



New South Wales

Duties Act 1997 No 123

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New South Wales

Duties Act 1997 No 123

Act No 123, 1997

An Act to create and charge a number of duties [Assented to 15 December 1997]

The Legislature of New South Wales enacts:

Chapter 1 Preliminary

1 Name of Act

This Act is the *Duties Act 1997*.

2 Commencement

This Act commences on 1 July 1998.

3 What does this Act do?

This Act creates and charges a number of duties.

Note. Each duty is dealt with in a separate Chapter of this Act. The Contents pages list the Chapters and their subject-matter.

4 What is a duty?

A duty charged by this Act is, when a liability to pay the duty is created, a debt due to the State of New South Wales.

5 Arrangements for payment of duties

This Act does not contain all the provisions concerning duties. This Act is to be read together with the *Taxation Administration Act 1996*. The *Taxation Administration Act 1996* contains provisions that deal with, for example:

- how assessments of duty are made
- how assessments can be challenged
- what happens if duty is not paid on time
- how unpaid duty may be recovered
- what records must be kept by taxpayers
- how decisions made under this Act can be challenged
- the investigative powers of tax administrators.

6 Meaning of words and expressions used in this Act

Words and expressions used in this Act (or in any particular provision of this Act) that are defined in the Dictionary at the end of this Act have the meanings set out in the Dictionary.

7 Notes in the text

Notes included in this Act are explanatory notes and do not form part of this Act.

Chapter 2 Transactions concerning dutiable property

Part 1 Introduction and overview

8 Imposition of duty on certain transactions concerning dutiable property

- (1) This Chapter charges duty on:
- (a) a transfer of dutiable property, and
 - (b) the following transactions:
 - (i) an agreement for the sale **or** transfer of dutiable property,
 - (ii) a declaration of trust over dutiable property,
 - (iii) a surrender of an interest in land in New South Wales,
 - (iv) a foreclosure of a mortgage over dutiable property,
 - (v) a vesting of dutiable property by or as a consequence of a statute **or** court order.
- (2) Such a transfer or transaction is a ***dutiable transaction*** for the purposes of this Act.
- (3) In this Chapter:

declaration of trust means any declaration (other than by a will or testamentary instrument) that any identified property vested or to be vested in the person making the declaration is or is to be held in trust for the person or persons, or the purpose or purposes, mentioned in the declaration although the beneficial owner of the property, or the person entitled to appoint the property, may not have joined in or assented to the declaration.

transfer includes an assignment and an exchange.

9 Imposition of duty on dutiable transactions that are not transfers

- (1) The duty charged by this Chapter on a dutiable transaction referred to in section 8 (1) (b) is to be charged as if each such dutiable transaction were a transfer of dutiable property.
- (2) Accordingly, for the purpose of charging duty under this Chapter, in relation to a dutiable transaction specified in Column 1 of the following Table:
 - (a) the property specified opposite the dutiable transaction in Column 2 is taken to be the property transferred (and a reference in this Act to property transferred includes a reference to such property), and
 - (b) the person specified opposite the dutiable transaction in Column 3 is taken to be the transferee of the dutiable property (and a reference in this Act to a transferee includes a reference to such a person), and
 - (c) the transfer of the dutiable property is taken to have occurred at the time specified opposite the dutiable transaction in Column 4 (and a reference in this Act to the time at which a transfer occurs includes a reference to such a time).

Table

Column 1	Column 2	Column 3	Column 4
Dutiable transaction	Property transferred	Transferee	When transfer occurs
agreement for sale or transfer	the property agreed to be sold or transferred	the purchaser or transferee	when the agreement is entered into
declaration of trust	the property vested or to be vested in the declarant	the person declaring the trust	when the declaration is made
surrender	the surrendered Property	the person to whom the property is surrendered	when the surrender takes place

Table—continued

Column 1	Column 2	Column 3	Column 4
Dutiable transaction	Property transferred	Transferee	When transfer occurs
foreclosure	the mortgaged property	the mortgagee	when the foreclosure order is made
vesting by statute	the vested property	the person in whom the property is vested	when the vesting occurs
vesting by court order	the vested property	the person in whom the property is vested	when the order is made

10 What form must a dutiable transaction take?

It is immaterial whether or not a dutiable transaction is effected by a written instrument or by any other means, including electronic means.

11 What is “dutiable property”?

Dutiable property is any of the following:

- (a) land in New South Wales,
- (b) **transferable floor space** (also known as heritage floor space), being floor space area that:
 - (i) is recorded on a register kept by a local government council in New South Wales, and
 - (ii) derives from the unutilised development potential of land in New South Wales that contains improvements of heritage value, and
 - (iii) may, subject to obtaining all necessary consents and approvals, be utilised in the development of other land in New South Wales,

-
- (c) a land use entitlement,
 - (d) shares in:
 - (i) a NSW company, or
 - (ii) a corporation incorporated outside Australia that:
 - (A) in the case of an SCH-regulated transfer, has a registered office in New South Wales, or
 - (B) in any other case, being shares that are kept on the Australian register kept in New South Wales,

Note. “Shares” is defined in the Dictionary to include rights to shares.

- (e) units in a unit trust scheme, being units:
 - (i) registered on a register kept in New South Wales, or
 - (ii) that are not registered on a register kept in Australia, but in respect of which the manager (or, if there is no manager, the trustee) of the unit trust scheme is a NSW company or is a natural person resident in New South Wales,

Note. “Units” is defined in the Dictionary to include rights to units.

- (f) a *relevant interest* being:
 - (i) CUFs providing beneficial ownership in respect of:
 - (A) shares in a corporation incorporated outside Australia that has a registered office in New South Wales, or
 - (B) units in a public unit trust scheme, being units to which paragraph (e) (i) or (ii) apply, or
 - (ii) IRs providing beneficial ownership in respect of shares in a NSW company, or
 - (iii) ADRs,

Note. “CUFs”, “IRs” and “ADRs” are defined in the Dictionary.

- (g) a *business asset*, being, at any relevant time:
 - (i) the goodwill of a business if, during the previous 12 months, a sale of goods or services, or goods and services, has been made to a New South Wales customer of the business, or

- (ii) intellectual property that has been used or exploited in New South Wales during the previous 12 months, but only if the intellectual property is the subject of a dutiable transaction that includes goodwill referred to in subparagraph (i), or
- (iii) a statutory licence or permission under a Commonwealth law, if the rights under the licence or permission have been exercised, during the previous 12 months, in respect of New South Wales or in an area that includes New South Wales or a part of New South Wales,

Note. “Intellectual property” is defined in the Dictionary. Business assets are subject to apportionment under section 28.

- (h) a statutory licence or permission under a New South Wales law,
- (i) a *partnership interest*, being an interest in a partnership that has partnership property that is dutiable property elsewhere referred to in this section,
- (j) goods in New South Wales, if the subject of a dutiable transaction together with any dutiable property (other than intellectual property) elsewhere referred to in this section, not including the following:
 - (i) goods that are stock-in-trade,
 - (ii) materials held for use in manufacture,
 - (iii) goods under manufacture,
 - (iv) goods held or used in connection with land used for primary production,
 - (v) livestock,
 - (vi) a registered motor vehicle,
- (k) an option to purchase land in New South Wales,
- (l) an interest in any dutiable property referred to in the preceding paragraphs of this section, except to the extent that:
 - (i) it arises as a consequence of the ownership of a unit in a unit trust scheme and is not a land use entitlement, or

- (ii) it is, or is attributable to, an option over dutiable property, or
- (iii) it is an interest in a marketable security, being an interest that is traded on the Australian Stock Exchange or the Sydney Futures Exchange and that is not included in paragraph (f).

12 When does a liability for duty arise?

- (1) A liability for duty charged by this Chapter arises when a transfer of dutiable property occurs.
- (2) However, if a transfer of dutiable property is effected by a written instrument, liability for duty charged by this Chapter arises when the instrument is first executed.

13 Who is liable to pay the duty?

Duty charged by this Chapter is payable by the transferee, unless this Chapter requires another person to pay the duty.

14 The liability of joint tenants

For the purpose of assessing duty charged by this Chapter, joint tenants of dutiable property are taken to hold the dutiable property as tenants in common in equal shares.

15 Necessity for written instrument or written statement

- (1) If a dutiable transaction that is liable to ad valorem duty under this Chapter is not effected by a written instrument, the transferee must make a written statement in a form approved by the Chief Commissioner.
- (2) The written statement must be made within 3 months after the liability arises.
- (3) This section does not apply to an SCH-regulated transfer to which Division 1 of Part 4 applies.

- (4) If a dutiable transaction:
- (a) is completed by an SCH-regulated transfer, or
 - (b) is completed or evidenced by a written instrument,
- within 3 months after the date on which the dutiable transaction occurs, the requirement to lodge a statement and pay duty in respect of the statement may be satisfied by the payment of duty under Division 1 of Part 4, or by the lodgment of and payment of duty on the written instrument, within 3 months after the date on which the dutiable transaction occurs.

16 Lodging written instrument or written statement with Chief Commissioner

- (1) A transferee who is liable to pay duty in respect of a dutiable transaction must, within 3 months after the liability arises, lodge with the Chief Commissioner:
- (a) the written instrument that effects the dutiable transaction or, if there is more than one such written instrument, each one of them as provided by section 18 (1), or
 - (b) the written statement made in compliance with section 15.
- (2) This section does not apply to:
- (a) the transfer of a marketable security on which duty is paid in accordance with:
 - (i) Division 1 of Part 4 (SCH-regulated transfers (CHESS)), or
 - (ii) Division 3 of Part 4 (London Stock Exchange), or
 - (b) an SCH-regulated transfer, or a transfer to which Division 3 of Part 4 applies, that is exempt from duty.

17 When must duty be paid?

- (1) A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if duty is paid within 3 months after the liability to pay the duty arises.
- (2) This section does not apply to duty payable on the lodgment of a return under Division 1 or 3 of Part 4.

18 No double duty

- (1) If a dutiable transaction is effected by more than one instrument, one instrument is to be stamped with the duty payable on the dutiable transaction and each other instrument is chargeable with duty of \$10.

Note. "Instrument" includes a written statement.

- (2) The duty chargeable in respect of a transfer of dutiable property made in conformity with an agreement for the sale or transfer of the dutiable property is \$2 if the duty chargeable in respect of the agreement has been paid.
- (3) The duty chargeable in respect of a transfer of dutiable property that is not made in conformity with an agreement for the sale or transfer of the dutiable property is \$2 if
- (a) the duty chargeable in respect of the agreement has been paid, and
 - (b) the transfer would be in conformity with the agreement if the transferee was the purchaser under the agreement, and
 - (c) the purchaser under the agreement and the transferee under the transfer were related persons at the time the agreement was entered into.
- (4) The duty chargeable on a transfer to a trustee of dutiable property subject to a declaration of trust is \$2 if ad valorem duty has been paid on the declaration of trust in respect of the same dutiable property.
- (5) The duty chargeable on a transfer of dutiable property as a consequence of a foreclosure order is \$2 if ad valorem duty has been paid on the foreclosure.
- (6) The duty chargeable on a declaration of trust that declares the same trusts as those upon and subject to which the same dutiable property was transferred to the person declaring the trust is \$2 if ad valorem duty has been paid on the transfer.
- (7) A dutiable transaction in respect of marketable securities that confer a land use entitlement is taken to be a dutiable transaction in respect of the land use entitlement only. If duty has been paid on the dutiable transaction in accordance with a law of another

Australian jurisdiction, the duty charged by this Chapter on the dutiable transaction is to be reduced by the amount of the duty so paid.

19 What is the rate of duty?

Duty is charged on the dutiable value of the dutiable property subject to the dutiable transaction at the relevant rate set out in Part 3.

20 Concessions and exemptions from duty

Concessions and exemptions from duty charged by this Chapter are dealt with in Parts 6, 7 and 8.

Part 2 Dutiable value

21 What is the “dutiable value” of dutiable property?

- (1) The *dutiable value* of dutiable property that is subject to a dutiable transaction is the greater of
 - (a) the consideration (if any) for the dutiable transaction (being the amount of a monetary consideration or the value of a non-monetary consideration), and
 - (b) the unencumbered value of the dutiable property.
- (2) The *dutiable value* of dutiable property transferred by way of foreclosure is the unencumbered value of the dutiable property and not the value of the debt secured by the mortgaged property.
- (3) The *dutiable value* of a business asset referred to in section 11 (g) that also has a relevant connection with the Commonwealth or another Australian jurisdiction is to be apportioned in accordance with section 28.
- (4) The *dutiable value* of a partnership interest referred to in section 29 is to be determined in accordance with that section.

22 What is the consideration for the transfer of dutiable property?

- (1) The consideration for the transfer of dutiable property is taken to include the amount or value of all encumbrances, whether certain or contingent, subject to which the dutiable property is transferred.
- (2) The consideration for the transfer of the interest of a transferee under an uncompleted agreement for the sale or transfer of dutiable property is taken to include the balance of the amount or value of the consideration that would be required from the transferee under the agreement in order to complete it in accordance with its terms.
- (3) The consideration for the transfer of the goodwill of a business is taken to include the amount or value of the consideration for any restraint of trade arrangement entered into in connection with the transfer of the goodwill.

23 What is the “unencumbered value” of dutiable property?

- (1) The *unencumbered value* of dutiable property is the value of the property determined without regard to any encumbrance to which the property is subject.
- (2) The *unencumbered value* of the goodwill of a business is taken to include the value of any restraint of trade arrangement entered into by the vendor in order to protect the value of the goodwill.
- (3) If, before land is transferred to a transferee, the transferee has made improvements to the land, the unencumbered value of the land is to be determined as if those improvements had not been made.

24 Arrangements that reduce the dutiable value

If any arrangement affecting the dutiable value of dutiable property that was entered into within 12 months before a dutiable transaction was brought about by any person with the intention of reducing the dutiable value of the dutiable property, the Chief Commissioner may:

- (a) cause a valuation of the dutiable property to be made, and
- (b) direct the valuer to disregard the arrangement for the purposes of the valuation, and
- (c) assess duty on the basis of the valuation carried out in accordance with the direction.

25 Aggregation of dutiable transactions

- (1) Dutiable transactions relating to separate items of dutiable property, or separate parts of, or interests in, dutiable property are to be aggregated and treated as a single dutiable transaction if
 - (a) they occur within 12 months, and
 - (b) the transferee is the same or the transferees are associated persons, and
 - (c) the dutiable transactions together form, evidence, give effect to or arise from what is, substantially, one arrangement relating to all of the items or parts of, or interests in, the dutiable property.

Note. “Associated person” is defined in the Dictionary.

- (2) Dutiable transactions are not to be aggregated under this section if the Chief Commissioner is satisfied that it would not be just and reasonable to do so in the circumstances.
- (3) The dutiable value of aggregated dutiable property is the sum of the dutiable values of the items or parts of, or the interests in, the dutiable property as at the time at which each dutiable transaction occurs.
- (4) The amount of duty payable in accordance with this section is to be reduced by the amount of any ad valorem duty paid on a prior dutiable transaction that is, or prior dutiable transactions that are, aggregated in accordance with this section.
- (5) Duty may be apportioned to the instruments effecting or evidencing the dutiable transactions, or may be charged in accordance with section 18 (1), as determined by the Chief Commissioner.
- (6) A transferee to whom this section applies must disclose to the Chief Commissioner, in writing, at or before the time at which an instrument or statement relating to the dutiable transactions is lodged for stamping, details known to the transferee of
 - (a) all of the items or parts of, or interests in, the dutiable property included or to be included in the arrangement referred to in subsection (1), and
 - (b) the consideration for each item or part of, or interest in, that dutiable property.

Maximum penalty (subsection (6)): 100 penalty units.
- (7) The reference in this section to dutiable property does not include a reference to marketable securities.

26 Certain transactions concerning goods and other property

The Chief Commissioner, if satisfied that it would not be just and reasonable in the circumstances to charge duty on the dutiable value of all the dutiable property in a dutiable transaction involving goods and other property, may disregard the value of the goods, or any of them, in determining the dutiable value of the property involved.

27 Apportionment—dutiable property and other property

- (1) If a dutiable transaction relates to dutiable property and property that is not dutiable property, it is chargeable with duty under this Chapter only to the extent that it relates to dutiable property.
- (2) If a dutiable transaction relates to different types of dutiable property for which different rates of duty are chargeable under this Chapter, the dutiable transaction is chargeable with duty under this Chapter as if a separate dutiable transaction had occurred in relation to each such type of dutiable property.

28 Apportionment—business assets in this and other jurisdictions

(1) Business assets to which this section applies

This section applies to a business asset referred to in section 11 (g), being:

- (a) the goodwill of a business if sales of goods or services, or goods and services, have also been made to a non-New South Wales customer of the business during the previous 12 months, or
- (b) intellectual property that has also been used or exploited in one or more other Australian jurisdictions during the previous 12 months, or
- (c) a statutory licence or permission under a Commonwealth law if the rights under the licence or permission have been exercised during the previous 12 months in respect of one or more other Australian jurisdictions.

(2) How is the dutiable value of a business asset determined?

The dutiable value (DV) of a business asset to which this section applies is to be determined in accordance with the following formula:

$$DV = A \times \frac{X}{Y}$$

where:

A is the unencumbered value of the business asset, or so much of the consideration for the dutiable transaction as relates to the business asset, whichever is the greater, and

X is the gross amount of the sales of goods and services (expressed in Australian dollars) made to New South Wales customers of the business during the last 3 completed financial years preceding the dutiable transaction, and

Y is the gross amount of the sales of goods and services (expressed in Australian dollars) made to both New South Wales customers and non-New South Wales customers of the business during the last 3 completed financial years preceding the dutiable transaction.

- (3) Subsection (2) applies to intellectual property together with goodwill as if the intellectual property and goodwill comprise a single business asset.
- (4) If an apportionment cannot be made under subsection (2), the Chief Commissioner may make an apportionment on such basis as the Chief Commissioner considers appropriate in the circumstances.
- (5) **When is a sale made to NSW customers and non-NSW customers of a business?**

For the purposes of this Chapter, a sale of goods or services is taken to be made to:

- (a) a New South Wales customer of a business if the goods are delivered, or the services are provided, in New South Wales to the customer, and
- (b) a non-New South Wales customer of a business if the goods are delivered, or the services are provided, outside New South Wales to the customer.

29 Partnership interests

The dutiable value of a partnership interest (DV) is to be determined in accordance with the following formula:

$$DV = A \times \frac{X}{Y}$$

where:

A is the value of the partnership interest, or so much of the consideration for the dutiable transaction as relates to the partnership interest, whichever is the greater, and

X is the unencumbered value of all dutiable property of the partnership, and

Y is the unencumbered value of all assets of the partnership.

30 Partitions

(1) **What is a partition?**

For the purposes of this section, a partition occurs when dutiable property that is held by persons jointly (as joint tenants or tenants in common) and beneficially is transferred or agreed to be transferred to one or more of those persons.

(2) **Single dutiable transaction**

For the purposes of this section and sections 16 and 18, a partition is taken to be a single dutiable transaction.

(3) **Dutiable value**

The dutiable value of a partition is the greater of

- (a) the sum of the amounts by which the unencumbered value of the dutiable property transferred, or agreed to be transferred, to a person by the partition exceeds the unencumbered value of the interest held by the person in the dutiable property transferred, or agreed to be transferred, to each person by the partition immediately before the partition, and
- (b) the sum of any consideration for the partition paid by any of the parties.

(4) **Minimum duty**

The minimum duty chargeable on a transaction that effects a partition is \$10.

(5) **Who is liable to pay the duty?**

Duty charged by this section is payable by the persons making the partition or any one or more of them.

31 Effect of reduction in purchase price

If the Chief Commissioner is satisfied that:

- (a) after an agreement for the transfer of dutiable property is entered into and before the property is transferred, the consideration under the agreement is reduced, and
- (b) the reduced consideration is not less than the unencumbered value of the dutiable property when the consideration was reduced,

the Chief Commissioner must assess or reassess the liability to duty of the agreement in accordance with the reduced consideration.

Part 3 Rates of duty

32 General rate

- (1) The rate of duty chargeable on a dutiable transaction is as follows:

Dutiable value of the dutiable property subject to the dutiable transaction	Rate of duty
Not more than \$14,000	\$1.25 for every \$100, or part, of the dutiable value
More than \$14,000 but not more than \$30,000	\$175 plus \$1.50 for every \$100, or part, by which the dutiable value exceeds \$14,000
More than \$30,000 but not more than \$80,000	\$415 plus \$1.75 for every \$100, or part, by which the dutiable value exceeds \$30,000
More than \$80,000 but not more than \$300,000	\$1,290 plus \$3.50 for every \$100, or part, by which the dutiable value exceeds \$80,000
More than \$300,000 but not more than \$1,000,000	\$8,990 plus \$4.50 for every \$100, or part, by which the dutiable value exceeds \$300,000
More than \$1,000,000	\$40,490 plus \$5.50 for every \$100, or part, by which the dutiable value exceeds \$1,000,000

- (2) This rate applies unless other provision is made by this Chapter.

Note. The rates of duty chargeable on dutiable transactions in respect of marketable securities are dealt with in section 33 and section 150. Concessional rates of duty chargeable on certain dutiable transactions are dealt with in Part 6 of this Chapter.

33 Shares, units, derivatives and interests (marketable securities)

- (1) The rate of duty chargeable on dutiable transactions in respect of marketable securities, other than marketable securities to which subsection (2) applies, is 60 cents per \$100, or part, of the dutiable value of the marketable securities.

- (2) The rate of duty chargeable on dutiable transactions in respect of marketable securities quoted on the market operated by the Australian Stock Exchange is 30 cents per \$100, or part, of the dutiable value of the marketable securities.

Note. This rate does not apply to dutiable transactions in respect of marketable securities to which Chapter 4 (Marketable securities—on-market transfers (Broker provisions)) applies.

- (3) A minimum rate of duty of \$10 is chargeable under this section in respect of a transfer of shares of a corporation:
- (a) the shares of which are not listed on a recognised stock exchange, and
 - (b) that is not the legal or beneficial owner of land in New South Wales.
- (4) A rate of duty chargeable under this section does not apply to a dutiable transaction that confers a land use entitlement.

Part 4 Off-market transfers of marketable securities

Introductory note. An object of this Part is to provide 3 schemes for the payment of duty on the transfer of marketable securities, one relating to transfers made via SCH-regulated transfers (CHESS), one relating to transfers made through the London Stock Exchange and the other relating to transfers made by a person who is approved by the Chief Commissioner to pay duty by periodic return.

Divisions 1 and 2 relate to SCH-regulated transfers (CHESS), Division 3 relates to trading on the United Kingdom Stock Exchange and Division 4 relates to payment of duty by periodic return.

This Part provides alternative means for effecting the payment of duty from those provided elsewhere in this Act.

Division 1 SCH-regulated transfers (CHESS)

34 Application of Division 1

- (1) This Division applies to an SCH-regulated transfer of marketable securities only if
 - (a) the transfer is a proper SCH transfer, and
 - (b) the body approved as the securities clearing house under section 779B of the *Corporations Law* is registered by the Chief Commissioner under Division 2.
- (2) This Division does not apply to a transfer to which Division 3 applies.

35 SCH participant liable to pay duty

- (1) An SCH participant who is a party to a transfer to which this Division applies is liable to pay the duty. However, if more than one SCH participant is a party to the transfer, the SCH participant who acts for the transferee is liable to pay the duty.
- (2) If the SCH participant liable to pay duty in respect of an SCH-regulated transfer is not the transferee under the transfer, the participant may recover from the transferee the amount of the

duty paid as a debt and may, in reimbursement of that amount, retain any money in the participant's hands belonging to the transferee.

36 Record of SCH-regulated transfers

- (1) The relevant SCH participant must make a record that complies with this section immediately on making an SCH-regulated transfer of marketable securities to which this Division applies.
- (2) The record must show the following particulars:
 - (a) the date of the transfer,
 - (b) the transfer identifier of the transfer,
 - (c) the name of the transferee and, unless another SCH participant controls the transferor's holding, the name of the transferor,
 - (d) the identification code of the SCH participant making the record and the identification code of the other SCH participant (if any) who is a party to the transfer,
 - (e) the quantity and full description of the marketable securities transferred,
 - (f) the transfer value of the marketable securities,
 - (g) the amount of duty chargeable in respect of the transfer,
 - (h) if ad valorem duty is not chargeable in respect of the transfer, the duty-type category for the transfer,
 - (i) in the case of an error transaction to reverse an earlier transfer that was made mistakenly, the transfer identifier of that earlier transfer.

37 Particulars to be included by relevant SCH participant in transfer document

The relevant SCH participant must include in the transfer document for an SCH-regulated transfer to which this Division applies the particulars required by the Chief Commissioner under the conditions of registration of SCH.

Maximum penalty: 100 penalty units.

38 Relevant SCH participant's identification code equivalent to stamping

When the relevant SCH participant includes the participant's identification code in the transfer document for an SCH-regulated transfer to which this Division applies, the transfer document is taken to be duly stamped but without affecting the participant's liability to pay any duty payable under section 39.

Note. "Identification code" is defined in the Dictionary.

39 Returns to be lodged and duty paid

- (1) The relevant SCH participant must, not more than 7 days after the end of a month in which the participant has been party to an SCH-regulated transfer to which this Division applies:
 - (a) lodge with SCH a return in respect of the transfer in the form and containing the details required by the Chief Commissioner under the conditions of registration of SCH, and
 - (b) if duty is payable in respect of the transfer, pay the duty to SCH.
- (2) If the relevant SCH participant lodges the return with, and pays the duty (and any interest) to, SCH later than the fifteenth day after the end of each month:
 - (a) without limiting the *Taxation Administration Act 1996*, the SCH participant commits a tax default for the purposes of that Act, and
 - (b) SCH must identify the return as a late return and lodge it with the next monthly return that is lodged with the Chief Commissioner under section 41.

Division 2 The Securities Clearing House

40 Registration as the securities clearing Rouse

- (1) The Chief Commissioner must, on application by the body approved as the securities clearing house under section 779B of the *Corporations Law*, register the body under this Division.

- (2) The registration is subject to conditions determined by the Chief Commissioner from time to time and notified to SCH in writing.
- (3) Subject to subsection (5), the Chief Commissioner may, by order in writing, suspend the registration for a specified period if SCH contravenes this Division or a condition of registration.
- (4) Before suspending the registration, the Chief Commissioner must give SCH 7 days written notice specifying the grounds on which the Chief Commissioner proposes to suspend the registration and the proposed period of suspension.
- (5) SCH may, within 7 days after receipt of a notice under subsection (4), apply to the Chief Commissioner for a review of the proposed decision.
- (6) The Chief Commissioner must not suspend the registration unless:
 - (a) the period of 7 days notice referred to in subsection (4) has elapsed, and
 - (b) SCH has been given an opportunity to make submissions on the matter and, if it has made any such submissions, the submissions are not acceptable to the Chief Commissioner.
- (7) The registration continues in force:
 - (a) until cancelled on the application of the body registered, or
 - (b) subject to an order of suspension made under subsection (3).

41 Monthly return

SCH must, on or before the fifteenth day of each month:

- (a) lodge with the Chief Commissioner a return in the form and containing the particulars required by the Chief Commissioner under the conditions of registration of SCH, and
- (b) pay to the Chief Commissioner any duty (and any interest) paid to SCH under this Act in respect of an SCH-regulated transfer made in the preceding month.

42 Returns to be kept by SCH

SCH must keep a return lodged with it under this Part by an SCH participant.

Note. Under sections 51 and 53 of the *Taxation Administration Act 1996*, the record must be kept in an accessible form for not less than 5 years.

43 Disclosure to SCH of information

Nothing in this Act or the *Taxation Administration Act 1996* prevents the disclosure to SCH of information acquired in, or in connection with, the administration of this Part.

Division 3 London Stock Exchange

44 Application of Division 3

- (1) This Division applies to the transfer of the beneficial interest in shares held by a prescribed person, being shares:
 - (a) in a NSW company, or
 - (b) in a corporation incorporated outside Australia that are kept on the Australian register kept in New South Wales,unless duty is chargeable on the acquisition of those shares under Chapter 4 (Marketable securities—on-market transfers (Broker provisions)) or the provisions of an Act of another Australian jurisdiction that correspond to Chapter 4.
- (2) In this Division, *prescribed person* means:
 - (a) Sepon (Australia) Pty Limited, or
 - (b) a person prescribed by the regulations.

45 Payment of duty

- (1) Duty is chargeable on a transfer to which this Division applies at half the rate otherwise chargeable under this Chapter on a transfer of shares.
- (2) No duty is chargeable under this Chapter on an associated transfer.

- (3) The prescribed person must, on or before the twenty-eighth day of each month:
- (a) lodge with the Chief Commissioner a return in the form and containing the particulars required by the Chief Commissioner relating to all transfers to which this Division applies made during the preceding month, and
 - (b) pay to the Chief Commissioner the duty payable in relation to those transfers.
- (4) If duty is liable to be paid by a prescribed person in relation to a transfer to which this Division applies, no other person is liable to duty in relation to the transfer or any associated transfer of the shares by any other person that is made in accordance with the rules and practices of the London Stock Exchange.
- (5) The duty is to be paid by periodic return in accordance with Part 6 of the *Taxation Administration Act 1996*.
- (6) In this section:
- associated transfer*** of shares means:
- (a) a transfer effected by a transaction that, in accordance with the rules and practices of the London Stock Exchange, is a stock loan transaction, and
 - (b) a transfer to a member of the London Stock Exchange as principal where the beneficial interest of the member in the shares is disposed of within a period of 10 clear days (not including any day on which the London Stock Exchange is closed for business) after the transfer, and
 - (c) a transfer by an intermediary to an intermediary in the capacity of an intermediary.

intermediary means a person who is an intermediary within the meaning of the United Kingdom *Finance Act 1997*.

Division 4 Payment by periodic return

46 Application for approval to pay duty by periodic return

- (1) A person may apply to the Chief Commissioner for approval to pay duty on transactions to which this Part applies by periodic return.

- (2) Applicants may include, but are not limited to the following:
 - (a) a broker,
 - (b) a recognised stock exchange (within the meaning of the rules of the Australian Stock Exchange) or a person who is authorised by such a recognised stock exchange to make an application to which this section applies,
 - (c) a company, including a nominee company,
 - (d) a person who manages a share registry.
- (3) The application is to be made in accordance with Part 6 of the *Taxation Administration Act 1996*.

Division 5 Miscellaneous

47 Reduction of duty—payment in non-Australian jurisdiction

- (1) The amount of duty chargeable under this Chapter on a transfer of marketable securities is to be reduced by the amount of duty of a similar kind paid in relation to the transfer in accordance with the law of a place outside Australia.
- (2) In this section, a reference to a transfer of marketable securities includes a reference to a dealing or arrangement affecting marketable securities by means of a dutiable transaction other than a transfer.

48 Certain transfers not chargeable with duty

- (1) If an SCH-regulated transfer of marketable securities is made within 3 months after an instrument of transfer or an agreement for the transfer of the marketable securities to or for the benefit of the same transferee is first executed, the dutiable transaction effected by the instrument is not chargeable with duty under this Act.
- (2) Despite the other provisions of this Chapter, no duty is chargeable on a transfer of marketable securities quoted on the market operated by the Australian Stock Exchange if the transfer is one described in section 18, 30, 54, 55, 57, 62 or 63.

Part 5 Special provisions

49 Interim payment of duty

- (1) If the full dutiable value of dutiable property subject to an agreement for sale or transfer cannot, in the Chief Commissioner's opinion, be immediately ascertained, the Chief Commissioner may make an assessment by way of estimate under section 11 (2) of the *Taxation Administration Act 1996*.
- (2) The written instrument or the written statement required by section 15 may be stamped "interim stamp only".
- (3) When the full dutiable value has been ascertained, the Chief Commissioner must reassess the duty payable on the agreement.
- (4) If no further duty is payable, the interim stamp is to be cancelled and any amount paid in excess of the amount assessed is to be refunded.
- (5) If further duty is payable, liability for the further duty arises when the notice of assessment issues, despite section 12.
- (6) On payment of the balance of the duty (and any interest or penalty tax), the written instrument or the written statement required by section 15 is to be stamped with the amount of the balance and marked to indicate that duty has been duly paid.

