

STAMP DUTIES (AMENDMENT) ACT 1987 No. 85

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 47, 1920
5. Savings and transitional provisions

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS OTHERWISE THAN BY DUTIABLE INSTRUMENTS

SCHEDULE 2—AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS DUTIABLE AS
CONVEYANCES OF LAND

SCHEDULE 3—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES

SCHEDULE 4—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
AUSTRALIAN OPTIONS MARKET

SCHEDULE 5—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 6—SAVINGS AND TRANSITIONAL PROVISIONS

STAMP DUTIES (AMENDMENT) ACT 1987 No. 85

NEW SOUTH WALES



Act No. 85, 1987

An Act to amend the Stamp Duties Act 1920 to overcome certain practices by which the payment of duty is avoided or reduced; to make further provision with respect to loan securities; to exempt from duty certain share transfers relating to trading on the Australian Options Market; and for other purposes. [Assented to 10 June 1987]

Stamp Duties (Amendment) 1987

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 (Amendment) Act 1987".

Commencement

2. (1) Except as provided by this section, this Act shall commence on the date of assent to this Act.

(2) Schedule 1 (1) and (6) shall be deemed to have commenced on 21 November 1986.

(3) Schedule 3 (Schedule 3 (1) (a) excepted) and Schedule 5 (8) shall be deemed to have commenced on 1 January 1987.

(4) Schedule 5 (9) and (10) shall be deemed to have commenced on 13 October 1986.

(5) Schedule 5 (15) (b) shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

(6) Section 4, in its application to a provision of Schedules 1-5, shall commence or be deemed to have commenced, as the case requires, on the day on which the provision commences or is deemed to have commenced.

Principal Act

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

Amendment of Act No. 47, 1920

4. The Principal Act is amended in the manner set forth in Schedules 1-5.

Savings and transitional provisions

5. Schedule 6 has effect.
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SCHEDULE 1

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS OTHERWISE THAN BY DUTIABLE
INSTRUMENTS(1) Section 3 (**Interpretation**)—

Section 3 (1), definition of “Land”—

After the definition of “Instrument”, insert:

“Land” includes a stratum, being a part of land consisting of a space or layer below, on, or above the surface of the land, or partly below and partly above the surface of the land, defined or definable by reference to improvements or otherwise, whether some of the dimensions of the space or layer are unlimited or whether all the dimensions are limited.

(2) Section 24 (**Penalty for registering instrument not duly stamped**)—

(a) Section 24 (1)—

Omit the subsection, insert instead:

(1) If a person whose duty it is to enrol or register instruments or to enter instruments in or upon any books or records enrolls, registers or enters—

(a) an instrument chargeable with duty which is unstamped or insufficiently stamped; or

(b) an instrument made or executed on or after 21 November 1986 in respect of a transaction to which Division 3A of Part III applies, unless—

(i) an instrument executed for the purpose of effecting that transaction has been sufficiently stamped; or

(ii) any statement required to be lodged under section 44A in respect of the transaction has been lodged and the duty and any fine with which the statement is chargeable have been paid,

the person shall incur a fine not exceeding \$500 for each offence.

Stamp Duties (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS OTHERWISE THAN BY DUTIABLE
INSTRUMENTS—*continued*

(b) Section 24 (3)—

After section 24 (2), insert:

(3) It is a defence to a prosecution for an offence against this section in respect of the enrolling, registering or entering of an instrument referred to in subsection (1) (b) if it is proved that the defendant did not know and could not reasonably be expected to have known that the instrument was an instrument so referred to.

(3) Section 28 (**Secondary evidence of unstamped and other instruments**)—

(a) Section 28—

Omit “a document” where firstly occurring, insert instead “an instrument”.

(b) Section 28—

Omit “document” where secondly and thirdly occurring, insert instead “instrument”.

(c) Section 28 (2)—

At the end of section 28, insert:

(2) In any proceedings in any court, secondary evidence of an instrument made or executed on or after 21 November 1986 in respect of a transaction to which Division 3A of Part III applies may, saving all just exceptions on other grounds, be admitted if—

(a) an instrument executed for the purpose of effecting that transaction has been sufficiently stamped; or

(b) any statement required to be lodged under section 44A in respect of the transaction has been lodged and the duty and any fine with which the statement is chargeable have been paid.

Stamp Duties (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS OTHERWISE THAN BY DUTIABLE
INSTRUMENTS—*continued*

(4) Section 29 (**Inadmissibility of unstamped and other instruments**)—

Section 29 (3)—

After section 29 (2), insert:

(3) No instrument made or executed (whether in New South Wales or elsewhere) on or after 21 November 1986 in respect of a transaction to which Division 3A of Part III applies, shall, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful, or available in law or equity for the purpose of proving that a change in beneficial ownership to which the transaction relates occurred, unless—

- (a) an instrument to effect that transaction has been sufficiently stamped; or
- (b) any statement required to be lodged under section 44A in respect of the transaction has been lodged and the duty and any fine with which the statement is chargeable have been paid.

(5) Section 38 (**Stamp duty a debt to the Crown**)—

Section 38 (1B)—

After section 38 (1A), insert:

(1B) If a person required by this Act to lodge a statement and to pay duty under the provisions of Division 3A or 30 of Part III fails or refuses to lodge the statement, or the Chief Commissioner is not satisfied with the statement lodged, and an assessment is issued under section 127B, the person is personally liable to the Crown for the payment of the duty immediately upon the duty becoming payable, and the person may be sued for the amount of the duty as for a debt due to the Crown.

Stamp Duties (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS OTHERWISE THAN BY DUTIABLE
INSTRUMENTS—*continued*

(6) Part III, Division 3A—

After Division 3, insert:

DIVISION 3A—*Transactions otherwise than by dutiable instruments*

Transactions to which this Division applies

44. (1) This Division applies to a transaction which, on or after 21 November 1986, causes or results in a change in the beneficial ownership of an estate or interest in—

- (a) land situated in New South Wales;
- (b) goods, wares or merchandise situated in New South Wales, being goods, wares or merchandise sold or conveyed with other property situated in New South Wales;
- (c) the goodwill in New South Wales of a business carried on in New South Wales;
- (d) a lease of land situated in New South Wales;
- (e) an interest in a partnership, in so far as the interest relates to property of the partnership, being property of the kind referred to in paragraph (a), (b), (c), (d) or (f) or prescribed, or of a class prescribed, for the purposes of this subsection;
- (f) shares or rights to shares of a corporation incorporated in New South Wales or of a corporation incorporated outside New South Wales and which are registered on a register of members of the corporation kept in New South Wales; or
- (g) property prescribed, or of a class prescribed, for the purposes of this subsection.

(2) A reference to a change in beneficial ownership in subsection (1) does not include a reference to a change in beneficial ownership occurring as the consequence of—

- (a) the appointment of a receiver or trustee in bankruptcy;

*Stamp Duties (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS OTHERWISE THAN BY DUTIABLE
INSTRUMENTS—*continued*

- (b) the appointment of a liquidator;
- (c) the making of a compromise or arrangement under Part VIII of the Companies (New South Wales) Code which has been approved by the court;
- (d) the issue or redemption of units in a unit trust scheme;
- (e) the surrender of a lease;
- (f) the transfer or conveyance of any estate or interest in property as a security, including the pledging or charging of property; or
- (g) the release or termination of an option for the purchase of property.

(3) This Division does not apply to a transaction or property which is prescribed, or is of a class prescribed, for the purposes of this subsection.

(4) Notwithstanding anything to the contrary in any other Act, a regulation made for the purposes of subsection (3) may take effect as from 21 November 1986 or a later day.

