

**STAMP DUTIES (FINANCIAL INSTITUTIONS DUTY)
AMENDMENT ACT, 1983, No. 72**

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 72, 1983.

An Act to amend the Stamp Duties Act, 1920, with respect to the payment of duty in relation to certain receipts and for certain other purposes.
[Assented to, 4th May, 1983.]

Stamp Duties (Financial Institutions Duty) Amendment.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Stamp Duties (Financial Institutions Duty) Amendment Act, 1983".

Principal Act.

2. The Stamp Duties Act, 1920, is referred to in this Act as the Principal Act.

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENT TO THE PRINCIPAL ACT RELATING TO THE PAYMENT OF DUTY IN RELATION TO CERTAIN RECEIPTS.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION OF CERTAIN GROUPS.

SCHEDULE 3.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

Amendment of Act No. 47, 1920.

4. (1) The Principal Act is amended in the manner set forth in Schedules 1-3.

(2) On and from the date of assent to this Act or the day appointed and notified under section 2 (2) of the Stamp Duties (Administration) Amendment Act, 1983, whichever is the later, a reference in any matter inserted by this Act into the Principal Act or in section 98i of the Principal Act (except section 98i (1)) to the "Commissioner" shall be read and construed as a reference to the "Chief Commissioner".

(3) Schedule 2 to the Stamp Duties (Administration) Amendment Act, 1983, applies to and in respect of subsection (2) as if that subsection formed part of that Act.

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SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE PAYMENT OF
DUTY IN RELATION TO CERTAIN RECEIPTS.

- (1) (a) Section 98 (1), definition of "dutiable receipts"—
- (i) From paragraph (a) (ii), omit "or".
 - (ii) From paragraph (b), omit "apply;"; insert instead "apply; or".
 - (iii) After paragraph (b), insert:—
 - (c) a receipt referred to in section 98LA (1) which is not lodged or deposited with a registered person or designated person or to the credit of an exempt account as referred to in that subsection;
- (b) Section 98 (1), definition of "receipts return"—
- Omit "or 98K", insert instead ", 98K or 98LA".

(2) Section 98LA—

After section 98L, insert:—

Liability to lodge or deposit money.

98LA. (1) Where a person (in this section referred to as the "dutiable person"), being—

- (a) a person (other than a registered person) who is not a member of a group and who receives receipts in excess of \$100,000 (or, where some other amount is prescribed, the prescribed amount) in a month; or
- (b) a person (other than a registered person) who is a member of a group (whether or not the other members of the group are persons included in the reference in section 98 (3) (b)), being a group the aggregated receipts of the members of which are in excess of \$100,000 (or, where some other amount is prescribed, the prescribed amount) in a month,

does not, within 14 days after a receipt is received by—

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SCHEDULE 1—*continued.*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO THE PAYMENT OF
DUTY IN RELATION TO CERTAIN RECEIPTS—*continued.*

- (c) in the case of a person to whom paragraph (a) applies—the person; or
- (d) in the case of a person to whom paragraph (b) applies—the person or any one or more of the members of the group of which the person is a member,

lodge or deposit the receipt—

- (e) with a registered person who, in relation to that lodgement or deposit, is liable to pay stamp duty under this Division and who will include that lodgement or deposit in a receipts return required to be made out by the registered person;
- (f) with a designated person who is not registered and who is not required to apply to the Commissioner for registration under this Division and who will lodge or deposit the receipt with a registered person who is liable to pay stamp duty under this Division and who will include that lodgement or deposit in a receipts return required to be made out by the registered person;
- (g) except in so far as the regulations may otherwise provide, with a short term dealer who is not a prescribed short term dealer and in relation to whom the lodgement or deposit of the receipt creates a short term liability, being a short term liability which shall be taken into account in determining the amount to be specified in a short term dealers return required to be made out by the short term dealer;
- (h) except in so far as the regulations may otherwise provide, with a registered person in respect of whom the Commissioner has imposed a condition as referred to in section 98o (2) and in relation to whom the lodgement or deposit of the receipt creates a credit in his short term dealer's account, being a credit which shall be taken into account in determining the amount to be specified in a short term dealers return required to be made out by the registered person; or