50 Cancelled agreements

- (1) An agreement for the sale or transfer of dutiable property that is rescinded or annulled is not liable to duty under this Chapter if the Chief Commissioner is satisfied:
 - (a) that the agreement was not rescinded or annulled to give effect to a subsale, or
 - (b) that the purchaser or transferee under the agreement is a promoter of a named company proposed to be incorporated and that the company is the purchaser or transferee of the dutiable property under a subsequent agreement, or
 - (c) that the purchaser or transferee under the agreement and the purchaser or transferee under a subsequent agreement relating to the same dutiable property were related persons when the agreement that is rescinded or annulled was entered into.

- (2) If duty has been paid on an agreement that is not liable to duty under this Chapter because of this section, the Chief Commissioner must reassess and refund the duty if an application for a refund is made within:
- (a) 5 years of the initial assessment, or
 - (b) 12 months after the agreement is rescinded or annulled, whichever is the later.

51 Transfers arising from mortgages of land under Real Property Act 1900

- (1) The mortgagor and the mortgagee are jointly and severally liable to pay the duty chargeable on a transfer by way of mortgage of dutiable property that is land under the *Real Property Act 1900*.
- (2) If the Chief Commissioner is satisfied that:
- (a) duty has been paid in accordance with this section on a transfer of dutiable property to which this section applies, and
 - (b) the dutiable property has been re-transferred to the mortgagor (or a person to whom the land has been transmitted by death or bankruptcy) and the mortgagor (or person) is the registered proprietor of the land,
- the Chief Commissioner must refund the ad valorem duty paid on the transfer less the amount of duty that would have been payable on the mortgage under Chapter 7 (Mortgages).

52 Possessory applications

- (1) A possessory application under the *Real Property Act 1900* is chargeable with the same duty as a transfer of the land the subject of the application as if the dutiable value of the land were the land value of the land within the meaning of the *Valuation of Land Act 1916*.
- (2) The person liable to pay the duty is the applicant.

53 Applications to bring land under Real Property Act 1900

- (1) An application to bring land under the *Real Property Act 1900* is chargeable with:

- (a) the same duty as on a possessory application under that Act if:
 - (i) the application contains an application based on possessory title, and
 - (ii) the applicant has not paid ad valorem duty on a transfer of the land, or
 - (b) the same duty as on a transfer of the land if the applicant nominates another person as the person for whose estate or interest a folio of the Register is to be created, or
 - (C) duty of \$10 in any other case.
- (2) The person liable to pay the duty is:
- (a) the applicant, if subsection (1) (a) or (c) applies, or
 - (b) the nominee, if subsection (1) (b) applies.

Part 6 Concessional rates of duty

Division 1 Trusts

54 Change in trustees

- (1) In this section:

new trustee means a trustee appointed in substitution for a trustee or a trustee appointed in addition to a trustee or trustees.

special trustee means:

- (a) the Public Trustee, and
 - (b) a trustee company within the meaning of the *Trustee Companies Act 1964*, and
 - (c) a corporation constituted under the law of another Australian jurisdiction that, in the Chief Commissioner's opinion, corresponds in that jurisdiction to the Public Trustee or a trustee company referred to in paragraph (b), and
 - (d) the trustees of a fund that is a complying superannuation fund within the meaning of section 267 of the *Commonwealth Income Tax Assessment Act 1936* or that, in the opinion of the trustee, will become a complying superannuation fund within 12 months after the execution of:
 - (i) an instrument appointing a new trustee, or
 - (ii) an instrument by which a trustee retires without a new trustee being appointed in place of the retiree.
- (2) Duty of \$10 is chargeable in respect of a transfer of dutiable property to a special trustee as a consequence of the retirement of a trustee or the appointment of a new trustee.
- (3) Duty of \$10 is chargeable in respect of a transfer of dutiable property to a person other than a special trustee as a consequence of the retirement of a trustee or the appointment of a new trustee, if the Chief Commissioner is satisfied that, as the case may be:

- (a) none of the continuing trustees remaining after the retirement of a trustee is or can become a beneficiary under the trust, and
- (b) none of the trustees of the trust after the appointment of a new trustee is or can become a beneficiary under the trust, and
- (c) the transfer is not part of a scheme for conferring an interest, in relation to the trust property, on a new trustee or any other person, whether as a beneficiary or otherwise, to the detriment of the beneficial interest or potential beneficial interest of any person.

If the Chief Commissioner is not so satisfied, ad valorem duty is chargeable in respect of the transfer.

55 Property vested in an apparent purchaser

- (1) Duty of \$10 is chargeable in respect of:
 - (a) a declaration of trust made by an apparent purchaser in respect of identified dutiable property:
 - (i) vested in the apparent purchaser upon trust for the real purchaser who provided the money for the purchase of the dutiable property, or
 - (ii) to be vested in the apparent purchaser upon trust for the real purchaser, if the Chief Commissioner is satisfied that the money for the purchase of the dutiable property has been or will be provided by the real purchaser, or
 - (b) a transfer of dutiable property from an apparent purchaser to the real purchaser, in a case where dutiable property is vested in an apparent purchaser upon trust for the real purchaser who provided the money for the purchase of the dutiable property.
- (2) In this section, *purchase* includes an allotment.

56 Transfers back from a nominee

- (1) If:
 - (a) dutiable property (other than marketable securities) that was transferred to a person to be held by that person as trustee for the transferor is transferred back to the transferor by the trustee, and

- (b) no person other than the transferor has had a beneficial interest in the dutiable property (other than the trustee's right of indemnity) between its transfer to the trustee and its transfer back to the transferor,

the duty chargeable on the transfer of the dutiable property back to the transferor is \$10.

- (2) If duty of \$10 has been paid on a transfer under subsection (1), the initial transfer to the trustee is also chargeable with duty of \$10. The Chief Commissioner must reassess the initial transfer and refund any duty paid in excess of \$10 if an application for a refund is made within:
 - (a) 5 years after the initial assessment, or
 - (b) 12 months after the transfer back to the trustee,whichever is the later.
- (3) In this section, *trustee* includes a trustee appointed in substitution for a trustee or a trustee appointed in addition to a trustee or trustees.

57 Property passing to beneficiaries

- (1) Duty of \$10 is chargeable in respect of a transfer for no consideration of dutiable property to a beneficiary made under and in conformity with the trusts contained in a declaration of trust, subject to subsections (2) and (3).
- (2) Subsection (1) applies only to the extent that the property being transferred is property that the Chief Commissioner is satisfied is:
 - (a) wholly or substantially the same as the dutiable property the subject of the declaration of trust and that:
 - (i) duty charged by this Act has been paid in respect of the declaration of trust over that property, or
 - (ii) the declaration of trust is exempt from duty, or
 - (b) dutiable property representing the proceeds of re-investment of property referred to in paragraph (a), or
 - (c) property to which both paragraphs (a) and (b) apply.

- (3) Subsection (1) applies only if the transferee was a beneficiary at the time at which duty became chargeable in respect of the declaration of trust.

58 Establishment of a trust relating to unidentified property and non-dutiable property

- (1) Duty of \$200 is chargeable in respect of an instrument executed in New South Wales that declares a trust over New South Wales property none of which is dutiable property.
- (2) Duty of \$200 is chargeable in respect of an instrument executed in New South Wales that declares that property, although not identified in the instrument, when vested in the person executing the instrument is to be held in trust for a person or persons or a purpose or purposes mentioned in the instrument.
- (3) It is immaterial whether or not the beneficial owner or person entitled to appoint the property has joined in or assented to the instrument.
- (4) A liability for duty charged by this section arises when the instrument is first executed.
- (5) Duty charged by this section is payable by the person declaring the trust.

59 Instrument that amends or varies a public unit trust scheme

Duty of \$10 is Chargeable in respect of an instrument that:

- (a) amends or varies an instrument that establishes a public unit trust scheme, and
- (b) is not:
- (i) an instrument appointing a new trustee, or
 - (ii) an instrument appointing an additional trustee, or
 - (iii) an instrument by which a trustee retires from a trust without a new trustee being appointed in the retiring trustee's place, or
 - (iv) a declaration by an executor under section 11 of the *Trustee Act 1925*, and
- (c) does not transfer, or have the effect of transferring, any of the scheme property to a person:

- (i) who is a trustee under the scheme, or
- (ii) who does not hold units in the scheme, and
- (d) does not have the effect of reducing the number of persons who hold units in the scheme.

Division 2 Superannuation

60 Instruments relating to superannuation

- (1) The following instruments are liable to duty of \$20:
 - (a) an instrument that establishes, or that amends provisions governing, a superannuation fund, an approved deposit fund, a pooled superannuation trust or an eligible rollover fund, being a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund within 12 months after the instrument or amending instrument takes effect,
 - (b) an instrument under which an employer agrees to participate in or contribute to a complying superannuation fund or a superannuation fund that, in the opinion of the trustees, will become a complying superannuation fund within 12 months after the employer agrees to participate in or contribute to the fund,
 - (c) an instrument that is executed in order to set out or vary the terms of custodial arrangements concerning a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund (whether or not the instrument contains any other terms) or concerning a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund within 12 months after the instrument takes effect.
- (2) A liability for duty charged by this section arises when the instrument is first executed.
- (3) The persons liable to pay the duty are the parties to the instrument.

- (4) The duty may be denoted by adhesive stamp.
- (5) Despite subsection (1), an instrument to which this section applies is not liable to duty if
 - (a) it is exempt from duty under a corresponding Act, or
 - (b) the duty for which it is liable under a corresponding Act has been paid.

61 Transfer of property from one superannuation fund to another

- (1) This section applies to the transfer of dutiable property from one superannuation fund to another where:
 - (a) the transfer is made from a complying superannuation fund or from a fund that was a complying superannuation fund within the period of 12 months before the transfer was made, and
 - (b) the transfer is made to a complying superannuation fund or to a superannuation fund that, in the opinion of the trustees, will be a complying superannuation fund within 12 months after the transfer is made, and
 - (c) the transfer occurs in connection with a person's ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, the fund from which the dutiable property is transferred and the person's becoming a member of, or otherwise becoming entitled to benefits in respect of, the fund to which the dutiable property is transferred.
- (2) The duty chargeable on a transfer to which this section applies is ad valorem duty in accordance with this Chapter or \$200, whichever is the lesser.
- (3) An application for an assessment of duty in accordance with this section is to be accompanied by the following:
 - (a) a brief explanation of the background to the transfer and the entitlements to be extinguished and created,
 - (b) copies of the governing rules of the complying superannuation funds concerned,
 - (c) a statement of the property to be transferred,
 - (d) a copy of each instrument relating to the transfer,
 - (e) a statutory declaration from a trustee (or a director of a corporate trustee) of each of the Superannuation funds concerned stating that, in the opinion of the trustee (or

director), the fund will be a complying superannuation fund within 12 months after the transfer occurs.

- (4) The Chief Commissioner may require further information.
- (5) In this section, complying superannuation fund includes a complying approved deposit fund, an eligible rollover fund and an exempt public sector superannuation scheme.

62 Transfers to trustees or custodians of superannuation funds or trusts

- (1) This section applies to the transfer of, or an agreement to transfer, dutiable property to a trustee or custodian of a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund, or a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund within 12 months after the transfer takes effect, where there is no change in the beneficial ownership of the property.
- (2) A transfer of, or an agreement to transfer, property to or from a trustee or custodian of a pooled superannuation trust in exchange for the issue of units in the trust does not, for the purposes of this section, effect a change in the beneficial ownership of the property.
- (3) The duty chargeable on a dutiable transaction to which this section applies is:
 - (a) except as provided by paragraph (b), ad valorem duty in accordance with this Chapter or \$200, whichever is the lesser, or
 - (b) if the dutiable property transferred, or agreed to be transferred, is marketable securities, \$2.

Division 3 Miscellaneous

63 Deceased estates

Duty of \$10 is chargeable in respect of:

- (a) a transfer of dutiable property not made for valuable consideration by the legal personal representative of a deceased person to a beneficiary, being:

- (i) a transfer made under and in conformity with the trusts contained in the will of the deceased person or arising on an intestacy, or
- (ii) a transfer of property the subject of a trust for sale contained in the will of the deceased person, and
- (b) a consent by a legal personal representative of a deceased person to a transmission application by a beneficiary, and
- (c) a transmission application to a devisee who is also the sole legal personal representative.

64 Conversion of lots to strata title

The duty chargeable on the transfer of a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973* is \$10 if the Chief Commissioner is satisfied that:

- (a) the transferee, immediately before registration of the strata plan, held a land use entitlement in respect of the land or part of the land the subject of the strata plan, and
- (b) the transfer is part of an arrangement under which the transferee will take an interest in the lot similar in effect to and in substitution for the interest the transferee had under the land use entitlement immediately before registration of the strata plan.

Part 7 Exemptions

65 Exemptions from duty

(1) General

A dutiable transaction is exempt from duty under this Chapter if it is, or occurs as a consequence of any of the following:

- (a) the appointment of a receiver or trustee in bankruptcy,
- (b) the appointment of a liquidator,
- (c) the transfer of dutiable property for no consideration to a former bankrupt from the estate of the former bankrupt,
- (d) a dutiable transaction over dutiable property arising from the discharge or transfer of a mortgage or declaration of trust over a mortgage,
- (e) a dutiable transaction comprising:
 - (i) a transfer by way of discharge of mortgage, or
 - (ii) a transfer by way of mortgage (not being a transfer by way of mortgage of land, or an estate or interest in land, under the *Real Property Act 1900*),
if duty as on a mortgage has been paid in respect of an instrument evidencing the mortgage or the instrument is exempt from, or is not liable to, duty,
- (f) the vesting of dutiable property in a society or company by virtue of Part 7 or 8 of the *Financial Institutions (NSW) Code* or a corresponding law of another State or Territory.

(2) Employee and employer organisations

No duty is chargeable under this Chapter on a transfer of dutiable property made pursuant to, or in accordance with the rules of

- (a) an association of employees or employers registered as an organisation under the *Commonwealth Workplace Relations Act 1996*, or
- (b) an industrial union of employers or employees registered under the *Industrial Relations Act 1996*, or
- (c) any body of a kind referred to in paragraph (a) or (b) that is approved for the time being by the Minister,

if the transfer is made to another such association, union or body as a consequence of the amalgamation of two or more such associations, unions or bodies.

(3) **Registered clubs**

No duty is chargeable under this Chapter on a transfer of dutiable property to give effect to an order under section 17A of the *Registered Clubs Act 1976* for the amalgamation of two clubs, or for the dissolution of two clubs and the formation of a new club, if such information and documents as the Chief Commissioner may require are given to the Chief Commissioner.

(4) **Workers compensation insurers and custodians**

No duty is chargeable under this Chapter on a transfer of, or an agreement to transfer, dutiable property:

(a) made in compliance with a requirement of the WorkCover Authority between:

(i) a licensed insurer, or a person who was a licensed insurer, under the *Workers' Compensation Act 1926* and an insurer licensed under the *Workers Compensation Act 1987*, or

(ii) licensed insurers under the *Workers Compensation Act 1987*, or

(iii) the Authority and a licensed insurer under the *Workers Compensation Act 1987*, or

(b) made at the direction of the WorkCover Authority:

(i) from an insurer licensed under the *Workers Compensation Act 1987* to a custodian nominated by the Authority, or

(ii) from such a custodian to another such custodian.

(5) **Solicitor corporations**

No duty is chargeable under this Chapter on a transfer of, or an agreement to transfer, to a solicitor corporation formed under the *Legal Profession Act 1987* dutiable property of:

- (a) a partnership of solicitors formed or originally formed before 8 March 1991 if the members of the corporation are the same as the members of the partnership immediately before the transfer or agreement is first executed, or
- (b) a solicitor practising as a sole solicitor before 8 March 1991 if the solicitor becomes the sole member of the corporation.

66 Exemptions—marketable securities

(1) Dutiable transactions subject to Chapter 4

No duty is chargeable under this Chapter on a dutiable transaction in respect of marketable securities:

- (a) if a transfer of those marketable securities is endorsed under Chapter 4 (Marketable securities—on-market transfers (Broker provisions)), or
- (b) if duty is chargeable on the sale or purchase of those marketable securities, or the sale or purchase is exempt from duty, or the transfer of those marketable securities is endorsed, under the provisions of an Act of another Australian jurisdiction that correspond to Chapter 4 and that are declared by order of the Governor published in the Gazette to be corresponding provisions.

(2) Securities lending

No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of marketable securities quoted on the market operated by the Australian Stock Exchange if the transfer or agreement is for the sole purpose of:

- (a) lending the marketable securities to the transferee for not more than 12 months, or
- (b) returning marketable securities borrowed from the transferee not more than 12 months before, being such marketable securities as are necessary to restore the shareholding of the transferee to the exact number and class of marketable securities of which the transferee would have otherwise been the registered holder, if the loan had not taken place, or
- (c) a securities lending transaction that is completed within 12 months.

(3) **SCH error transactions**

No duty is chargeable under this Chapter in respect of:

- (a) an SCH-regulated transfer made to reverse an SCH-regulated transfer that was made mistakenly not more than 7 days earlier, or
- (b) the SCH-regulated transfer so reversed.

(4) **Nomineeing (including entrepot accounts)**

No duty is chargeable under this Chapter on:

- (a) a transfer of marketable securities made by the transferor to a trustee or nominee to be held solely as trustee or nominee of the transferor without any change in beneficial ownership and without contemplation of any such change, or
- (b) a re-transfer of marketable securities to a transferor if
 - (i) the marketable securities were transferred to a trustee or nominee to be held solely as trustee or nominee for the transferor, and
 - (ii) no person other than the transferor has had a beneficial interest in the marketable securities (other than the trustee's or nominee's right of indemnity) between their transfer to the trustee or nominee and their transfer back to the transferor, or
- (c) without limiting paragraph (a) or (b), a transfer of marketable securities to or from:
 - (i) SECH Nominees Pty Limited, or
 - (ii) CHESS Depository Nominees Pty Limited, or
 - (iii) a nominee company that holds marketable securities solely for the purpose of facilitating marketable security transaction settlements by a broker.

(5) **Share buy-backs**

No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of shares comprising a buy-back of the shares in accordance with Division 4B of Part 24 of the *Corporations Law*, unless the buy-back is effected by

the purchaser pursuant to one or more agreements, understandings or arrangements that the purchaser will issue marketable securities.

(6) Rights to shares

No duty is chargeable under this Chapter on the transfer to a person of rights to shares if an earlier transfer of the shares to the person included a right to shares and duty in respect of the rights was paid in connection with that earlier transfer or the earlier transfer was exempt from duty.

(7) Bonus or rights issue

No duty is chargeable under this Chapter on the transfer of shares to a person (the *transferee*) if

- (a) as a consequence of the transfer of shares in a company:
 - (i) in respect of which ad valorem duty under this Act or a corresponding Act has been paid or that is exempt from duty, and
 - (ii) that is not registered in the share register of the company,
the transferee is, on a bonus issue or the issue of a right to shares subsequent to the transfer, entitled to other shares registered in the name of the transferor, and
- (b) the transferee pays the amount, if any, necessary to take up the other shares.

(8) Foreign residents

No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer:

- (a) of marketable securities listed on a recognised stock exchange located outside Australia to:
 - (i) a foreign resident on the foreign resident's own behalf, or
 - (ii) a foreign resident acting on behalf of or as trustee for another foreign resident, and
- (b) that is to be registered on an overseas register of legal or beneficial title.

(9) **Index trusts**

No duty is chargeable under this Chapter on a transfer or transfers, on any one day, of marketable securities:

- (a) to the trustee of an index trust in exchange for the issue of units in the trust, or
- (b) from the trustee of that trust in exchange for the redemption of units in the trust,

if the total amount of the marketable securities so transferred between the transferor and transferee represents a portfolio of securities in such volumes as are contained in the relevant stock exchange index on that day.

(10) **Mining securities**

No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of marketable securities in a company (wherever incorporated) whose sole business is either or both of the following activities:

- (a) mining in New South Wales for minerals within the meaning of the *Mining Act 1992*, or
- (b) prospecting or mining in New South Wales for petroleum within the meaning of the *Petroleum (Onshore) Act 1991*,

if the consideration for the transfer or agreement is not less than the unencumbered value of the marketable securities.

67 Exemptions—transfers to married couples and de facto partners

(1) No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of dutiable property if it is proved to the satisfaction of the Chief Commissioner that:

- (a) as a result of the transfer or agreement, the whole of the property is or will be held by a married couple or de facto partners as joint tenants or as tenants in common in equal shares, and
- (b) the dutiable property:
 - (i) is land that has erected on it a private dwelling house and was solely or principally used, as at the date of transfer, as the principal place of residence of the married couple or de facto partners, or

- (ii) is vacant land and the married couple or de facto partners intend to use it as the site of a private dwelling house to be solely or principally used as their principal place of residence, or
 - (iii) is shares that confer an entitlement to exclusive possession of a company title dwelling that was solely or principally used, as at the date of transfer, as the principal place of residence of the married couple or de facto partners, and
 - (c) both the transferor and the transferee are the married couple or one of them or the de facto partners or one of them and no other person is a party to the transfer, and
 - (d) in the case of de facto partners, the parties to the relationship have lived in the relationship for at least the 2 years before the date of the transfer.
- (2) In this section, private dwelling house includes a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973* used as a place of residence.

68 Exemptions—break-up of marriages and de facto relationships

(1) Break-up of marriage

No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of matrimonial property if

- (a) the property is transferred, or agreed to be sold or transferred, to the parties to a marriage that is dissolved or annulled (or in the opinion of the Chief Commissioner will be dissolved or annulled) or to either of them, or to a child or children of either of them, and
- (b) the transfer or agreement is effected by or in accordance with:
 - (i) a document registered or approved under the Commonwealth *Family Law Act 1975*, or
 - (ii) an order of a court under that Act, or
 - (iii) a purchase at public auction of property that, immediately before the auction, was matrimonial property where the public auction is held to comply with any such document or order.

(2) Break-up of de facto relationship

No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of partnership property if

- (a) the property is transferred, or agreed to be sold or transferred, to the partners in a de facto relationship that has, in the opinion of the Chief Commissioner, been terminated or to either of them, or to a child or children of either of them, and
- (b) the transfer or agreement is effected by or in accordance with:
 - (i) an order of a court made under the De Facto Relationships Act 1984, or
 - (ii) a separation agreement within the meaning of section 44 of the De Facto Relationships Act 1984 that has been certified in accordance with section 47 of that Act.

(3) Associated transactions

No duty is chargeable under this Chapter on a dutiable transaction to the extent that:

- (a) for purposes of or ancillary to a transfer referred to in subsection (1) or (2), it transfers a share that is matrimonial property or partnership property to a person not a party to the relevant marriage or de facto relationship, in order to comply with a requirement of or prescribed under the Corporations Law, or
- (b) it is a declaration of trust, by the transferee of a share transferred as referred to in paragraph (a), for the benefit of a party to the marriage or relationship.

(4) Refunds

If:

- (a) ad valorem duty was paid on a transfer, or agreement for the sale or transfer, of:
 - (i) matrimonial property to the parties to a marriage or to either of them, or to a child or children of either of them, or

- (ii) partnership property to the partners in a de facto relationship or to either of them, or to a child or children of either of them, and
- (b) the marriage was dissolved or annulled or the de facto relationship was terminated,

the Chief Commissioner must reassess the transfer or agreement and refund the duty paid.

(5) **Definitions**

In this section:

marriage includes a void marriage.

Matrimonial property of a marriage means property of the parties to the marriage or of either of them.

partnership property of a de facto relationship means property of the partners to the relationship or of either of them.

party to a marriage includes a person who was a party to a marriage that has been dissolved or annulled, in Australia or elsewhere.

Part 8 Exemption, discounts and instalment payment schemes

Division 1 First home purchase scheme

Subdivision 1 Agreements and associated mortgages

69 The nature of the scheme

This scheme is intended to help people who are buying their first home by enabling them to choose to pay duty on the agreement by instalments over a period of 5 years (instead of at the time of purchase) or to pay the duty at a discounted rate. Under the scheme, any mortgage given to assist the financing of the purchase may be exempted from payment of duty.

70 Commencement

The following transactions and instruments are eligible for consideration under the scheme:

- (a) agreements for sale or transfer entered into on or after the commencement of this Division,
- (b) transfers that occur on or after the commencement of this Division,
- (c) mortgages over land the subject of those agreements or transfers.

71 Eligible persons—generally

- (1) A single person may apply under the scheme but will only be eligible once as a single person.
- (2) A couple may apply under the scheme as long as one of them has not owned land, or a company title dwelling, in Australia either solely or with someone else.

72 Eligible persons—net taxable income

- (1) Eligibility is subject to a means test.

- (2) In the case of a couple, with or without dependants, the couple's combined net taxable income must not exceed \$48,000 for the tax year prior to the date of the application.
- (3) In the case of a single person with one or more dependants, the person's net taxable income must not exceed \$48,000 for the tax year prior to the date of the application.
- (4) In the case of a single person with no dependants, the person's net taxable income must not exceed \$33,000 for the tax year prior to the date of the application.
- (5) In this section, *net taxable income* means the taxable income (including taxable capital gains) determined in accordance with the *Commonwealth Income Tax Assessment Act 1936*.

73 Ineligible persons

- (1) Companies, partnerships, and persons in their capacity as trustees, are not eligible.
- (2) However, a trustee is eligible if the trustee is an apparent purchaser of the kind referred to in section 55 and the real purchaser is eligible.
- (3) A person is not eligible if any duty remains to be paid by the person in connection with a previous application approved under this scheme (or if stamp duty remains to be paid by the person in connection with a first home purchase scheme that operated under the *Stamp Duties Act 1920*).
- (4) A person is not eligible if the person owns or has owned land, or a company title dwelling, in Australia either solely or with someone else. However, this does not apply to a person who is one of an eligible couple under section 71 (2).

74 Eligible agreements or transfers

- (1) The agreement or transfer must be for the purchase of a first home or for the purchase of a vacant block of residential land intended to be used as the site of a first home.
- (2) The agreement or transfer must be for the whole of the property.

- (3) The total consideration payable under the agreement or transfer (that is, the amount paid for the house or unit, or the land and the construction of a house or unit on the land, and any furnishings and other items acquired under the agreement or transfer or any related document) must not be more than:
- (a) \$155,000 if the property is located in the Metropolitan Area and has a private dwelling built on it, or
 - (b) \$145,000 if the property is located elsewhere than in the Metropolitan Area and has a private dwelling built on it, or
 - (c) \$80,000 if the property is located in the Metropolitan Area and comprises a vacant block of residential land, or
 - (d) \$70,000 if the property is located elsewhere than in the Metropolitan Area and comprises a vacant block of residential land.
- (4) The amount paid must be the full market value. Wholly or partially gifted property is not eligible.
- (5) The regulations may vary the amounts specified for the purposes of this section.
- (6) In this section, *Metropolitan Area* means the following:
- County of Cumberland
 - local government area of Wollondilly
 - City of Wollongong
 - City of Shellharbour
 - City of Gosford
 - local government area of Wyong
 - City of Blue Mountains.

75 Ineligible agreements and transfers

- (1) An agreement or transfer is not eligible if it involves the acquisition of a business or business premises. However, an agreement for the purchase, or a transfer, of a farming property on which there is a private dwelling is not excluded.
- (2) An agreement for the purchase, or a transfer, of a holiday home is not eligible.

- (3) An agreement or transfer under which there are more than two purchasers or transferees is not eligible.

76 Other qualifications

- (1) The home must be occupied or intended to be occupied by the purchaser or purchasers on or before settlement, or within a reasonable time after settlement, as the principal place of residence.
- (2) No part of the property purchased may be rented or leased while any instalment of duty remains to be paid.

77 Eligible mortgages

- (1) A mortgage is eligible if it is given to assist the financing of a purchase under an agreement or transfer that is eligible under the scheme.
- (2) The mortgage must be over the property purchased.
- (3) In the case of a property which has a private dwelling built on it, the amount of advances secured must not be more than the amount of the total consideration permitted under section 74 (3) (a) or (b), as the case requires.
- (4) In the case of a property which comprises a vacant block of residential land, the amount of advances secured must not be more than the amount of the total consideration permitted under section 74 (3) (c) or (d), as the case requires, unless the amount of advances secured under the mortgage includes provision for the building of a private dwelling on the property. In such a case, the amount of advances secured must not be more than the amount of the total consideration permitted under section 74 (3) (a) or (b), as the case requires.

78 Making of applications

- (1) An application is made to the Chief Commissioner by completing a statutory declaration in a form approved by the Chief Commissioner.
- (2) Unless the applicant intends (or the applicants intend) to pay the duty at the discounted rate in accordance with section 80, the application must be accompanied by an undertaking in a form approved by the Chief Commissioner to pay the duty on the agreement by 5 annual instalments, the amounts of which are, as nearly as possible, to be equal.

- (3) The Chief Commissioner may at any time (whether before or after the approval of an application) require the applicant or applicants to provide such further information as the Chief Commissioner may consider necessary for the proper administration of the scheme.

79 Determination of applications

An application is to be determined solely at the discretion of the Chief Commissioner whose decision is final.

80 Stamping of documents if application is approved

- (1) If an application concerning an eligible agreement or transfer is approved, the purchaser is (or the purchasers are) entitled to a 30% discount of the duty otherwise payable in respect of the agreement or transfer. However, this entitlement ceases if the discounted amount of duty is not paid within 3 months after the liability to duty arises.
- (2) If the discounted amount of duty is paid in accordance with this section, the agreement (including any transfer made in conformity with the agreement) will be stamped as if the full amount of duty has been paid.
- (3) Otherwise, if an application concerning an eligible agreement is approved, the agreement will be stamped as if the full amount of duty had been paid and the duty must be paid in instalments in accordance with the undertaking.
- (4) The amount of any duty payable on a duplicate agreement and any associated transfer may be added to the amount to be paid by instalments.

81 Payment of instalments

- (1) Where instalments of duty are to be paid in accordance with the undertaking, the first instalment is to be paid by a date which is 1 year after the date of exchange of the agreement.
- (2) Although instalments are payable annually, payments may be made at more frequent intervals.

82 Payment of interest

- (1) No interest is payable unless an instalment is overdue. An instalment is overdue if it is not paid within 21 days after the date fixed for its payment in the undertaking.
- (2) Interest on an instalment that is overdue is payable as on a tax default by a taxpayer under the *Taxation Administration Act 1996*.
- (3) A person having the benefit of the scheme is not liable, in that capacity, for any penalty under this Act or any interest other than as provided by this section.

83 Overdue instalments

As well as attracting interest, if an instalment is overdue for more than 3 months, the Chief Commissioner (or the Chief Commissioner's agent) may sue the defaulter to recover, as a debt, the whole of the outstanding balance of the duty and any accrued interest and may, in addition, lodge and maintain a caveat over the subject property until all duty has been paid.

84 Sale or leasing of home or land before all instalments are paid

- (1) If the home or land is sold, leased (wholly or in part) or otherwise disposed of, or if for some other reason the home ceases to be the principal place of residence of the person or both of the persons having the benefit of the scheme:
 - (a) any entitlement to a discount under section 87 ceases immediately the home or land is sold, leased or otherwise disposed of or the home so ceases to be the principal place of residence, and
 - (b) the whole of the outstanding balance of the duty and any accrued interest becomes immediately payable.
- (2) The Chief Commissioner (or the Chief Commissioner's agent) may sue the person or persons owing the duty and any interest to recover, as a debt, the amount involved.