Payment of duty on statements in absence of dutiable instruments

44A. (1) A person, being a party to a transaction to which this Division applies which is not effected or evidenced by an instrument chargeable with ad valorem duty in accordance with the Second Schedule under—

- (a) paragraph (1) under the heading “Transfer of Shares”;
- (b) the heading “Conveyances of Any Property”; or
- (c) any other heading whereby duty is charged as on a conveyance of property,

shall, if the person would have been liable to pay any such ad valorem duty in respect of the transaction had such an instrument been executed, lodge with the Chief Commissioner a statement in respect of the transaction.

Stamp Duties (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS OTHERWISE THAN BY DUTIABLE
INSTRUMENTS—*continued*

(2) A person, being a party to a transaction—

- (a) which causes or results in a change in the beneficial ownership of an estate or interest in the shares of a corporation incorporated in New South Wales which are registered on a register of members of the corporation kept outside New South Wales; and
- (b) which is not effected or evidenced by an instrument which is chargeable with stamp duty (or duty of a like nature) in accordance with the law of the place at which the register is kept,

shall, notwithstanding section 96A (2), lodge with the Chief Commissioner a statement in respect of the transaction.

(3) The statement shall be lodged within 2 months after the change in beneficial ownership which is caused by or results from the transaction.

(4) The statement shall be in a form approved by the Chief Commissioner.

(5) The statement shall, for the purposes of this Act, be deemed to be an instrument effecting the transaction to which it relates and is chargeable with the ad valorem duty referred to in subsection (1) appropriate to the transaction.

(6) The statement shall, for the purposes of this Act, be deemed to have been first executed on the date on which the change in beneficial ownership occurs.

(7) The ad valorem duty with which the statement is chargeable shall be charged on—

- (a) the unencumbered value of the property the subject of the transaction as at the date on which the change in beneficial ownership occurs; or

Stamp Duties (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS OTHERWISE THAN BY DUTIABLE
INSTRUMENTS—*continued*

- (b) the amount of the consideration in respect of the transaction,

whichever is the greater, and shall be paid at the time of lodgment of the statement with the Chief Commissioner by the person required to lodge the statement.

Splitting of transactions

44B. (1) If—

- (a) 2 or more transactions to which this Division applies; or
(b) at least one transaction to which this Division applies and at least one instrument liable to ad valorem duty under this Act,

are entered into or executed, as the case may be—

- (c) in relation to separate parts of, or separate estates or interests in, the same property;
(d) between the same parties or between one party and other parties, where the other parties are not at arms' length from each other; and
(e) within, or apparently within, a period of 12 months of each other,

the transactions or the transactions and instruments, as the case requires, shall, unless the Chief Commissioner is satisfied that it would not be just and reasonable in the circumstances, be deemed to constitute a single transaction relating to the whole of the property concerned and ad valorem duty shall be chargeable on—

- (f) the unencumbered value of the whole of that property as at the date on which the change in beneficial ownership occurs; or
(g) the total amount of the consideration in respect of the whole of that property,

whichever is the greater.

Stamp Duties (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS OTHERWISE THAN BY DUTIABLE
INSTRUMENTS—*continued*

(2) If ad valorem duty has been paid in respect of a transaction or instrument referred to in subsection (1), the duty payable under that subsection shall be reduced by the amount of duty so paid.

Effect of execution of dutiable instruments

44C. (1) An instrument executed for the purpose of effecting or evidencing or apparently for the purpose of effecting or evidencing a transaction to which this Division applies, being a transaction in respect of which a statement has been duly stamped in accordance with section 44A, is not chargeable with duty under this Act to the extent to which duty has been paid on the statement.

(2) A conveyance made in conformity with an instrument or statement referred to in subsection (1) shall be chargeable with duty of \$1.

(3) If, within 2 months after a change in beneficial ownership occurs as the result of a transaction to which this Division applies, an instrument chargeable with ad valorem duty (not being a statement under section 44A) is executed for the purpose of effecting or evidencing or apparently for the purpose of effecting or evidencing the transaction, section 44A ceases to apply to the transaction.

(4) For the purposes of section 25 (Terms on which instruments may be stamped after execution), an instrument referred to in subsection (3) shall be deemed to have been first executed on the date on which the change in beneficial ownership occurs.

Aiding and abetting

44D. A person who—

- (a) directly or indirectly, aids, abets, counsels or procures another person to enter into a transaction to which this Division applies; or

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
TRANSACTIONS OTHERWISE THAN BY DUTIABLE
INSTRUMENTS—*continued*

(b) is, in any way, by act or omission, directly or indirectly concerned in, or party to, the entry by another person into a transaction to which this Division applies,

knowing or believing that the other person does not intend to lodge a statement under section 44A and pay duty in accordance with this Division in respect of the transaction, is guilty of an offence and liable to a fine not exceeding \$5,000.

Offences relating to statements

44E. (1) A person who, in respect of a transaction to which this Division applies—

(a) fails or refuses to lodge a statement under section 44A within 6 months after the date on which a change in beneficial ownership occurs as a result of the transaction; or

(b) lodges a statement under section 44A which is false or misleading in a material particular,

is guilty of an offence and liable to a fine not exceeding \$5,000.

(2) Proceedings for an offence under this section—

(a) may not be instituted without the consent of the Minister;

(b) subject to that consent, may be instituted at any time; and

(c) may be disposed of—

(i) before a Local Court constituted by a Magistrate sitting alone; or

(ii) before the Supreme Court in its summary jurisdiction.

(3) The consent of the Minister to the institution of proceedings for an offence under this section shall be presumed unless the contrary is proved.

Stamp Duties (Amendment) 1987

SCHEDULE 2

(Sec. 4)

AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND

Part III, Division 30—

After Division 29, insert:

DIVISION 30—*Acquisitions of company and unit trust interests
dutiable as conveyances of land*

Interpretation

99A. (1) For the purposes of this Division, unless inconsistent with the context or subject-matter—

“acquisition”, in relation to an interest or land use entitlement in a landholder, includes an acquisition by which a person becomes entitled to an interest or land use entitlement (or an increase in an interest or land use entitlement) by means of—

- (a) the purchase, gift, allotment or issue of any share in a private company or unit in a private unit trust scheme;
- (b) the variation, abrogation or alteration of a right attaching to any share in a private company or unit in a private unit trust scheme; or
- (c) the redemption, surrender or cancellation of any share in a private company or unit in a private unit trust scheme;

“de facto partner” and “de facto relationship” have the same meanings as in the De Facto Relationships Act 1984;

“designated landholder” means a landholder which is entitled to land—

- (a) the unencumbered value of which (not including the unencumbered value of land the subject of a land use entitlement) comprises not less than 80 per cent of the unencumbered value of all its assets, not including assets consisting of—

- (i) cash, whether in Australian currency or otherwise;

*Stamp Duties (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

- (ii) money on deposit with a bank, negotiable instruments or corporate debt securities;
 - (iii) loans which by their terms are to be repaid on demand by the lender or within 12 months of the date of the loan;
 - (iv) loans to persons who, in relation to the landholder, are related persons or to the spouse, de facto partner, child, parent, brother or sister of—
 - (A) if the landholder is a private company—a majority shareholder, director or secretary of the company; or
 - (B) if the landholder is a private unit trust scheme—a trustee of, or beneficiary under, the scheme;
 - (v) land use entitlements; or
 - (vi) assets which the landholder is unable to satisfy the Chief Commissioner were obtained otherwise than in order to reduce, for the purposes of the application of this Division, the ratio of the unencumbered value of the land to which the landholder is entitled to the unencumbered value of all its assets; and
- (b) the unencumbered value of which, in so far as the land is in New South Wales, is not less than \$1,000,000;
- “discretionary trust” means—
- (a) 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—
 - (i) 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

