is not more than 185 days, and
 - (ii) the face or nominal value of the bill of exchange is not less than \$50,000, or
- (u) a receipt by a financial institution (not being a fee, brokerage, commission or other charge made by the financial institution) from the initial issue or making of a mortgage-backed security, or
- (v) a receipt by a financial institution in respect of a payment to it by another financial institution under a mortgage or a mortgage-backed security, if the payment represents a receipt of the other financial institution:

-
- (i) that is received under the mortgage or a mortgage in relation to which the mortgage-backed security has been issued, and
 - (ii) in respect of which duty under this Division has been paid or is liable to be paid by the other financial institution, or
- (w) a receipt by a building society that is the consequence of:
- (i) the conversion of withdrawable share capital of the society to a deposit with the society, or
 - (ii) the conversion of withdrawable share capital of the society to fixed share capital of the society, or
 - (iii) a redesignation in connection with or as a consequence of a transfer of engagements between, or the merger of, 2 or more building societies, or
 - (iv) the transfer between accounts of a society in connection with or as a consequence of any such transfer or merger, or
- (x) a receipt by a building society or credit union (a ***recognised financial institution***) that is the consequence of a customary general clearance:
- (i) effected under an agreement between 2 or more recognised financial institutions (whether or not a bank that is a registered person is also party to that agreement) for the settlement of balances arising between them, being an agreement contemplated by the terms and conditions of any agreement between recognised financial institutions relating to customary general clearance, or

- (ii) effected under an agreement between a recognised financial institution and a registered person (other than a recognised financial institution) for the settlement of balances arising between them, being an agreement contemplated by the terms and conditions of any agreement between recognised financial institutions and registered persons (other than recognised financial institutions) relating to customary general clearance, or
- (y) a receipt by or to the credit of an account that is kept on behalf of, and to which payments are made only in respect of transactions wholly and exclusively in the furtherance of the objects of:
 - (i) the New South Wales Aboriginal Land Council, or
 - (ii) a Regional Aboriginal Land Council, or
 - (iii) a Local Aboriginal Land Council, or
- (z) a receipt by or on behalf of a charitable organisation, being a receipt that is applied wholly and exclusively in the furtherance of the objects of the organisation.

[16] Section 98A (2)–(4)

Insert at the end of section 98A:

- (2) For the purposes of subsection (1) (d) (ii), the prescribed circumstances, in relation to a receipt, are circumstances where the dealer, as a term or condition of acting as agent, has not been satisfied that, or has not received a certificate from the principal in or to the effect that, the receipt has been or will be paid into:
 - (a) if the principal is a registered person—an account kept by the principal, or

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- (b) whether or not the principal is a registered person—an account kept by a bank that is a registered person.
- (3) This Division does not apply to or in respect of a receipt prescribed by the regulations for the purposes of this section, either generally or in relation to a specified person or class of persons.
- (4) In this section:

foreign exchange dealer means a designated person in respect of whom a general authority is in force.

general authority means a general authority to engage in foreign currency transactions granted and issued under Regulation 38A of the *Banking (Foreign Exchange) Regulations* of the Commonwealth to a person named in the authority.

merger and *transfer of engagements* have the same meanings as in the *Financial Institutions (NSW) Code*.

redesignation means the process by which an account kept by a society on behalf of a person ceases to be kept by that society and is instead kept by another society on behalf of the same person and on the same terms and conditions as the account that ceased to be so kept.

[17] Section 98LA Liability to lodge or deposit money

Omit section 98LA (3) (b). Insert instead:

- (b) except in so far as the regulations may otherwise provide, a receipt of a charitable organisation, being a receipt that may be applied wholly and exclusively in the furtherance of the objects of the organisation,

[18] Section 98LA (3) (e) and (f)

Omit the paragraphs. Insert instead:

- (e) a receipt by a person of the proceeds of an amount deposited or invested in that person's name with a registered person, or with a short term dealer, or
- (f) a receipt prescribed by the regulations for the purposes of this subsection, either generally or in relation to a specified person.

[19] Section 98U Exempt accounts

Omit section 98U (1) (a). Insert instead:

- (a) an account with a bank that is a registered person, being an account of a registered person into which only receipts of that registered person are deposited, or

[20] Section 98U (1) (d) (vii) and (viii)

Omit section 98U (1) (d) (vii). Insert instead:

- (vii) livestock agents, or
- (viii) persons prescribed for the purposes of this paragraph, or

[21] Section 98U (1) (h)–(o)

Omit section 98U (1) (h). Insert instead:

- (h) an account of Flemington Markets Commercial Services Co-operative Limited with a bank that is a registered person, to the credit of which there is paid only receipts by the Co-operative of deposits:
 - (i) that are lodged with the Co-operative in respect of farm produce (within the meaning of the *Farm Produce Act 1983*) sold at Flemington Markets, and