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SCHEDULE 1—*continued.*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO THE PAYMENT OF
DUTY IN RELATION TO CERTAIN RECEIPTS—*continued.*

- (i) except in so far as the regulations may otherwise provide, to the credit of an exempt account in his name,

the dutiable person shall, within 21 days after the end of—

- (j) except as provided by paragraph (k), each month; or
 (k) where, in relation to a dutiable person, the Commissioner approves a period longer than a month, each such longer period,

make out a return.

(2) For the purposes of subsection (1), a return—

- (a) shall be in a form approved by the Commissioner;
 (b) shall, in addition to such other matters as may be required to be specified in the form, specify—
 (i) the total amount of dutiable receipts, not being receipts referred to in subparagraph (ii); and
 (ii) the number of dutiable receipts, the amount of which was a single amount of not less than \$1,000,000 (or, where some other amount is prescribed, the prescribed amount),

received during the month or the longer period, as the case may be, to which the return relates, by the dutiable person;

- (c) shall be duly stamped with duty of an amount equivalent to the amount of duty that would have been payable by a registered person as duty on a receipts return had the dutiable receipts been received by the registered person (and for that purpose, notwithstanding section 26, be deemed to be first executed at the time the return is made out); and
 (d) shall be retained by the dutiable person for a period of 3 years after the return is made out.

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SCHEDULE 1—*continued.*AMENDMENT TO THE PRINCIPAL ACT RELATING TO THE PAYMENT OF
DUTY IN RELATION TO CERTAIN RECEIPTS—*continued.*

(3) This section does not apply to—

- (a) a receipt of a person to the extent that it is for the sale of goods by the person, otherwise than under a credit contract, a hiring arrangement within the meaning of section 74D or a lease within the meaning of section 76;
- (b) except in so far as the regulations may otherwise provide, a receipt of—
 - (i) a religious or public benevolent institution, or a public hospital;
 - (ii) a hospital that is carried on by a society or association otherwise than for the purpose of profit or gain to the individual members of the society or association;
 - (iii) a school or college that is carried on by a body corporate, society or association otherwise than for the purpose of profit or gain to the individual members of the body corporate, society or association and provides education at or below, but not above, the secondary level of education;
 - (iv) a charity within the meaning of the Charitable Collections Act, 1934, which is registered or which is exempted from registration under that Act (other than a school or college or a statutory body);
 - (v) a society or an institution (other than a school or college or a statutory body) which in the opinion of the Commissioner is a charitable society or institution and is for the time being approved by the Commissioner for the purposes of this subparagraph; or
 - (vi) a statutory body which in the opinion of the Minister is a charitable statutory body and is for the time being approved by the Minister for the purposes of this subparagraph,
being a receipt which may be applied wholly and exclusively in the furtherance of its objects;

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SCHEDULE 1—*continued.*AMENDMENT TO THE PRINCIPAL ACT RELATING TO THE PAYMENT OF
DUTY IN RELATION TO CERTAIN RECEIPTS—*continued.*

- (c) a receipt of cash (not including a cheque), or a receipt of a class or description of such receipts, in respect of which a dutiable person is able to satisfy the Commissioner either generally or in any particular case or class of cases—
 - (i) that he would have used the cash in the ordinary conduct of his business and would not, before so using the cash, have lodged or deposited the cash with a registered person to whom subsection (1) (e) applies or a designated person to whom subsection (1) (f) applies; and
 - (ii) that the failure to lodge or deposit the cash with a registered person to whom subsection (1) (e) applies or a designated person to whom subsection (1) (f) applies did not occur solely or substantially for the purpose of reducing or avoiding payment of stamp duty by any person under this Division;
- (d) in the case of a dutiable person, being a member of a group, who is not resident or domiciled in New South Wales or who is not carrying on business wholly or partly in New South Wales, a receipt received by any other member of the group, unless the dutiable person was involved directly or indirectly in any of the circumstances giving rise to the receipt of the receipt by the other member;
- (e) a receipt prescribed for the purposes of this subsection; or
- (f) a receipt prescribed for the purposes of this subsection in relation to a person prescribed for the purposes of this subsection.