Stamp Duties (Amendment) 1987

SCHEDULE 2—*continued*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

(ii) will occur in the event that a discretion conferred under the trust is not exercised; or

(b) a trust which is, by or under the regulations, declared to be a discretionary trust for the purposes of this Division,

but does not include—

(c) a trust which is solely a charitable trust; or

(d) a trust which is, by or under the regulations, declared not to be a discretionary trust for the purposes of this Division;

“interest” means an interest (other than a land use entitlement) in a landholder, acquired—

(a) in the case of a landholder, being a private company—on or after 21 November 1986; or

(b) in the case of a landholder, being a private unit trust scheme—on or after the date of assent to the Stamp Duties (Amendment) Act 1987,

which, if the landholder were to be wound up immediately after the acquisition of the interest, would entitle the person acquiring the interest to participate (otherwise than as a creditor or other person to whom the landholder was liable at the time of the acquisition) in a distribution of the property of the landholder;

“land” means land, whether situated in New South Wales or elsewhere;

*Stamp Duties (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

“land use entitlement” means an interest in a landholder which gives the person acquiring the interest an entitlement to the exclusive possession, or substantially exclusive possession, of land in New South Wales (not being such an entitlement in respect of a dwelling in a building containing more than one separate dwelling conferred by the ownership of shares in a private company or of units in a private unit trust scheme);

“landholder” means—

- (a) a private company; or
- (b) a private unit trust scheme;

“majority interest” means an interest (other than a land use entitlement) in a landholder which, if the landholder were to be wound up—

- (a) in the case of an interest acquired by a single acquisition—immediately after that acquisition; or
- (b) in the case of an interest acquired by 2 or more acquisitions—immediately after the later or latest of those acquisitions,

would entitle the person who acquired the interest or that person together with any related person to participate (otherwise than as a creditor or other person to whom the landholder was liable at the time of the acquisition) in a distribution of the property of the landholder to an extent greater than 50 per cent of the value of the property distributable to all the holders of interests in the landholder;

“majority shareholder”, in relation to a private company, means a person who would have a substantial shareholding in the company in accordance with section 136 of the Companies (New South Wales) Code if the reference in that section to the prescribed percentage were a reference to 50 per cent;

*Stamp Duties (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

“prior acquisition”, in relation to a designated landholder, means the acquisition by a person or a related person of an interest in the designated landholder—

- (a) on or at any time during the period of 3 years before the date of a relevant acquisition by the person of an interest in the designated landholder; but
- (b) not earlier than—
 - (i) in the case of a designated landholder, being a private company—21 November 1986; or
 - (ii) in the case of a designated landholder, being a private unit trust scheme—the date of assent to the Stamp Duties (Amendment) Act 1987;

“prior land use entitlement”, in relation to a landholder, means a land use entitlement which is acquired in relation to the landholder by a person or a related person—

- (a) on or at any time during the period of 3 years before the date of the acquisition of a land use entitlement in relation to the landholder by the person, the acquisition of which required the person to lodge a statement under section 99C; but
- (b) not earlier than—
 - (i) in the case of a landholder, being a private company—21 November 1986; or
 - (ii) in the case of a landholder, being a private unit trust scheme—the date of assent to the Stamp Duties (Amendment) Act 1987;

“private company” means a company (other than a company the shares of which are listed on a recognised stock exchange) whether or not it is incorporated in New South Wales—

- (a) which is entitled to land in New South Wales; or

*Stamp Duties (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

- (b) which carries on business wholly or partly in New South Wales;

“private unit trust scheme” means a unit trust scheme (other than a public unit trust scheme) whether or not its trustees are resident in New South Wales—

- (a) the trustees of which are entitled to land in New South Wales; or
- (b) which carries on business wholly or partly in New South Wales;

“relevant acquisition”, in relation to a designated landholder, means the acquisition by a person of an interest in the designated landholder which requires the lodgment of a statement under section 99E (1) by the person.

(2) For the purposes of this Division, a reference to land owned by a landholder is—

- (a) in the case of a landholder, being a private company—a reference to land owned by the private company beneficially; and
- (b) in the case of a landholder, being a private unit trust scheme—a reference to land owned by the trustee (in the capacity of trustee) of the private unit trust scheme.

(3) For the purposes of this Division, a private company or a private unit trust scheme (referred to in this Division as a “first landholder”) is entitled to land if—

- (a) the land is owned by a first landholder; or

Stamp Duties (Amendment) 1987

SCHEDULE 2—*continued*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

(b) the land is owned by a landholder (referred to in this Division as the “actual landholder”) which, if the actual landholder and all other landholders (if any) interposed between the actual landholder and the first landholder in a chain of ownership of interests in landholders were to be wound up, would entitle the first landholder, by reason of that chain of ownership of interests, to participate in a distribution of the property of the actual landholder.

(4) For the purposes of this Division, the unencumbered value of the land to which a landholder is entitled at any particular date is the sum of—

(a) in the case of land owned by the landholder—the unencumbered value of the land at that date; and

(b) in the case of land owned by an actual landholder, the amount to which, if the actual landholder and all other landholders (if any) interposed between the actual landholder and the first landholder in a chain of ownership of interests in landholders were to be wound up on that date, the first landholder would be entitled (without regard to any liabilities of the actual landholder or any other landholder in the chain of ownership of interests) in respect of the unencumbered value at that date of land owned by the actual landholder at that date.

(5) For the purposes of this Division, the entitlement of a person, first landholder, actual landholder or landholder to participate (otherwise than as a creditor or other person to whom the private company or private unit trust scheme is liable) in the distribution of the property of a private company or private unit trust scheme on a winding up of the private company or private unit trust scheme is an entitlement to an amount calculated—

*Stamp Duties (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

- (a) as if the winding up were carried out in accordance with the memorandum and articles of association of the private company or the instrument constituting the private unit trust scheme and with any law relevant to the winding up of such a private company or such a private unit trust scheme, respectively, as the memorandum, articles, instrument and law exist at the date of the winding up; or
- (b) as if the person, first landholder, actual landholder or landholder had, immediately prior to the date of the winding up, exercised all powers and discretions exercisable by the person, first landholder, actual landholder or landholder by reason of having acquired an interest in a landholder—
 - (i) to effect or compel an alteration to the memorandum or articles of association of the private company or to the instrument constituting the private unit trust scheme;
 - (ii) to vary the rights conferred by shares in the private company or by units in the private unit trust scheme; or
 - (iii) to effect or compel the substitution or replacement of shares in the private company or units in the private unit trust scheme with other shares in the private company or other units in the private unit trust scheme.

in such manner as to maximise that amount,

whichever of the amounts under paragraph (a) or (b) results in the greater amount, unless the Chief Commissioner determines, after consideration of the circumstances of the case, and where the calculation under paragraph (b) results in the greater amount, that the amount of the entitlement should be calculated under paragraph (a).

*Stamp Duties (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

(6) If a private company, a private unit trust scheme or a trustee of a private unit trust scheme (in the capacity of trustee)—

(a) is a person or a member of a class of persons in favour of whom, by the terms of a discretionary trust, capital the subject of the discretionary trust may be applied—

(i) in the event of the exercise of a power or discretion in favour of the person or class; or

(ii) in the event that a discretion conferred under a discretionary trust is not exercised; or

(b) is a person or a member of a class of persons who could become a person or a member of a class of persons referred to in paragraph (a) in respect of a discretionary trust, the settlor or trustee of which is not at arms' length from the private company, the private unit trust scheme or the trustee of the private unit trust scheme (in the capacity of trustee),

the private company, private unit trust scheme or trustee of the private unit trust scheme (in the capacity of trustee), as the case requires, shall be deemed, for the purposes of this Division, to be entitled to the property the subject of the discretionary trust, unless the Chief Commissioner determines that the private company, private unit trust scheme or trustee of the private unit trust scheme (in the capacity of trustee) shall not be deemed to be entitled to the property.