85 Definitions

In this Subdivision:

couple means any 2 people residing together or who intend to reside together in the home or on the land the subject of the application.

single person means a person residing alone (whether or not with children) or who intends to so reside in the home or on the land the subject of the application.

Subdivision 2 Discount for full payment of remaining duty

86 Application of Subdivision 2

This Subdivision applies to a person or persons having the benefit of the scheme set out in Subdivision 1 or a first home purchase scheme that operated under the *Stamp Duties Act 1920*.

87 Discount for full payment of remaining duty

- (1) A person or persons to whom this Subdivision applies may choose at any time to pay out, at a discount, the total of all instalments of duty remaining at that time. The amount of the discount depends on the number of instalments remaining to be paid and is calculated as follows:

No of instalments remaining	Discount
5	25%
4	20%
3	15%
2	10%
1	—

- (2) There is no entitlement to a discount under this section at any time when an instalment is overdue or any interest payable on an overdue instalment remains unpaid.

Division 2 Flood-prone housing scheme

88 The nature of the scheme

This scheme is intended to assist a person who, as an owner of a home on flood-prone land, has entered into an agreement for the sale of the land to the council of the local government area in which the land is situated and then purchases another home. The scheme enables such a person to choose to pay duty on the agreement for the purchase of the new home by instalments over a period of 5 years (instead of at the time of purchase).

89 Commencement

Agreements for sale or transfer entered into on or after the commencement of this Division are eligible for consideration under the scheme.

90 Eligible persons

A person may apply under the scheme if

- (a) the person was the owner of at least 50% of the beneficial interest in the land sold or being sold to the council, and
- (b) the person has entered into an agreement for the purchase of a home intended to be occupied as the person's principal place of residence.

91 Eligible agreements

The agreement for the purchase of the new home is eligible for consideration under the scheme if the amount paid for the home is the full market value. Wholly or partially gifted property is not eligible.

92 Other provisions

Sections 76 and 78–84 apply to this scheme in the same way as they apply to the First Home Purchase Scheme.

Division 3 Exemption from or reduction in duty for certain transfers

93 The nature of the scheme

The scheme is intended to provide an exemption from or reduction in duty, at the discretion of the Chief Commissioner, in respect of:

- (a) the transfer of a principal place of residence from a corporation or special trust to certain persons, or
- (b) the transfer of any land owned as at 31 December 1986 by a special trust from the trust to certain persons.

94 Definitions

In this Division:

corporation has the same meaning as in the *Corporations Law*.

land includes any estate or interest in land.

land tax has the same meaning as in the *Land Tax Management Act 1956*.

principal shareholder in a corporation means:

- (a) any person (other than a corporation) whose voting entitlement (whether or not through the holding of shares) in the corporation is 50% or more, or
- (b) any person (other than a corporation) who has a voting entitlement (whether or not through the holding of shares) in the corporation where all the persons who have a voting entitlement in the corporation have an equal voting entitlement.

shareholder includes member.

special trust has the same meaning as in the *Land Tax Management Act 1956*.

voting entitlement has the meaning given by section 95.

95 Meaning of “voting entitlement”

- (1) A person’s voting entitlement in a corporation is that proportion of the total voting rights of all shareholders entitled to vote at general meetings of the corporation which the person is entitled to exercise, as a shareholder, at general meetings of the corporation.
- (2) A person is to be considered to have a voting entitlement in a corporation (*corporation A*) if the person has a voting entitlement in another corporation (*corporation B*) which itself has a voting entitlement in corporation A.
- (3) In a case to which subsection (2) applies, the person’s voting entitlement in corporation A is the proportion which results from multiplying the person’s voting entitlement in corporation B by corporation B’s voting entitlement in corporation A.
- (4) If a person has a voting entitlement in the same corporation under different provisions of this section, or under different applications of the same provision of this section, the person’s voting entitlement in the corporation is the aggregate of those entitlements.
- (5) In determining a person’s voting entitlement for the purposes of this section, proxies and other authorities to vote held by a shareholder are to be disregarded.

96 Transfer by corporation of principal place of residence to principal shareholder or spouse

- (1) A transfer of land by a corporation is eligible for exemption under this Division if
 - (a) the corporation owned the land on 11 September 1990, and
 - (b) the transferee or each of the transferees is a principal shareholder in the corporation or the spouse of such a principal shareholder (whether or not the principal shareholder is one of the transferees), and

- (c) had the transferee or each of the transferees been an owner of the land within the meaning of the Land Tax Management Act 1956 on 31 December that last preceded the date of the transfer, the land would, by the operation of section 10 (1) (r) of the Land Tax Management Act 1956, be exempt from land tax in respect of the year in which the transfer took effect.
- (2) If land is transferred by a corporation to two or more persons jointly, each of those persons is, for the purposes of this section (but without affecting any entitlement to be considered to be a principal shareholder apart from this subsection), to be considered to be a principal shareholder in the corporation if
 - (a) each of the persons has a voting entitlement in the corporation, and
 - (b) the aggregate of the voting entitlements in the corporation of each of those persons would be sufficient to qualify any one person as a principal shareholder in the corporation.

97 Transfer of principal place of residence by special trust to beneficiary etc

A transfer of land subject to a special trust is eligible for exemption under this Division if:

- (a) the land was subject to the special trust on 11 September 1990, and
- (b) the transferee or each of the transferees was:
 - (i) the settler of the land or the person who actually paid the purchase money for the land when the land was acquired by the trustee under the trust, or
 - (ii) a beneficiary of the special trust immediately before the transfer took effect and a beneficiary of the trust when the land was acquired by the trustee under the trust, or
 - (iii) the spouse of a person referred to in subparagraph (i) or (ii), and
- (c) the transferee or each of the transferees will hold the land beneficially, and

- (d) had the transferee or each of the transferees been an owner of the land within the meaning of the *Land Tax Management Act 1956* on 31 December that last preceded the date of the transfer, the land transferred would, by the operation of section 10 (1) (r) of the *Land Tax Management Act 1956*, be exempt from land tax in respect of the year in which the transfer took effect.

98 Transfer of principal place of residence by corporation to beneficiary of special trust

A transfer of land by a corporation (not acting in the capacity of a trustee) is eligible for exemption under this Division if

- (a) the corporation owned the land on 11 September 1990, and
- (b) the transferee or each of the transferees is a person, or the spouse of a person, who is a beneficiary under a special trust and was a beneficiary under the trust when the land was acquired by the corporation, and
- (c) the trustee under the special trust is a principal shareholder in the corporation (or would, if the trustee were not a corporation, be a principal shareholder in the corporation) at the time of the transfer, and
- (d) had the transferee or each of the transferees been the owner within the meaning of the *Land Tax Management Act 1956* on 31 December that last preceded the date of the transfer, the land transferred would, by the operation of section 10 (1) (r) of the *Land Tax Management Act 1956*, be exempt from land tax in respect of the year in which the transfer took effect.

99 Transfer by special trust to corporation

- (1) A transfer of land to a corporation by a person in the person's capacity as trustee of a special trust is eligible for exemption under this Division if
 - (a) the land was subject to the special trust on, and at all times between, 31 December 1986 and 11 September 1990, and
 - (b) section 160ZZN (Transfer of asset to wholly-owned company) of the Commonwealth *Income Tax Assessment Act 1936* applies to the disposal of land effected by the transfer, and

- (c) pursuant to that section, Part IIIA (Capital Gains and Capital Losses) of that Act (except that section) does not apply to that disposal.
- (2) Chapter 3 (Certain transactions treated as transfers) does not apply to the issue or allotment of shares in a corporation pursuant to a transfer for which an exemption from the payment of duty is granted under this Division.

100 Transfer of land not used and occupied solely as a principal place of residence

If

- (a) a transfer of land would be eligible for exemption under section 96,97 or 98 but for the fact that the land is not land to which section 96 (1) (c), 97 (d) or 98 (d) applies because it was not used and occupied solely as a principal place of residence at the relevant time, and
- (b) the land value of the land was entitled to be reduced under section 9C of the *Land Tax Management Act 1956* at the relevant time,

the amount on which the transfer is to be charged with ad valorem duty is to be reduced in the same proportion as the land value was entitled to be reduced under section 9C of the *Land Tax Management Act 1956*.

101 Making of applications

- (1) An application under this Division is to be made to the Chief Commissioner in a form approved by the Chief Commissioner.
- (2) If the land to which the transfer relates is or includes land under the *Real Property Act 1900*, the application must be accompanied by an undertaking from the transferee in a form approved by the Chief Commissioner that:
 - (a) the duty that would be payable on the transfer but for the granting of an exemption under this Division will be paid if the transferee does not become the registered proprietor of the land within 3 months (or such longer period as the Chief Commissioner may at any time determine and notify in writing to the transferee) after the transfer is stamped as exempt from the payment of duty, and

- (b) the transferee will, within 1 month after becoming the registered proprietor of the land (or such longer period as the Chief Commissioner may at any time determine and notify in writing to the transferee), provide evidence of that fact to the satisfaction of the Chief Commissioner.

102 Determination of applications

- (1) An application is to be determined solely at the discretion of the Chief Commissioner whose decision is final.
- (2) An application is not to be granted unless the Chief Commissioner is satisfied that all land tax payable in respect of the land (including any additional land tax payable by way of penalty or otherwise) has been paid.
- (3) If the application is granted, the Chief Commissioner is to stamp the transfer as exempt from the payment of duty.

103 Reassessment of duty if undertaking not met

If a requirement of an undertaking from a transferee is not met, the Chief Commissioner may reassess the duty payable on the transfer as if this Division does not apply.

104 Application of scheme to company titles

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

Chapter 3 Certain transactions treated as transfers

Part 1 Preliminary

105 Introduction and overview

This Chapter charges duty on certain transactions that are not “dutiabale transactions” under Chapter 2.

Note. Duty is chargeable under Part 2 on the acquisition by a person of an interest consisting of certain shareholdings in a private company, or unitholdings in a private unit trust scheme, whose property in either case consists, to the prescribed extent, of land holdings.

The duty is chargeable at the general rate for a dutiable transaction under Chapter 2, rather than at the rate applicable to transfers of shares and units. An acquisition statement must be lodged when a majority interest is acquired or increased. Duty on an acquisition statement is chargeable only on interests acquired within a 3-year period. In certain cases the obligation to pay duty at the higher rate is phased in (see section 122).

Duty is chargeable:

- under Part 3 on transactions by which corporate capital is reduced by redemption, surrender or cancellation of shares or reduction of share value or alteration of share rights
- under Part 4 on the allotment of shares or units that confer a land use entitlement
- under Part 5 on the allotment of shares by direction.

Part 2 Acquisition of interests in certain landholders

Division 1 Land-rich private corporations

106 Meaning of “private corporation”

A private company or private unit trust scheme is, for the purposes of this Part, a *private corporation*.

Note. “Private company” and “private unit trust scheme” are defined in the Dictionary.

107 When is a private corporation “land-rich”?

- (1) A private corporation is *land-rich* if:
 - (a) it has land holdings in New South Wales whose unencumbered value is \$1,000,000 or more, and
 - (b) its land holdings in all places, whether within or outside Australia, comprise 80% or more of the unencumbered value of all its property.

Note. As to what constitutes a land holding, see section 108. As to ownership through subsidiaries or discretionary trusts, see sections 109 and 110.
- (2) In calculating the unencumbered value of the property of a private corporation for the purposes of this section, property of any of the following kinds is not counted:
 - (a) cash, whether in Australian or other currency,
 - (b) money on deposit with a bank, negotiable instruments or debt securities,
 - (c) loans that, according to their terms, are to be repaid on demand by the lender or within 12 months after the date of the loan,
 - (d) if the private corporation concerned is a private company, loans to persons who, in relation to the company or to a majority shareholder or director of the company, are associated persons,

(e) if the private corporation concerned is a private unit trust scheme, loans to persons who, in relation to a trustee or beneficiary of the scheme, are associated persons,

(f) land use entitlements,

unless the Chief Commissioner, being satisfied that the property concerned was not acquired solely or mainly for the purpose of avoiding duty under this Part, notifies the private corporation concerned that the property will be counted for the purposes of such a calculation.

Note. “Associated person”, “land use entitlement” and “majority shareholder” are defined in the Dictionary.

(3) In addition to subsection (2), property is not to be counted in calculating the unencumbered value of all of the property of a private corporation for the purposes of this section if the private corporation is unable to satisfy the Chief Commissioner that the property was obtained otherwise than to reduce, for the purposes of this Division, the ratio of its land holdings in all places, whether within or outside Australia, to the unencumbered value of all its property.

108 Land holdings of private corporations

(1) For the purposes of this Part, a *land holding* is any interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor. An interest in land, however:

(a) is not a land holding of a private company unless the interest of the private company in the land is a beneficial interest, and

(b) is not a land holding of a unit trust scheme unless the interest is held by the trustees in their capacity as trustees of the scheme.

(2) This section is in aid of, but does not limit, the operation of any provision of this Part providing for constructive ownership of interests.

(3) For the purposes of this Part, the vendor and the purchaser under an uncompleted agreement for the sale of land are taken to be separately entitled to the whole of the land.

Note. If duty is charged on an acquisition that relates to a land holding referred to in subsection (3), the Chief Commissioner may defer payment of duty under section 47 of the Taxation Administration Act 1996.

A refund may be payable in relation to the non-completion or rescission of an agreement referred to in subsection (3)—see section 123.

**109 Constructive ownership of land holdings and other property:
subsidiaries**

- (1) In addition to any interest in land or other property that it may hold in its own right, a private corporation is taken, for the purposes of this Part, to hold an interest (the value of which, for duty purposes, is to be calculated in accordance with subsection (2)) in land or other property held by a subsidiary of the private corporation.
- (2) The value, for duty purposes, of the interest in land or other property that a private corporation is taken, by the operation of subsection (1), to hold by virtue of a holding of a subsidiary (the actual landholder) is that portion of the interest's unencumbered value to which the private corporation would be entitled on a winding-up of
 - (a) the actual landholder, and
 - (b) every subsidiary of the private corporation that stands between the private corporation and the actual landholder in the ownership chain.
- (3) For the purposes of this Part, a private company (*Company A*) is the subsidiary of another private company (*Company B*) if Company A is a subsidiary, within the meaning of the *Corporations Law*, of Company B.
- (4) For the purposes of this Part, a private company is the subsidiary of a unit trust scheme if the trustees of the scheme, in their capacities as trustees of the scheme, have a majority interest in the private company.
- (5) For the purposes of this Part, a unit trust scheme is the subsidiary of a private corporation if the corporation has a majority interest in the scheme.

Note. As to what constitutes a "majority interest" in a private corporation, see Division 2.

110 Constructive ownership of land holdings and other property: discretionary trusts

- (1) A person or a member of a class of persons in whose favour, by the terms of a discretionary trust, capital the subject of the trust may be applied:
 - (a) in the event of the exercise of a power or discretion in favour of the person or class, or
 - (b) in the event that a discretion conferred under the trust is not exercised,

is, for the purposes of this section, a *beneficiary* of the trust.

- (2) A beneficiary of a discretionary trust is taken to own or to be otherwise entitled to the property the subject of the trust, unless the Chief Commissioner, being satisfied that the application of this subsection in the particular case would be inequitable, determines otherwise.
- (3) For the purposes of this Part, any property that is the subject of a discretionary trust is taken to be the subject of any other discretionary trust:
 - (a) that is, or
 - (b) any trustee of which (in the capacity of trustee) is, a beneficiary of it, unless the Chief Commissioner, being satisfied that the application of this subsection in the particular case would be inequitable, determines otherwise.
- (4) Subsection (3) extends to apply to property that is the subject of a discretionary trust only by the operation of that subsection.
- (5) In this section, *person* includes a private corporation.

Note. "Discretionary trust" is defined in the Dictionary.

Division 2 Acquisitions of interests in private corporations

111 What are "interests" and "majority interests" in private corporations?

- (1) A person has an *interest* in a private corporation if the person has an entitlement (otherwise than as a creditor or other person to whom the corporation is liable) to a distribution of property from the corporation on a winding up of the corporation or otherwise.

- (2) A person who, by virtue of subsection (1), has an interest in a private corporation has a *majority interest* in the corporation if the person, in the event of a distribution of all the property of the corporation immediately after the interest was acquired, would be entitled to more than 50% of the property distributed.
- (3) An interest in a private corporation is not counted for the purposes of this section if
- (a) the interest concerned is an interest in a private company acquired before 21 November 1986, or
 - (b) the interest concerned is an interest in a private unit trust acquired before 10 June 1987, or
 - (c) the interest concerned was acquired at a time when the private corporation did not hold land in New South Wales.
- (4) In this section, *person* includes a private corporation.

Note. Section 120 is relevant to ascertaining a person's entitlements on a distribution of property.

112 How may an interest be “acquired”?

For the purposes of this Part, an interest in a land-rich private corporation may be acquired by means of

- (a) the purchase, gift, allotment or transfer of any share or unit in a private corporation, or
- (b) the variation, abrogation or alteration of a right attaching to any such share or unit, or
- (c) the redemption, surrender or cancellation of any such share or unit,

or by any combination of the means referred to in paragraphs (a), (b) and (c).

Division 3 Charging of duty

113 When does a liability for duty arise?

A liability for duty charged by this Part arises when a relevant acquisition is made.

114 What is a “relevant acquisition”?

For the purposes of this Division, a person who:

- (a) acquires an interest in a land-rich private corporation:
 - (i) that is of itself a majority interest in the corporation, or
 - (ii) that, when aggregated with other interests in the corporation held by the person or an associated person, results in an aggregation that amounts to a majority interest in the corporation, or
- (b) having a majority interest, or an interest described in paragraph (a) (ii), in a land-rich private corporation, acquires a further interest in the corporation,

has made a relevant acquisition.

Note. “Associated person” is defined in the Dictionary.

The interests of associated persons are not always taken into account—see section 118 (5).

115 Acquisition statements

- (1) A person who has made a relevant acquisition must prepare a statement (an acquisition statement) and lodge it with the Chief Commissioner.
- (2) The acquisition statement is to be prepared in a form approved by the Chief Commissioner and must contain the following information:
 - (a) the name and address of the person who has acquired the interest,
 - (b) the date of the relevant acquisition,
 - (c) particulars of the interest acquired,
 - (d) particulars of the total interest of the person and any associated person in the private corporation at that date,
 - (e) the unencumbered value of all land holdings in New South Wales of the private corporation as at the date of the relevant acquisition and as at the date of acquisition of each interest acquired in the corporation during the 3 years prior to the date of the relevant acquisition,

- (f) the unencumbered value of the property of the private corporation at the date of the relevant acquisition,
- (g) the amount of duty paid under this Act or under a law of another Australian jurisdiction in respect of each earlier acquisition of an interest referred to in paragraph (e),
- (h) such other information as the Chief Commissioner may require.

Note. In ascertaining whether or not a liability to lodge a statement under this section exists, it is necessary to have regard to provisions of this Part that deal with:

- acquisition generally (section 112)
- acquisitions that are exempt from the operation of this Part (section 119)
- how a person may be taken to have acquired an interest in a land-rich private corporation because of the interests of a subsidiary company (section 109).

Sometimes there is joint and several liability for the duty as between the person lodging the acquisition statement and an associated person—see section 117 (2).

116 When must duty be paid?

A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if duty is paid within 3 months after the liability to pay the duty arises.

117 Who is liable to pay the duty?

- (1) Duty chargeable under this Part is payable by the person who makes the relevant acquisition, except as provided by subsection (2).
- (2) If a relevant acquisition results from an aggregation of the interests of associated persons, the person who made the relevant acquisition and the associated person or persons are jointly and severally liable for payment of the duty.

118 How duty is charged on relevant acquisitions

- (1) If an acquisition statement does not disclose any acquisitions during the 3 years preceding the relevant acquisition, duty is chargeable, at the rate specified under this Act for a transfer of dutiable property, on the amount calculated by multiplying the

unencumbered value of all land holdings of the private corporation in New South Wales (calculated at the date of acquisition of the interest acquired) by the proportion of that value represented by the interest acquired in the relevant acquisition.

- (2) If an acquisition statement discloses one or more acquisitions during the 3 years preceding the relevant acquisition, duty is chargeable, at the rate specified under this Act for a transfer of dutiable property, on the aggregate of amounts severally calculated, in the manner provided by subsection (1), in respect of each interest required to be disclosed in the statement.
- (3) Duty payable under this section is to be reduced by the sum of the duty paid or payable under this Act in respect of the acquisition, during the 3 years preceding the relevant acquisition, by the person or any associated person of an interest in the same private corporation, but only in proportion to the extent to which the duty paid or payable is attributable to the amount of the duty payable under this section.
- (4) Duty payable under this section is to be reduced by an amount (if any) calculated in accordance with the following formula:

$$\frac{A}{B} \times C$$

where:

A is the unencumbered value of the land holdings in New South Wales of the private corporation at the time the dutiable acquisition was made, and

B is the encumbered value of all property of the private corporation at that time, and

C is the sum of the duty under this Act paid or payable in respect of a dutiable transaction in relation to the shares or units or capital reduction by which an interest in the private corporation was acquired and any duty of a like nature so paid or payable under a law of another Australian jurisdiction.

- (5) If a relevant acquisition is made owing to the aggregation of the interests of associated persons, but the Chief Commissioner is satisfied that the associated persons acquired their respective interests independently and for no common purpose, the Chief

Commissioner may assess and charge duty on the relevant acquisition without aggregating the interests of the person who made it with the interests of associated persons.

- (6) This section is subject to section 122 and to the other provisions of Division 4.

Note. In ascertaining the duty payable under this section, it is necessary to have regard to provisions of Division 4 of this Part that deal with:

- acquisitions that are exempt from the operation of this Part (section 119)
- rescission of agreements for the sale or conveyance of land (section 123)
- acquisitions for securing financial accommodation (section 124).

Division 4 General and supplemental

119 Exempt acquisitions

- (1) An acquisition by a person of an interest in a private corporation is an exempt acquisition:
- (a) if the land the subject of the interest concerned could have been acquired by the person in a manner that does not result in a liability to pay ad valorem duty under Chapter 2 (Transactions concerning dutiable property), or
 - (b) if the interest was acquired in the person's capacity as:
 - (i) a receiver or trustee in bankruptcy, or
 - (ii) a liquidator, or
 - (iii) an executor or administrator of the estate of a deceased person, or
 - (iv) if the interest was acquired solely as the result of the making of a compromise or arrangement under Part 5.1 of the *Corporations Law* that has been approved by the court, not being a compromise or arrangement that the Chief Commissioner is satisfied was made with the intention of defeating the operation of this Part, or

- (c) if the interest concerned is acquired solely from a pro rata increase in the interests of all shareholders or unitholders, or
- (d) if the interest was acquired solely as the result of the distribution of the estate of a deceased person, whether effected in the ordinary course of execution of a will or codicil or administration of an intestate estate or as the result of the order of a court, made under the *Family Provision Act 1982* or otherwise, varying the application of the provisions of a will or codicil or varying the application of the rules governing the distribution of the property of an intestate estate, or
- (e) if the interest was acquired by the parties to a marriage that is dissolved or annulled (or in the opinion of the Chief Commissioner will be dissolved or annulled) or by either of them, or by a child or children of either of them, in accordance with:
 - (i) a document registered or approved under the Family Law Act, or
 - (ii) an order of a court under that Act, or
 - (iii) a purchase at public auction of property that, immediately before the auction, was matrimonial property where the public auction is held to comply with any such document or order, or
- (f) if the interest was acquired by the partners in a de facto relationship that has, in the opinion of the Chief Commissioner, been terminated or by either of them, or by a child or children of either of them, in accordance with:
 - (i) an order of a court made under the *De Facto Relationships Act 1984*, or
 - (ii) a separation agreement within the meaning of section 44 of the *De Facto Relationships Act 1984* that has been certified in accordance with section 47 of that Act, or

Note. “De facto partner” and “de facto relationship” (defined in the Dictionary) have the same meanings as in the De Facto Relationships Act 1984.

- (g) to the extent that:
 - (i) for purposes of or ancillary to the acquisition of an interest referred to in paragraph (d) or (e), the acquisition consists of the transfer of a share that is matrimonial property or partnership property to a person not a party to the relevant marriage or de facto relationship, in order to comply with a requirement of or prescribed under the *Corporations Law*, or
 - (ii) the acquisition consists of a declaration of trust, by the transferee of a share transferred as referred to in subparagraph (i), for the benefit of a party to the marriage or relationship.
- (2) If:
 - (a) duty was paid on the acquisition of
 - (i) matrimonial property by the parties to a marriage or by either of them, or by a child or children of either of them, or
 - (ii) partnership property by the partners in a de facto relationship or by either of them, or by a child or children of either of them, and
 - (b) the marriage was dissolved or annulled or the de facto relationship was terminated,

the person who paid the duty is entitled to a refund of it.
- (3) An acquisition by a person of an interest in a private corporation is an exempt acquisition if the Chief Commissioner, being satisfied that the application of this Part to the acquisition in the particular case would not be just and reasonable, so determines.
- (4) An interest acquired by an exempt acquisition is not counted, for the purposes of this Part, as an interest in a private corporation.
- (5) In this section:

Family Law Act means the Commonwealth *Family Law Act 1975* or any Act of the Commonwealth amending or replacing that Act.

marriage includes a void marriage.

matrimonial property of a marriage means property of the parties to the marriage or of either of them.

partnership property of a de facto relationship means property of the partners to the relationship or of either of them.

party to a marriage includes a person who was a party to a marriage that has been dissolved or annulled, in Australia or elsewhere.

120 Maximisation of entitlements on distribution of property

- (1) This section applies to any calculation, for the purposes of this Part, of the entitlement of a person (the *interested person*) to participate in a distribution of the property of a private corporation, whether on a winding up of the private corporation or otherwise.
- (2) A calculation is to be made based, firstly, on a distribution carried out in accordance with the constitution of the private corporation, and with any law relevant to the distribution, as in force at the time of distribution, and the entitlement of the interested person is to be evaluated accordingly.
- (3) Next, a calculation is to be made based on a distribution carried out after the interested person, and any other person whom the interested person has power to direct with respect to such a distribution or who is, in relation to the interested person, an associated person, had exercised all powers and discretions exercisable by them by reason of having acquired an interest in the private corporation concerned:
 - (a) to effect or compel an alteration to the Constitution of the private corporation, and
 - (b) to vary the rights conferred by shares or units in the private corporation, and
 - (c) to effect or compel the substitution or replacement of shares or units in the private corporation with other shares or units in it,

in such a manner as would maximise the value of the entitlement, and the entitlement of the interested person is to be evaluated accordingly.

- (4) The results obtained by an evaluation of the interested person's entitlement in accordance with subsections (2) and (3) are then to be compared, and whichever evaluation results in a greater entitlement is the correct evaluation, for the purposes of this Part, of the entitlement, unless the Chief Commissioner, being satisfied that the application of this subsection in the particular case would be inequitable, determines otherwise.

121 Valuation of property

- (1) The provisions of this Act that apply to the ascertainment of the value of transfers chargeable with ad valorem duty apply in the same way to an acquisition statement under this Part and the value of land holdings mentioned in it.
- (2) If any arrangement affecting the dutiable value of dutiable land holdings that was entered into within 12 months before a relevant acquisition was brought about by any person with the intention of reducing the dutiable value of the land holdings, the Chief Commissioner may:
- (a) cause a valuation of the land holding to be made, and
 - (b) direct the valuer to disregard the arrangement for the purposes of the valuation, and
 - (c) assess duty on the basis of the valuation carried out in accordance with the direction.

122 Phasing-in of duty

If the unencumbered value of land holdings in New South Wales of a private corporation does not exceed \$1.5 million, the duty chargeable under this Part is to be calculated in accordance with the following formula:

$$\left(\frac{A - \$1,000,000}{\$500,000} \right) \times B + \left(1 - \frac{A - \$1,000,000}{\$500,000} \right) \times C$$

where:

A is the unencumbered value of the land holdings in New South Wales of the private corporation at the time the dutiable acquisition was made, and

B is the duty that, apart from this section, would be chargeable under this Part, and

C is the duty calculated under this Act on the dutiable value of the shares comprised in the dutiable acquisition.

123 Agreements for sale or conveyance of land

- (1) If
 - (a) at the time of acquisition of an interest by any person in a land-rich private corporation that necessitates the lodgment of an acquisition statement under Division 3, the corporation was the vendor under an uncompleted agreement for the sale or conveyance of land, and
 - (b) the agreement is subsequently completed,

the Chief Commissioner is to assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a land holding of the corporation.

- (2) If
 - (a) at the time of acquisition of an interest by any person in a land-rich private corporation that requires the lodgment by any person of an acquisition statement under Division 3, the private corporation was the purchaser under an uncompleted agreement for the sale or conveyance of land, and
 - (b) the agreement is subsequently rescinded, annulled or otherwise terminated without completion,

the Chief Commissioner is to assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a land holding of the corporation.

124 Duty concession: acquisitions securing financial accommodation

- (1) If the person lodging an acquisition statement under this Part in relation to the acquisition of an interest in a land-rich private corporation:
 - (a) informs the Chief Commissioner at the time the statement is lodged that the acquisition is effected for the purpose of securing financial accommodation, and

- (b) the Chief Commissioner is satisfied that the acquisition is effected for that purpose,

the statement, in so far as it relates to that acquisition, is not chargeable with duty, except as provided by subsection (2).

- (2) The statement is chargeable with duty at the expiration of the period of 5 years after the date of the acquisition (or such longer period as may be determined by the Chief Commissioner in the particular case) if the interest concerned is not:
 - (a) re-acquired by the person from whom it was acquired, or
 - (b) in the case of an acquisition by way of mortgage, conveyed by the mortgagee to a third person in exercise of the mortgagee's power of sale,within that period (or that longer period).
- (3) Section 115 does not apply to the re-acquisition by a person of the interest concerned.

Part 3 Entitlements arising from capital reductions or rights alterations

125 Definitions

(1) In this Part:

capital reduction means:

- (a) the redemption, surrender or cancellation of a share (including cancellation as part of a buy-back of shares in accordance with Division 4B of Part 2.4 of the Corporations Law), or
- (b) a reduction in the paid up value of a share.

company means a NSW company that is a public company within the meaning of the *Corporations Law*.

dutiable entitlement means a voting share entitlement in respect of whose acquisition a statement is required, under section 129, to be lodged.

person includes persons who are associated persons.

Note. “Associated person” is defined in the Dictionary.

rights alteration, in relation to voting shares, means a variation, abrogation or alteration of rights relating to the shares.

voting shares has the same meaning as in section 9 of the *Corporations Law*.

- (2) For the purposes of this Part, if voting shares acquired by associated persons severally do not, but taken in the aggregate would, confer an entitlement to which this Part applies, the voting shares acquired by the associated persons are taken to be aggregated and are taken to confer the entitlement on the associated person who last acquired any of those voting shares.
- (3) If, by subsection (2), an entitlement to voting shares is taken to exist as the aggregate of voting shares of associated persons, the associated persons are jointly and severally liable for payment of the duty chargeable on the statement required to be lodged under this Part.

- (4) Voting shares are not to be aggregated in accordance with subsection (2) if the Chief Commissioner is satisfied that the associated persons concerned acquired their several shares independently and for no common purpose.

126 When does a liability for duty arise?

A liability for duty charged by this Part arises when a dutiable entitlement is acquired.

127 When must duty be paid?

A tax default does not occur for the purposes of the Taxation Administration Act 1996 if duty is paid within 3 months after the liability to pay the duty arises.

128 Who is liable to pay the duty?

- (1) Duty chargeable under this Part is payable by the person who acquires a dutiable entitlement.
- (2) If the dutiable entitlement results from an aggregation of the voting share entitlements of associated persons, the associated persons are jointly and severally liable for payment of the duty.