(4) A receipt shall be deemed to have been lodged or deposited by a dutiable person with a registered person or designated person or to the credit of an exempt account as referred to in subsection (1) if it is lodged or deposited as so referred to within the period of 14 days so referred to by a member of the group of which the dutiable person is a member.

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SCHEDULE 1—*continued.*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO THE PAYMENT OF
DUTY IN RELATION TO CERTAIN RECEIPTS—*continued.*

(5) A person who pays duty under section 98K or 98L in respect of a dutiable receipt is not liable to pay duty under this section in respect of that receipt.

(6) Where a person who is a member of a group pays duty under this section in respect of a dutiable receipt, the liability of any other person who is a member of the group to pay duty under this section in respect of that dutiable receipt shall be reduced to the extent to which that duty has been paid by the firstmentioned person.

(7) A person who fails to comply with this section is guilty of an offence and liable to a fine not exceeding \$5,000 together with twice the amount of duty of which Her Majesty has been deprived by any such failure.

(8) It is a defence to a prosecution under this section if the defendant proves that he used all due diligence to determine, but was unable to determine, from information which he could reasonably be expected to acquire, whether a person with whom he lodged or deposited a receipt was or was not—

- (a) a registered person to whom subsection (1) (e) applies and who was liable to pay stamp duty under this Division and would include the lodgement or deposit in a receipts return required to be made out by the registered person;
- (b) a designated person to whom subsection (1) (f) applies and who proposed to lodge or deposit the receipt with a registered person who was liable to pay stamp duty under this Division and would include the deposit in a receipts return required to be made out by the registered person;
- (c) except in so far as the regulations may otherwise provide, a short term dealer who is not a prescribed short term dealer and in relation to whom the lodgement or deposit of the receipt creates a short term liability, being a short term

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SCHEDULE 1—*continued.*AMENDMENT TO THE PRINCIPAL ACT RELATING TO THE PAYMENT OF
DUTY IN RELATION TO CERTAIN RECEIPTS—*continued.*

liability which shall be taken into account in determining the amount to be specified in a short term dealers return made out by the short term dealer; or

- (d) except in so far as the regulations may otherwise provide, a registered person in respect of whom the Commissioner has imposed a condition as referred to in section 98o (2) and in relation to whom the lodgement or deposit of the receipt creates a credit in his short term dealer's account, being a credit which shall be taken into account in determining the amount to be specified in a short term dealers return required to be made out by the registered person.

(9) Without affecting the construction of any other provision of this Division, a reference in this section to a person who is a dutiable person and who is a member of a group is a reference to a person who is resident or domiciled in New South Wales, who carries on business wholly or partly in New South Wales, who enters into a transaction as a consequence of which he receives a receipt, a designated receipt or a dutiable receipt, who receives a receipt, a designated receipt or a dutiable receipt in New South Wales, who receives a receipt, a designated receipt or a dutiable receipt outside New South Wales as a consequence of any act, matter or thing done by the person in New South Wales or who is prescribed for the purposes of this subsection.

(10) A reference in subsection (3) (b) to a statutory body does not include a reference to a company within the meaning of the Companies (New South Wales) Code.

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SCHEDULE 2.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION OF
CERTAIN GROUPS.

(1) Section 1—

From the matter relating to Subdivision 2 of Division 29 of Part III,
omit "98c", insert instead "98BA".

(2) Section 98BA—

Before section 98c, insert:—

Interpretation: Pt. III, Div. 29, Subdiv. 2.

98BA. In this Subdivision, "business" includes—

- (a) a trade or profession;
- (b) any other activity carried on for fee, gain or reward; and
- (c) the activity, carried on by an employer, of employing one or more persons where that person performs or those persons perform duties for or in connection with another business.