(7) For the purposes of this Division, any property which is (or is deemed by this subsection to be) the subject of a discretionary trust (which is referred to in this subsection as "the first discretionary trust") shall be deemed to be the subject of any discretionary trust which is, or any trustee of which (in the capacity of trustee) is, a person or a member of a class of persons referred to in subsection (6) (a) or (b) in relation to the first discretionary trust, unless the Chief Commissioner determines that the property shall not be deemed to be the subject of the discretionary trust.

Stamp Duties (Amendment) 1987

SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

- (8) For the purposes of this Division—
- (a) natural persons are related persons if—
 - (i) they are partners; or
 - (ii) the relationship between them is that of a married couple, de facto partners or parent and child;
 - (b) private companies are related persons if they are related corporations within the meaning of the Companies (New South Wales) Code;
 - (c) trustees are related persons if any person is a beneficiary common to the trusts of which they are trustees;
 - (d) a natural person and a private company are related persons if the natural person is a majority shareholder, director or secretary in or of the company or a private company which is a related corporation within the meaning of the Companies (New South Wales) Code;
 - (e) a natural person and a trustee are related persons if the natural person is a beneficiary under the trust of which the trustee is a trustee; and
 - (f) a private company and a trustee are related persons if—
 - (i) the company, a majority shareholder, director or secretary in or of the company is a beneficiary of the trust of which the trustee is a trustee; or
 - (ii) a related corporation (within the meaning of the Companies (New South Wales) Code) of the company is a beneficiary of the trust of which the trustee is a trustee.

*Stamp Duties (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued***Acquisitions to which this Division does not apply**

99B. This Division does not apply to or in respect of the acquisition by a person of a land use entitlement or prior land use entitlement in relation to a landholder or an interest in a designated landholder if—

- (a) the acquisition is by a person in the capacity of—
 - (i) a receiver or trustee in bankruptcy;
 - (ii) a liquidator; or
 - (iii) an executor or administrator of the estate of a deceased person;
- (b) the acquisition occurred solely as the result of—
 - (i) the making of a compromise or arrangement under Part VIII of the Companies (New South Wales) Code which has been approved by the court;
 - (ii) the distribution of the estate of a deceased person, including an acquisition occurring as the result of—
 - (A) a will, a codicil or an order of a court varying or modifying the application of the provisions of a will or codicil; or
 - (B) an intestacy or an order of a court varying or modifying the application, in relation to the estate of a deceased person, of the provisions of a law relating to the distribution of the assets of persons who die intestate;
- (c) the acquisition is by—
 - (i) a person who was a partner in a marriage and has occurred solely as the result of the dissolution of the marriage; or

*Stamp Duties (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

- (ii) a person who was a de facto partner in a de facto relationship and has occurred solely as the result of the termination of the relationship; or
- (d) the acquisition, had it been effected by an agreement or conveyance, would not be chargeable with ad valorem duty.

Statement of acquisition of land use entitlement

99C. (1) If a person acquires a land use entitlement in relation to a landholder, the person shall lodge with the Chief Commissioner a statement in respect of the acquisition.

(2) The statement shall be lodged within 2 months after the land use entitlement is acquired or within such longer period as the Chief Commissioner may approve in writing.

(3) The statement shall be in a form approved by the Chief Commissioner and shall contain the following information:

- (a) the name and address of the person who has acquired the land use entitlement;
- (b) the reference to title of the land to which the land use entitlement applies;
- (c) the date of acquisition of the land use entitlement;
- (d) the unencumbered value of the land to which the land use entitlement applies as at the date of acquisition;
- (e) the same information as is specified in paragraphs (a)–(d) in respect of each prior land use entitlement acquired in relation to the landholder by the person or a related person;
- (f) the amount of stamp duty (or duty of a like nature) paid in respect of the acquisition of each such prior land use entitlement; and

*Stamp Duties (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

(g) such other information as may be required by the Chief Commissioner.

(4) The statement shall, for the purposes of this Act, be deemed to be an instrument and is chargeable with ad valorem duty in accordance with section 99D.

Assessment and payment of duty—statement of acquisition of land use entitlement

99D. (1) A statement lodged under section 99C in respect of a land use entitlement is chargeable with duty at the rates specified in paragraph (1) under the heading “Conveyances of Any Property” in the Second Schedule on the unencumbered value of the land the subject of the land use entitlement as at the date of acquisition aggregated with the unencumbered value of any land which is the subject of any prior land use entitlement required to be included in the statement as at the date of acquisition of the prior land use entitlement.

(2) The duty chargeable under this section shall be reduced by the sum of the stamp duty (or duty of a like nature), if any, paid—

- (a) under this Division in respect of a prior land use entitlement; and
- (b) on an instrument which effected or evidences the acquisition of—
 - (i) any land use entitlement; or
 - (ii) any prior land use entitlement in respect of which duty under this Division has not previously been paid,

but only in proportion to the extent to which the duty so paid is attributable to the unencumbered value of the land the subject of the land use entitlement or any prior land use entitlement.

SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

(3) If the Chief Commissioner is satisfied that it would not be just and reasonable in the circumstances, the Chief Commissioner may determine that values shall not be aggregated for the purposes of this section.

(4) The duty with which the statement is chargeable shall be paid at the time of lodgment of the statement with the Chief Commissioner by the person required to lodge the statement.

(5) If duty is chargeable under this section on a statement in respect of a land use entitlement acquired by a person and any prior land use entitlement acquired by a related person, the person and the related person are jointly and severally liable for the duty.

Statement of entitlement concerning designated landholder

99E. (1) If a person—

- (a) acquires a majority interest;
- (b) acquires an interest which results in the person having a majority interest;
- (c) acquires an interest which, together with the interest of a related person, is a majority interest; or
- (d) having a majority interest (including an interest which, together with the interest of a related person, is a majority interest) acquires a further interest,

in a designated landholder, the person shall lodge with the Chief Commissioner a statement in respect of the acquisition.

(2) The statement shall be lodged within 2 months after the interest is acquired or within such longer period as the Chief Commissioner may approve in writing.

Stamp Duties (Amendment) 1987

SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

(3) The statement shall be in a form approved by the Chief Commissioner and shall contain the following information:

(a) in relation to the relevant acquisition of an interest—

- (i) the name or names and address or addresses of the person or persons who has or have acquired the interest;
- (ii) the date of the relevant acquisition;
- (iii) the interest acquired;
- (iv) the total interest of the person or the person and any related person in the designated landholder at that date;
- (v) the unencumbered value of all land in New South Wales to which the designated landholder is entitled at that date;
- (vi) the unencumbered value of the assets of the designated landholder at that date;

(b) in relation to each prior acquisition of an interest—

- (i) the name or names and address or addresses of the person or persons who has or have acquired the interest;
- (ii) the date of the prior acquisition;
- (iii) the interest acquired;
- (iv) the unencumbered value of all land in New South Wales to which the designated landholder is entitled at that date;
- (v) the unencumbered value of the assets of the designated landholder at that date;
- (vi) the amount of stamp duty (or duty of a like nature) paid in respect of the prior acquisition;

SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

- (c) such other information as may be required by the Chief Commissioner.
- (4) The information in relation to an interest referred to in subsection (3) (a) (iii) or (b) (iii) shall include—
 - (a) the maximum percentage of the property of the designated landholder to which the person required to lodge the statement, or that person together with any related person, would be entitled on a winding up of the designated landholder immediately after the acquisition of the interest (otherwise than as a creditor or other person to whom the designated landholder was liable at the time of the acquisition) in a distribution of the property of the landholder; and
 - (b) the basis and method of calculation of the percentage included pursuant to paragraph (a).
- (5) The statement shall, for the purposes of this Act, be deemed to be an instrument and is chargeable with ad valorem duty in accordance with section 99F.