129 Entitlement to voting shares arising from capital reduction or rights alteration

- (1) If
- (a) a person becomes entitled to at least 50% of the voting shares of a company by means of capital reduction or rights alteration, or both, or
- (b) a person who is entitled to at least 50% of the voting shares of a company becomes entitled to at least 10% more of the voting shares over a period of not more than 12 months by means of capital reduction or rights alteration, or both,

the person must lodge a statement with the Chief Commissioner in respect of the entitlement.

- (2) The statement must be lodged within 3 months after the entitlement arises.

130 Form of statement

The statement required to be lodged under this Part by a person is to be in a form approved by the Chief Commissioner and is to contain the following information:

- (a) the name and address of the person,
- (b) the name of the company,
- (c) the date on which each relevant capital reduction or rights alteration, or both, occurred,
- (d) if the person's entitlement has arisen:
 - (i) from capital reduction—the total of the unencumbered value, immediately prior to each relevant capital reduction, of the shares the subject of the capital reduction, or
 - (ii) from rights alteration—the total of the unencumbered value, immediately prior to each relevant rights alteration, of the shares the subject of the rights alteration, or
 - (iii) from capital reduction and rights alteration—the aggregate of the totals under subparagraphs (i) and (ii),
- (e) the total consideration paid to the person in relation to all relevant capital reductions or rights alterations, or both,
- (f) such other information as may be required by the Chief Commissioner.

131 Assessment of duty

A statement required to be lodged under this Part by a person is chargeable with duty:

- (a) in the case of a company whose shares are quoted on the market operated by the Australian Stock Exchange—30 cents for every \$100, or part, of the higher of
 - (i) the total or aggregate obtained under section 130 (d), and
 - (ii) the total obtained under section 130 (e), or

- (b) in the case of a company whose shares are not quoted on the market operated by the Australian Stock Exchange—
60 cents for every \$100, or part, of the higher of
 - (i) the total or aggregate obtained under section 130 (d), and
 - (ii) the total obtained under section 130 (e).

Part 4 Acquisition of land use entitlements by allotment of shares or issue of units

132 When does a liability for duty arise?

A liability for duty charged by this Part arises when a land use entitlement is acquired by an allotment of shares or an issue of units to any person.

133 When must duty be paid?

A tax default does not occur for the purposes of the Taxation Administration Act 1996 if duty is paid within 3 months after the liability to pay the duty arises.

134 Who is liable to pay the duty?

Duty chargeable under this Part is payable by the person who acquires the land use entitlement.

135 Acquisition of land use entitlement

- (1) A person who acquires a land use entitlement by an allotment of shares or an issue of units must lodge a statement (an acquisition statement) with the Chief Commissioner in respect of the entitlement.
- (2) The statement must be lodged within 3 months after the entitlement is so acquired.

136 Form of statement

An acquisition statement required to be lodged by a person is to be in a form approved by the Chief Commissioner and is to contain the following information:

- (a) the name and address of the person,
- (b) the name of the relevant company or unit trust,
- (c) the date on which the land use entitlement was acquired,
- (d) the consideration paid by the person for the relevant shares or units,
- (e) such other information as may be required by the Chief Commissioner.

Section 137	Duties Act 1997 No 123
Chapter 3	Certain transactions treated as transfers
Part 4	Acquisition of land use entitlements by allotment of shares or issue of units

137 Assessment of duty

The share allotment or unit issue by which a person acquires a land use entitlement is chargeable with duty at the general rate of duty set out in section 32 on the dutiable value of the land use entitlement.

Part 5 Allotment of shares by direction

138 Application of Part 5

This Part applies to an allotment of shares to any person by a NSW company at another person's direction, in discharge of an obligation to that other person, whether that obligation arises as consideration for the purchase of property by the company or otherwise.

139 When does a liability for duty arise?

A liability for duty charged by this Part arises when the relevant shares are allotted.

140 When must duty be paid?

A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if duty is paid within 3 months after the liability to pay the duty arises.

141 Who is liable to pay the duty?

Duty chargeable under this Part is payable by the person to whom the relevant shares are allotted.

142 Acquisition of shares by allotment

- (1) A person to whom any shares are allotted in an allotment to which this Part applies must lodge a statement (an *allotment statement*) with the Chief Commissioner in respect of the allotment.
- (2) The statement must be lodged within 3 months after the shares or units are allotted.

143 Allotment statement

An allotment statement required to be lodged by a person is to be in a form approved by the Chief Commissioner and is to contain the following information:

- (a) the name and address of the person,

- (b) the name of the relevant company,
- (c) the date on which the shares were allotted to the person,
- (d) such other information as may be required by the Chief Commissioner.

144 Assessment of duty

An allotment to which this Part applies is chargeable with duty at the rate of duty set out in section 33 in respect of a transfer of marketable securities on the dutiable value of the shares.

Chapter 4 Marketable securities— on-market transfers (Broker provisions)

Part 1 Introduction and overview

145 Imposition of duty

- (1) This Chapter imposes liability for duty:
 - (a) on a sale or purchase of marketable securities that are quoted on the market operated by the Australian Stock Exchange, if the sale or purchase is:
 - (i) conducted on the market operated by the Australian Stock Exchange, or
 - (ii) reported to it, in accordance with the Business Rules of the Australian Stock Exchange,
and if an order for the sale or purchase concerned was received in New South Wales, and
 - (b) on a sale or purchase of marketable securities that are not quoted on the market operated by the Australian Stock Exchange, if the sale or purchase is:
 - (i) of marketable securities of a body corporate incorporated under the law of an Australian jurisdiction that are to be registered on an Australian register, and
 - (ii) conducted on a recognised stock exchange, and
 - (iii) made pursuant to an order received in New South Wales, and
 - (c) on a sale or purchase of marketable securities on a broker's own account, if the sale or purchase is effected in New South Wales, and
 - (d) on an associated transaction with a broker in New South Wales (being a transaction referred to in section 149 (b), (c) or (d)).

- (2) For the purposes of subsection (1) (a), an order for a sale or purchase is received in New South Wales if
- (a) in the case of a manual client order, it is received by an individual who:
 - (i) is a broker, or the employee or agent of a broker, and
 - (ii) is present in New South Wales at the time the order is received, or
 - (b) in the case of an automated client order, it is received by a broker by electronic means in New South Wales.
- (3) For the purposes of subsection (1) (c), a sale or purchase on a broker's own account is effected in New South Wales if
- (a) it arises from a manual broker order that an individual, being the broker or an employee or agent of the broker, who is present in New South Wales, instructed a SEATS operator to put into the market, or
 - (b) it arises from an automated broker order that was put by the broker into SEATS from New South Wales, or
 - (c) it did not arise from a manual broker order or an automated broker order, and an individual, being the broker or an employee or agent of the broker, who is present in New South Wales, instructed a SEATS operator to report a trade to the market.
- (4) In this section:

automated broker order means an order that is submitted into SEATS on a broker's own account without being keyed or rekeyed by an individual.

automated client order means an order received by a broker that is submitted into SEATS without being keyed or rekeyed by an individual.

manual broker order means an order that is submitted into SEATS on a broker's own account by being keyed or rekeyed by an individual.

manual client order means an order received by a broker that is submitted into SEATS by being keyed or rekeyed by an individual.

- Notes.** (1) “Broker” is defined in section 147.
- (2) The rates of duty are set out in Part 2.
- (3) The duty is generally payable by the broker but an amount equal to the duty may be recovered from the vendor or purchaser in accordance with section 162. For marketable securities that have been held for more than a short term by or on behalf of a registered independent options trader, futures broker or warrant-issuer, the duty is payable by the options trader, futures broker or warrant-issuer concerned (see section 155).
- (4) To facilitate payment of duty, persons liable to pay duty must submit a periodic return showing details of sales and purchases for the relevant period and pay the appropriate amount of duty when submitting the return. The provisions that deal with this are in Part 4.
- (5) Sales and purchases of marketable securities that are exempt from duty are listed in section 149.
- (6) Because this Chapter applies only to on-market transfers, it does not apply to other transfers of marketable securities. Transfers of marketable securities that are effected off-market and their liability to duty are dealt with in Chapter 2 (Transactions concerning dutiable property).
- (7) Because this Chapter applies only to on-market transfers, it does not deal with the following transactions:
- (a) transfers of securities not quoted on a stock exchange,
 - (b) transfers trustee to trustee upon the appointment or resignation of a trustee,
 - (c) nominee transfers to a beneficial owner,
 - (d) transfers of entitlements following the parent security,
 - (e) transfers pursuant to a will.

These transfers and their liability to duty are also dealt with in Part 7 of Chapter 2 (Transactions concerning dutiable property).

146 What are “marketable securities”?

In this Chapter, *marketable securities* means any of the following:

- (a) shares,
- (b) units,
- (c) CUFS,
- (d) IRs.

Notes. (1) This definition is not as wide as the definition of “marketable securities” that applies for the purposes of this Act, apart from this Chapter. The definition for the purposes of this Chapter does not include “ADRs” or an interest in shares, units, CUFS or IRs.

(2) “Shares” is defined in the Dictionary at the end of this Act to include rights to shares. “Rights to shares” includes options and will include, for example, company listed options over unissued shares. The definition of “shares” does not include:

- (a) debentures,
 - (b) convertible notes,
 - (c) all Government paper (Commonwealth, State or Local).
- (3) “Units” is defined in the Dictionary to include rights to units.
- (4) “CUFS” and “IRs” are defined in the Dictionary.

147 Who is a “broker”?

A broker is a person who is a broker within the meaning of the Business Rules of the Australian Stock Exchange.

Note. The principal meaning of “broker” according to the Business Rules of the Australian Stock Exchange (as at the commencement of this Act) is “Member Organisation”. Under the Articles of Association of the Australian Stock Exchange, “Member Organisation” means the business entity constituted by:

- (a) a Member carrying on business as a sole trader, or
- (b) a Member Corporation carrying on business on its own account and not in partnership, or
- (c) a partnership comprising a Member other than a Member Corporation and any other person (not being a corporation), or
- (d) a partnership comprising a Member Corporation and any other Member Corporation.

148 Presumption as to broking

If a broker, or the agent or employee of a broker, who is in New South Wales sells marketable securities to, or purchases marketable securities from, a person who is not a broker, or the agent or employee of a broker:

- (a) the broker, agent or employee is taken, for the purposes of this Chapter, to have acted on the orders of both the vendor and the purchaser, and
- (b) the orders are taken to have been received by the broker, agent or employee in New South Wales.

Note. If there is a broker on only one side of the transaction, the broker is taken to have acted for both parties with the consequence that the broker is liable for duty on the sale as well as on the purchase.

149 Exemptions

- (1) Duty is not chargeable on the following sales or purchases of marketable securities, or transactions concerning marketable securities (*exempt transactions*):
 - (a) a sale or purchase made by a broker on behalf of another broker who:
 - (i) has paid duty on the sale or purchase under this Chapter or the law of another Australian jurisdiction that corresponds to this Chapter, or
 - (ii) has not paid duty on the sale or purchase because the sale or purchase is exempt from duty under this Chapter or the law of another Australian jurisdiction that corresponds to this Chapter,
 - (b) a sale or purchase of marketable securities quoted on the market operated by the Australian Stock Exchange that is for the sole purpose of
 - (i) lending the marketable securities to the transferee for not more than 12 months, or
 - (ii) returning marketable securities borrowed from the transferee not more than 12 months before, being such marketable securities as are necessary to restore the shareholding of the transferee to the exact number and class of marketable securities of which the transferee would have otherwise become the registered holder, if the loan had not taken place, or
 - (iii) a securities lending transaction that is completed within 12 months,
 - (c) a transaction by:
 - (i) SECH Nominees Pty Limited, or
 - (ii) CHESSE Depository Nominees Pty Limited, or
 - (iii) a nominee company that holds marketable securities solely for the purpose of facilitating share transaction settlements by a broker,

- (d) a transaction made to reverse a sale or purchase made mistakenly not more than 7 days earlier, and the sale or purchase so reversed,
 - (e) a purchase comprising a buy-back, in the ordinary course of trading on the market operated by the Australian Stock Exchange, of the marketable securities in accordance with Division 4B of Part 2.4 of the *Corporations Law* by a company, unless the buy-back is effected by the purchaser pursuant to one or more agreements, understandings or arrangements that the purchaser will issue marketable securities,
 - (f) a sale or purchase made by or on behalf of any society or institution for the time being approved by the Chief Commissioner for the purposes of this paragraph whose resources are, in accordance with its rules or objects, used wholly or predominantly for the relief of poverty, or the promotion of education, in Australia,
 - (g) a sale or purchase made by or on behalf of a society or institution that, if made in another Australian jurisdiction by that society or institution, would be exempt from duty under provisions of the law of that jurisdiction that correspond to the provisions of this Chapter,
 - (h) a sale or purchase made by or on behalf of the Crown in right of the Commonwealth or a State or Territory,
 - (i) a sale or purchase made by or on behalf of a public hospital,
 - (j) a sale or purchase of marketable securities in a company (wherever incorporated) whose sole business is either or both of the following activities:
 - (i) mining in New South Wales for 'minerals within the meaning of the *Mining Act 1992*, or
 - (ii) prospecting or mining in New South Wales for petroleum within the meaning of the *Petroleum (Onshore) Act 1991*.
- (2) For the purpose of ascertaining whether or not a purchase of marketable securities made on behalf of a client by a broker is not made pursuant to one or more agreements, understandings or

mangements that the purchaser will issue marketable securities referred to in subsection (1) (e), a broker is entitled to rely on representations made in writing by the client.

Part 2 Rates of duty

150 Three rates

Three rates of duty are applicable for the purposes of this Chapter. They are:

- (a) the *general rate*, which is a rate of 15 cents for every \$100, or part, of the consideration for a sale or purchase, and
- (b) the *concessional rate*, which is a rate of 0.25 cents for every \$100, or part, of the consideration for a sale or purchase, and
- (c) the *differential rate*, which is a rate of 14.75 cents for every \$100, or part, of the consideration for a sale or purchase.

151 Duty at general rate

Duty payable by a broker on a sale or purchase that is dutiable in accordance with this Chapter is payable at the general rate, unless specified in one of the subsequent provisions of this Chapter to be payable at another rate.

152 Marketable securities held on broker's own account

- (1) Duty is payable by a broker at the concessional rate on:
 - (a) a purchase by a broker, on the broker's own account, of marketable securities, being securities of the same type as those intended to be sold by the broker during the period of 3 months after the purchase, and
 - (b) a sale by the broker, on the broker's own account, of marketable securities of the same type as those purchased by the broker during the period of 3 months before the sale on which duty was payable under paragraph (a), and
 - (c) a sale by the broker, on the broker's own account, of marketable securities of the same type as those intended to be purchased by the broker during the period of 3 months after the sale, and

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- (d) a purchase by the broker, on the broker's own account, of marketable securities of the same type as those sold by the broker during the period of 3 months before the purchase on which duty was payable under paragraph (c).
- (2) Duty is payable by a broker at the concessional rate on:
- (a) a purchase by the broker, on behalf of another broker who is acting on its own account as principal (the principal broker) of marketable securities, being securities of the same type as those intended to be sold by the principal broker during the period of 3 months after the purchase, and
- (b) a sale by the principal broker, or by another broker on behalf of the principal broker, of marketable securities of the same type as those purchased on behalf of the principal broker during the period of 3 months before the sale on which duty was payable under paragraph (a), and
- (c) a sale by the broker on behalf of a principal broker of marketable securities of the same type as those intended to be purchased by the principal broker during the period of 3 months after the sale, and
- (d) a purchase by the principal broker, or by another broker on behalf of the principal broker, of marketable securities of the same type as those sold on behalf of the principal broker during the period of 3 months before the purchase on which duty was payable under paragraph (c).
- (3) Duty payable on a sale or purchase under subsection (2) is payable by the broker who effects the sale or purchase through SEATS.
- (4) For the purpose of ascertaining whether or not a sale or purchase of marketable securities on behalf of a principal broker is made for a purpose relevant to subsection (2), a broker is entitled to rely on representations made in writing by the principal broker.

Note. Further duty may be payable on such sales and purchases—see section 155.

153 Marketable securities held on account of options traders and futures brokers

- (1) Duty is payable by a broker at the concessional rate on:
- (a) a purchase by the broker of marketable securities on behalf of a registered independent options trader or futures broker who is acting as principal and in his or her capacity as an options trader or a futures broker, if
 - (i) the options trader or futures broker intends to sell marketable securities of the same type during the period of 3 months after the purchase, and
 - (ii) the purchase is made for the purpose of hedging risk in respect of an options contract or futures contract over marketable securities of a type in respect of which options or futures contracts are traded or the price of which is included in the calculation of an index in respect of which options or futures contracts are traded, and
 - (b) a sale by the broker on behalf of a registered independent options trader or futures broker of marketable securities of the same type as those purchased by the broker (or another broker) during the period of 3 months before the sale on which duty was payable under paragraph (a), and
 - (c) a sale by the broker of marketable securities on behalf of a registered independent options trader or futures broker who is acting as principal and in his or her capacity as an options trader or a futures broker, if:
 - (i) the options trader or futures broker intends to purchase marketable securities of the same type during the period of 3 months after the sale, and
 - (ii) the sale is made for the purpose of hedging risk in respect of an options contract or futures contract over marketable securities of a type in respect of which options or futures contracts are traded or the price of which is included in the calculation of an index in respect of which options or futures contracts are traded, and

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- (d) a purchase by the broker on behalf of a registered independent options trader or futures broker of marketable securities of the same type as those sold by the broker (or another broker) during the period of 3 months before the purchase on which duty was payable under paragraph (c).
- (2) For the purpose of ascertaining whether or not a sale or purchase of marketable securities on behalf of a client is made for a purpose relevant to this section, a broker is entitled to rely on representations made in writing by the client.

Note. Further duty may be payable on such sales and purchases—see section 155.

154 Marketable securities held on account of warrant-issuers

- (1) Duty is payable by a broker at the concessional rate on a sale made by the broker of marketable securities on behalf of a warrant-issuer, who is acting as principal and in his or her capacity as a warrant-issuer, if the sale is made for the purpose of hedging risk in respect of a warrant over marketable securities of a type in respect of which warrants are traded or the price of which is included in the calculation of an index over which warrants are traded.
- (2) Duty is payable by a broker at the concessional rate on a purchase made by the broker of marketable securities on behalf of a warrant-issuer, who is acting as principal and in his or her capacity as a warrant-issuer, if the purchase is made for the purpose of hedging risk in respect of a warrant over marketable securities of a type in respect of which warrants are traded or the price of which is included in the calculation of an index over which warrants are traded.
- (3) For the purpose of ascertaining whether or not a sale or purchase of marketable securities on behalf of a client is made for a purpose relevant to this section, a broker is entitled to rely on representations made in writing by the client.

155 Additional duty on marketable securities held otherwise than for short terms

- (1) Duty is payable by a broker at the differential rate on:
 - (a) a purchase by a broker, on the broker's own account, of marketable securities on which concessional duty was paid under section 152 (1) (a) if marketable securities of the same type were not sold by the broker during the period of 3 months after the purchase, and
 - (b) a sale by the broker on the broker's own account, of marketable securities on which the concessional duty was paid under section 152 (1) (c) if marketable securities of the same type were not purchased by the broker during the period of 3 months after the sale, and
 - (c) a purchase by the principal broker, on the broker's own account of marketable securities on which concessional duty was paid under section 152 (2) (a) if marketable securities of the same type were not sold by the principal broker during the period of 3 months after the purchase, and
 - (d) a sale by the broker on the broker's own account of marketable securities on which the concessional duty was paid under section 152 (2) (c) if marketable securities of the same type were not purchased by the principal broker during the period of 3 months after the sale.
- (2) Duty is payable by a registered independent options trader or futures broker at the differential rate on:
 - (a) a purchase of marketable securities made on his or her behalf by a broker and on which concessional duty was paid under section 153 (1) (a) if marketable Securities of the same type were not sold by the registered independent options trader or futures broker during the 3 months after the purchase, and
 - (b) a sale of marketable securities made on his or her behalf by a broker and on which concessional duty was paid under section 153 (1) (c) if marketable securities of the same type were not purchased by the registered independent options trader or futures broker during the 3 months after the sale.

- (3) Duty is payable by a warrant-issuer at the differential rate on:
- (a) a sale of marketable securities made on his or her behalf by a broker and on which concessional duty was paid under section 154 (1), if marketable securities of the same type were not purchased by the warrant-issuer during the period of 30 days after the last day on which the relevant warrant could be exercised, and
 - (b) a purchase of marketable securities made on his or her behalf by a broker and on which concessional duty was paid under section 154 (2), if marketable securities of the same type were not purchased by the warrant-issuer during the period of 30 days after the last day on which the relevant warrant could be exercised.
- (4) Duty payable under this section is in addition to duty payable under sections 152, 153 and 154.

156 Low exercise price options

The rate of duty chargeable under this Chapter on the sale or purchase of marketable securities that is made as a result of the exercise of an option to purchase the marketable securities is to be calculated on the premium paid on the option for the marketable securities (rather than on the consideration for the sale or purchase) if the premium is greater than the consideration.

Part 3 Records of transfers

157 Records of sales, purchases and transactions—generally

- (1) Immediately after a sale or purchase of, or a transaction that transfers, marketable securities that is dutiable under this Chapter, or that is exempt from duty under this Chapter, is made by a broker, the broker must make a record of the sale, purchase or transaction that shows the following:
 - (a) its date,
 - (b) the principal's name (if relevant),
 - (c) the name of the broker on the other side of the transaction (if relevant),
 - (d) the quantity and full description of the marketable securities,
 - (e) the selling or purchase price,
 - (f) the amount of duty chargeable.
- (2) Immediately after a sale or purchase of, or a transaction that transfers, marketable securities is made by a broker:
 - (a) on the order of another broker, or
 - (b) of marketable securities that are exempt from duty,the broker must make a record of the sale, purchase or transaction that shows the particulars set out in subsection (1).

Maximum penalty: 100 penalty units.

158 Records of sales, purchases and transactions —options traders, futures brokers and warrant-issuers

- (1) Immediately after a sale or purchase of, or a transaction that transfers, marketable securities that is dutiable under this Chapter, or that is exempt from duty under this Chapter, being a sale, purchase or transaction by a broker on behalf of a registered independent options trader, futures broker or warrant-issuer in that capacity, the options trader, futures broker or warrant-issuer must make a record of the sale, purchase or transaction that shows the following:

- (a) its date,
 - (b) the name of the broker who effected the sale, purchase or transaction,
 - (c) the quantity and full description of the marketable securities,
 - (d) the selling or purchase price of each security and in total,
 - (e) in the case of a sale, the date on which the marketable securities were purchased,
 - (f) in the case of a purchase, the date on which the marketable securities were sold,
 - (g) in the case of a transaction, the date on which the transaction took place.
- (2) The record must be kept separately from any record required to be kept by the registered independent options trader, futures broker or warrant-issuer in any other capacity.

Maximum penalty: 100 penalty units.

Part 4 Periodic returns and payment of duty

159 Lodgment of returns and payment of duty by brokers

- (1) A broker must, not later than Thursday of each week, lodge with the Chief Commissioner a return in the approved form of the sales, purchases and transactions required to be recorded under section 157 that have been made by the broker during the week ending on the preceding Saturday, and pay to the Chief Commissioner the appropriate amount of duty calculated in accordance with Part 2 in respect of the sales, purchases and transactions required to be included in the return (other than any exempt transactions).
- (2) Not later than 7 days after the end of a month in which a broker becomes liable to pay duty under section 155, the broker must lodge with the Chief Commissioner a return in the approved form of the sales, purchases and transactions for which duty is payable, and pay to the Chief Commissioner the appropriate amount of duty calculated in accordance with Part 2 in respect of the sales, purchases and transactions required to be included in the return (other than any exempt transactions).

160 Lodging of returns—registered independent options traders, futures brokers and warrant-issuers

Not later than 7 days after the end of a month in which a registered independent options trader, futures broker or warrant-issuer is liable to pay duty under section 155, the options trader, futures broker or warrant-issuer must lodge with the Chief Commissioner a return in the approved form of the sales, purchases and transactions for which duty is payable, and pay to the Chief Commissioner the appropriate amount of duty calculated in accordance with Part 2 in respect of the sales, purchases and transactions required to be included in the return (other than any exempt transactions).

Part 5 Miscellaneous

161 Endorsement of transfer as to payment of duty

- (1) This section applies to a broker immediately after the broker makes a record as required by section 157.
- (2) The broker must endorse the transfer by including the broker's identification code in the transfer document if the sale, purchase or transaction is an SCH-regulated transfer.
- (3) A broker, in circumstances where Subsection (2) does not apply, must:
 - (a) endorse the written transfer with a statement that the duty (if any) on the sale, purchase or transaction has been or will be paid by the broker or that the sale, purchase or transaction is exempt from duty, and
 - (b) note the date of the endorsement on the written transfer, and
 - (c) stamp the written transfer with the broker's stamp.
- (4) A transfer dealt with in accordance with this section is taken to be duly stamped.
- (5) A broker must not deal with a transfer in accordance with subsection (2) or (3) before a record required by section 157 (1) has been made.

Maximum penalty (subsection (5)): 100 penalty units.

162 Recovery of duty by broker from vendor or purchaser

- (1) The amount of any duty paid under this Chapter by a broker in respect of a transaction made on behalf of a client (whether vendor or purchaser) is, from the time of payment of the duty to the Chief Commissioner, a debt due to the broker from the client.
- (2) Without affecting any remedy available to a broker for the recovery of debts, a broker may recover a debt created by this section by appropriating the amount out of any money held by the broker for the client.

Chapter 5 Lease instruments

Part 1 Introduction and overview

163 Imposition of duty

This Chapter charges duty on a lease instrument, being an instrument that evidences or effects a lease (as defined in section 164).

Notes. “Lease” is defined in section 164 to include agreements for lease, agreements for rights to use land and franchise arrangements.

Duty is generally charged on the cost of the lease. “Cost” is defined in section 166.

The rates of duty are dealt with in Part 2.

Duty is also chargeable on certain variations of leases—see section 169.

Leases that are exempt from duty are dealt with in section 179.

164 What is a “lease”?

Lease means:

- (a) a lease of land in New South Wales or an agreement for a lease of land in New South Wales, or
- (b) an agreement (such as a licence) by which a right to use land in New South Wales at any time and for any purpose is conferred on or acquired by a person (who is taken, for the purposes of this Chapter, to be a lessee of the land), or
- (c) a franchise arrangement that is held in respect of a place or area located in New South Wales.

Notes. “Franchise arrangement” is defined in the Dictionary.

Certain exemptions are available, in particular, if the cost of the lease is less than \$3,000—see Part 4.

165 How duty is charged on a lease instrument

Duty is chargeable on a lease instrument:

- (a) at the rate prescribed under this Chapter, on the cost of the lease, as determined in accordance with this Chapter, except as provided by paragraph (b), or

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- (b) in the case of a lease for which there is no consideration in money or money's worth, at the rate prescribed under this Chapter on the unencumbered value of the lease.

Note. Part 3 prescribes means of levying duty on indeterminate rents and other indeterminate lease costs.

166 What is the "cost" of a lease?

- (1) The *cost* of a lease (other than a franchise arrangement) is the aggregate of the following:
- (a) the rent payable during the term of the lease,
 - (b) any premium paid for the lease,
 - (c) any rates and taxes paid or payable on behalf of the lessor in connection with the lease,
 - (d) the value of improvements and additions to the leased premises made or undertaken to be made by or on behalf of, or at the expense of, the lessee under an agreement or covenant by the lessee (other than fit-out costs), to the extent provided by section 175,
 - (e) any royalties payable under the lease, including royalties for the right to enter onto and remove something from the land.
- (2) *Rent* includes any payment under the lease expressed to be rent.
- (3) The *cost* of a franchise arrangement is the aggregate of all amounts payable for the grant of the franchise (including any renewal fees where the franchise arrangement is entered into by way of renewal of a previous franchise arrangement) and the exercise of the franchisee's rights during the term of the arrangement, to the extent that any of those amounts are referable to New South Wales. It includes any amounts so payable under the arrangement for any of the following:
- (a) the right to use the goodwill of the business (including payments by way of royalty or as a percentage of turnover),
 - (b) the right to use systems and processes, instruction manuals and operation manuals, business names, logos, trademarks, patents and copyright material in connection with the business,
 - (c) the use of goods,

but not including any amounts payable under the arrangement for goods that are stock-in-trade or materials provided for use in manufacture.

- (4) If a franchise arrangement applies to an area that comprises the whole or part of New South Wales and a place outside New South Wales, duty is not payable on that proportion of the cost of the franchise arrangement that represents the extent to which the franchise has been granted in respect of the place that is outside New South Wales.

167 Splitting or redirection of cost of franchise arrangement (anti-avoidance provision)

The Chief Commissioner may include, as part of the amount payable as the cost of a franchise arrangement, any of the following:

- (a) any payments under the arrangement that the Chief Commissioner is satisfied have been increased for the purpose of minimising duty under this Chapter,
- (b) any payments that would be included in the cost of a franchise arrangement except for the fact that they are paid to a person other than the person who grants the franchise arrangement.

168 Who is liable to pay the duty?

- (1) The person liable to pay the duty is the lessee.
- (2) *Lessee* means, in the case of a franchise arrangement, the franchisee.

Note. "Franchisee" is defined in the Dictionary.

- (3) *Lessee* includes any assignee for the time being of the rights of the lessee under the lease and the assignee of a franchisee.

169 When must the duty be paid?

- (1) A lease instrument becomes liable to duty on the date of first execution.
- (2) A lease instrument also becomes liable to duty on the making of a variation to the lease that increases the cost of the lease. Duty is chargeable on the amount of additional cost resulting from the variation.

Note. A refund of duty may be applied for in case of a variation that decreases the cost of a lease—see section 178.

- (3) Duty must be paid to the Chief Commissioner within 3 months after the lease instrument becomes liable to duty, except as otherwise provided by this Chapter.

Note. Part 3 makes provision for periodic adjustments of duty in certain cases.

Part 2 Rates of duty

170 General rate

The rate of duty is 35 cents per \$100 (or remaining part of \$100) of the total cost of the lease, except as otherwise provided by this Chapter.

171 Nominal duty

- (1) Duty of \$2 is payable on a lease instrument made subsequently to and in conformity with an agreement for a lease for which ad valorem duty under this Chapter has been duly paid.
- (2) If requested by the lessee, the Chief Commissioner must regard the subsequent lease instrument as the instrument dutiable with ad valorem duty and the agreement as the nominally dutiable instrument, and assess or reassess them accordingly. The subsequent lease instrument is taken to have been first executed on the date of first execution of the agreement.
- (3) Duty of \$10 is payable on an instrument that evidences a variation of a lease.

Part 3 Unascertainable lease costs

172 Operation of Part 3

- (1) The object of this Part is to enable an unascertainable component of the cost of a lease to be determined as a definite sum for duty assessment purposes.
- (2) The amount of a cost component of a lease is *unascertainable* if it cannot, at the time duty is liable to be paid in respect of it, be ascertained as a definite sum (so that, consequently, the total cost of the lease over its whole term cannot at that time be so ascertained).

Note. Examples of unascertainable cost components are:

 - (a) a royalty on minerals won from the leased land, expressed to be pro rata of (unspecified) tonnage of the minerals won,
 - (b) rent expressed to be pro rata of the turnover of a business conducted on the land,
 - (c) rent expressed to be "market rent".
- (3) Cost components whose amounts are partly unascertainable are to be dealt with under section 173 or 174. Cost components whose amounts are wholly unascertainable are to be dealt with under section 176 (2).
- (4) Section 175 applies to the quantification of the value of lessees' improvements.