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- (ii) that are to be paid to farm produce sellers or producers (within the meaning of that Act), or
 - (i) an account with a bank that is a registered person, being an account of an insurer (including any licensed insurer or former licensed insurer within the meaning of the *Workers Compensation Act 1987*), in which the insurer deposits only receipts arising directly or indirectly from the transfer to the insurer of the assets or the proceeds of the assets of another insurer, if the transfer is made under the *Workers Compensation Act 1987* and at the direction of the WorkCover Authority, or
 - (j) an account of Australian Stock Exchange Limited with a bank that is a registered person, being an account in which Australian Stock Exchange Limited deposits only:
 - (i) receipts by Australian Stock Exchange Limited of deposits lodged with it by its member organisations out of money in trust accounts of those organisations under Part 7.8 of the *Corporations Law*, and
 - (ii) receipts by Australian Stock Exchange Limited of repayments of such deposits invested by it under Part 7.8 of the *Corporations Law*, and
 - (iii) receipts by Australian Stock Exchange Limited by way of interest in respect of such deposits invested by it under Part 7.8 of the *Corporations Law*, or
 - (k) a clearing or settlement account kept by Combined Financial Processing Pty Ltd with a bank that is a registered person (being an account used solely for the clearing of direct entry transactions between the Reserve Bank of Australia and one or more credit unions), or

- (l) a clearing or settlement account kept with a bank that is a registered person by an SCH participant (as defined in section 9 of the *Corporations Law*) who is not a registered person, being an account:
 - (i) that is used solely for the purpose of depositing receipts from SCH-regulated transfers (as defined in section 9 of the *Corporations Law*) or depositing funds or transferring funds from another account for the purpose of meeting the SCH participant's settlement obligations, and
 - (ii) from which all funds are transferred on a daily basis to other accounts, or
- (m) an account with a bank that is a registered person, being an account that is kept by either the Sydney Organising Committee for the Olympic Games or by Sydney Paralympic Organising Committee Limited, or
- (n) an account with a bank that is a registered person, being an account:
 - (i) that is kept by either the Australian Olympic Committee Incorporated or the New South Wales Olympic Council Incorporated, and
 - (ii) that is used solely for the purpose of receipts in connection with the year 2000 Olympic Games (but not in connection with the administrative or operating costs of either account-holder), or
- (o) an account prescribed for the purposes of this paragraph,

[22] Section 124C Payment of duty assessed and calculation of refund by Supreme Court

Insert after section 124C (3):

- (4) For the purposes of this section, the prescribed rate of interest is:
 - (a) in relation to refunds made before 14 January 1994—20%, or

(b) in relation to refunds made on or after that date—the rate for the time being prescribed under section 95 (1) of the *Supreme Court Act 1970* for payment of interest on a judgment debt.

(5) An amount of interest calculated under subsection (4) that is not a multiple of 1 cent is to be increased or decreased, as the case requires, to the nearest multiple of 1 cent. An amount that is not a multiple of 1 cent but is a multiple of 0.5 cent is to be increased by 0.5 cent.

[23] Section 129D Deferred payments for certain stamped instruments

Omit “in such circumstances as may be prescribed” from section 129D (1).

Insert instead “in the circumstances described in subsection (7)”.

[24] Section 129D

Insert after section 129D (6):

(7) For the purposes of subsection (1), the relevant circumstances are:

(a) circumstances in which (in the course of an industrial dispute involving persons engaged in the administration of this Act) an instrument liable to duty under the Act is not stamped by reason of the refusal of those persons to exercise functions relating to the administration of this Act or of any other law, and

(b) such other circumstances as the regulations may prescribe.

(8) For the purposes of subsection (2), the following persons are prescribed persons:

(a) a person who is primarily liable to pay duty in respect of an instrument,

- (b) a person who is authorised (whether by a person who is primarily liable to pay duty in respect of an instrument or by another person) to arrange for the stamping of the instrument on behalf of a person who is primarily liable.

[25] Second Schedule Stamp duties and exemptions

Omit paragraph (f) (ii) (D) of the exemptions appearing under the heading "TRANSFER OF SHARES".

Insert instead:

- (D) any of the following:
 - (1) a nominee corporation (being a corporation whose principal business is the business of holding shares as a trustee or nominee),
 - (2) a corporation, person or class of persons prescribed by the regulations,

[26] Second Schedule

Omit paragraph (f) (iv) (F) of the exemptions appearing under the heading "TRANSFER OF SHARES".