Assessment and payment of duty—statement of relevant acquisition of an interest etc.

99F. (1) A statement lodged under section 99E is chargeable with duty at the rates specified in paragraph (1) under the heading “Conveyances of Any Property” in the Second Schedule on—

- (a) in the case of a relevant acquisition of an interest in a designated landholder and where there are no prior acquisitions of interests in the designated landholder—the amount calculated by multiplying the unencumbered value of all land in New South Wales to which the designated landholder is entitled at the date of the relevant acquisition by the percentage of the interest acquired by the relevant acquisition and required to be included in the statement; or

Stamp Duties (Amendment) 1987

SCHEDULE 2—*continued*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

(b) in the case of a relevant acquisition of an interest in a designated landholder and one or more prior acquisitions of interests in the designated landholder—the aggregate of—

(i) in respect of the relevant acquisition—the amount calculated in accordance with paragraph (a); and

(ii) in respect of each prior acquisition—each amount calculated by multiplying the unencumbered value of all land in New South Wales to which the designated landholder was entitled at the date of the prior acquisition by the percentage of the interest acquired by the prior acquisition and required to be included in the statement.

(2) The duty chargeable under this section shall be reduced by the sum of the stamp duty (or duty of a like nature), if any, paid—

(a) under this Division in respect of a prior acquisition; and

(b) on an instrument which effected or evidences the acquisition of—

(i) the relevant acquisition; or

(ii) any prior acquisition in respect of which duty under this Division has not previously been paid,

but only in proportion to the extent to which the duty so paid is attributable to the amount calculated under subsection (1).

(3) If the Chief Commissioner is satisfied that it would not be just and reasonable in the circumstances, the Chief Commissioner may determine that an amount calculated in accordance with subsection (1) (b) (ii) and specified in the Chief Commissioner's determination shall not be aggregated for the purposes of this section.

*Stamp Duties (Amendment) 1987*SCHEDULE 2—*continued*AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

(4) The duty with which the statement is chargeable shall be paid at the time of lodgment of the statement with the Chief Commissioner by the person required to lodge the statement.

(5) If duty is chargeable under this section on a statement in respect of a relevant acquisition acquired by a person and any prior acquisition acquired by a related person, the person and the related person are jointly and severally liable for the duty.

Ascertainment of value of property

99G. Section 68 (Ascertainment of the value of property conveyed) applies to and in respect of a statement under section 99C or 99E in the same way as it applies to and in respect of a conveyance chargeable with ad valorem duty under this Act.

Date of first execution of statements under this Division

99H. For the purposes of this Act—

- (a) a statement under section 99C shall be deemed to have been first executed on—
 - (i) in the case of the acquisition of a land use entitlement—the date on which the land use entitlement is acquired; or
 - (ii) in the case of the acquisition of a prior land use entitlement—the date on which the land use entitlement in respect of which the prior land use entitlement is a prior land use entitlement is acquired; and
- (b) a statement under section 99E shall be deemed to have been first executed on—
 - (i) in the case of a relevant acquisition—the date of the relevant acquisition; or
 - (ii) in the case of a prior acquisition—the date of the relevant acquisition in respect of which the prior acquisition is a prior acquisition.

Stamp Duties (Amendment) 1987

SCHEDULE 2—*continued*

AMENDMENT TO THE PRINCIPAL ACT RELATING TO
ACQUISITIONS OF COMPANY AND UNIT TRUST INTERESTS
DUTIABLE AS CONVEYANCES OF LAND—*continued*

Offences relating to statements

99i. (1) A person—

(a) who fails or refuses to lodge a statement under section 99C or 99E—

(i) within the period of 6 months; or

(ii) if, under section 99C (2) or 99E (2), the Chief Commissioner has approved a longer period for the lodgement of the statement, within the period which is the sum of 4 months and that longer period,

after the date on which the statement is deemed, under section 99H, to have been executed; or

(b) who lodges a statement under section 99C or 99E which is false or misleading in a material particular,

is guilty of an offence and liable to a fine not exceeding \$5,000.

(2) Proceedings for an offence under this section—

(a) may not be instituted without the consent of the Minister;

(b) subject to that consent, may be instituted at any time; and

(c) may be disposed of—

(i) before a Local Court constituted by a Magistrate sitting alone; or

(ii) before the Supreme Court in its summary jurisdiction.

(3) The consent of the Minister to the institution of proceedings for an offence under this section shall be presumed unless the contrary is proved.

SCHEDULE 3

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES(1) Section 83 (**Interpretation**)—

(a) Section 83 (1), definition of “Corporation”—

After the definition of “Bill facility”, insert:

“Corporation” means a body corporate, whether incorporated
in New South Wales or elsewhere.

(b) Section 83 (1), paragraph (e) of the definition of “Debenture”—

Omit the paragraph, insert instead:

(e) a document, not being an acknowledgement of
indebtedness of a corporation in respect of money that is
deposited with or lent to the corporation, that does not
create a debt; or(c) Section 83 (1), paragraph (b) of the definition of “Financial
accommodation”—After “lease”, insert “or a hiring arrangement within the meaning
of section 74D”.

(d) Section 83 (1), definition of “Loan security”—

(i) Omit paragraph (b).

(ii) From paragraph (d), omit “property” where secondly
occurring, insert instead “land”.

Stamp Duties (Amendment) 1987

SCHEDULE 3—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

(2) Section 84 (Limited and unlimited loan securities)—

(a) Section 84 (3), (3A)—

Omit section 84 (3), insert instead:

(3) If the total amount secured or to be ultimately recoverable by or under a loan security is not expressed in the loan security to be limited to a definite and certain sum of money, the loan security is to be stamped with duty of \$5 and, if an advance, or the total of an advance and one or more additional advances made under or secured by the loan security, exceeds \$15,000, additional duty of 40 cents for every \$100 or fractional remaining part of \$100 of the total amounts advanced under or secured by the loan security in excess of \$15,000 shall be payable.

(3A) Nothing in this section or the Second Schedule under the heading "Loan Security" requires the payment of duty in respect of an advance or additional advance if the amount payable or repayable under or secured by the loan security following the advance or additional advance does not exceed the maximum amount payable or repayable under or secured by the loan security (being an amount in relation to which duty, as duty on a loan security, has previously been paid) at any time prior to the making of the advance or additional advance, but if the loan security is a loan security to which subsection (1) or (2) applies, the amount of duty with which the loan security is to be stamped shall not be less than the amount of duty payable as required under subsection (1) or (2), whichever is the greater amount under those subsections.

(b) Section 84 (6)—

Omit "(b)".

SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*

(c) Section 84 (6A)—

After section 84 (6), insert:

(6A) Section 25 (Terms on which instruments may be stamped after execution) applies to and in respect of a mortgage referred to in paragraph (d) of the definition of “Loan security” in section 83 (1), being a mortgage which affects land in New South Wales, as if a reference in section 25 to the date on which an instrument is first executed were a reference to the date on which the mortgage affected land in New South Wales.

(d) Section 84 (7)—

Before “(3)”, insert “(2A) or”.