173 Estimate and subsequent adjustment

- (1) This section applies in order to determine as a definite sum any unascertainable cost components of a lease, except where the Chief Commissioner and the lessee agree that section 174 should apply instead.
- (2) The Chief Commissioner is to make an initial estimate of the cost of the lease.
- (3) The initial estimate is to be the sum of:
 - (a) the amount of each cost component payable in the course of the lease, so far as it is ascertainable, and

- (b) in respect of any interval in the term of the lease in which the amount of a cost component, although unascertainable, is subject to a certain minimum rate—the amount of the cost component that would be paid if it were payable at that minimum rate, and
 - (c) in respect of any interval in the term of the lease in which the amount of a cost component is unascertainable and to which paragraph (b) cannot be applied—the amount of the cost component that would be paid during the interval if it were payable at the highest certain rate prevailing immediately before the commencement of the interval.
- (4) Following the initial estimate, duty is to be paid to the Chief Commissioner on the cost of the lease determined on the basis of an estimate under this section of the relevant unascertainable cost components.
 - (5) Periodic estimates are to be made, at such dates (estimate dates) as the Chief Commissioner, having regard to the provisions of the lease, determines, of the amount of any cost components dealt with under this section payable during the term of the lease, and periodic adjustments of duty are to be made accordingly.
 - (6) Within 1 month after each estimate date, the lessee must produce to the Chief Commissioner a duly stamped part of the lease instrument and a statutory declaration stating:
 - (a) the amount of each cost component dealt with under this section that was paid between the initial estimate date or the last previous estimate, as the case may be, and the date of the current estimate, and
 - (b) the rate at which that cost component is payable as at the date of the current estimate.

Maximum penalty: 100 penalty units.

- (7) If the amount of a cost component actually paid during a period between estimation dates is higher than the estimated amount so payable for that period, the Chief Commissioner may make a reassessment of duty in respect of the lease for that period and the balance of the term of the lease, and the lessee must, within 3 months after the date of issue of the notice of assessment, pay any additional duty assessed.

- (8) If the amount of a cost component actually paid during a period between estimation dates is lower than the estimated amount so payable for that period, the Chief Commissioner must, after the lessee has complied with subsection (6), make a refund to the lessee of duty overpaid.

174 CPI method

- (1) This section applies, if the Chief Commissioner and the lessee agree to apply it, in order to determine as a definite sum any unascertainable amounts of any particular cost Component of a lease.
- (2) The amount of the relevant cost component payable during any interval of the term of the lease for which it cannot be ascertained is taken to be payable at an annual rate ascertained by compounding the rate at which it is payable during the first year of the lease by the annual percentage increase in the Consumer Price Index last issued before the commencement of the lease.
- (3) If the rate at which the cost component is payable is unascertainable for a part of the first year, the rate for that year is to be calculated in accordance with section 173 (3) (b) and (c).
- (4) The Chief Commissioner may assess and levy duty on the cost of a lease based on a determination under this section of the value⁷ of the relevant cost component.
- (5) Duty assessed in accordance with this section may not be varied merely because the actual amount of the cost component paid under the lease is different from the value of the cost component determined under this section.
- (6) In this section, *Consumer Price Index* means the number appearing in the *Consumer Price Index (All Groups Index) for Sydney* published by the *Commonwealth Census and Statistics Act 1905*.

175 Quantification of lessee's improvements

The value of so much of the cost of a lease as comprises:

- (a) an undertaking by the lessee to make or pay for additions or improvements to the land the subject of the lease, or

(b) the making of or payment for such additions or improvements by the lessee,

is taken to be the percentage, determined by the following Table, of the value of the additions or improvements:

Table

Term of lease	Percentage of value of additions or improvements
10 years or less	100
More than 10 but not more than 20 years	75
More than 20 but not more than 30 years	50
More than 30 but not more than 40 years	25
More than 40 years	Nil
Periodic lease or lease for a term that cannot be ascertained when the lease is made	100

Part 4 Miscellaneous

176 Interim stamping of lease instrument

- (1) A lease instrument on which duty is assessed under section 173 is to be marked “interim stamp only”.
- (2) A lease instrument on which no part of the duty under this Chapter is immediately ascertainable is, on payment of a duty of \$10, to be stamped accordingly and marked “interim stamp only”.
- (3) Section 49 applies to a lease instrument marked “interim stamp only” in the same way as it applies to a written instrument or written statement referred to in that section marked “interim stamp only”.

177 Reassessment of duty—early termination

- (1) A lessee may apply in writing to the Chief Commissioner for a reassessment of duty paid on a lease instrument if the lease is terminated before the end of its term. The means by which the lease was terminated is immaterial.
- (2) The application must be made within 5 years after the initial assessment or 12 months after the termination, whichever is the later, and must be supported by such documents and information as the Chief Commissioner specifies.
- (3) The Chief Commissioner:
 - (a) if satisfied that the lease has been terminated before the commencement of the term, must refund the whole of the duty paid, or
 - (b) if satisfied that the lease has been terminated early, must refund the difference between the duty actually paid and the duty that would have been payable if the lease had been granted for a term equal to the period for which the lease actually remained in force before termination.
- (4) In this section, a reference to the termination of a lease includes a reference to a lease coming to an end.

178 Reassessment of duty—reduction of cost

- (1) A lessee may apply in writing to the Chief Commissioner for a reassessment of duty paid on a lease instrument if the lease is subsequently varied so as to reduce the total cost of the lease.
- (2) The application must be made within 5 years after the initial assessment or 12 months after the variation, whichever is the later, and must be supported by such documents and information as the Chief Commissioner specifies.
- (3) The Chief Commissioner, if satisfied that the lease has been varied so as to reduce the total cost of the lease, must refund the difference between the duty actually paid and the duty that would have been payable if the lease had been granted on the terms as so varied.

179 Exemptions

- (1) A lease instrument for any of the following leases is not chargeable with duty under this Chapter:
 - (a) a lease for a term of less than one year whose total cost is not more than \$3,000,
 - (b) a lease for a term of one year or more whose total cost is not more than \$3,000 per year,
 - (c) a lease granted by or on behalf of a corporation, society or institution if
 - (i) the purpose of the lease is to grant a retired person or a disabled person the right to occupy residential accommodation, and
 - (ii) the lease has not been granted for the purpose of profit by the lessor,
 - (d) a lease of premises to the Home Care Service of New South Wales,
 - (e) a lease executed in accordance with Part V of the Commonwealth *National Health Act 1953*.
- (2) Duty under this Chapter is not chargeable on a lease instrument on:

- (a) so much of the cost of a residential lease as relates to premises used, or intended to be used, exclusively as a residence, or
- (b) so much of the cost of a lease of a moveable dwelling site used, or intended to be used, as the principal place of residence of the lessee.

Chapter 6 Hire of goods

Part 1 Introduction and overview

180 Imposition of duty

This Chapter charges duty on the hire of goods.

Notes. (1) “Goods” is defined in section 182.

(2) “Hire of goods” is defined in section 183.

(3) Different arrangements apply to the imposition and payment of the duty according to whether the hiring out of the goods is done by a person who is in the business of hiring out goods (a “commercial hire business”) or by another person. Part 2 applies to commercial hire businesses and Part 3 applies to other persons.

(4) The rate of duty is applied to the amount of hiring charges. “Hiring charges” are defined in section 189. Different rates of duty are applied, depending on the kind of hire. (There are two kinds of hire and they are specified in section 183.)

181 Hire of goods to which this Chapter applies—jurisdictional nexus

(1) This Chapter applies to the hire of goods and to a person who hires out goods only if the goods are used solely or predominantly in New South Wales during the course of the hire.

(2) A motor vehicle, however, that is registered under the law of an Australian jurisdiction and that is the subject of an equipment financing arrangement is taken to be used, at all times in the course of that arrangement, in the jurisdiction under whose law it is registered.

Note. “Equipment financing arrangement” is defined in section 184.

(3) If goods hired under a hire of goods are not used solely or predominantly in any particular Australian jurisdiction, the goods are taken to be predominantly used in New South Wales if, under the hire of goods, the goods are initially delivered in New South Wales.

- (4) For the purposes of this section, goods are predominantly used in New South Wales if they are used more in New South Wales than in any other single Australian jurisdiction.

182 What are “goods”?

For the purposes of this Chapter, *goods* includes all chattels personal and fixtures severable from realty, but does not include money, livestock or things in action.

183 What is a “hire of goods”?

- (1) *A hire of goods* is an arrangement under which goods are or may be used at any time by a person other than the person hiring out the goods, unless the arrangement is excluded under section 186.
- (2) There are two kinds of hire of goods, namely:
- (a) an equipment financing arrangement, and
 - (b) an ordinary (that is, any other) hire of goods.

Note. The rates of duty are different for the two kinds of hire.

184 What is an “equipment financing arrangement”?

- (1) *An equipment financing arrangement* is a hire of goods that consists of:
- (a) a hire purchase agreement, or
 - (b) some other agreement for a term of not less than 9 months and under which the final payment is payable not earlier than 8 months after the agreement is entered into.
- (2) *A hire purchase agreement* is a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise), but does not include any agreement:
- (a) by which the property in the goods comprised in the agreement passes at the time of the agreement or on or at any time before the delivery of the goods, or

- (b) for the letting of goods, or for the purchase of goods, together with a letting or purchase of
 - (i) real property or an estate or interest in real property, or
 - (ii) a business or an interest in a business.

185 What form may a hire of goods take?

A hire of goods may take any form. It is immaterial whether or not a hire of goods is effected or evidenced by an instrument in writing.

186 Exclusions from the definition of “hire of goods”

- (1) A hire of goods does not include any of the following:
 - (a) an arrangement that gives a person a right to use goods that is conferred incidentally with a lease of, or a licence to occupy or use, land if:
 - (i) there is no apportionment of consideration between the right to use the goods and the right to occupy or use the land, and
 - (ii) duty is chargeable under Chapter 5 (Lease instruments) in respect of the lease or licence,
 - (b) a franchise arrangement that is chargeable with duty under Chapter 5 (Lease instruments),
 - (c) an arrangement for the hire of an aircraft, ship or vessel, or for the hire of an engine or other component part of an aircraft, ship or vessel,
 - (d) an arrangement for the provision of goods to a trader for the purpose of displaying or demonstrating the goods pending their sale or hire to a third party,
 - (e) an arrangement comprising a “wet hire” (that is, an arrangement under which an operator is provided by or at the direction of the person hiring out the goods to operate the goods for the hirer),
 - (f) an arrangement for the use of goods the provision of which is incidental and ancillary to the provision of a service if the provision of the goods is solely to enable the contractual provision of the service,

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- (g) an arrangement made between related bodies corporate,
 - (h) an arrangement under which a motor vehicle is subleased by an employee to an employer in connection with the employee's remuneration or other employment benefits,
 - (i) an arrangement for the use, by a person who is partially or totally incapacitated, of an invalid aid or prosthetic device or of any similar aid, device or appliance,
 - (j) an arrangement for the use of goods by a public hospital,
 - (k) a credit contract within the meaning of the *Consumer Credit (New South Wales) Code*, or
 - (l) an arrangement relating to the use of:
 - (i) a book, or
 - (ii) an electricity, gas or water meter, or
 - (iii) a caravan that is to remain on site.
- (2) Duty is not chargeable under this Chapter on a hire of goods if the person who hires out the goods acquired them at the request of the hirer and has paid duty under Chapter 2 (Transactions concerning dutiable property) on their transfer to that person.

187 Special hiring agreements

A *special hiring agreement* is a written agreement for the hire of goods:

- (a) that describes the goods in such a way (for example, by reference to the make and model of each item) as to enable the nature or character of the goods to be clearly and readily identified, including the number of items, and
- (b) that does not include:
 - (i) an agreement under which the goods may, at any time, be replaced in whole or in part by other goods, except to the extent that the agreement allows replacement if the goods:
 - are lost, destroyed or stolen, or
 - fail or malfunction in the normal course of operation or use, or
 - are temporarily replaced during the servicing, maintenance or repair of the goods, or

- (ii) an agreement under which other goods, whether of the same or a different type, may be additionally provided.

Note. A duty ceiling applies to a hire of goods that is a special hiring agreement. See section 188 (3).

188 What is the rate of duty?

- (1) The duty chargeable on a hire of goods that is an equipment financing arrangement is 0.75% of the total amount of the hiring charges.
- (2) The duty chargeable on a hire of goods that is an ordinary hire of goods is 1.5% of the total amount of the hiring charges.
- (3) The maximum amount of duty chargeable in respect of a special hiring agreement is \$10,000.

Note. A duty-free threshold of \$6,000 per month applies to hiring charges received by a commercial hire business in respect of ordinary hires that are not special hiring agreements. See section 199 (2).

189 What are “hiring charges”?

- (1) **Hiring charges** are payments made to the person who hires out the goods by or on behalf of the hirer, for (or that arise as an incident of) the hire of the goods.
- (2) The following charges are included as hiring charges:
 - (a) payments for damage waiver or for damage excess,
 - (b) late return fees.
- (3) For a hire of goods to which Part 3 applies, any residual payment payable by the hirer as an indemnity for the agreed value of the goods at the end of the hire is taken to be included in the hiring charges.

190 Payments exempted from “hiring charges”

- (1) The following charges are not included as hiring charges:
 - (a) payments for delivery, repositioning, erection, installation, maintenance or cleaning of the goods,

- (b) refundable cash deposits or bonds (unless appropriated as hiring charges),
 - (c) insurance premiums payable by the hirer,
 - (d) duty paid or payable under this Act or a corresponding Act,
 - (e) payments for the sale of goods (such as fuel, replacement parts or theft replacement),
 - (f) any payment of a type prescribed by the regulations.
- (2) Duty is not chargeable under this Chapter on a payment by the hirer under a hire of goods if title to the goods passes to the hirer as a consequence of the payment.

191 Credit for duty paid in another Australian jurisdiction

The duty chargeable under this Chapter on a hire of goods is to be reduced by the amount of duty paid on the hire under a corresponding Act.

192 Splitting or redirection of hiring charges (anti-avoidance provision)

The Chief Commissioner may include, as part of the amount received as hiring charges, any of the following:

- (a) any payments under the arrangement that are not hiring charges, including charges referred to in section 190, that the Chief Commissioner is satisfied have been increased for the purpose of minimising duty under this Chapter,
- (b) any payments that would be hiring charges except for the fact that they are paid to a person other than the person who hires out the goods.

193 Ascertainment and disclosure of place of use of goods

- (1) A person who hires out goods may, in determining the person's liability to duty, rely on a statement of the hirer as to where the goods will be solely or predominantly used in the course of the hire or, in the case of an unregistered motor vehicle, where the motor vehicle will be registered during the course of the hire, unless the person knows that the statement is false.

- (2) A person who hires out goods is not bound to inquire as to any change in the place of use of the goods or, in the case of a motor vehicle, the place of its registration.
- (3) If goods are solely or predominantly used or, in the case of a motor vehicle, are registered in a place other than the place advised by the hirer in a statement referred to in subsection (1), the Chief Commissioner may assess or reassess the duty payable according to the actual place of sole or predominant use of the goods or, in the case of a motor vehicle, the place of its registration.
- (4) A failure to pay duty on the hire of goods by a person who hires out the goods in due reliance on a statement referred to in subsection (1), is not a tax default for the purposes of the *Taxation Administration Act 1996* if the duty is paid within 3 months after the issue of a notice of assessment of the duty.
- (5) A hirer who knowingly falsely represents to the person who hires out goods (or to any person acting for that person) that the goods will be used solely or predominantly outside New South Wales is guilty of an offence.

Maximum penalty (subsection (4)): 100 penalty units.

Part 2 What arrangements apply to persons who are in the business of hiring out goods (commercial hire businesses)?

194 Application of Part 2

- (1) This Part applies to persons who hire out goods as a business. In this Chapter, such a person is called a *commercial hire business*.
- (2) It is immaterial whether or not the hiring out of the goods is the principal business or is ancillary to some other form of business, and whether or not any such principal or ancillary business is carried on wholly or partly outside New South Wales,

195 Commercial hire businesses must be registered

- (1) A commercial hire business must be registered under this Part if, in any month, the total amount of the hiring charges received in the month exceeds \$6,000.
- (2) An application for registration must be made within 21 days after the end of the month in which the \$6,000 threshold is first exceeded.

Maximum penalty: 100 penalty units.

196 Registration of commercial hire businesses

- (1) The Chief Commissioner must register a commercial hire business that applies in the approved form for registration under this Part.
- (2) The Chief Commissioner may register a commercial hire business that has not applied for registration.
- (3) The Chief Commissioner must give written notice to the commercial hire business of the hirer's registration.

197 Cancellation of registration of commercial hire business

- (1) A registered commercial hire business that ceases to hire out goods as a business must:
 - (a) give written notice of that fact to the Chief Commissioner, and

- (b) lodge the return required to be lodged under this Part, and
- (c) pay the duty payable in connection with the return on or before the twenty-first day of the month after which the notice is given.

Maximum penalty: 100 penalty units.

- (2) The Chief Commissioner is to cancel the registration of a commercial hire business on receipt of a notice under subsection (1).
- (3) The Chief Commissioner may cancel a commercial hire business's registration under this Part if the Chief Commissioner has reason to believe that registration is no longer required by the commercial hire business. The registration must not be cancelled until at least 30 days after written notice of intention to cancel the registration has been given by the Chief Commissioner to the commercial hire business.
- (4) A cancellation of registration has effect from the day specified for the purpose by the Chief Commissioner in a written notice of cancellation given to the commercial hire business.

198 Duty base

- (1) Duty under this Part is to be assessed on the total amount of the hiring charges received in a month by the commercial hire business.
- (2) The Chief Commissioner may, however, by notice in writing approve a different basis of calculation of hiring charges if it appears to the Chief Commissioner that duty payable on that basis will, over a period of time, approximate the duty payable in accordance with subsection (1). An amount calculated under any method so approved is taken for duty purposes, while the approval remains in force, to be the amount of hiring charges received. Such an approval may be revoked by the Chief Commissioner at any time by notice in writing to the commercial hire business concerned.

- (3) A registered commercial hire business can, with the Chief Commissioner's written consent, change the basis (as between a receipts basis and an approved basis) from month to month but it cannot change the basis within a month.
- (4) If consent is given under subsection (3), the Chief Commissioner may assess or reassess the duty payable in any period prior to the change of basis to include any hiring charges that would not be accounted for, or to exclude any hiring charges that would be accounted for twice, because of the change of basis.

199 Lodgment of returns and payment of duty

- (1) A commercial hire business must, on or before the twenty-first day of each month:
 - (a) lodge with the Chief Commissioner a return in the approved form, and
 - (b) pay to the Chief Commissioner the appropriate amount of duty calculated in accordance with section 188 in respect of the previous month, subject to the duty-free threshold in subsection (2).
- (2) A duty-free threshold of \$6,000 per month applies in respect of hiring charges received from ordinary hires that are not special hiring agreements (that is, duty is payable only on such part of the total amount of those charges as exceeds \$6,000).

Note. For the application of the threshold to corporate commercial hire businesses, see section 200.
- (3) A commercial hire business is not required to lodge a return in respect of any month in which all hiring charges received by the commercial hire business were from ordinary hires and the hiring charges so received did not exceed the duty-free threshold.
- (4) The Chief Commissioner may by notice in writing approve of the lodgment by a commercial hire business of returns in respect of a period of more than one month, and in such a case:
 - (a) the return must be lodged, and the duty paid, on or before the twenty-first day of the month following the last month to which the return relates, and

- (b) the duty payable on the return is the sum of the duties payable on a monthly basis in accordance with this section for each month to which the return relates.
- (5) A commercial hire business may elect to pay the duty payable on a special hiring agreement by lodging a statement under section 202. In that event, returns under this section in respect of the agreement are not necessary.
- (6) If, in relation to a special hiring agreement:
 - (a) a commercial hire business makes an election under subsection (5), and
 - (b) the special hiring agreement is terminated before the expiry of the term expressed in the agreement,

the commercial hire business may request a reassessment of duty as if the duty had been paid on a return under this section.

200 Returns of related bodies corporate

- (1) A single return may be lodged on behalf of two or more commercial hire businesses that are related bodies corporate.
- (2) The duty-free threshold under section 199 (2) applies to the aggregated hiring charges required to be included in such a single return. It does not apply individually to the hiring charges of each commercial hire business included in the return.
- (3) If two or more commercial hire businesses that are related bodies corporate lodge individual returns for the same month, the duty-free threshold under section 199 (2) applies to the hiring charges of only one of them. Those commercial hire businesses may nominate to the Chief Commissioner the one to which the duty-free threshold is to apply.

Part 3 What arrangements apply to other persons?

201 Statement of transaction

- (1) If a hire of goods is effected otherwise than by a commercial hire business and the total amount of hiring charges paid or payable for the hire of the goods is not less than \$1,000, the person hiring out the goods must make out a written statement that includes the following:
 - (a) the name and address of each party,
 - (b) a description of the goods,
 - (c) the commencement date and the term of the hire,
 - (d) the total of the hiring charges (including any residual payment referred to in section 189 (3)) paid or payable over the term of the hire,
 - (e) the intervals at which the hiring charges are paid or payable.
- (2) The written statement must be made out not later than:
 - (a) the time when the person hiring out the goods receives the first (or only) payment of hiring charges, or
 - (b) the time when the hiring charges become payable,whichever first occurs.
- (3) This section does not require a separate written statement to be made out if the hire is already evidenced in a document that otherwise complies with this section. In such a case, the document is taken to be the written statement.

202 Lodgment of statement and payment of duty

- (1) Within 3 months after the written statement is required to be made out, the person hiring out the goods must:
 - (a) lodge the statement with the Chief Commissioner, and
 - (b) pay to the Chief Commissioner the appropriate rate of duty calculated under section 188 in respect of hiring charges for the whole period of the hire.

- (2) If the person hiring out the goods has not complied with subsection (1) within the 3-month period, the Chief Commissioner may, at any time thereafter, issue a notice of assessment under the *Taxation Administration Act 1996* of the duty that would be payable if a statement had been lodged.
- (3) For the purposes of the assessment, both the person hiring out the goods and the hirer are jointly and severally liable to pay duty in accordance with this section.
- (4) The hirer may, at any time, make out and lodge a statement and pay duty in accordance with this section.

203 Method of calculating total hiring charges if they are not readily ascertainable

- (1) The Chief Commissioner, if satisfied at the time a written statement is lodged that it is not reasonably practicable to calculate the total of the hiring charges payable over the term of the hire, may require the person hiring out the goods to make out one or more further written statements at such time or times as the Chief Commissioner specifies in a written notice given to the person.
- (2) A further written statement must include the same information as is specified in section 201.
- (3) Within 3 months after a further written statement is required to be made out, the person hiring out the goods must:
 - (a) lodge the statement with the Chief Commissioner, and
 - (b) pay duty calculated in accordance with section 188 to the extent that the total hiring charges are ascertainable.
- (4) The amount of duty paid on a prior statement relating to the same hire of goods is to be deducted from the duty payable on the further written statement.

Chapter 7 Mortgages

Part 1 Introduction and overview

204 Imposition of duty

This Chapter charges duty on instruments that fall within the definition of a *mortgage*. Duty chargeable under this Chapter is called *mortgage duty*.

Notes. (1) Mortgage duty is calculated, in most cases, according to “the amount of advances secured by the mortgage”. Contingent liabilities may also be included. This is dealt with in Part 2.

(2) Ad valorem duty is only chargeable on one of a package of mortgages securing the same advance. This is dealt with in section 217.

(3) Provision is also made for the apportionment, for duty purposes, of the amount secured by any mortgage over property in different Australian jurisdictions. This is dealt with in sections 216–218.

205 What is a “mortgage”?

For the purposes of this Chapter, an instrument is a *mortgage* if it is:

- (a) a security by way of mortgage or charge over property wholly or partly in New South Wales at the date of its first execution, or
- (b) a security by way of mortgage or charge (not being a floating charge) that does not affect property in New South Wales at the date of its first execution, but within 12 months from that date affects land in New South Wales, or
- (c) a security by way of a transfer or conveyance of any property in New South Wales that is held in trust to be sold or otherwise converted into money, redeemable before such a sale or conversion either by express stipulation or otherwise, except where the transfer or conveyance is made for the benefit of creditors who accept the transfer or conveyance in full satisfaction of debts owed to them, or
- (d) an instrument that, on the deposit of documents of title to property in New South Wales or instruments creating a charge on property in New South Wales, becomes a mortgage or evidences the terms of a mortgage.

Note. Certain instruments that would otherwise be caught by this definition are exempted under Part 4.

206 What is an advance?

In this Chapter, *advance* means the provision or obtaining of funds by way of financial accommodation, by means of

- (a) a loan, being:
 - (i) an advance of money, and
 - (ii) the payment of money for or on account of, or on behalf of, or at the request of, any person, and
 - (iii) a forbearance to require the payment of money owing on any account whatever, and
 - (iv) any transaction (whatever its terms or form) that in substance effects a loan of money, or
- (b) a bill facility, being one or more agreements, understandings or arrangements as a consequence of which a bill of exchange or promissory note:
 - (i) is drawn, accepted, endorsed or made, and
 - (ii) is held, negotiated or discounted to obtain funds, whether or not the funds are obtained from the person who draws, accepts, endorses or makes the bill of exchange or promissory note and whether or not the funds are obtained from a person who is a party to any such agreement,

and includes contingent liabilities of the kind referred to in section 215.

207 Who is liable to pay the duty?

The person liable to pay mortgage duty is the mortgagor.

208 When does a liability arise?

- (1) A mortgage becomes liable to duty on the date of its first execution.
- (2) A mortgage becomes liable to additional duty on the making of an advance or further advance by which the amount secured by the mortgage exceeds the amount secured by it at the time duty was last paid on it, unless section 219 applies.

- (3) An instrument of security that does not affect property in New South Wales at the date of first execution but that affects land in New South Wales at any time within 12 months after that date becomes liable to duty as a mortgage on the date on which it first affects the land.

209 When must duty be paid?

A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if duty is paid within 3 months after the liability to pay the duty arises.

Note. Duty is payable, without interest or penalty, within 3 months after the liability to duty arises. Some amount of duty will always be payable within the 3-month period after first execution. The minimum amount is \$5. If the amount of the advance is limited by the mortgage, duty will be payable on that amount within the 3-month period (see section 213). If the amount of the advance is not limited (because, for example, it is an all moneys mortgage), duty will be payable on the actual advances (see section 214).

210 How is mortgage duty charged?

- (1) The amount of duty chargeable on first execution of a mortgage is determined by the amount secured by it, as determined under Part 2. The amount of duty is:
 - (a) \$5.00, if the mortgage secures no amount or if the amount secured by the mortgage is not more than \$16,000, or
 - (b) if the amount secured by the mortgage is more than \$16,000—\$5.00, plus a further \$4.00 for every \$1,000, or part, by which the amount secured exceeds \$16,000.
- (2) The amount of duty chargeable on a mortgage in respect of an advance or further advance is calculated on the amount secured by it as determined under Part 2. The amount of duty is \$4.00 for every \$1,000, or part, of the amount secured.

Notes. (1) Further provisions that determine how the amount secured by a mortgage is to be calculated are contained in Part 2.

(2) See sections 216–218 as to the assessment of duty in cases where some of the property over which a mortgage, or a package of mortgages, is given is property outside New South Wales.

(3) Some instruments are exempt from payment of mortgage duty. They are dealt with in Part 4.

211 Consequences of non-payment of duty

A mortgage on which duty is required by this Chapter to be paid is, while any duty remains unpaid on it, enforceable only to the extent of the amount secured by the mortgage on which duty has been paid under this Act.

212 Where is property located?

For the purposes of this Chapter, property in the following forms is taken to be located in the place specified:

- (a) shares in or securities of a body corporate—in the place of incorporation of the body corporate,
- (b) units in a unit trust scheme:
 - (i) in the place where the register on which the units are registered is kept, or
 - (ii) in the place of residence of the manager of the unit trust scheme, if the register on which the units are registered is not kept in Australia,
- (c) debt securities of a Government of a State or Territory of the Commonwealth—in the State or Territory concerned.

Part 2 Calculating the amount secured by a mortgage

213 Secured amount limited

- (1) If the amount of advances secured or to be secured by a mortgage is a definite and limited sum, the mortgage is chargeable with duty assessed on that amount, until such time (if any) as a greater amount of advances is secured by the mortgage.
- (2) If the amount of advances secured by the mortgage exceeds, at any time, the definite and limited sum mentioned in subsection (1), the mortgage is chargeable with duty assessed on the amount by which the amount of advances secured by it exceeds the amount on which duty was payable under subsection (1).

214 “All moneys” mortgage

- (1) If the amount of advances secured by a mortgage is not a definite and limited sum, the mortgage is chargeable with duty assessed on the amount of advances actually secured by it.
- (2) If the amount of advances for the time being secured by the mortgage subsequently exceeds the amount on which duty was chargeable at an earlier time, the mortgage is chargeable with duty assessed on the amount by which the advances secured by it exceeds the amount on which duty was payable under subsection (1).

215 Contingent liabilities

- (1) A mortgage that is used or is capable of being used (whether directly or through a chain of relationships) to recover the whole or any part of an amount contingently payable in connection with an advance:
 - (a) by a guarantor or indemnifying party under a guarantee or indemnity, or
 - (b) by another party under another instrument of a different kind,

is liable to duty as if the amount of the contingent liability under the guarantee, indemnity or other instrument (or, where there is more than one guarantee, indemnity or other instrument, the greatest contingent liability) were a separate advance secured by the mortgage.

- (2) In the case of a mortgage that is part of a chain of relationships referred to in subsection (1), a reference in that subsection to a contingent liability is a reference to a contingent liability limited to the amount of any advance by any party in the chain, and does not include a reference to any other kind of contingent liability.
- (3) This section does not apply if the Chief Commissioner is satisfied that there is no connection between the mortgage and any advance by any party to the arrangements.
- (4) Nothing in this section requires duty to be paid more than once in respect of an advance.

216 Mortgages over property not wholly within New South Wales

Duty is to be assessed in respect of a mortgage over property that is partly within, and partly outside, New South Wales as though the amount secured by it were only such proportion of that amount as, at the date of first execution of the mortgage, the value of the property in New South Wales affected by the mortgage bears to the value of all property in Australia affected by it (other than property situated in a Territory of the Commonwealth).

217 Advances secured by several instruments

- (1) Several instruments of security (at least one of which is a security affecting property wholly or partly outside New South Wales and at least one of which is a mortgage) that secure or partly secure the same money, and that are first executed within any period of 28 days, are to be treated as a *mortgage package*.
- (2) Duty on a mortgage package is to be assessed, in accordance with the foregoing provisions of this Part, as though the several instruments comprised in the package were one mortgage first executed on the last of their several dates of execution.

- (3) The mortgage, or one of the mortgages, in the mortgage package is to be stamped with the duty payable on the mortgage package and any other mortgage in the mortgage package is to be stamped with duty of \$10.

218 Collateral securities

- (1) If the same money is secured, or partly secured, by two or more instruments of security, at least one of which is a mortgage, and one of the instruments has been duly stamped under this Act or under a corresponding Act (the *stamped instrument*), the duty payable under this Act in respect of any other of those instruments that is a mortgage (a *collateral mortgage*) is to be reduced by an amount calculated in accordance with the following formula:

$$\frac{A}{B} \times C$$

where:

A is the amount of the same money secured by the stamped instrument and the collateral security, and

B is the amount secured by the stamped instrument, and

C is the duty (including duty payable under a corresponding Act) paid on the stamped instrument.

- (2) A collateral mortgage is nevertheless chargeable with a minimum duty of \$10.
- (3) In this section, a reference to a stamped instrument includes a reference to a package of securities that has been stamped in accordance with section 217.

Part 3 Duty concessions

219 Additional advances of not more than \$10,000 in 12 months

Duty is not chargeable on additional advances secured by or under a mortgage if the total of the additional advances so secured does not exceed \$10,000 in any 12-month period, not being the period of 12 months following the making of the initial advance.