Insert instead:

- (F) any of the following:
 - (1) a nominee corporation (being a corporation whose principal business is the business of holding shares as a trustee or nominee),
 - (2) a corporation, person or class of persons prescribed by the regulations,

[27] Second Schedule

Omit paragraph (g) of the exemptions appearing under the heading "TRANSFER OF SHARES".

Insert instead:

- (g) A transfer, to or by any of the following nominee companies, of a marketable security or right in respect of shares:
 - (i) a nominee company that holds marketable securities solely for the purpose of facilitating marketable security transaction settlements by a broker as defined in section 97A,
 - (ii) SECH Nominees Pty Ltd,
 - (iii) CHESSE Depository Nominees Pty Ltd,
 - (iv) a nominee company prescribed by the regulations.

[28] Second Schedule

Omit item (43) under the heading "GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART 3".

Schedule 2 Amendment of Debits Tax Act 1990

(Section 4)

[1] Section 34 Penalty for unpaid tax

Omit "the prescribed rate".

Insert instead "the rate of 20 per cent per annum".

[2] Section 34 (6)

Insert at the end of section 34:

- (6) An amount of interest calculated under subsection (1) that is not a multiple of 1 cent is to be increased or decreased, as the case requires, to the nearest multiple of 1 cent. An amount that is not a multiple of 1 cent but is a multiple of 0.5 cent is to be increased by 0.5 cent.

Schedule 3 Amendment of Business Franchise Licences (Tobacco) Act 1987

(Section 5)

[1] Section 36 Grant of licences

Omit "Except as provided by subsection (2), the Chief Commissioner shall" from section 36 (1).

Insert instead "The Chief Commissioner may".

[2] Section 36 (2AA), (2AB)

Insert before section 36 (2A):

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

- (a) the issue of the licence would be contrary to the public interest, or
- (b) the licensee, having held a licence previously, has contravened one or more of the conditions of that licence.

(2AB) The Chief Commissioner may refuse to authorise the granting of a licence to a person if in respect of a previous or current licence period the person's licence has been suspended or cancelled.

[3] Section 36A

Insert after section 36:

36A Conditions of licences

- (1) A licence is subject to such conditions as the Chief Commissioner thinks fit to impose.

- (2) The conditions that may be imposed by the Chief Commissioner include conditions for the purposes of:
 - (a) regulating the distribution, sale and purchase of tobacco by a licensee, and
 - (b) preventing avoidance by a licensee or any other person of the operation of this Act or the regulations.
- (3) A licensee must comply with any conditions to which the licence is subject.

Maximum penalty: 100 penalty units.

[4] Section 40 Grant of further licence

Insert “, unless notified under section 36 (2A) to the contrary” after “licence” where lastly occurring in section 40 (1) (b).

[5] Section 40 (5)

Insert “, suspension” after “cancellation”.

[6] Section 50 Suspension and cancellation of licences

Insert at the end of the section:

- (2) If the Chief Commissioner is satisfied that a licensee has contravened a condition to which the licence is subject, the Chief Commissioner may, by notice served on the licensee, suspend the licence as from the date on which the notice is served (or such later date as may be specified in the notice).
- (3) Any such notice suspending a licence is to invite the licensee, within 14 days of the date on which the suspension takes effect, to make submissions as to why the licence should not be cancelled by the Chief Commissioner.

- (4) After taking into consideration any submissions made by or on behalf of the licensee, the Chief Commissioner may, by notice served on the licensee:
- (a) lift the suspension and reinstate the licence, or
 - (b) cancel the licence on the grounds that the licensee has contravened a condition of the licence.

Any such reinstatement or cancellation takes effect on the date on which the notice is served (or such later date as may be specified in the notice).

- (5) A person whose licence is suspended is for all purposes (including the construction of any reference to a licensee in section 41) to be regarded as having ceased to be a licensee for the duration of the suspension.

[7] Section 51 Appeals against licensing decisions

Insert “(including an application taken by virtue of section 40 (1) (a) to have been made)” after “licence” in section 51 (1).

[8] Section 51 (2A) and (2B)

Insert after section 51 (2):

- (2A) If a licence is cancelled under section 50 (4), the licensee may appeal to the District Court. The Court may determine any such appeal, and may direct the Chief Commissioner to take such action as the Court thinks appropriate to dispose of the matter.
- (2B) If, while an appeal under subsection (2A) is pending, the term of the licence concerned has expired, the appeal is to be treated as an appeal against a refusal of the Chief Commissioner to authorise the granting of a further licence for the next licence period.

[9] Section 57 Power to require attendance and evidence

Insert after section 57 (1) (e):

, or

- (f) inquiring into any matter the Chief Commissioner considers relevant to the exercise by the Chief Commissioner of any power, authority or discretion under section 36,

[Minister's second reading speech made in—
Legislative Assembly on 12 June 1996
Legislative Council on 20 June 1996]