(e) Section 84 (8)—

After section 84 (7), insert:

(8) In proceedings for recovery of an amount payable or repayable under or secured by a loan security, the loan security shall not be unenforceable only because duty has not been paid in respect of an advance or additional advance which has been made for the purpose of paying any unpaid duty on the loan security.

(3) Section 84CA (**Unregistered mortgage protected by caveat**)—

Section 84CA (2)—

At the end of section 84CA, insert:

(2) The mortgagor is the person primarily liable for duty chargeable under this section.

(3) This section does not apply to a caveat lodged in respect of a mortgage being a loan security not chargeable with duty under section 84EB.

*Stamp Duties (Amendment) 1987*SCHEDULE 3—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LOAN
SECURITIES—*continued*(4) Second Schedule (**Stamp duties and exemptions**)—

From the matter appearing under the heading “GUARANTEE”, omit “(not being an instrument liable to stamp duty as a Loan Security)”.

SCHEDULE 4

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
AUSTRALIAN OPTIONS MARKET(1) Section 97A (**Definitions and application of ss. 97AA–97ADC**)—

(a) Section 97A (1), definition of “Australian Options Market”—

Before the definition of “Broker”, insert:

“Australian Options Market” means the market regulated by the Stock Option Trading Regulations of the Australian Stock Exchange (Sydney) Limited.

(b) Section 97A (1), definition of “Registered trader”—

After the definition of “Prescribed stock exchange”, insert:

“Registered trader” means a person who is a registered trader under the Stock Option Trading Regulations of the Australian Stock Exchange (Sydney) Limited.

(c) Section 97A (2)—

Omit “97AD”, insert instead “97ADC”.

(d) Section 97A (2)—

After “97AB”, insert “or 97ADC”.

*Stamp Duties (Amendment) 1987*SCHEDULE 4—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
AUSTRALIAN OPTIONS MARKET—*continued*(2) Sections 97_{ADA}–97_{ADC}—

After section 97_{AD}, insert:

Exemption from duty—underlying stock for stock option

97_{ADA}. No stamp duty shall be payable in accordance with the provisions of section 97_{AB} (1) in respect of any sale or purchase of shares if the sale or purchase—

- (a) was made on behalf of a registered trader in the capacity of a registered trader; and
- (b) was of shares of a type in respect of which options are traded on the Australian Options Market.

Sales and purchases to be recorded by registered traders

97_{ADB}. (1) A registered trader shall, forthwith on a sale or purchase of shares in respect of which no stamp duty is payable under section 97_{ADA} being made by a dealer on behalf of the registered trader in the capacity of a registered trader, make a record of the sale or purchase showing—

- (a) the date of the sale or purchase;
- (b) the name of the dealer by whom the sale or purchase was effected;
- (c) the quantity and full description of the shares sold or purchased;
- (d) the purchase or selling price of each share and in total; and
- (e) in the case of the sale of shares, the date on which the shares were purchased.

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

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

*Stamp Duties (Amendment) 1987*SCHEDULE 4—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
AUSTRALIAN OPTIONS MARKET—*continued*

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

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

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

Returns to be lodged and duty paid

97ADC. (1) A registered trader shall not later than 7 days after the end of each month—

- (a) lodge with the Chief Commissioner a return, in a form approved by the Chief Commissioner, of sales and purchases details of which have been recorded in accordance with section 97ADB being—
 - (i) in the case of a sale of shares, those sales during the month which have occurred more than 3 months after the purchase of the shares; and
 - (ii) in the case of the purchase of shares, those shares which, during the month, have been held for more than 3 months from the date of their purchase; and
- (b) pay to the Chief Commissioner as stamp duty in respect of the sales and purchases included in the return, an amount calculated on the consideration for each such sale and each such purchase for which duty has not previously been paid—
 - (i) if the consideration is less than \$100, at the rate of 7 cents for every \$25 and also for any remaining fractional part of \$25; and

*Stamp Duties (Amendment) 1987*SCHEDULE 4—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE
AUSTRALIAN OPTIONS MARKET—*continued*

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

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

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

(3) A person who contravenes this section is liable to a fine not exceeding \$500.

SCHEDULE 5

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 35 (**Chief Commissioner to assess duty**)—

(a) Section 35—

Omit “Provided that nothing in this section shall affect the operation of section 25.”.

(b) Section 35 (2), (3)—

At the end of section 35, insert:

(2) If a statement under section 44A, 99C or 99E or a return is presented to the Chief Commissioner for assessment, the Chief Commissioner shall state whether the statement or return is liable to duty and if the Chief Commissioner is of the opinion that the statement or return is liable to duty or fine, the Chief Commissioner shall assess the duty or fine accordingly.

(3) Nothing in this section affects the operation of section 25 (Terms on which instruments may be stamped after execution) in relation to an instrument or statement or the operation of section 127C (Fines in respect of returns) in relation to a return.

Stamp Duties (Amendment) 1987

SCHEDULE 5—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(2) Section 37 (**Deficient duty may be recovered**)—

(a) Section 37 (1A)—

After section 37 (1), insert:

(1A) If it appears that the Chief Commissioner has assessed an insufficient amount of duty or fine in respect of an assessment under section 127B (Default assessment of stamp duty), the Chief Commissioner may at any time call upon the person liable to pay the duty the subject of the assessment to pay the amount which, in the opinion of the Chief Commissioner, was properly chargeable in respect of duty or fine, or both duty and fine, at the time the assessment was issued.

(b) Section 37 (2)—

Omit “The aforesaid amount”, insert instead “An amount payable under this section”.

(c) Section 37 (2) (a)—

Before “appeal”, insert “object or”.

(d) Section 37 (2) (b)—

Omit “so stamped”, insert instead “stamped under subsection (1)”.

(3) Section 43 (**Conveyances of, or agreements for, goods, wares or merchandise generally**)—

(a) Section 43 (1)—

Omit “An”, insert instead “A conveyance or”.

(b) Section 43 (1)—

Before “agreement” where secondly occurring, insert “conveyance or”.

(c) Section 43 (2)—

Omit “an”, insert instead “a conveyance or”.

*Stamp Duties (Amendment) 1987*SCHEDULE 5—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(d) Section 43 (3)—

Before “agreement”, insert “conveyance or”.

(4) Section 43A (**Goods, wares or merchandise included in or connected with a conveyance or agreement for the sale or conveyance of other property**)—

(a) Section 43A (1), definition of “arrangement”—

(i) After “means a”, insert “conveyance of goods, wares or merchandise or a”.

(ii) Omit “and includes”, insert instead “including”.

(b) Section 43A (1A), (2)—

Omit section 43A (2), insert instead:

(1A) In this section, a reference to a conveyance of goods, wares or merchandise is a reference to a conveyance of goods, wares or merchandise, not being a conveyance made in conformity with an agreement for the sale or conveyance of goods, wares or merchandise.

(2) If—

(a) one conveyance of property (being goods, wares or merchandise) and other property is made;

(b) one agreement for the sale or conveyance of property (being goods, wares or merchandise) and other property is made; or

*Stamp Duties (Amendment) 1987*SCHEDULE 5—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (c) one agreement is made with respect to property (being goods, wares or merchandise) and other property and part of the agreement is for the sale or conveyance of some or all of the other property,

the conveyance or the agreement shall, except in so far as the Chief Commissioner is satisfied that it would not be just and reasonable in the circumstances, be charged with ad valorem duty (to be paid by the person to whom the property is to be conveyed or by the purchaser or person to whom the property is agreed to be conveyed) at the rates specified in the Second Schedule under the heading "Conveyances of Any Property" on the whole of the property to which the conveyance or the agreement relates and shall be stamped accordingly.