220 Refinancing of loans

- (1) In this section, *refinancing mortgage* means a mortgage that secures the amount of the balance outstanding under an earlier mortgage, created to secure an advance to the same borrower, over the same or substantially the same property or part of it.
- (2) For the purposes of subsection (1), mortgages are created to secure an advance to the same borrower if, either directly by the mortgages themselves or indirectly through one or more collateral arrangements, the same person obtains the advances secured by them.
- (3) A refinancing mortgage is taken to have been stamped with ad valorem duty as a mortgage in respect of the maximum amount payable under or secured by the previous mortgage (being an amount in relation to which mortgage duty has been paid or in relation to which an exemption from duty has been obtained), except as provided by subsection (5).
- (4) If an advance is refinanced by more than one lender, so that mortgages given to the lenders together secure the balance outstanding under an earlier mortgage, the definition of *refinancing mortgage* in subsection (1) is to be construed as though:
 - (a) the reference to a mortgage securing the outstanding balance were a reference to the aggregate of such mortgages, and
 - (b) the reference to property were a reference to the property securing the aggregate of refinancing advances made by the lenders under their combined mortgages, to the intent

that, if the requirements of the definition, as so construed, are satisfied, each lender is taken, for the purposes of this section, to be the holder of a refinancing mortgage.

- (5) If, as provided by subsection (4), each of a number of lenders is the holder of a refinancing mortgage, a refinancing mortgage held by each lender is taken to have been duly stamped with ad valorem duty as a mortgage in respect of an amount equal to the same proportion of the maximum amount secured by the earlier mortgage as the amount secured by that mortgage bears to the total amount secured by the refinancing mortgages held by all the lenders.
- (6) If each of two or more refinancing mortgages severally secures the same advance:
- (a) the provisions of subsection (3) or (5), as the case may be, apply to such one of the mortgages as the Chief Commissioner determines, and
 - (b) no duty is chargeable in respect of any of the others.
- (7) For the purposes of section 218:
- (a) a refinancing mortgage that is taken, by the operation of subsection (3) or (5), to be duly stamped is in either case the *stamped instrument*, and
 - (b) duty is taken to have been paid on it to the extent provided by whichever of those subsections applies.
- (8) Duty at the rate of \$4 per \$1,000 or remaining part of \$1,000 is payable on the amount by which the advance made under a refinancing mortgage (not being a mortgage on which, by virtue of subsection (6) (b), no duty is chargeable) exceeds:
- (a) the maximum amount secured by the earlier mortgage, or
 - (b) the proportion of that amount referred to in subsection (5), in the case of a refinancing to which subsection (4) applies.
- (9) If an original borrower dies or is divorced, the remaining borrower is, or the remaining borrowers are, taken to be the same borrower or the same person for the purposes of subsection (1) or (2).

221 Eligible mortgages under first home purchase scheme

- (1) Duty is not chargeable on an advance secured by an eligible mortgage under Division 1 (First home purchase scheme) of Part 8 of Chapter 2, but only to the extent that the amount of advances qualifies under section 74 (3) or (4).
- (2) For the purpose of assessing any further advances secured by the mortgage, duty is taken to have been paid on the amount of advances to which subsection (1) applies.

Part 4 Exempt instruments

222 Exempt mortgages and supporting instruments

- (1) This Chapter does not apply to:
 - (a) a mortgage executed before 1 January 1975, or
 - (b) a mortgage executed on or after 1 January 1975 and before 1 July 1998 that has been duly stamped or that was not chargeable with or was exempt from duty, or
 - (c) a mortgage that is not chargeable with duty under this Act.
- (2) Other instruments that are exempt from payment of mortgage duty are:
 - (a) a mortgage created solely for the purpose of providing security in accordance with a condition imposed on the grant of bail in criminal proceedings, and
 - (b) a mortgage taken by a non-profit organisation in conjunction with a lease in respect of which no duty is chargeable under this Act, and
 - (c) a mortgage of any ship or vessel, or of any part, interest, share or property of or in any ship or vessel, and
 - (d) a mortgage given by the Government of the Commonwealth or a Government of a State or Territory or by any public statutory body constituted under a law of a State or Territory, and
 - (e) a mortgage to which an offshore banking unit is a party and that would not be liable to duty if it were executed outside New South Wales, and
 - (f) a mortgage under the *Liens on Crops and Wool and Stock Mortgages Act 1898*.
- (3) The exemption provided by subsection (2) (d) does not apply to a mortgage given by a public statutory body in relation to a transaction, or any one of a class of transactions, specified in a proclamation made by the Governor and published in the Gazette in respect of the public statutory body concerned.

- (4) Duty is not chargeable in respect of a mortgage made or given by:
 - (a) a council or county council under the *Local Government Act 1993*, or
 - (b) the WorkCover Authority.
- (5) Duty is not chargeable on an instrument referred to in section 205 (d) if it is:
 - (a) executed for the purposes of money market trading operations conducted or to be conducted by the person executing the instrument, or
 - (b) an agreement by which a clearing member agrees to lodge securities with, or to make securities available to, Options Clearing House.

223 Mortgages associated with certain credit contracts

- (1) If
 - (a) a mortgage secures an amount advanced under a consumer credit contract and no other advance, and
 - (b) the total amount advanced under the consumer credit contract does not exceed \$35,000,the mortgage is exempt from mortgage duty.
- (2) If
 - (a) a mortgage secures an amount advanced under a consumer credit contract and another advance, and
 - (b) the total amount advanced under the consumer credit contract does not exceed \$35,000,mortgage duty is not chargeable on the mortgage in relation to the amount advanced under the consumer credit contract.
- (3) If
 - (a) a mortgage secures an amount advanced under a consumer credit contract (whether or not it also secures any other advance), and
 - (b) the total amount advanced under the consumer credit contract exceeds \$35,000,

the whole of the amount advanced under the consumer credit contract comprises or forms part of the advances secured by the mortgage.

- (4) An exemption provided by subsection (1) or (2) is not available to the extent to which the consumer credit is provided for the purposes of
- (a) the acquisition of a private dwelling house or land on which to erect a private dwelling house, or
 - (b) the erection of a private dwelling house or the addition of accommodation to a private dwelling house.
- (5) In this section:

consumer credit means credit regulated under the *Consumer Credit Code*.

Consumer Credit Code means:

- (a) the provisions of the Code by that name set out in the Appendix to the Queensland *Consumer Credit (Queensland) Act 1994*, as applied and in force in any Australian jurisdiction, or
- (b) the provisions of an Act of an Australian jurisdiction that are in the same, or substantially the same, terms as that Code.

private dwelling house includes a lot within the meaning of the *Strata Schemes Management Act 1996* that is used as a place of residence.

224 Farm machinery and commercial vehicles

- (1) Mortgage duty is not chargeable on so much of an advance to a natural person or a strata corporation for the acquisition of farm machinery or a commercial vehicle as is secured by the mortgage.

- (2) In this section:

commercial vehicle means:

- (a) a motor vehicle or trailer within the meaning of the *Traffic Act 1909* constructed or adapted principally for the

carriage of goods but does not include a motor vehicle of the kind known as a utility, a station wagon or a panel van, or

- (b) a vehicle without motive power of its own and constructed or adapted principally for the carriage of goods and for being drawn by a motor vehicle within the meaning of that Act.

farm machinery means:

- (a) a harvester, binder, tractor, plough or other agricultural implement, or
- (b) a boat within the meaning of the *Fisheries Management Act 1994* or fishing gear within the meaning of that Act, or
- (c) any other goods of a class commonly used for the purposes of a farming undertaking that are determined by the Chief Commissioner to be farm machinery for the purposes of this section,

where the goods are acquired for the purposes of a farming undertaking.

farming undertaking includes:

- (a) any agricultural, apicultural, dairy farming, horticultural, orcharding, pastoral, poultry keeping, viticultural or other business involving the cultivation of the soil, the gathering of crops or the rearing of livestock, and
- (b) the business of taking fish, crustacea, oysters or any other marine, estuarine or fresh-water animal life, and
- (c) the cutting of timber for sale, and
- (d) any class of business determined by the Chief Commissioner to be a farming undertaking.

225 Certain debentures and related instruments

- (1) Duty is not chargeable on a mortgage consisting of
 - (a) a debenture issued by a financial corporation or a related corporation pursuant to an instrument of trust to which the financial corporation or related corporation is a party and which protects the interests of the holders of the debentures, or

- (b) a debenture issued by a financial corporation or related corporation the repayment in respect of which is secured by a mortgage executed by the financial corporation or related corporation.
- (2) Mortgage duty is not chargeable on a mortgage executed by a financial corporation or a related corporation to secure the repayment of debentures issued by the financial corporation or related corporation.
- (3) This section applies to a debenture issued, or a mortgage executed, by a related corporation only in so far as the debenture is issued, or the mortgage is executed, for the purposes of raising funds to be used for a financial corporation.
- (4) In this section:

financial corporation means a corporation whose sole or principal business is providing finance to the public, including making loans to the public.

related corporation, in relation to a particular financial corporation, means a corporation that is, with respect to the financial corporation, a related body corporate within the meaning of the *Corporations Law*.

Part 5 Miscellaneous

226 Payment of duty on mortgages associated with debenture issues

- (1) This section applies if
 - (a) a corporation is or will be under a liability to repay money received or to be received by it in respect of its debentures, and
 - (b) the repayment is secured by a mortgage, and
 - (c) the corporation is a party to an instrument of trust relating to the debentures.
- (2) If the corporation and the trustee for the debenture holders give a written undertaking in the approved form to the Chief Commissioner:
 - (a) a mortgage executed by the corporation protecting the interests of the debenture holders is not liable to mortgage duty, and
 - (b) a mortgage, not executed by the Corporation, protecting the interests of the debenture holders is liable to duty of \$10.
- (3) The undertaking binds the corporation and the trustee to lodge with the Chief Commissioner, in July each year, a statutory declaration setting out, in the following categories, the total amount subscribed for in New South Wales in respect of the corporation's debentures during the year ending on the previous 30 June (but not including amounts repayable at call or in less than 30 days) and to pay duty in the following amounts:

Money repayable at or after the expiration of not less than 30 days and not more than 3 months	\$2 for every \$10,000, or part
Money repayable at or after the expiration of not less than 3 months and not more than 6 months	\$2 for every \$1,000, or part
Other money (except money repayable at call or in less than 30 days)	\$4 for every \$1,000, or part

Money repayable at call after a specified period is taken to be money repayable at the expiration of that period.

- (4) In this section, a reference to an amount subscribed for in respect of debentures includes a reference to an amount represented by debentures issued on the conversion or renewal of an existing holding of debentures or other marketable securities.

227 Unregistered mortgages protected by caveats (anti-avoidance provision)

- (1) A caveat under the *Real Property Act 1900* in which an estate or interest is claimed under an unregistered mortgage is chargeable with duty.
- (2) The amount of duty is:
- (a) if the mortgage is chargeable, but not stamped, with mortgage duty—the same amount as is chargeable on the mortgage, or
 - (b) if the mortgage is stamped, or is not chargeable, with mortgage duty—\$10.
- (3) The person liable to pay the duty is the mortgagor.
- (4) This section does not apply to a caveat lodged in respect of a mortgage that is exempt from mortgage duty under Part 4.

228 Stamping counterpart or collateral instrument if mortgage is lost, destroyed or cannot be produced

A counterpart of a mortgage or a collateral security for an amount secured by a mortgage is taken to be the mortgage and may accordingly be stamped or upstamped for mortgage duty purposes if, on application by or on behalf of a person who is a party to the mortgage, the Chief Commissioner is satisfied that the mortgage has been lost or destroyed or, because of being deposited in the Land Titles Office or from other reasonable cause, cannot conveniently be produced.

Chapter 8 Insurance

Part 1 General insurance

229 Imposition of duty

- (1) This Part charges duty on the amount of the premium paid in relation to a contract of insurance that effects general insurance (whether or not it also effects other kinds of insurance).
- (2) The amount of duty is required to be paid each time a premium is paid in relation to a contract of insurance that effects general insurance.

Notes. (1) "General insurance" is defined in section 230.

(2) "Premium" is defined in section 231.

(3) The time at which a premium is "paid" is determined by section 232.

(4) Generally, the insurer to whom the premium is paid is the person liable to pay the duty. But there are circumstances in which the person insured is liable to pay the duty. These circumstances are set out in section 236.

(5) To facilitate payment of duty, insurers must register themselves with the Chief Commissioner, submit a monthly return showing the total amount of premiums paid to them for general insurance during the preceding month and pay the appropriate amount of duty when submitting the return. The provisions that deal with this are in Part 3.

230 What is "general insurance"?

- (1) *General insurance* is any kind of insurance that is applicable to:
 - (a) property in New South Wales, or
 - (b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, New South Wales,or both.
- (2) *General insurance* does not include life insurance, a life insurance rider or insurance that is exempt from duty by Part 5.

231 What is a "premium" in relation to general insurance?

- (1) *Premium*, in relation to general insurance, means the total consideration given to an insurer by or on behalf of the insured person to effect insurance without deductions for any amounts paid or payable, or allowed or allowable, by way of commission or discount to an insurance intermediary.

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- (2) **Premium** includes a fire service levy paid or payable in connection with insurance by an insurer or any other person.
 - (3) **Premium** does not include:
 - (a) an amount paid to an insurance intermediary by the insured person as a fee, provided that the amount can be clearly identified as a fee, or
 - (b) an amount of duty under this or a corresponding Act.
 - (4) It is immaterial where the amount is paid or where the insurance is effected.

232 When is a premium “paid”?

- (1) A premium, or an instalment of a premium, is paid for the purposes of this Chapter when the first of the following events occurs:
 - (a) the premium or instalment is received by the insurer, or
 - (b) an account of the insurer is credited with the amount of the premium or instalment.
- (2) A premium or instalment of a premium (apart from the case where the premium or instalment is received directly by an insurer) is taken to have been received by an insurer if it is received by another person on the insurer’s behalf.

233 Classes of general insurance

- (1) For the purpose of charging duty, general insurance is divided into 3 classes, Class 1 insurance, Class 2 insurance and Class 3 insurance.
- (2) **Class 1 insurance** is general insurance other than Class 2 insurance or Class 3 insurance.
- (3) **Class 2 insurance** is:
 - (a) motor vehicle insurance, being insurance covering any one or more of the following:
 - (i) the loss (including the loss by theft) of a motor vehicle,

- (ii) damage to a motor vehicle,
 - (iii) loss of or damage to property by a motor vehicle, being a motor vehicle within the meaning of the *Motor Accidents Act 1988*,
 - (a) aviation insurance, being insurance covering any one or more of the following:
 - (i) the loss (including the loss by theft) of an aircraft,
 - (ii) damage to aircraft,
 - (iii) the death of or injury to a person by an aircraft or a thing falling from an aircraft,
 - (iv) the loss of or damage to property by an aircraft or a thing falling from an aircraft,
 - (b) disability income insurance, being insurance effected by a contract of insurance under which an amount is payable in the event of disablement of the insured by accident or sickness,
 - (c) occupational indemnity insurance, being insurance covering liability arising out of the provision by a person of professional services or other services,
 - (d) hospital and ancillary health benefits insurance, being insurance covering liability incurred in respect of fees or charges for hospital treatment, or for health care ancillary to hospital treatment, if the liability is not covered by an organisation registered under Part VI of the Commonwealth *National Health Act 1953*.
- (4) **Class 3 insurance** is:
- (a) crop insurance, being insurance covering:
 - (i) loss due to the destruction of, or physical damage to, any pasturage or any crop of grain, fruit, vegetables or other plants, where the destruction or damage occurs while the pasturage or crop is being grown, or

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

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

- (b) livestock insurance, being insurance covering:
 - (i) loss due to the death of, or physical damage to, any animal, whether domesticated or wild, or
 - (ii) loss due to the death of, or physical damage to, any genetic material of any such animal, or
 - (iii) loss due to the theft of any such animal or genetic material.

234 What duty is payable?

- (1) The amount of duty chargeable on the premium paid in relation to a contract of insurance is 11.5% of the amount of the premium to the extent to which the premium is paid to effect Class 1 insurance.
- (2) The amount of duty chargeable on the premium paid in relation to a contract of insurance is 5% of the amount of the premium to the extent to which the premium is paid to effect Class 2 insurance.
- (3) The amount of duty chargeable on the premium paid in relation to a contract of insurance is 2.5% of the amount of the premium to the extent to which the premium is paid to effect Class 3 insurance.

235 Who is liable to pay the duty?

The general insurer is liable to pay the duty, except as provided by section 236.

236 Circumstances in which duty is payable by the insured person

- (1) This section applies to a person (not being a registered insurer) who obtains, effects, or renews any general insurance as an insured person with a person who is not a registered insurer.
- (2) A person to whom this section applies must, within 21 days after the end of the month in which the premium relating to the insurance is paid to an insurer (not being a registered insurer) or insurance intermediary:
 - (a) lodge with the Chief Commissioner a return in the approved form containing such particulars and information as to the premium and the insurance as the Chief Commissioner may require, and
 - (b) pay to the Chief Commissioner as duty the amount calculated in accordance with section 234.
- (3) A person to whom this section applies is taken to have complied with this section if the person's duty under this section is discharged by another person acting on the person's behalf.
- (4) The payment of a periodic premium in respect of disability income insurance that is continued, but not renewed, on the payment of the premium is taken to effect the insurance for the purposes of this section.

Note. Because this section imposes liability for duty on an insured person if the insured person arranges insurance with an insurer who is not registered, it would always be prudent to check the registered status of the insurer. This may be done by inspecting the register kept under section 252 by the Chief Commissioner.

237 Records to be kept

A person to whom section 236 applies must maintain records that contain information as to:

- (a) the nature and location of the property insured, and
- (b) the nature and location of each risk, contingency or event insured, and
- (c) the amount of the premiums paid in relation to each contract of insurance.

238 Refunds where premiums are returned

- (1) A general insurer or a person to whom section 236 applies is entitled to a refund of duty if the general insurer refunds, or there is refunded to the person, the whole or a part of a dutiable premium in respect of the contract of insurance for which duty has been paid.
- (2) The refund is the duty paid on the amount of the premium refunded.
- (3) A general insurer to whom duty is refunded may apply the amount of the refund to offset any other payment required to be made under this Act by the general insurer.

Part 2 Life insurance

239 Imposition of duty

This Part charges duty on:

- (a) a policy of life insurance, and
- (b) a life insurance rider.

Notes. (1) "Insurance" is defined in the Dictionary to include assurance.
(2) Generally, the insurer with whom the policy is effected is the person liable to pay the duty. But there are circumstances in which the person insured is liable to pay the duty. These circumstances are set out in section 245.

240 What is "life insurance"?

Life insurance means insurance described in section 9 (1) (a)–(g) and 9A of the Commonwealth *Life Insurance Act 1995* in respect Of

- (a) a life or lives, or
- (b) any event or contingency relating to or depending on a life or lives,

of a person whose principal place of residence is, or persons whose principal places of residence are, in New South Wales at the time the policy that effects the insurance is issued.

241 What is a "life insurance rider"?

A life insurance rider is insurance that:

- (a) is attached to a policy of life insurance, and
- (b) adds specified events and contingencies to those insured under the policy, and
- (c) is subject to the terms and conditions of the policy.

242 Obligation to make out and execute a policy of life insurance

A life company must, on or before the twenty-first day of each month:

- (a) make out and execute a policy of life insurance for each contract or agreement for life insurance effected by or on behalf of the life company in the preceding month, and
- (b) endorse the policy in the manner approved by the Chief Commissioner.

243 What duty is payable?

(1) **Policies of life insurance, other than a temporary or term insurance policy or disability income insurance**

The amount of duty chargeable on a policy of life insurance, other than a temporary or term insurance policy, or a policy of disability income insurance is:

- (a) on the first \$2,000, or part of \$2,000, of the sum insured—\$1, and
- (b) for every \$200, or part of \$200, in excess of the first \$2,000—20 cents.

(2) **Temporary or term insurance policies**

The amount of duty chargeable on a temporary or term insurance policy is 5% of the first year's premium on the policy.

(3) **Life insurance riders**

The amount of duty chargeable on a life insurance rider is 5% of the first year's premium on the life insurance rider.

(4) **Disability income insurance**

The amount of duty chargeable on a policy of disability income insurance, being insurance under which an amount is payable in the event of the disablement of the insured by accident or sickness, is 5% of the premium paid to effect the insurance.

244 Who is liable to pay the duty?

The life company or the person issuing the policy or life insurance rider is liable to pay the duty, except as provided by section 245.

245 Circumstances in which duty is payable by the insured person

- (1) This section applies to a person (not being a registered insurer) who effects a policy of life insurance or life insurance rider as an insured person with a person who is not a registered insurer.

- (2) A person to whom this section applies must, within 21 days after the end of the month in which the policy of life insurance or life insurance rider was effected:
 - (a) lodge with the Chief Commissioner a return in the approved form containing such particulars and information as the Chief Commissioner may require, and
 - (b) pay to the Chief Commissioner as duty the amount calculated in accordance with section 243.
- (3) A person to whom this section applies is taken to have complied with this section if the person's duty under this section is discharged by another person acting on the person's behalf.

Note. Because this section imposes liability for duty on an insured person if the insured person arranges insurance with an insurer who is not registered, it would always be prudent to check the registered status of the insurer. This may be done by inspecting the register kept under section 252 by the Chief Commissioner.

246 Refund on cancellation of policy of life insurance

If a premium is refunded to a person because the person cancels a policy of life insurance within 30 days after receiving the policy, a person who has paid duty in respect of the policy is entitled to a refund of the duty.

Part 3 How is duty paid by an insurer?

247 Who is an insurer?

- (1) An insurer is a life company that writes life insurance or a general insurer.
- (2) A general insurer is a person:
 - (a) who writes general insurance, and
 - (b) who does so otherwise than as an insurance intermediary, and
 - (c) who is registered under the Commonwealth *Insurance Act 1973*.

Note. “Life company” and “insurance intermediary” are defined in the Dictionary.

248 Insurers must be registered

An insurer must be registered under this Part.

Maximum penalty: 100 penalty units.

249 Application for registration

The Chief Commissioner must register an insurer who applies in the approved form for registration under this Part.

250 Cancellation of registration by the Chief Commissioner

- (1) The Chief Commissioner may, by written notice, cancel an insurer’s registration under this Part:
 - (a) if the insurer’s registration under the Commonwealth *Insurance Act 1973* is terminated, or
 - (b) if the insurer is made bankrupt or, being a company, is wound up, or
 - (c) if the insurer is convicted of an offence under an Act imposing duty, or

- (d) if the insurer's registration was made in error or as a consequence of a false or misleading statement made in relation to the application for registration, or
 - (e) if the Chief Commissioner is of the opinion that the insurer has ceased to write general insurance in New South Wales, or
 - (f) if the insurer ceases to be a life company, or
 - (g) for any other reason the Chief Commissioner thinks sufficient.
- (2) A cancellation of registration has effect from the date specified for the purpose by the Chief Commissioner in the notice of cancellation.

251 Cessation of business and cancellation of registration by the insurer

- (1) A registered insurer who ceases to write insurance business in New South Wales must:
- (a) give written notice of that fact to the Chief Commissioner, and
 - (b) lodge the return required to be lodged under this Part, and
 - (c) pay the duty payable in connection with the return on or before the twenty-first day of the month after which the notice is given.

Maximum penalty: 100 penalty units.

- (2) The notice cancels the insurer's registration under this Part on the day on which it is received by the Chief Commissioner.

252 Register of insurers

- (1) The Chief Commissioner must keep a register of the insurers who are registered under this Part.
- (2) Anyone may inspect the register without charge at the Chief Commissioner's principal office during the hours that the office is open to the public.

253 Monthly returns and payment of duty

A registered insurer must, on or before the twenty-first day of each month:

- (a) lodge with the Chief Commissioner a return in the approved form showing:
 - (i) the total amount of all premiums for Class 1 insurance paid to the registered insurer in the preceding month, and
 - (ii) the total amount of all premiums for Class 2 insurance paid to the registered insurer in the preceding month, and
 - (iii) the total amount of all premiums for Class 3 insurance paid to the registered insurer in the preceding month, and
 - (iv) the total duty payable on policies of life insurance other than temporary or term insurance effected in the preceding month, and
 - (v) the total amount of all first year's premiums for temporary or term life insurance received by or on behalf of the registered insurer in the preceding month (other than premiums for insurance that is exempt from duty by Part 5), and
 - (vi) the total amount of all first year's premiums for life insurance riders received by or on behalf of the registered insurer in the preceding month (other than premiums for insurance that is exempt from duty by Part 5), and
- (b) pay to the Chief Commissioner as duty the amounts determined in accordance with sections 234 and 243.

254 Recovery of duty by registered insurer

- (1) A registered insurer may require a person by whom a premium is payable to the insurer to pay the insurer an amount equal to the duty chargeable.

- (2) The requirement is duly made if it is contained in a written request that is given to the person and that specifies the amount of the duty.
- (3) If the duty is not paid, the insurer may recover it as a debt.

Part 4 Apportionment

Division 1 Apportionment of premiums and other amounts between Australian jurisdictions

255 Application of Division 1

- (1) This Division applies to a contract of insurance:
- (a) that insures:
 - (i) property in New South Wales as well as property in another place, or
 - (ii) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, New South Wales as well as within, or partly within, another place,or both, or
 - (b) that insures:
 - (i) lives, or
 - (ii) any event or contingency relating to or depending on lives,or both, of persons whose principal places of residence are variously in New South Wales or another place at the time the policy is issued.
- (2) It is the intention of this Division:
- (a) to provide the means for apportioning premiums paid and other amounts in relation to a contract of insurance having regard to the principle in sections 230 (1) and 240, and
 - (b) to avoid multiple duty as between Australian jurisdictions, and
 - (c) to give Australian jurisdictions their appropriate share of duty by means of the apportionment.

256 Schedule of Apportionment

- (1) The Chief Commissioner may, from time to time, adopt a Schedule of Apportionment for the purpose of apportioning premiums, or premiums paid for specific classes of insurance, and other amounts in relation to insurance in accordance with this Division.
- (2) The Schedule of Apportionment may be developed in consultation with any person the Chief Commissioner considers suitable.

257 Apportionment in practice

- (1) A premium or an amount is to be apportioned in accordance with the Schedule of Apportionment adopted for the time being, except as provided by this section.
- (2) An insurer or an insured person may apply in writing to the Chief Commissioner to apportion a premium or an amount on a basis other than that provided by the Schedule of Apportionment. The Chief Commissioner may apportion the premium or amount on the other basis.
- (3) In particular, if the Chief Commissioner is not satisfied that a premium paid or another amount in relation to a contract of insurance has been properly apportioned for each risk insured, the Chief Commissioner may determine the apportionment, reassess the liability to duty and charge duty accordingly.

Division 2 Apportionment of premiums and other amounts as between different types of insurance

258 Apportionment between different types of insurance

- (1) This section applies to apportionment between different types of insurance that are relevant to determining liability for duty, such as general insurance, life insurance and insurance that is exempt from duty. It does not apply to the apportionment of a premium or another amount between New South Wales and another place. Division 1 deals with that kind of apportionment.

- (2) This section also applies to apportionment between different classes of insurance referred to in section 233.
- (3) If the Chief Commissioner is not satisfied that a premium paid or another amount in relation to a contract of insurance that effects different types or classes of insurance has been properly apportioned, the Chief Commissioner may determine the apportionment, reassess the liability to duty and charge duty accordingly.

Part 5 Exempt insurance

259 What insurance is exempt from duty?

The following insurances are exempt from duty under this Chapter:

- (a) insurance covering only property of the Crown,
- (b) insurance effected by a separate policy in a distinct sum against loss by fire on the tools, implements of work or labour used by any working mechanic, artificer, handcrafter or labourer,
- (c) insurance taken out by or on behalf of a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose,
- (d) insurance taken out by or on behalf of a society or institution for the time being approved for the purposes of this paragraph by the Chief Commissioner whose resources are, in accordance with its rules or objects, used wholly or predominantly for:
 - (i) the relief of poverty, or
 - (ii) the promotion of education, or
 - (iii) any purpose directly or indirectly connected with defence or the amelioration of the condition of past or present members of the naval, military or air forces of the Commonwealth or their dependants or any other patriotic object, or
 - (iv) such other purpose as, in the opinion of the Chief Commissioner, warrants the society or institution being taken to be a charitable society or institution,
- (e) insurance covering mortgages or pools of mortgages acquired for the purpose of issuing mortgage-backed securities,
- (f) medical benefits insurance, being insurance effected by a contract of insurance that is issued by an organisation registered under Part VI of the Commonwealth *National Health Act 1953* and that provides hospital benefits or medical benefits (or both), whether or not other benefits are also provided,

- (g) insurance effected under the *Workers Compensation Act 1987*,
- (h) insurance effected under the *Motor Accidents Act 1988*,
- (i) insurance of
 - (i) the hull of a floating vessel used primarily for commercial purposes, or
 - (ii) goods or merchandise, or the freight of goods or merchandise, carried by land, sea or air,or both,
- (j) redundancy insurance in respect of a housing loan where the sum insured does not exceed \$124,000,
- (k) reinsurance (being a contract or contracts between two parties by which one party indemnifies the other against liability or payment under a contract or contracts of insurance or reinsurance),
- (l) an annuity:
 - (i) issued, created or sold by a life company,
 - (ii) purchased by a person from a life company,
- (m) policies of life insurance, being group superannuation investment policies owned by the trustee of a superannuation plan for the benefit of more than one member of the superannuation plan.

Part 6 Miscellaneous

260 Effect on contract of insurance of failure to comply with this Chapter

A failure to comply with this Chapter does not render a contract of insurance illegal or invalid.

Chapter 9 Motor vehicle registration

Part 1 Introduction and overview

261 Imposition of duty

This Chapter charges duty on an application to register a motor vehicle under the *Traffic Act 1909* if:

- (a) the vehicle has not previously been registered under that Act, or
- (b) the person in whose name the vehicle is to be registered differs (or the persons in whose names the motor vehicle is to be registered differ) from the person or persons in whose name or names the vehicle was last registered.

Note. “Application to register” is defined in the Dictionary.

262 Lodgment of statement of dutiable value

A person who is required by law to make an application to register a motor vehicle under the *Traffic Act 1909* must lodge with the application for registration a statement of the dutiable value of the vehicle, unless the application is not chargeable with duty under this Chapter.

Maximum penalty: 100 penalty units.

Note. The “dutiable value” of a motor vehicle is specified in section 266.

263 Who is liable to pay the duty?

Duty is payable by the applicant for registration of the motor vehicle.

264 When does duty become payable?

Duty becomes payable when the motor vehicle is registered in pursuance of the relevant application.

265 What is the rate of duty?

- (1) The rate of duty is:
 - (a) until 30 June 1999—\$3 per \$100, or part, of the dutiable value of the motor vehicle, and

- (b) on and from 1 July 1999—\$2.50 per \$100, or part, of the dutiable value of the motor vehicle,

except as provided by subsection (2).

- (2) The rate of duty for a passenger vehicle, being a vehicle that has a dutiable value of not less than \$45,000 and that is constructed primarily for the carriage of not more than 9 occupants, including a sedan, station wagon, coupe, convertible, four wheel drive vehicle with seats and windows, two wheel drive panel van with seats and windows, three wheel car, forward control passenger vehicle, small bus (seating not more than 9 persons, including the driver), motor home, and snow vehicle, but not including a motor cycle (with or without a side car), large bus (seating more than 9 persons, including the driver), hearse or invalid conveyance, is:
 - (a) until 30 June 1999—\$1,350 plus \$5 per \$100, or part, of the dutiable value of the motor vehicle in excess of \$45,000, and
 - (b) on and from 1 July 1999—\$1,125 plus \$4.50 per \$100, or part, of the dutiable value of the motor vehicle in excess of \$45,000.