(3) (a) Section 98c (1)—

Omit "of persons engaged in the business of the provision of finance".

(b) Section 98c (1) (b), (4), (6), (7)—

Omit "or (3)" wherever occurring.

(c) Section 98c (2), (3)—

Omit the subsections, insert instead:—

(2) Where the Commissioner is satisfied, having regard to the nature and degree of ownership or control of the businesses, the nature of the businesses or any other matters that he considers relevant, that a business carried on by a member of a

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE CONSTITUTION OF
CERTAIN GROUPS—*continued.*

group is carried on substantially independently of, and is not substantially connected with the carrying on of, a business carried on by any other member of that group, the Commissioner may determine that the member is not, for the purposes of this Division, a member of the group.

(3) The Commissioner may, notwithstanding subsection (2), refuse to make a determination that a person is not, for the purposes of this Division, a member of a group if the person is a corporation to which section 98D applies.

(d) Section 98c (5)—

Omit “the members of the group concerned who he considers are engaged in the business of the provision of finance”, insert instead “the persons who, in the opinion of the Commissioner, are members of the group concerned”.

(e) Section 98c (7)—

Omit “the members of the group in respect of which the determination was made who he considers are engaged in the business of the provision of finance”, insert instead “the persons who, in the opinion of the Commissioner, are members of the group in respect of which the determination was made”.

(4) Section 98D—

Omit “and any of them is engaged in the business of the provision of finance”.

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SCHEDULE 3.

(Sec. 4.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

- (1) Section 10 (2)—
At the end of section 10, insert:—
 - (2) Notwithstanding subsection (1), a regulation made for the purposes of section 98w may impose a fine not exceeding \$5,000.

- (2) Section 98 (1), definition of “credit contract”—
After “1981”, insert “, and includes a contract or agreement which, but for section 19 of that Act, would be a credit contract within the meaning of that Act”.

- (3) Section 98 (1), definition of “credit provider”—
After “1981”, insert “, and includes a person who, but for section 19 of that Act, would be a credit provider within the meaning of that Act”.

- (4) Section 98 (1), definitions of “short term dealing”, “short term liability”—
Omit “\$100,000” wherever occurring, insert instead “\$50,000”.

- (5) Section 98 (1), definition of “short term liability”—
 - (a) After “dealer” where firstly occurring, insert “or a person (whether or not the person is included in the reference in section 98 (3) (b)) who is a member of a group”.
 - (b) After “dealer” where secondly occurring, insert “or person”.

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SCHEDULE 3—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Section 98 (3) (b)—

After “dutiabie receipt”, insert “, who receives a receipt, a designated receipt or a dutiable receipt in New South Wales, who receives a receipt, a designated receipt or a dutiable receipt outside New South Wales as a consequence of any act, matter or thing done by the person in New South Wales”.

(7) Section 98 (6)—

After “designated person” where thirdly occurring, insert “(being an exempt account, an account the receipts to the credit of which are dutiable receipts or a prescribed account)”.

(8) (a) Section 98w (a)—

After “implementation”, insert “or carrying out”.

(b) Section 98w (a1), (a2)—

After section 98w (a), insert:—

(a1) authorise, control or prohibit the making of charges or the implementation or carrying out of practices or procedures by a short term dealer which require or have the effect of requiring—

(i) a person from whom the short term dealer, or any member of a group of which the short term dealer is a member, receives an amount comprising a short term liability; or

(ii) a person otherwise involved in a short term dealing by a short term dealer, or any member of a group of which the short term dealer is a member,

to pay to the short term dealer or any such member any amount equivalent to or by way of payment of or towards any amount of duty paid or payable by the short term dealer in relation to short term liabilities;

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SCHEDULE 3—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (a2) authorise, control or prohibit the making of charges or the implementation or carrying out of practices or procedures by a person, not being a designated person or short term dealer, but whether or not the person is liable to pay duty under this Division, which require or have the effect of requiring any other person to pay to the person any amount equivalent to or by way of payment of or towards any amount of duty to which this Division applies;
-