- (c) Section 43A (3) (b)—

Omit the paragraph, insert instead:

- (b) at least one of the arrangements is—

(i) a conveyance; or

(ii) an agreement for the sale or conveyance,

of some or all of the other property,

- (d) Section 43A (3)—

Omit "the agreement, or one of the agreements, shall be charged with the same ad valorem duty (to be paid by)", insert instead "the conveyance or the agreement, or one of the conveyances or agreements, shall be charged with the same ad valorem duty (to be paid by the person to whom the property is conveyed or by)".

- (e) Section 43A (6), (7)—

Omit "agreement" wherever occurring, insert instead "instrument".

*Stamp Duties (Amendment) 1987*SCHEDULE 5—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(5) Section 43B (**Certain goods, wares or merchandise exempt from section 43A**)—

(a) Section 43B (2)—

Before “an agreement”, insert “a conveyance of goods, wares or merchandise or”.

(b) Section 43B (2)—

Before “the agreement” wherever occurring, insert “the conveyance of goods, wares or merchandise or”.

(6) Section 66E (**Conveyance between married couple**)—

Section 66E (2) (a)—

Omit the paragraph, insert instead:

(a) as a result of the conveyance, the property is held by a married couple as—

(i) joint tenants;

(ii) tenants in common in equal shares; or

(iii) tenants in common in shares, other than equal shares, where the shares are proportionate to the contributions of the parties towards the purchase and improvement of the property or are in such proportions (if any) as may be prescribed and have been created in such circumstances (if any) as may be prescribed;

Stamp Duties (Amendment) 1987

SCHEDULE 5—*continued*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(7) Section 74E (**Instrument to be made out**)—

(a) Section 74E (2) (b)—

Omit “, and stamp duty or duty of a like nature of an amount not less than the amount payable under subsection (1) in respect of such a hiring arrangement has not been paid or is not payable in accordance with the provisions of any law of the Commonwealth of Australia or of a Territory or of a State of the Commonwealth (other than New South Wales) on the hiring arrangement”.

(b) Section 74E (3) (a)—

Omit “or unless duty of an amount not less than the duty so payable has been paid in accordance with the provisions imposing duty of a like nature by any law of the Commonwealth of Australia or of a Territory or of a State of the Commonwealth”.

(c) Section 74E (3C)—

After section 74E (3B), insert:

(3C) In the case of a hiring arrangement to which subsection (2) or (3) applies, the Chief Commissioner shall credit in respect of the duty that would otherwise be payable an amount equal to the lesser of—

(a) the amount of the duty; or

(b) the amount of stamp duty (or duty of a like nature) paid or payable on the hiring arrangement in accordance with the provisions of any law of the Commonwealth, a Territory or another State.

(8) Section 74F (**Payment of duty on hiring arrangements by return**)—

(a) Section 74F (7)—

Omit “An”, insert instead “Subject to subsection (7A), an”.

(b) Section 74F (7) (b)—

Omit “subject to subsection (7A) of this section,”.

*Stamp Duties (Amendment) 1987*SCHEDULE 5—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(c) Section 74F (7A), (7AA)—

Omit section 74F (7A), insert instead:

(7A) If the total amount received during a calendar month in respect of hiring arrangements by an approved person (not being a member of a group) or a group of which an approved person is a member—

- (a) does not exceed \$6,000—no stamp duty as stamp duty on a hiring arrangement is payable by the approved person in respect of that calendar month;
- (b) does not exceed \$5,500—a return is not required to be lodged under subsection (7) by the approved person; or
- (c) exceeds \$5,500 but does not exceed \$6,000—a return is required to be lodged by the approved person even though no stamp duty as stamp duty on a hiring arrangement is payable by the approved person in respect of that calendar month.

(7AA) For the purposes of subsection (7A), a group is constituted in the same manner as under Subdivision 2 of Division 29.

(9) Section 96A (Duty on certain transfers of shares)—

Section 96A (2)—

Omit “if, under the law of the place in which the register is kept, the instrument of transfer is required to be retained in that place for a period of not less than 3 years from the date on which the corporation or company registers, records or enters the transfer”, insert instead:

but if—

- (d) under the law of the place in which the register is kept, there is no requirement for the instrument of transfer to be retained in that place for any period—subsection (2) of section 97 shall apply; or

*Stamp Duties (Amendment) 1987*SCHEDULE 5—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (e) under the law of the place in which the register is kept, the instrument of transfer is required to be retained in that place for a period of less than 3 years from the date on which the corporation or company registers, records or enters the transfer—subsection (2) of section 97 shall apply between the date of expiry of that period and the period of 3 years from the date on which the corporation or company registers, records or enters the transfer.

(10) Section 96B (**Share transfers on registers outside New South Wales**)—

Section 96B (1A)–(1C)—

After section 96B (1), insert:

(1A) A corporation or company is not required to include in a return lodged under subsection (1) any particulars or information concerning—

- (a) a transfer of shares—
- (i) executed in respect of shares which, at the time of execution of the transfer, were registered in a register of members kept in a prescribed place; and
 - (ii) which has, in accordance with the law of the prescribed place, been duly stamped or stamped not liable to, or exempt from, duty;
- (b) a transfer of shares effected by a member of a prescribed stock exchange, or a member of a stock exchange in a prescribed place, on the stock market of the stock exchange of which the member effecting the transfer is a member; or
- (c) a transfer of shares—
- (i) executed in respect of shares which, at the time of execution of the transfer, were registered in a register of members kept in a place outside New South Wales which has a stock exchange which is a prescribed stock exchange; and

*Stamp Duties (Amendment) 1987*SCHEDULE 5—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (ii) which would, if registered in a register of members kept in New South Wales, be liable to duty under paragraph (4), (5), (6), (7) or (8) under the heading "Transfer of Shares" in the Second Schedule.

(1B) A corporation or company is not required to lodge a return under subsection (1) if, at the time at which the return would otherwise be required to be lodged, the only transfers of shares registered, recorded or entered in the register of members are transfers to which subsection (1A) applies.

(1C) The first regulation made for the purposes of subsection (1A) shall be deemed to have taken effect on a day specified in the regulation that is not earlier than 13 October 1986.

(11) Section 127B—

Omit the section, insert instead:

Default assessment of stamp duty

127B. (1) If a person is required by or under this Act—

- (a) to lodge a return or statement with the Chief Commissioner and to pay duty to the Chief Commissioner at the time of lodgment of the return or statement or within the period within which the return or statement is required to be lodged; or
- (b) to cause an instrument to be duly stamped within a specified time after the date of execution of that instrument (other than an instrument in respect of which stamp duty is paid by way of return under this Act),

and—

- (c) the person who is required to lodge the return or statement or to cause an instrument to be duly stamped, fails or refuses to lodge the return or statement or to cause the instrument to be duly stamped as and when required by or under this Act; or

*Stamp Duties (Amendment) 1987*SCHEDULE 5—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (d) the Chief Commissioner is not satisfied with the return or statement lodged or the instrument produced for stamping,

the Chief Commissioner may cause an assessment to be made of the amount of duty which, in the opinion of the Chief Commissioner, should have been paid by the person if the person had lodged the return or statement or produced the instrument, or when the person lodged the return or statement or produced the instrument, as the case may be.

- (2) If an amount is assessed under subsection (1) in relation to a return, statement or instrument—

- (a) that amount shall be deemed to be the duty payable by the person in respect of the return, statement or instrument; and

- (b) without affecting the generality of paragraph (a), fines are payable—

(i) in the case of a return, under section 127C, in respect of that amount as if that amount had been payable as duty at the time the person was required by or under this Act to lodge the return;

(ii) in the case of a statement, under section 25, in respect of that amount as if that amount had been payable as duty from the deemed date of first execution of the statement; or

(iii) in the case of an instrument, under section 25, in respect of that amount as if that amount had been payable from the date of first execution of that instrument.