266 What is the “dutiable value” of a motor vehicle?

- (1) The *dutiable value* of a motor vehicle is:
 - (a) the consideration in money or money’s worth given for the acquisition of the vehicle, or
 - (b) the market value of the vehicle at the time duty is payable, whichever is the greater.
- (2) The *dutiable value* does not include:
 - (a) sales tax if the applicant for registration of the vehicle is exempt from the payment of sales tax, or
 - (b) a premium paid for extended warranty insurance.

Part 2 **Circumstances in which duty not chargeable**

267 Exemptions

(1) **Ownership by devolution of title**

Duty under this Chapter is not chargeable on an application to register a motor vehicle made by a person who is beneficially entitled to the vehicle following the death of the person in whose name the vehicle was registered in New South Wales.

(2) **Charities**

Duty under this Chapter is not chargeable on an application to register a motor vehicle if the applicant is a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose.

(3) **Rural lands protection board**

Duty under this Chapter is not chargeable on an application to register a motor vehicle if the applicant is a rural lands protection board established under the *Rural Lands Protection Act 1989*.

(4) **Repossessed motor vehicles**

Duty under this Chapter is not chargeable on an application to register a motor vehicle if

- (a) the applicant is in the business of financing the purchase or use of motor vehicles, and
- (b) the vehicle was repossessed by, or voluntarily surrendered to, the applicant, and
- (c) the applicant, in the course of that business, does not dispose of any such vehicles except by public tender or public auction or through a dealer licensed under the *Motor Dealers Act 1974*.

(5) Ambulances

Duty under this Chapter is not chargeable on an application to register:

- (a) a motor vehicle that weighs not more than 250kg when unladen and is specially constructed to be used, and while on a road is used, solely for conveying an invalid, or
- (b) a motor vehicle specially constructed for:
 - (i) the work of carrying sick and injured persons, or
 - (ii) mine rescue work in accordance with the *Mines Rescue Act 1925* and the regulations under that Act, if the vehicle while on a road is used solely for purposes connected with that work.

(6) Vehicles transferred by certain court orders—parties to a marriage

Duty under this Chapter is not chargeable in respect of an application to transfer the registration of a motor vehicle registered in the names of the parties to a marriage or in the name of either of them to the extent that the vehicle was, at the time the application was made, matrimonial property, if it is proved to the satisfaction of the Chief Commissioner that:

- (a) the marriage is dissolved or annulled (whether before or after the certificate of registration is issued), and
- (b) the application was made, for the purposes of or in accordance with:
 - (i) an instrument registered or approved under the Commonwealth *Family Law Act 1975*, or
 - (ii) an order of a court under that Act.

(7) Vehicles transferred by certain court orders—de facto partners

Duty under this Chapter is not chargeable in respect of an application to transfer the registration of a motor vehicle registered in the names of the parties to a de facto relationship or in the name of either of them (but to no other person) to the

extent that the vehicle was, at the time the application was made, partnership property, if it is proved to the satisfaction of the Chief Commissioner that:

- (a) the de facto relationship ceases, and
- (b) the application was made for the purposes of or in accordance with an order of a court under the *De Facto Relationships Act 1984*.

(8) Equity

Duty under this Chapter is not chargeable in respect of an application to register a motor vehicle if the Chief Commissioner considers it would not be just and reasonable to require payment of the duty.

268 Avoidance of double duty—duty paid in a corresponding Australian jurisdiction

Duty is not chargeable in respect of an application to register a motor vehicle in New South Wales if

- (a) at the time the application was made, the motor vehicle is or was registered by the person making the application under the law of an Australian jurisdiction that corresponds to the *Traffic Act 1909*, and
- (b) duty was paid in that jurisdiction in respect of the registration.

269 Reassessment of duty—repossession of stolen motor vehicle

- (1) Duty is not chargeable on an application for registration of a motor vehicle that has been repossessed from a person because, before the person acquired it, it had been stolen.
- (2) If requested by a person who has paid duty on an application for registration to which subsection (1) applies, the Chief Commissioner must assess or reassess the duty accordingly.

Part 3 Trading stock and demonstrator vehicles of motor dealers

270 Exemptions for motor dealers

(1) **Trading stock—used motor vehicles**

Duty under this Chapter is not chargeable on an application by a motor dealer, being the holder of a dealer's licence or a wholesaler's licence issued under the *Motor Dealers Act 1974*, or the holder of a similar licence under the corresponding provisions of a law of another State or Territory, to register a motor vehicle that is trading stock.

(2) **Demonstrator motor vehicles—new motor vehicles**

The Chief Commissioner may issue an exemption authority to a motor dealer in respect of the registration of demonstrator motor vehicles of the dealer. The authority may be issued unconditionally or subject to conditions.

(3) Duty under this Chapter is not chargeable on an application by a motor dealer to register a motor vehicle if, at the time the application is made, the dealer produces to the Roads and Traffic Authority an exemption authority issued by the Chief Commissioner in relation to the vehicle.

(4) A motor dealer must not use an exemption authority in contravention of any condition subject to which it is issued by the Chief Commissioner.

Maximum penalty: 100 penalty units.

(5) The Chief Commissioner may by written notice to a motor dealer cancel an exemption authority issued to the dealer if in the Chief Commissioner's opinion the dealer has contravened the authority.

(6) **Definitions**

In this section:

demonstrator motor vehicle means a new motor vehicle used solely or primarily for the sale of another new motor vehicle of the same class.

trading stock means a used vehicle offered or exposed for sale by a motor **dealer** in the course of a dealer's business, other than a vehicle used:

- (a) solely or principally by the dealer or a member of the dealer's staff or family, or
- (b) for the general purposes of the dealer's business.

Chapter 10 Miscellaneous duties

271 Duplicates or counterparts

- (1) Duty of \$2 is chargeable on the duplicate or counterpart of an instrument that effects a dutiable transaction or an instrument chargeable with duty.
- (2) The person liable to pay the duty is the person liable to pay the duty on the original instrument.
- (3) The duplicate or counterpart referred to in subsection (1) is not to be stamped as a duplicate or counterpart unless it is proved to the Chief Commissioner's satisfaction that the proper duty has been paid on the original instrument of which it is the duplicate or counterpart.

272 Replicas

- (1) Duty is chargeable on a replica:
 - (a) at \$10, or
 - (b) at the same amount as the duty with which the instrument the replica is intended to replace was stampable, whichever is the lesser.
- (2) The persons liable to pay the duty are the parties to the replica or any one or more of them.
- (3) A replica that is duly stamped is to be marked in such manner as the Chief Commissioner thinks fit to denote that it is a replica.
- (4) In this section, *replica* means an instrument that:
 - (a) is executed to replace, and
 - (b) contains the same terms as, but no other terms than, those contained in,
a previously executed instrument that has been lost, spoiled or destroyed and that, in the Chief Commissioner's opinion, has been duly stamped.

273 Minimum amount of duty

- (1) Despite any other provision of this Act or the regulations, if the amount of duty chargeable under this Act in respect of a transaction or an instrument would, but for this section, be less than \$2, the amount of duty chargeable is \$2.

- (2) This section does not apply to:
- (a) marketable securities quoted on the market operated by the Australian Stock Exchange, or
 - (b) Chapter 8 (Insurance).

Chapter 11 General exemptions from duty

274 Intergenerational rural transfers

- (1) Duty under this Act is not chargeable in respect of a transfer or agreement for the sale or transfer of land, a lease of land, or a transfer or assignment of a lease or permit in respect of land, used for primary production together with any other property that is an integral part of the business of primary production, if the Chief Commissioner is satisfied that:
 - (a) the land was land used for primary production by the transferor, lessor or assignor immediately before the transaction or the date of first execution of the instrument, and
 - (b) the land will continue to be land used for primary production by the transferee, lessee or assignee, and
 - (c) the parties are persons of a class identified in guidelines approved from time to time by the Treasurer, and
 - (d) the transaction satisfies such other requirements as may be contained in those guidelines.
- (2) Duty under this Act is not chargeable in respect of a transfer of shares in a share management fishery within the meaning of the *Fisheries Management Act 1994*, if the Chief Commissioner is satisfied that:
 - (a) the parties are persons of a class identified in guidelines approved from time to time by the Treasurer, and
 - (b) the transaction satisfies such other requirements as may be contained in those guidelines.
- (3) In this section, ***land used for primary production*** has the meaning given in the Dictionary to this Act and includes land subject to an aquaculture permit within the meaning of the *Fisheries Management Act 1994*.

275 Charitable or benevolent societies or institutions

Duty under this Act is not chargeable on a transfer, or an agreement for the sale or transfer, or a lease, of dutiable property to, or a declaration of trust over dutiable property held or to be held on trust for, or a mortgage given by or on behalf of

- (a) any society or institution for the time being approved by the Chief Commissioner for the purposes of this paragraph whose resources are, in accordance with its rules or objects, used wholly or predominantly for:
 - (i) the relief of poverty in Australia, or
 - (ii) the promotion of education in Australia, or
- (b) any society or institution that, in the opinion of the Chief Commissioner, is of a charitable or benevolent nature, or has as its primary object the promotion of the interests of Aborigines and if the transfer, agreement or declaration of trust is for such purposes as the Chief Commissioner may approve in accordance with guidelines approved by the Treasurer.

276 Public hospitals

Duty under this Act is not chargeable on:

- (a) a dutiable transaction in respect of dutiable property, if a public hospital would be the person liable to pay the duty, or
- (b) an instrument executed by or on behalf of a public hospital, if the public hospital would be the person liable to pay the duty.

277 Councils and county councils

- (1) Duty under this Act is not chargeable in the case of a body, being a council or county council under the *Local Government Act 1993*, on the following:

- (a) a dutiable transaction in respect of dutiable property if the body is the person described in this Act as the person liable to pay the duty,
 - (b) an instrument executed by or on behalf of any such body if the body is the person described in this Act as the person liable to pay the duty,
 - (c) an application by any such body to register a motor vehicle,
 - (d) any insurance taken out by or on behalf of any such body.
- (2) However, this section does not exempt dutiable transactions, instruments or insurance issued, given, taken out, or executed by, to or on behalf of any such body in connection with or arising from the establishment, acquisition and operation of any trading undertaking, being:
- (a) the supply of electricity, gas, liquefied petroleum gas or hydraulic power and the supply and installation of associated fittings and appliances, or
 - (b) the operation of a coal mine and the supply and distribution of coal, or
 - (c) the operation of a public transport service, or
 - (d) the supply of building materials.

278 Department of Housing tenants

Duty under this Act is not chargeable on an agreement for the sale or transfer, or a transfer, of land, or a mortgage executed to finance or assist the purchase of that land (but only to the extent to which the amount secured by the mortgage is to finance or assist that purchase), or a mortgage in support of that mortgage, if the purchaser or borrower, or at least one of the purchasers or borrowers:

- (a) is a tenant of the Department of Housing, or a tenant under the Community Tenancy Scheme administered within that Department, at the date of the transaction or the date of first execution of the instrument, and

- (b) will obtain not less than 25% of the beneficial ownership of the land, and
- (c) intends to use the land as his or her principal place of residence.

279 Specialised agencies

Duty under this Act is not chargeable on any instrument executed by or on behalf of a Specialised Agency within the meaning of the *Convention on the Privileges and Immunities of the Specialised Agencies* that was approved by the General Assembly of the United Nations on 21 November 1947 in respect of which instrument the Specialised Agency is the person described in this Act as the person liable to pay the duty.

280 Aboriginal land councils

Duty under this Act is not chargeable, in the case of an organisation that is the New South Wales Aboriginal Land Council, a Regional Aboriginal Land Council, or a Local Aboriginal Land Council, within the meaning of the *Aboriginal Land Rights Act 1983*, on the following:

- (a) a dutiable transaction in respect of dutiable property if the organisation is the person described in this Act as the person liable to pay the duty,
- (b) an instrument executed by or on behalf of the organisation if the organisation is the person described in this Act as the person liable to pay the duty,
- (c) an application by the organisation to register a motor vehicle,
- (d) any insurance taken out by or on behalf of the organisation.

281 Members of a group of corporations

- (1) Duty under this Act is not chargeable on a transfer of, or an agreement to transfer, dutiable property approved by the Chief Commissioner in accordance with guidelines approved by the Treasurer by which the property is transferred, or agreed to be

transferred, by a corporation that is a member of a group of corporations to another corporation that is a member of the same group.

- (2) Duty under this Act is not chargeable on an application to register a motor vehicle approved by the Chief Commissioner in accordance with guidelines approved by the Treasurer by a corporation that is a member of a group of corporations if, immediately before the application was made, the motor vehicle was registered in the name of another corporation that is a member of the same group.
- (3) The approval of the Chief Commissioner may be given to such extent as may be determined by the Chief Commissioner and in accordance with such conditions as may be so determined.

282 Mortgage-backed securities

- (1) Duty under this Act is not chargeable in respect of a mortgage over the interest of a person in a pool of mortgages relating to debt securities that are mortgage-backed securities issued by the person to secure the repayment of financial accommodation provided to the person.
- (2) Duty under this Act is not chargeable in respect of a mortgage of a mortgage or pool of mortgages or part of a pool of mortgages in connection with creating, issuing, marketing or securing a mortgage-backed security.
- (3) Duty under this Act is not chargeable in respect of
 - (a) the issue or making of a mortgage-backed security, or
 - (b) the transfer or assignment of or other dealing with a mortgage-backed security, or
 - (c) the discharge, cancellation or termination of a mortgage-backed security.
- (4) Duty under this Act is not chargeable in respect of a mortgage of a mortgage or pool of mortgages or part of a pool of mortgages for the purpose of creating, issuing, marketing or securing a mortgage-backed security:
 - (a) to a person entitled to a mortgage-backed security or a trustee or agent for such a person, or

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- (b) by or to a person who issues, makes or endorses a mortgage-backed security, or
 - (c) to a person who provides security (whether as a guarantor, surety or otherwise) to a person entitled to a mortgage-backed security or a trustee or agent for such a person,

if the mortgage is executed on or after 1 July 1998.

Note. "Mortgage", "mortgage-backed security" and "pool of mortgages" are defined in the Dictionary.

283 Instruments issued for the purpose of creating, issuing or marketing mortgage-backed securities

Duty under this Act is not chargeable on an instrument that, in the opinion of the Chief Commissioner, was executed for the purpose of creating, issuing or marketing mortgage-backed securities.

284 Loan-backed securities

- (1) Duty is not chargeable in respect of an instrument that is or effects any of the following:
 - (a) the issue or making of a loan-backed security,
 - (b) the transfer or assignment of, or other dealing in, a loan-backed security,
 - (c) an instrument that, in the Chief Commissioner's opinion, was executed for the purpose of creating, issuing or marketing loan-backed securities,
 - (d) a mortgage over the interest of a person in a pool of loans, being a mortgage relating to loan-backed securities issued by the person to secure the repayment of financial accommodation provided to the person,
 - (e) a policy of insurance covering any or all assets in a pool of loans acquired or held for the purpose of issuing loan-backed securities, but only so far as the instrument relates to loan-backed securities.
- (2) This section does not remove any liability to pay duty in respect of a receipts return or a short term dealers return.

Note. "Loan-backed security" is defined in the Dictionary.

Chapter 12 Miscellaneous

Part 1 Stamping instruments

285 Provision of stamps

The Chief Commissioner may provide stamps or such other equipment as may be required for:

- (a) stamping instruments, or
 - (b) otherwise denoting the payment of duty,
- in accordance with the provisions of this Act.

286 Limitation on use of designated stamps

- (1) A stamp that by its terms is limited to an instrument of a specified kind must not be used for an instrument of a different kind.

Maximum penalty: 100 penalty units.

- (2) An instrument of a specified kind for which a particular stamp is specified is taken not to be duly stamped unless it is stamped with the stamp so specified.

287 Form of stamps to be used

- (1) An instrument that is required to be stamped by this Act is to be stamped by means of an impressed stamp.
- (2) However, another form of stamping may be used if its use is authorised by this Act or the Chief Commissioner.

288 Stamping of instruments

The Chief Commissioner must stamp an instrument in respect of which duty is chargeable under this Act and that has been lodged for stamping with the Chief Commissioner if the duty, and any interest or penalty tax under Part 5 of the *Taxation Administration Act 1996*, is paid in full.

289 When is an instrument duly stamped?

An instrument is duly stamped if it is stamped in accordance with this Act.

290 Adhesive stamps

(1) Use

An adhesive stamp may be used to stamp the following instruments:

- (a) a transfer of shares of any corporation listed on the Australian Stock Exchange that is effected pursuant to a sale of the shares for full consideration in money or money's worth,
- (b) a transfer of units in a unit trust scheme listed on the Australian Stock Exchange that is effected pursuant to a sale of the units for full consideration in money or money's worth,
- (c) a transfer of shares of a corporation or company:
 - (i) the shares of which are not listed on a recognised stock exchange, and
 - (ii) which is not the legal or beneficial owner of land in New South Wales,where the duty is \$10,
- (d) a superannuation instrument to which section 60 applies,
- (e) duplicates or counterparts of instruments that may themselves be stamped with adhesive stamps,
- (f) any other instrument for which, under a taxation law within the meaning of the *Taxation Administration Act 1996*, tax may be denoted by use of an adhesive stamp.

(2) Cancellation

An instrument that may be stamped by use of an adhesive stamp is not duly stamped unless:

- (a) an adhesive stamp for the appropriate amount of duty is attached to the instrument, and

- (b) the adhesive stamp is cancelled by marking the date of its cancellation on its face in such a way as to render it incapable of being used for any other instrument.

(3) Prohibition on removal of adhesive stamps

An adhesive stamp that has been attached to an instrument and cancelled must not be removed from the instrument except by the Chief Commissioner after an application for a refund of the duty denoted by the stamp has been approved.

Maximum penalty: 100 penalty units.

291 Licences to deal in stamps

- (1) The Chief Commissioner may, on such terms and conditions as are determined by the Chief Commissioner, grant a licence to a person to sell stamps.
- (2) The licence must include the name and address of the licensee.
- (3) The Chief Commissioner may sell stamps to a licensee at such commission discount as may be determined by the Chief Commissioner.
- (4) The Chief Commissioner may cancel a licence granted under this section at any time by giving notice of the cancellation to the licensee.
- (5) A person who is not licensed under this section must not sell or deal in stamps.

Maximum penalty (subsection (5)): 100 penalty units.

292 Refunds—spoiled and unused stamps

- (1) A person may apply to the Chief Commissioner for a refund of the value of adhesive stamps that have become spoiled or useless.
- (2) The spoiled or useless stamps must be produced to the Chief Commissioner.

- (3) If an adhesive stamp is erroneously placed on a document, an application for a refund may be made as if the stamp were spoiled.

293 Reassessments—failed instruments

- (1) An instrument that fails in its intended operation and becomes useless is not chargeable with duty under this Act.
- (2) The Chief Commissioner must make a reassessment of duty in respect of such an instrument if an application for a reassessment is made within:
 - (a) 5 years after the initial assessment, or
 - (b) 12 months after the instrument has failed,whichever is the later.
- (3) The instrument in respect of which the application is made must be produced to the Chief Commissioner unless the Chief Commissioner dispenses with its production.

294 Instruments to be separately charged with duty in certain cases

An instrument that contains or relates to several distinct matters for which different duties are chargeable under this Act is to be separately and distinctly charged with duty in respect of each such matter, as if each matter were expressed in a separate instrument.

295 Execution of instruments

- (1) For the purposes of this Act, an instrument is taken to be first executed the first time that it is signed and sealed, or signed (as the case may be) by any party to it.
- (2) However, a contract made by acceptance of an offer contained in an instrument is taken to be first executed when the offer is accepted.

- (3) If an instrument is ineffective by reason of a failure of the necessary parties to execute it, a refund may be made of any money paid for stamping.

296 Stamping of instruments after execution

- (1) Except where otherwise expressly provided by this or another Act, a person liable with respect to any instrument chargeable with duty must cause it to be duly stamped or, in accordance with the provisions of this Act marked “interim stamp only” within 6 months after it was first executed.

Maximum penalty: 100 penalty units.

- (2) For the purposes of this section, a written statement that is required to be stamped is taken to be first executed when the transaction to which the statement relates occurs.

297 Stamping taken to constitute an assessment

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

298 Deferred payments for certain stamped instruments

- (1) The Minister may:
- (a) in circumstances in which (in the course of an industrial dispute involving persons engaged in the administration of this Act) an instrument liable to duty 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) in such other circumstances as the regulations may prescribe,

authorise the stamping of instruments on which duty is payable, even though the duty has not yet been paid, if an undertaking, in a form approved by the Chief Commissioner, has been given by a prescribed person, or a person belonging to a prescribed class of persons, as to the payment of duty in respect of the instrument.

- (2) The Minister's authorisation must provide for the manner in which, and the time within which, unpaid duty is to be paid in respect of instruments stamped under the authorisation.
- (3) An instrument that has been stamped under the Minister's authorisation is, except for the purposes of the recovery of any unpaid duty (including any interest or penalty with which the instrument is charged under the *Taxation Administration Act 1996*) in respect of the instrument, taken to be duly stamped.
- (4) If the duty payable in respect of an instrument that has been stamped under the Minister's authorisation is not paid in accordance with the terms of the authorisation, the *Taxation Administration Act 1996* applies to the payment of that duty in the same manner as if the instrument had not been so stamped.
- (5) For the purposes of subsection (1), the following persons are **prescribed persons**:
 - (a) a person who is liable to pay duty in respect of an instrument,
 - (b) a person who is authorised (whether by a person who is 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 liable.

299 Copies of instruments

- (1) A copy of an original instrument is chargeable with duty as if it had been executed in the same way as the original instrument and had been first executed at the same time as the original instrument unless the Chief Commissioner is satisfied:
 - (a) that the original instrument has been duly stamped, or
 - (b) that a copy of the original instrument has been duly stamped in accordance with this section.
- (2) If a copy of an original instrument is duly stamped in accordance with this section, the original instrument is taken to be duly stamped.

- (3) In this section:

copy of an original instrument means an unexecuted instrument in which, in the Chief Commissioner's opinion, the matter contained in the original instrument is wholly or substantially reproduced, whether or not the matter reproduced has the same appearance as the matter contained in the original instrument, but does not include a replica within the meaning of section 272.

original instrument means an instrument that is chargeable with duty otherwise than under this section.

300 Calculation of time

- (1) This section applies to the calculation of a period of time for the purpose of determining when the payment of duty is due under this Act.
- (2) A month is taken to be a period commencing at the beginning of a day of one of the 12 named months (within the meaning of the *Interpretation Act 1987*) and ending:
- (a) at the end of the corresponding day of the next named month, or
 - (b) if there is no such corresponding day, at the end of the next named month.
- (3) A period of 2 or more months is taken to be a period commencing at the beginning of a day of one of the 12 named months (within the meaning of the *Interpretation Act 1987*) and ending:
- (a) at the end of the corresponding day of the last named month within the period, or
 - (b) if there is no such corresponding day, at the end of that named month.
- (4) Section 36 (except subsection (1)) of the *Interpretation Act 1987* applies to the calculation of a period of time to which this section applies.

Part 2 Enforcement

301 Registration of instruments

A person must not register in a register of legal or beneficial interests in dutiable property an instrument that effects a dutiable transaction or an instrument chargeable with duty unless:

- (a) it is duly stamped, or
- (b) it is marked by the Chief Commissioner or in a manner approved by the Chief Commissioner.

Maximum penalty: 100 penalty units.

302 Registration of transfers of shares

- (1) A corporation, company or society must not enter in its records a transfer of shares on which duty is charged under this Act or a transfer made as a consequence of a sale or purchase of shares in respect of which duty is charged under this Act unless:

- (a) a transfer has been delivered to the corporation, company or society, and
- (b) the transfer, including an SCH-regulated transfer, is duly stamped.

Maximum penalty: 100 penalty units.

- (2) For the purposes of this section, a corporation, company or society is entitled to assume that an instrument is duly stamped if

- (a) it bears any of the following:
 - (i) an impressed stamp,
 - (ii) an adhesive stamp,
 - (iii) a broker's stamp and identification number,
 - (iv) an SCH participant's identification code,
 - (v) an endorsement in accordance with an approval under section 37 of the *Taxation Administration Act 1996*,
 - (vi) an exempt stamp,
 - (vii) a current foreign resident declaration, or
- (b) it is accompanied by a current exemption certificate.

303 Registration of transfers of units

- (1) The trustee or manager of a unit trust scheme must not enter in its records a transfer of units on which duty is charged under this Act or a transfer made as a consequence of a sale or purchase of units in respect of which duty is charged under this Act unless:
- (a) a proper instrument of transfer has been delivered to the trustee or manager, and
 - (b) the instrument is duly stamped.

Maximum penalty: 100 penalty units.

- (2) For the purposes of this section, the trustee or manager of a unit trust scheme is entitled to assume that an instrument is duly stamped if
- (a) it bears any of the following:
 - (i) an impressed stamp,
 - (ii) an adhesive stamp,
 - (iii) a broker's stamp and identification number,
 - (iv) an SCH participant's identification code,
 - (v) an endorsement in accordance with an approval under section 37 of the *Taxation Administration Act 1996*,
 - (vi) an exempt stamp,
 - (vii) a current foreign resident declaration, or
 - (b) it is accompanied by a current exemption certificate.

304 Receipt of instruments in evidence

- (1) An instrument that effects a dutiable transaction or is chargeable with duty under this Act is not available for use in law or equity for any purpose and may not be presented in evidence in a court or tribunal exercising civil jurisdiction unless:
- (a) it is duly stamped, or
 - (b) it is marked by the Chief Commissioner or in a manner approved by the Chief Commissioner.

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- (2) A court or tribunal may admit in evidence an instrument that effects a dutiable transaction, or is chargeable with duty in accordance with the provisions of this Act, and that does not comply with subsection (1):
 - (a) if the instrument is after its admission transmitted to the Chief Commissioner in accordance with arrangements approved by the court or tribunal, or
 - (b) if (where the person who produces the instrument is not the person liable to pay the duty) the name and address of the person so liable is forwarded, together with the instrument, to the Chief Commissioner in accordance with arrangements approved by the court or tribunal.
 - (3) A court or tribunal may admit in evidence an unexecuted copy of an instrument that effects a dutiable transaction, or is chargeable with duty in accordance with the provisions of this Act, if the court or tribunal is satisfied that:
 - (a) the instrument of which it is a copy is duly stamped, or is marked in a manner approved by the Chief Commissioner, or
 - (b) the copy is duly stamped under section 299.

305 Valuation of property

- (1) The Chief Commissioner may require a person who is liable to duty determined with reference to the value of property to provide a declaration by a competent valuer as to the unencumbered value of the property or to provide such other evidence of that value as the Chief Commissioner thinks fit.
- (2) The Chief Commissioner may assess duty in accordance with the value so declared.
- (3) The Chief Commissioner may have property valued if not satisfied with the value so declared and may assess duty on the basis of the valuation.
- (4) The Chief Commissioner may recover the cost of obtaining a value under this section from the dutiable person.

306 Ascertainment of value of certain interests

If it is necessary for the purpose of assessing duty under this Act to ascertain the value of:

- (a) any estate or annuity or interest for the life of any person, or
- (b) any estate or annuity or interest determinable on or subject to any contingency or the happening of any event, or
- (c) any estate or annuity or interest in remainder expectant on the death of any person or expectant on or subject to any contingency or the happening of any event,

regard may be had in ascertaining the value of any such property to the death of the person having the life estate or annuity or interest or the happening of the contingency or event at any time before the assessment of duty is actually made.

307 Impounding of instruments

- (1) The Chief Commissioner may impound any instrument that ought to be but is not stamped or is insufficiently stamped.
- (2) The Chief Commissioner may retain any impounded instrument until the duty or any interest or penalty tax, or all such amounts, have been paid.

308 Application of Act to persons or bodies having Crown immunity

- (1) The Governor may, by order published in the Gazette, apply the whole or any specified provisions of this Act to any specified person or body (whether statutory or otherwise) that has Crown immunity.
- (2) While any such order is in force, the specified person or body is subject to the requirements of this Act accordingly.

Part 3 The Public Equity Partnership and the Rent/Buy Scheme

309 Liability to duty in respect of certain housing schemes

(1) In this section:

eligible land means:

- (a) land owned by N.S.W. Housing No. 1 Pty Limited that the Chief Commissioner is satisfied is the subject of an arrangement known as the Public Equity Partnership Arrangement in which the New South Wales Land and Housing Corporation is a participant, and
- (b) land of which the trustee of the FANMAC Pooled Superannuation Trust No. 1 is an owner and which the Chief Commissioner is satisfied is the subject of a scheme known as the Rent/Buy Scheme in which the New South Wales Land and Housing Corporation is a participant.

eligible owner means N.S.W. Housing No. 1 Pty Limited or the trustee of the FANMAC Pooled Superannuation Trust No 1.

- (2) The New South Wales Land and Housing Corporation is to pay the duty that would otherwise be payable by an eligible owner on an instrument executed in relation to eligible land for the purposes of
 - (a) the arrangement known as the Public Equity Partnership Arrangement, or
 - (b) the scheme known as the Rent/Buy Scheme.
- (3) The New South Wales Land and Housing Corporation is to pay the duty payable on any sovereign risk insurance policy or any correlation insurance policy issued in relation to the arrangement known as the Public Equity Partnership Arrangement.
- (4) A payment made under this section is to be regarded as an expense of the New South Wales Land and Housing Corporation.

Part 4 Board of Review

310 Constitution of Board of Review

- (1) There is to be a Board of Review consisting of:
 - (a) the Chief Commissioner, and
 - (b) the Auditor-General, and
 - (c) the Secretary of the Treasury.
- (2) A member of the Board of Review may appoint a person to act in the place of the member at meetings of the Board.
- (3) An acting member, while so acting, has the functions of, and is taken to be, a member of the Board of Review.

311 Waiver of duty

- (1) The Board of Review may waive the payment of duty, either wholly or in part, if it is satisfied that:
 - (a) the person liable to pay it is in such circumstances that the exaction of the full amount of duty would result in serious hardship for the person or the person's dependants, or
 - (b) the person liable to pay it has died and that person's dependants are in such circumstances that the exaction of the full amount of duty would result in serious hardship for them.
- (2) If the Board of Review waives the payment of duty, the Chief Commissioner must make such notation on the instrument in respect of which the duty is waived as the Chief Commissioner thinks fit and the instrument, on the making of the notation, is taken to have been duly stamped.
- (3) The Chief Commissioner may exercise the functions of the Board of Review under subsection (1) if the amount of the unpaid duty is less than \$2,000 in any particular case for any financial year.

312 Deferral and writing off of duty

The Board of Review may direct the Chief Commissioner:

- (a) to extend the time for payment of duty under section 47 of the *Taxation Administration Act 1996*, or
- (b) to write off duty under section 110 of the *Taxation Administration Act 1996*.

Part 5 Miscellaneous

313 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

314 Savings, transitional and other provisions

Schedule 1 has effect.

315 Amendment of Acts

An Act specified in Schedule 2 is amended as set out in that Schedule.

316 Repeal of Educational Institutions (Stamp Duties Exemption) Act 1961 No 37

The *Educational Institutions (Stamp Duties Exemption) Act 1961* is repealed.

317 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of this Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Savings, transitional and other provisions

(Section 314)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Application of sec 30 of Interpretation Act 1987

Except to the extent otherwise provided by this Schedule, nothing in this Schedule affects the application of section 30 of the *Interpretation Act 1987*.

Part 2 Provisions consequent on enactment of this Act

3 Instruments

This Act applies to instruments first executed on or after 1 July 1998, except as provided by this Schedule.