- (3) Subsection (2) shall not apply if—

- (a) the amount of duty is shown to be erroneous upon an objection or appeal under section 124; or

Stamp Duties (Amendment) 1987

SCHEDULE 5—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(b) the Chief Commissioner makes a further assessment under this section in relation to the return, statement or instrument.

(4) If an assessment has been made under subsection (1) that includes any duty that has not been paid to the Chief Commissioner, the Chief Commissioner shall cause notice in writing to be given to the person who is required to lodge the return or statement or to produce the instrument.

(5) A notice required to be given under subsection (4) shall specify—

- (a) the name of the person in respect of whom the assessment was made;
- (b) the details in respect of which the assessment was made, including the period in the case of a return;
- (c) the amount deemed by subsection (2) to be the duty payable to the Chief Commissioner; and
- (d) the date on or before which the duty is to be paid to the Chief Commissioner.

(6) A notice required to be given under subsection (4) may, without prejudice to any other method of giving notice, be given by post, and shall be properly addressed if it is addressed to the person in respect of whom the assessment was made at the last address of that person known to the Chief Commissioner.

(7) The amount of duty specified in a notice given under subsection (4) shall be paid on or before the date specified in the notice pursuant to subsection (5) (d) by the person who failed or refused to lodge the return or statement or produce the instrument for stamping or marking or with whose return, statement or instrument the Chief Commissioner is not satisfied.

(8) A person who contravenes subsection (7) is guilty of an offence and liable to a penalty not exceeding \$2,000.

*Stamp Duties (Amendment) 1987*SCHEDULE 5—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(9) If the amount of duty specified in a notice given under subsection (4) includes an amount that has been paid before the time the assessment was made, nothing in this section requires the amount so paid to be paid again.

(10) If, in relation to a return, statement or instrument, the Supreme Court in an appeal under section 124 assesses a different amount of duty from that assessed by the Chief Commissioner under this section, the amount assessed by the Court shall be deemed to have been assessed by the Chief Commissioner under this section, and the provisions of this Act (section 124 and subsection (3) (a) excepted) shall apply accordingly.

(11) If an assessment under subsection (1) has been made in respect of an instrument required to be duly stamped under this Act (other than an instrument in respect of which stamp duty is paid by way of return) and the instrument has not been produced to the Chief Commissioner for stamping, the original instrument shall, in the absence of evidence to the contrary, be deemed to have been executed on a date which, in the opinion of the Chief Commissioner, was the date of first execution of the instrument.

(12) If an instrument the subject of an assessment under subsection (1) is produced for stamping after the payment of the duty assessed and any fine which may be payable, the instrument may be stamped with the amount of duty so paid.

(12) Section 129A (**Chief Commissioner may obtain information**)—

Section 129A (3)—

Omit the subsection.

(13) Section 129B (**Offences**)—

Section 129B (1A)—

Before “the charge”, insert “an order in respect of the offence is made under section 75B (2) of the Justices Act 1902 or”.

*Stamp Duties (Amendment) 1987*SCHEDULE 5—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(14) Section 144A—

After section 144, insert:

Savings, transitional and other provisions

144A. The Tenth Schedule has effect.

(15) Second Schedule—

- (a) Second Schedule, under the heading “HIRING ARRANGEMENT”—

After the matter “\$10,000” in the column headed “Amount of Duty”, insert “in respect of any one hiring arrangement, but only if the hiring arrangement precludes the inclusion within it of other goods in replacement of, or in addition to, the original goods to which it relates (whether the other goods are of a class the same as, or of a class different from, the original goods)”.

- (b) Second Schedule, under the heading “GENERAL EXEMPTIONS FROM STAMP DUTY UNDER PART III”—

After paragraph (30), insert:

(31) In the case of an offshore banking unit (being a body or organisation, or part of a body or organisation, which is exempt from the obligation imposed under section 221YL of the Income Tax Assessment Act 1936 of the Commonwealth to make a deduction from interest paid or payable by the body or organisation to persons not resident in Australia, or which is prescribed, or is of a class or description of bodies or organisations prescribed, for the purposes of this paragraph)—

- (a) a cheque drawn or given by or on behalf of the offshore banking unit;
- (b) a loan security to which the offshore banking unit is a party and which would not be liable to duty if it were executed outside New South Wales (not being a mortgage referred to in section 84E or a debenture);

*Stamp Duties (Amendment) 1987*SCHEDULE 5—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (c) a guarantee of which the offshore banking unit is the guarantor;
- (d) an instrument, or an instrument of a class or description, prescribed for the purposes of this paragraph,

but only in so far as the cheque, loan security, guarantee or instrument is drawn, given or executed, as the case may be, for the purpose of those functions of the offshore banking unit which caused it to be exempt from the obligation imposed under section 221YL of the Income Tax Assessment Act 1936 of the Commonwealth.

(16) Tenth Schedule—

After the Ninth Schedule, insert:

TENTH SCHEDULE

(Sec. 144A)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

PART 1

STAMP DUTIES (AMENDMENT) ACT 1987

Loan securities

1. The amendments made to this Act by Schedule 8 to, and section 4 of, the Stamp Duties (Further Amendment) Act 1986 and the amendments made to this Act by Schedule 3 to, and section 4 of, the Stamp Duties (Amendment) Act 1987 do not apply to a loan security executed before 1 January 1987.

Acquisitions of company and unit trust interests

2. Division 30 of Part III does not apply to or in respect of—

- (a) an interest or land use entitlement acquired in a landholder, being a private company, on or after 21 November 1986 if it was acquired pursuant to an agreement entered into before that date;
or

Stamp Duties (Amendment) 1987

SCHEDULE 5—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

- (b) an interest or land use entitlement acquired in a landholder, being a private unit trust scheme, on or after the date of assent to the Stamp Duties (Amendment) Act 1987 if it was acquired pursuant to an agreement entered into before that date.
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SCHEDULE 6

(Sec. 5)

SAVINGS AND TRANSITIONAL PROVISIONS

Transactions otherwise than by dutiable instruments

1. (1) In the case of a transaction to which Division 3A of Part III of the Principal Act, as amended by this Act, applies which occurred before the date of assent to this Act, the time within which the statement required to be lodged under section 44A (3) of the Principal Act, as so amended, shall be lodged is 2 months after that date.

(2) Notwithstanding section 44A (6) of the Principal Act, as amended by this Act, in the case of a transaction to which Division 3A of Part III of the Principal Act, as so amended, applies which occurred before the date of assent to this Act, section 25 of the Principal Act applies to and in respect of any statement required to be lodged under section 44A (1) or (2) of the Principal Act, as so amended, as if a reference in section 25 to the date on which an instrument is first executed were a reference to the date of assent to this Act.

Payment of duty on hiring arrangements by return

2. Notwithstanding section 2 (3), the grouping provisions in section 74F (7A) and (7AA) of the Principal Act, as amended by this Act, shall not apply before the date of assent to this Act.

Stamp Duties (Amendment) 1987

SCHEDULE 6—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

Transfer of shares—exempt share registers

3. Until such time as the first regulation is made for the purposes of section 96B (1A) of the Principal Act, as amended by this Act—

- (a) the prescribed places for the purpose of that subsection are Victoria, South Australia, Western Australia, Tasmania, Queensland, the Australian Capital Territory and the United Kingdom and Northern Ireland; and
- (b) the New Zealand stock exchange is a prescribed stock exchange.