4 Provisions relating to Chapter 2 (Transactions concerning dutiable property)

(1) Dutiable transactions

The duty charged by Chapter 2 is charged on dutiable transactions that occur on or after 1 July 1998, except as provided by this clause.

(2) Aggregation of dutiable transactions—sec 25

Section 25 extends to dutiable transactions at least one of which occurred before 1 July 1998 and at least one of which occurred on or after 1 July 1998 if they occurred within 12 months and the other provisions of section 24 are satisfied.

(3) However, subclause (2) does not apply so as to aggregate transactions that occurred before 1 July 1998 and that would not have been aggregated under the law in force immediately before that date.

(4) Transfers back from a nominee—see 56

Section 56 extends to:

- (a) a transfer of dutiable property to a trustee, and
- (b) the payment of duty on that transfer,

before 1 July 1998 if the transfer back to the transferor occurs on or after 1 July 1998.

(5) Property passing to beneficiaries—sec 57

Without limiting clause 13, the reference in section 57 (2) (a) (i) to duty charged by this Act includes a reference to duty charged by the *Stamp Duties Act 1920*.

(6) Cancelled contracts—sec 50

Section 50 extends to an agreement that was entered into before 1 July 1998 and that was rescinded or annulled on or after that date.

(7) Break-up of marriages and de facto relationships—sec 68

Section 68 (4) extends to a payment of ad valorem duty made before 1 July 1998 under the *Stamp Duties Act 1920*.

5 Provisions relating to Chapter 3 (Certain transactions treated as transfers)

(1) Acquisitions

The duty that is charged by Chapter 3 is charged on an acquisition that occurs on or after 1 July 1998, except as provided by this clause.

(2) How duty is charged on relevant acquisitions—sec 118

In section 118:

- (a) a reference to a period of 3 years is a reference to any such period ending on or after 1 July 1998, and
- (b) a reference to duty paid under this Act includes a reference to duty paid under the *Stamp Duties Act 1920*, and
- (c) a reference to duty paid under that section includes a reference to duty paid under Division 30 of Part 3 of that Act.

- (3) However, subclause (2) does not apply so as to aggregate interests that were acquired before 1 July 1998 and that would not have been aggregated under the law in force immediately before that date.

6 Provisions relating to Chapter 4 (Marketable securities—on-market transfers (Broker provisions))

(1) Imposition of duty

The duty charged by Chapter 4 is charged on sales and transfers of marketable securities, and on associated transactions as referred to in section 145 (1) (d), that take place on or after 5 July 1998, except as provided by this clause.

(2) **Additional duty on marketable securities held otherwise than for short terms—sec 155**

Section 155 extends to purchases and sales made before 5 July 1998 if the liability to pay duty under that section arises on or after that date.

7 Provisions relating to Chapter 5 (Lease instruments)

(1) **Lease instruments**

The duty charged by Chapter 5 is charged on a lease instrument that is first executed on or after 1 July 1998, except as provided by this clause.

(2) **Variations of lease instruments**

The duty charged by Chapter 5 extends to a lease instrument that is first executed before 1 July 1998 and a variation of which on or after that date increases the cost of the lease.

(3) **Reassessment of duty—early termination—sec 177**

Section 177 extends to a lease instrument that is terminated on or after 1 July 1998 if duty in respect of the lease instrument was paid before 1 July 1998.

(4) **Reassessment of duty—reduction of cost—sec 178**

Section 178 extends to a lease instrument that is varied on or after 1 July 1998 so as to reduce the total cost of the lease if duty in respect of the lease instrument was paid before 1 July 1998.

8 Provisions relating to Chapter 6 (Hire of goods)

(1) **Imposition of duty**

The duty charged by Chapter 6 is charged on a hire of goods that is entered into on or after 1 July 1998.

(2) **Approved persons**

A person who, immediately before 1 July 1998, is an approved person under section 74F of the *Stamp Duties Act 1920* is taken to be registered under Part 2 of Chapter 6.

9 Provision relating to Chapter 7 (Mortgages)

The duty charged by Chapter 7 is charged on a mortgage that is first executed on or after 1 July 1998.

10 Provisions relating to Chapter 8 (Insurance)

(1) Imposition of duty

The duty charged by Chapter 8 is charged on:

- (a) the amount of a premium paid in relation to a contract that effects general insurance, or
- (b) a policy of life insurance or a life insurance rider,

if the contract, policy or life insurance rider is effected or renewed on or after 1 July 1998.

(2) Registered persons

A person who, immediately before 1 July 1998, is a registered person under section 88A of the *Stamp Duties Act 1920* is taken to be registered under Part 3 of Chapter 8.

(3) Undertakings given by certain persons

A person in respect of whom an undertaking has effect under section 88E of the *Stamp Duties Act 1920* immediately before 1 July 1998 is taken to have an approval under Division 2 of Part 6 of the *Taxation Administration Act 1996*.

11 Provision relating to Chapter 9 (Motor vehicle registration)

The duty charged by Chapter 9 is charged on:

- (a) an application to register a motor vehicle made on or after 1 July 1998, and
- (b) an application to register a motor vehicle made before 1 July 1998 in respect of which a certificate of registration is issued on or after that date.

12 Provision relating to Chapter 12 (Miscellaneous)

Section 293 extends to an application for a refund of duty that was paid under the *Stamp Duties Act 1920* before 1 July 1998.

13 Duty paid under the Stamp Duties Act 1920

If an assessment or reassessment of duty under this Act is required to take into consideration another amount of duty paid, a reference in this Act to duty includes a reference to duty within the meaning of the *Stamp Duties Act 1920* that has been paid in accordance with the provisions of that Act.

14 Stamping under the Stamp Duties Act 1920

An instrument is duly stamped for the purposes of this Act if, immediately before 1 July 1998, it was duly stamped for the purposes of the *Stamp Duties Act 1920*.

Schedule 2 Amendment of Acts

(Section 315)

2.1 Revenue Laws (Reciprocal Powers) Act 1987 No 86

Section 3 Definitions

Insert after paragraph (k) of the definition of *New South Wales revenue law* in section 3 (1):

(k1) *Duties Act 1997*,

2.2 Stamp Duties Act 1920 No 47

[1] Section 1A

Insert after section 1:

1A Application of this Act after commencement of Duties Act 1997 on 1 July 1998

(1) Instruments generally

The following Divisions of Part 3 do not apply to instruments first executed on or after 1 July 1998:

Division No	Division heading
2	Agreements
3	Agreements for sale or conveyance
3E	The Public Equity Partnership Arrangement and the Rent/Buy Scheme
10	Conveyances
11	Conveyances by possessory application

Division No	Division heading
11A	Copies of instruments
12	Deeds of assignment
14	Divorce—family law instruments
16	Duplicates or counterparts
18	Leases
19	Superannuation
21	Loan securities
21A	Mortgage-backed securities
21B	Loan-backed securities
22	Motor vehicle certificates of registration
23	Partitions or divisions
25	Replicas
25A	Transfer of units in unit trust schemes
26	Shares—issue or allotment by direction
27 (except Subdivision 3)	Shares—transfer
28	Transfer etc of certain mortgages and debentures
28A	Transfer of shares—London Stock Exchange

(2) Transactions

The following Divisions of Part 3 do not apply to transactions (or transactions of the kind specified in relation to a particular Division) that occur on or after 1 July 1998:

Division No	Division heading	Transaction
3A	Transactions otherwise than by dutiable instruments	All transactions
15	Hiring arrangements	Hiring arrangements within the meaning of section 74D
26A	SCH-regulated transfers	SCH-regulated transfers
30	Acquisitions of company and unit trust interests dutiable as conveyances of land	Acquisitions within the meaning of section 99A

(3) **Policies of insurance**

Division 24 of Part 3 does not apply to:

- (a) the amount of a premium paid in relation to a policy of insurance, not being a policy of life insurance, or
- (b) a policy of life insurance or a life insurance rider, if the contract, policy or life insurance rider is effected or renewed on or after 1 July 1998.

(4) **First home purchase scheme**

Division 3B of Part 3 and Schedule 2A do not apply to contracts exchanged on or after 1 July 1998 or mortgages over land the subject of those contracts.

(5) **Rental-purchase schemes**

The Chief Commissioner may not, on or after 1 July 1998:

- (a) approve a person for the purposes of Schedule 2B, or
- (b) approve a rental-purchase agreement entered into or proposed to be entered into by an approved person.

(6) **Flood-prone housing scheme**

Division 3D of Part 3 and Schedule 2C do not apply to contracts executed on or after 1 July 1998.

(7) **Transfers of marketable securities involving brokers**

Subdivision 3 of Division 27 of Part 3 does not apply to sales or purchases made on or after 5 July 1998.

(8) **Loan securities**

Division 21 of Part 3 does not apply to advances made on or after 1 July 1998 if the advances are secured only by a loan security within the meaning of section 83 that, if first executed on or after 1 July 1998, would not be a mortgage within the meaning of section 205 of the *Duties Act 1997*.

(9) This section has effect despite any other provision of this Act.

[2] Section 3 Definitions

Omit the definitions of *Fine*, *New South Wales revenue law* and *Officer* from section 3 (1).

[3] Section 3 (1)

Omit the definition of *record*. Insert instead:

record means:

- (a) a documentary record, or
- (b) a record made by an electronic, electromagnetic, photographic or optical process, or
- (c) any other kind of record.

[4] Section 3AA

Insert after section 3:

3AA Taxation Administration Act 1996

This Act is to be read together with the *Taxation Administration Act 1996* which makes provision for the administration and enforcement of this Act and other taxation laws.

[5] Sections 5, 6A, 8B, 8C, 9, 10, 13, 14, 19, 32, 35B, 35C, 36, 38A, 44E and 98V

Omit the sections.

[6] Section 15A

Omit sections 15A–15F. Insert instead:

15A Functions of Board of Review

The Board of Review constituted under Part 4 of Chapter 12 of the *Duties Act 1997* may exercise in relation to stamp duty under this Act any function that it may exercise in relation to duty under the *Duties Act 1997*.

[7] Section 25 Terms on which instruments may be stamped after execution

Omit section 25 (1A)–(6). Insert after section 25 (1):

Maximum penalty: 100 penalty units.

[8] Section 35

Omit the section. Insert instead:

35 Action by Chief Commissioner after assessing document

After assessing a document, the Chief Commissioner may:

- (a) stamp the document to indicate that it is not liable to duty, or
- (b) stamp the document to indicate:
 - (i) that a specified amount of duty has been paid, and
 - (ii) that the document is duly stamped.

[9] Section 41 Agreements for sale or conveyance to be chargeable as conveyance etc

Omit section 41 (3C) and (3D).

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

Omit section 74F (18)–(13).

[11] Section 97AA Sales and purchases to be recorded

Omit section 97AA (4)–(7).

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

Omit “stamp duty has been paid or is payable under section 94D or the Second Schedule under the heading ‘Transfer of Shares’ ” from section 98A (1) (d) (iii).

Insert instead “duty has been paid or is payable under this Act or the *Duties Act 1997*”.

[13] Section 98K Transactions with unregistered persons

Omit “Notwithstanding section 131A, for” from section 98K (6).
Insert instead “For”.

[14] Section 98U Exempt accounts

Omit “in accordance with this Act” from section 98U (1) (g3).
Insert instead “of this Act or Division 1 of Part 4 of Chapter 2 of the *Duties Act 1997*”.

[15] Part 5 Objections and appeals (sections 124–124G)

Omit the Part.

[16] Sections 127C–136A

Omit the sections.

[17] Section 146

Insert after section 144A:

146 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

2.3 Taxation Administration Act 1996 No 97

Section 4 Meaning of “taxation laws”

Insert “*Duties Act 1997*” and “*Stamp Duties Act 1920*” in alphabetical order.

Dictionary

Act imposing duty means:

- (a) a corresponding Act, or
- (b) an Act to which the *Taxation Administration Act 1996* applies.

ADRs means:

- (a) a depositary receipt issued by, or
 - (b) depositary shares deposited with,
- a depositary resident in the United States of America or elsewhere outside Australia.

application to register a motor vehicle means:

- (a) an application under the *Traffic Act 1909* to register a motor vehicle, and
- (b) an application under the *Traffic Act 1909* to transfer the registration of a motor vehicle.

approved means approved by the Chief Commissioner.

associated person means a person who is associated with another person in accordance with any of the following provisions:

- (a) persons are associated persons if they are related persons,
- (b) natural persons are associated persons if they are partners in a partnership to which the *Partnership Act 1892* applies,
- (c) private companies are associated persons if common shareholders have a majority interest in each private company,
- (d) trustees are associated persons if any person is a beneficiary common to the trusts (not including a public unit trust) of which they are trustees,
- (e) a private company and a trustee are associated persons if a related body corporate of the company (within the meaning of the *Corporations Law*) is a beneficiary of the trust (not including a public unit trust) of which the trustee is a trustee,

and, for the purposes of Part 2 of Chapter 3 (Certain transactions treated as transfers), a public company and a subsidiary of a public company are taken to be associated persons.

Australian register has the same meaning as in the *Corporations Law*.

Australian Stock Exchange means the Australian Stock Exchange Limited.

bank means a bank within the meaning of the Commonwealth *Banking Act 1959*.

bankrupt includes applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with creditors or making an assignment of remuneration for their benefit.

broker has the meaning given by section 147.

business asset has the meaning given by section 11 (g).

charge includes impose.

CHESS means Clearing House Electronic Subregister System.

Class 1 insurance has the meaning given by section 233 (2).

Class 2 insurance has the meaning given by section 233 (3).

Class 3 insurance has the meaning given by section 233 (4).

commercial hire business has the meaning given by section 194.

company title dwelling means a separate dwelling in a building containing more than one separate dwelling situated on land in New South Wales owned or leased by a company in which shares issued by the company are owned by persons who, by virtue of the ownership of their shares, have an exclusive right to occupy a part of the building.

complying approved deposit fund means an entity that is a complying approved deposit fund in accordance with section 43 of the Commonwealth *Superannuation Industry (Supervision) Act 1993*.

complying superannuation fund means an entity that is a complying superannuation fund in accordance with section 42 of the Commonwealth *Superannuation Industry (Supervision) Act 1993*.

corporation means a body corporate, whether incorporated in this jurisdiction or elsewhere.

corresponding Act means an Act of another Australian jurisdiction that corresponds to this Act.

cost of a lease has the meaning given by section 166.

CUFS means any interest, issued by or on behalf of CHESS Depository Nominees Pty Limited, that provides beneficial ownership in respect of:

- (a) shares in a corporation incorporated outside Australia, or
- (b) units in a public unit trust scheme,

being shares or units that are quoted on the market operated by the Australian Stock Exchange.

de facto partner has the same meaning as in the *De Facto Relationships Act 1984* and includes a person who was a de facto partner in a de facto relationship that has ceased, whether the cessation took effect in Australia or elsewhere.

de facto relationship has the same meaning as in the *De Facto Relationships Act 1984*.

depository receipt means a negotiable certificated receipt issued by a depository acknowledging the interest of the registered holder of the receipt in specific shares in a NSW company deposited with the depository to hold as trustee for the holder.

depository shares means shares or units deposited with a depository for which a depository receipt has issued or will issue.

disabled person means a person who is 16 years of age or older and who is:

- (a) permanently blind, or
- (b) permanently incapacitated for work.

discretionary trust means a trust under which the vesting of the whole or any part of the capital of the trust estate, or the whole or any part of the income from that capital, or both:

- (a) is required to be determined by a person either in respect of the identity of the beneficiaries, or the quantum of interest to be taken, or both, or
- (b) will occur if a discretion conferred under the trust is not exercised, or
- (c) has occurred but under which the whole or any part of that capital or the whole or any part of that income, or both, will be divested from the person or persons in whom it is vested if a discretion conferred under the trust is exercised.

dutiable property has the meaning given by section 11.

dutiable transaction has the meaning given by section 8 (2).

dutiable value of a motor vehicle has the meaning given by section 266.

dutiable value of dutiable property has the meaning given by section 21.

eligible rollover fund means an entity that is an eligible rollover fund in accordance with section 242 of the Commonwealth *Superannuation Industry (Supervision) Act 1993* and includes an entity the trustee of which is satisfied will be an eligible rollover fund within 12 months after the date on which a liability to duty arises (or would otherwise arise).

error transaction means a sale or purchase of shares made to reverse a sale or purchase of shares made mistakenly not more than 7 days earlier, and the sale or purchase so reversed.

fit-out costs, in relation to a lease, means improvements made by or on behalf of, or at the expense of, the lessee and that remain the property of the lessee.

foreign resident means a person who at the relevant time:

- (a) in the case of a person, other than a person referred to in paragraph (b) or (c), is not resident or domiciled in Australia, or
- (b) in the case of a body corporate, is not incorporated under a law of an Australian jurisdiction and:
 - (i) does not have its central management and control in Australia, and
 - (ii) does not have its voting power controlled by shareholders who are residents of Australia, or
- (c) in the case of a partnership or other unincorporated association or body of persons, does not have a member who is resident in Australia, or
- (d) in the case of a trust estate:
 - (i) does not have a trustee who is resident in Australia, and
 - (ii) does not have its central management and control in Australia.

franchise means the package of rights held by a franchisee under a franchise arrangement.

franchise arrangement means an agreement or other arrangement between two or more persons by which one of them (the ***franchisor***) authorises or permits another (the ***franchisee***):

- (a) to engage in the business of offering, selling or distributing goods and services within or partly within New South Wales, and the franchisee is required to do so:
 - (i) in accordance with a specified marketing, business or technical plan or system, and
 - (ii) under a common format or procedure (or format and procedure), and
- (b) to use a mark or common trade name, in such a manner that the business carried on by the franchisee is or is capable of being identified by the public as being substantially associated with the mark or name identifying, commonly connected with or controlled by the franchisor or a related person.

franchisee has the meaning given in the definition of ***franchise arrangement***.

franchisor has the meaning given in the definition of ***franchise arrangement***.

futures broker has the same meaning as in the *Corporations Law*.

futures contract has the same meaning as in the *Corporations Law*.

general insurance has the meaning given by section 230.

government body means:

- (a) the Commonwealth, or
- (b) the Government or Administration of a State or Territory of the Commonwealth, or
- (c) a council, county council, other local governing body or public authority constituted by or under a law of the Commonwealth or a State or Territory of the Commonwealth, or
- (d) a corporation the principal business of which is the supply and distribution by a system of reticulation, in this jurisdiction or in any other Australian jurisdiction, of water, gas or electricity.

hire of goods has the meaning given by section 183.

hire purchase agreement has the meaning given by section 184 (2).

hiring charges has the meaning given by section 189.

home means a private dwelling and includes a private dwelling which is a company title dwelling and a farming property on which a private dwelling is erected.

identification code of an SCH participant means a code that, for the purpose of the SCH business rules, is the SCH participant's identification code or one of the SCH participant's identification codes.

index trust means any of the following:

- (a) Benchmark Australian All Ordinaries Trust,
- (b) Australian Index Trust,
- (c) Industrial Index Trust,
- (d) Resources Index Trust,
- (e) Property Index Trust,
- (f) Gold Index Trust.

instrument includes a written document and a written statement.

insurance includes assurance.

insurance intermediary has the same meaning as in the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth.

insurer has the meaning given by section 247.

intellectual property means:

- (a) a business name, trading name, trade mark, industrial design, patent, registered design or copyright, or
- (b) a right, whether or not under a franchise arrangement, to use or exploit:
 - (i) a business name, trading name, trade mark or industrial design, or
 - (ii) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process).

interest includes an estate or proprietary right.

interest in a land-rich corporation has the meaning given by section 111 (1).

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

land includes a stratum.

land use entitlement means an entitlement to occupy land within New South Wales conferred through an ownership of shares in a company or an ownership of units in a unit trust scheme, or a combination of a shareholding or ownership of units together with a lease or licence.

land used for primary production means land used primarily for:

- (a) the cultivation of the land for the purpose of selling the produce of the cultivation, or
- (b) the maintenance of animals or poultry on the land for the purpose of selling them or their natural increase or bodily produce, or
- (c) the keeping of bees on the land for the purpose of selling their honey, or
- (d) a nursery within the meaning of the *Horticultural Stock and Nurseries Act 1969*, being a nursery in respect of which a person is registered under that Act as a nurseryman, or
- (e) the propagation for sale of mushrooms, orchids or flowers.

lease has the meaning given by section 164.

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

- (a) any land used, or intended to be used, as the site of a moveable dwelling within the meaning of the *Local Government Act 1993*, or
- (b) any such moveable dwelling on that site, or
- (c) both the land and any such moveable dwelling.

life company has the same meaning as in the *Life Insurance Act 1995* of the Commonwealth.

life insurance has the meaning given by section 240.

loan-backed security means:

- (a) 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 the profits, distributions of capital or income in which beneficiaries participate arise or arises from the acquisition, holding, management or disposal of a pool of loans, or any instrument which evidences such a right or interest, or
- (b) a debt security:
 - (i) the payments under which by the person that issues or makes the instrument are derived substantially from the acquisition, holding, management or disposal of a pool of loans, and
 - (ii) that is secured by a mortgage or charge over a pool of loans, or
- (c) an instrument of a class or description of instruments, or property of a class or description of property, prescribed to be a loan-backed security for the purposes of this definition.

majority shareholder in a private company means:

- (a) in the case of a company the voting shares in which are not divided into classes—a person entitled to not less than 50% of those shares, and
- (b) in the case of a company the voting shares in which are divided into classes—a person entitled to not less than 50% of the shares in one of those classes.

market value of a motor vehicle means the amount for which the motor vehicle might reasonably be sold, free of encumbrances, on the open market.

marketable securities, except in Chapter 4, means the following:

- (a) shares referred to in section 11 (d),
- (b) units referred to in section 11 (e),
- (c) relevant interests referred to in section 11 (f),
- (d) an interest in shares, units or relevant interests referred to in paragraphs (a), (b) and (c) (other than an interest described in section 11 (1) (iii)).

mortgage for the purposes of the definitions of ***mortgage-backed security*** and ***pool of mortgages*** means a mortgage of any estate or interest in land, including a leasehold estate or interest in land, whether the land is situated in New South Wales or elsewhere.

mortgage-backed security means:

- (a) an interest in a trust that entitles the holder of or beneficial owner under the interest:
 - (i) to the whole or any part of the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a mortgage or any money payable by the mortgagor under the mortgage (whether the money is payable to the holder of or beneficial owner under the interest on the same terms and conditions as under the mortgage or not), or
 - (ii) to the whole or any part of the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a pool of mortgages or any money payable by mortgagors under those mortgages (whether the money is payable to the holder of or beneficial owner under the interest on the same terms and conditions as under the mortgages or not), or
 - (iii) to payments that are derived substantially or, if the regulations prescribe the extent, to the prescribed extent, from the income or receipts of a pool of mortgages,
and that may, in addition, entitle the holder or beneficial owner to a transfer or assignment of the mortgage or mortgages, or
- (b) a debt security (whether or not in writing) the payments under which by the person who issues or makes the debt security are derived substantially or, if the regulations prescribe the extent, to the prescribed extent, from the income or receipts of a pool of mortgages, or
- (c) any of the following:
 - (i) an interest in a trust 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 security (whether or not in writing) the payments under which by the person who issues or makes the security are derived substantially from the income or receipts of prescribed property,
- (iii) an interest in a trust, a debt security (whether or not in writing), an instrument or property that creates an interest in or charge over an interest in a trust, a debt security (whether or not in writing) or other instrument or property, to which paragraph (a) or (b) or subparagraph (i) or (ii) of this paragraph applies,

but does not include an instrument or property comprising:

- (d) a mortgage, or
- (e) the transfer of a mortgage, or
- (f) a declaration of trust, or
- (g) an instrument of a class or description of instruments, or property of a class or description of property, prescribed not to be a mortgage-backed security for the purposes of this definition.

motor vehicle means, except in Chapter 8:

- (a) a motor vehicle or trailer within the meaning of the *Traffic Act 1909*, or
- (b) a caravan.

new motor vehicle means a motor vehicle that has not previously been registered under the *Traffic Act 1909* or the law of another Australian jurisdiction.

NSW company means a company incorporated or taken to be incorporated under the *Corporations Law* of New South Wales, and includes a body corporate that is incorporated under any other New South Wales Act and that is not a company incorporated or taken to be incorporated under the *Corporations Law* of another State or a Territory of the Commonwealth.

partnership interest has the meaning given by section 11 (i).

permanent building society means a continuing building society within the meaning of the *Financial Institutions (NSW) Code*.

pool of loans means a pool of loans that is comprised substantially of any one or more of the following:

- (a) cash,
- (b) notes, debentures, loans, stock, promissory notes, bonds or other securities of a government body,
- (c) bills of exchange, promissory notes or other negotiable instruments accepted, drawn or endorsed by a bank, a permanent building society or a government body,
- (d) deposits with, or the acquisition of certificates of deposits or any other security issued by, a bank, a permanent building society or a government body,
- (e) loan-backed securities,
- (f) mortgage-backed securities,
- (g) a guaranteed investment contract of a type approved by the Chief Commissioner,
- (h) assets of a class or description of assets prescribed for the purposes of this definition.

pool of mortgages means a pool or collection of assets:

- (a) that is comprised solely of mortgages, or
- (b) that is comprised substantially or, if the regulations prescribe the extent, to the prescribed extent, of mortgages or of money paid pursuant to mortgages (whether or not that money has been invested in prescribed property) or of money (whether or not that money has been invested in prescribed property) if the primary investment policy is to invest in mortgages, but that may also contain either or both of the following:
 - (i) prescribed property,
 - (ii) any other property that forms part of the pool or collection of assets for the purpose of issuing or making a mortgage-backed security in relation to the pool of mortgages.

pooled superannuation trust means an entity that is a pooled superannuation trust in accordance with section 44 of the Commonwealth *Superannuation Industry (Supervision) Act 1993*.

prescribed property means any of the following:

- (a) cash,
- (b) bonds, debentures, stock or Treasury Bills of the Commonwealth or the Government of New South Wales or the Government or Administration of another State or Territory,
- (c) debentures or stock of any public statutory body constituted under the law of the Commonwealth or New South Wales or another State or Territory,
- (d) notes or other securities of the Commonwealth or the Government of New South Wales or the Government or Administration of another State or Territory,
- (e) deposits with, or the acquisition of certificates of deposits or any other security issued by, a bank or building society (whether expressed in Australian currency or otherwise),
- (f) bills of exchange, promissory notes or other negotiable instruments accepted, drawn or endorsed by a bank (whether expressed in Australian currency or otherwise),
- (g) a guaranteed investment contract (expressed in Australian currency) of a type approved by the Chief Commissioner,
- (h) mortgage-backed securities, mortgage-backed certificates within the meaning of Part 1B of the *Trustee Act 1958* of Victoria or marketable securities that are secondary mortgage market securities under section 29 (1) of the *Mortgages (Secondary Market) Act 1984* of Queensland.

private company means a company that is not limited by shares, or whose shares are not listed on a recognised stock exchange.

private corporation has the meaning given by section 106.

private unit trust scheme means a unit trust scheme that is not a public unit trust scheme.

proper SCH transfer has the same meaning as in section 9 of the *Corporations Law*.

public unit trust scheme means a unit trust scheme:

- (a) any of the units of which are listed for quotation on the Australian Stock Exchange or on a recognised stock exchange, or

-
- (b) that is the subject of a deed that is an approved deed for the purposes of Division 5 of Part 7.12 of the *Corporations Law* or a corresponding law, but only if
 - (i) some or all of its units have been offered to the public, and
 - (ii) no fewer than 50 persons hold units in it, or
 - (e) that is exempted from the requirements of Part 7.12 of the *Corporations Law* and in respect of which:
 - (i) some or all of the units have been offered to the public, and
 - (ii) not less than 50 persons hold units in it.

recognised stock exchange means a stock exchange recognised in accordance with the *Business Rules of the Australian Stock Exchange*.

registered independent options trader has the same meaning as in the Business Rules of the Australian Stock Exchange.

registered insurer means an insurer registered under Part 3 of Chapter 8.

related body corporate has the same meaning as in the *Corporations Law*.

related person means a person who is related to another person in accordance with any of the following provisions:

- (a) natural persons are related persons if
 - (i) one is the spouse or de facto partner of the other, or
 - (ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister,
- (b) private companies are related persons if they are related bodies corporate within the meaning of the *Corporations Law*,
- (c) a natural person and a private company are related persons if the natural person is a majority shareholder or director of the company or of another private company that is a related body corporate of the company within the meaning of the *Corporations Law*,
- (d) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust (not being a public unit trust) of which the trustee is a trustee,
- (e) a private company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust) of which the trustee is a trustee.

relevant interest has the meaning given by section 11 (f).

relevant SCH participant in an SCH-regulated transfer means the participant who is liable under Division 1 of Part 4 of Chapter 2 to pay duty chargeable in respect of the transfer or, if no duty is chargeable, the SCH participant who would be so liable if duty were chargeable.

replica has the meaning given by section 272.

residential lease means an agreement under which a person has the right to occupy for a term (or for a term together with any option period) not exceeding 5 years any premises or part of premises used or intended to be used, whether or not exclusively, as a place of residence.

residential mortgage means:

- (a) a mortgage, the amount secured by which is or is to be applied for:
 - (i) the purchase of land, whether there are improvements on the land or not, that is to be used solely or predominantly for residential purposes, or
 - (ii) the extension or improvement of any residential accommodation on land, or
- (b) a mortgage of a class or description of mortgages prescribed for the purposes of this definition.

retired person means a person who is 55 years of age or older or who has retired from full-time employment and includes a person who is or was the spouse or the de facto partner of such a person.

right to shares or units means any right (whether actual, prospective or contingent) of a person to have shares or units issued by a company or trust to the person, whether or not on payment of money or for other consideration.

road means a road or road related area within the meaning of the *Traffic Act 1909* (other than a road or road related area that is the subject of a declaration made under section 2A (1) (b) of that Act).

SCH means the securities clearing house registered by the Chief Commissioner under Division 2 of Part 4 of Chapter 2.

SCH business rules has the same meaning as in section 9 of the *Corporations Law*.

SCH participant has the same meaning as in section 9 of the *Corporations Law*.

SCH-regulated transfer has the same meaning as in section 9 of the *Corporations Law*.

SEATS means the Stock Exchange Automated Trading System operated by the Australian Stock Exchange.

shares includes rights to shares.

special hiring agreement has the meaning given by section 187.

subsidiary of a private corporation has the meaning given by section 109 (3) or (5).

tenement includes an office, room or apartment in a tenement.

transfer includes an assignment and an exchange.

transfer document has the same meaning as in section 1097 of the *Corporations Law*.

transfer identifier for an SCH-regulated transfer means the distinctive number allocated to the transfer by SCH.

transfer value of marketable securities means:

- (a) in the case of a transfer on sale—the consideration for the sale or the unencumbered value of the marketable securities at the date of completion of the transfer, whichever is the greater, or
- (b) in any other case—the unencumbered value of the marketable securities at the date of completion of the transfer.

transferable floor space has the meaning given by section 11 (b).

unencumbered value has the meaning given by section 23.

unit in a unit trust scheme means:

- (a) a right or interest (whether described as a unit or a sub-unit or otherwise) of a beneficiary under the scheme, or
- (b) a right to any such right or interest.

unit trust scheme means any arrangements made for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in any profits, income or distribution of assets arising from the acquisition, holding, management or disposal of any property whatever pursuant to the trust.

Dictionary

variation of a lease means a variation made for any reason or on any basis and includes a further variation.

warrant means an option contract within the meaning of the *Corporations Law* that is admitted to trading status on the stock market of the Australian Stock Exchange in accordance with section 8 of the Business Rules of the Australian Stock Exchange.

warrant-issuer means a person who is a warrant-issuer under the Business Rules of the Australian Stock Exchange.

*[Minister's second reading speech made in—
Legislative Assembly on 12 November 1997
Legislative Council on 26 November 1997]*