

STAMP DUTIES (FURTHER AMENDMENT) ACT 1990 No. 66

NEW SOUTH WALES



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STAMP DUTIES (FURTHER AMENDMENT) ACT 1998 No. 66

NEW SOUTH WALES



Act No. 66, 1990

An Act to amend the Stamp Duties Act 1920 to abolish stamp duty on cheques, to increase financial institutions duty and to make further provision concerning the First Home Purchase Scheme. [Assented to 30 October 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Stamp Duties (Further Amendment) Act 1990.

Commencement

2. (1) This Act is taken to have commenced on 1 October 1990, except as provided by this section.
(2) Schedule 3 (2) commences on a day to be appointed by proclamation.
(3) Section 3, in its application to a provision of Schedules. 1–3, commences or is to be taken to have commenced on the day on which the provision commences.

Amendment of Stamp Duties Act 1920 No, 47

3. The Stamp Duties Act 1920 is amended as set out in Schedules 1–3.

Repeal of certain regulations

4. Regulations 47-53 of the Stamp Duties Regulations 1934 are repealed.

**SCHEDULE 1 - AMENDMENTS RELATING TO ABOLITION OF
STAMP DUTY ON CHEQUES**

(Sec. 3)

- (1) Part 3, Division 5 (**Bills of exchange and promissory notes**):

Omit the Division

- (2) Second Schedule (**Stamp Duties and Exemptions**):

Omit the matter relating to BILL OF EXCHANGE,
PROMISSORY NOTE AND CHEQUE

SCHEDULE 1 - AMENDMENTS RELATING TO ABOLITION
OF STAMP DUTY ON CHEQUES - *continued*

(3) Tenth Schedule (**Savings, transitional and other provisions**):

After Part 5, insert:

**PART 6 - STAMP DUTIES (FURTHER AMENDMENT)
ACT 1990**

Definition of cheque

17. In this Part, "**cheque**" has the same meaning as in the Cheques and Payment Orders Act 1986 of the Commonwealth and includes a payment order within the meaning of that Act and a banker's draft.

Refund of duty paid on cheque forms

18. (1) A person may apply to the Chief Commissioner for a refund of stamp duty paid before 1 October 1990 by the person in respect of a document intended for use as a cheque but which has not been drawn as a cheque before that date.

(2) An application must be made by means of the approved form.

(3) An application must be made before 1 July 1991.

(4) The Chief Commissioner must, in respect of an application, make a refund of duty unless the Chief Commissioner is satisfied that no refund is payable.

(5) Section 15 and Regulations 26–32A of the Stamp Duties Regulations 1934 do not apply to or in respect of a refund under this clause.

Use of certain cheques from 1 October 1990

19. A cheque on which stamp duty is expressed to have been paid may be drawn or otherwise dealt with on or after 1 October 1990 even though no such duty has been paid or duty paid has been refunded.

SCHEDULE 2 - AMENDMENTS RELATING TO FINANCIAL INSTITUTIONS DUTY

(Sec. 3)

Second Schedule (Stamp Duties and Exemptions):

From the matter relating to RECEIPTS RETURN:

- (a) Omit "0.03 per centum", insert instead "0.06 per centum".
- (b) Omit "600,00", insert instead "1,200.00".

SCHEDULE 3 - AMENDMENTS RELATING TO THE FIRST HOME PURCHASE SCHEME

(Sec. 3)

(1) **Schedule 2A (First Home Purchase Scheme):**

- (a) After the heading to the Schedule, insert:

PART 1 - CONTRACTS EXECUTED ON OR
AFTER 23 SEPTEMBER 1987 AND BEFORE
1 OCTOBER 1990 AND ASSOCIATED MORTGAGES

- (b) In clause 1, after "(instead of at the time of purchase)", insert "or to pay the stamp duty at a discounted rate".
- (c) In clause 2, after "23 September 1987", insert "and before 1 October 1990".
- (d) From clause 16, omit "Schedule", insert instead "Part".
- (e) At the end of the Schedule, insert:

PART 2 - CONTRACTS EXCHANGED ON OR
AFTER 1 OCTOBER 1990 AND ASSOCIATED
MORTGAGES

The nature of the scheme

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

SCHEDULE 3 - AMENDMENTS RELATING TO THE FIRST
HOME PURCHASE SCHEME - *continued*

Commencement

18. Contracts exchanged on or after 1 October 1998 and mortgages over land the subject of those contracts are eligible for consideration under the scheme.

Eligible persons - generally

19. (1) A single person may apply under the scheme but will only be eligible once as a single person.

(2) A couple may apply under the scheme as long as one of them has not owned a home in New South Wales solely or with someone else.

(3) A person who owns or has owned vacant land is not excluded.

Eligible persons - net taxable income

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

(2) In the case of a couple, with or without dependants, the couple's combined net taxable income must not exceed \$48,000 for the tax year prior to the date of the application.

(3) In the case of a single person with one or more dependants, the person's net taxable income must not exceed \$48,000 for the tax year prior to the date of the application.

(4) In the case of a single person with no dependants, the person's net taxable income must not exceed \$27,000 for the tax year prior to the date of the application.

(5) In this clause, "net taxable income" means the net taxable income (including taxable capital gains) determined in accordance with the Income Tax Assessment Act 1936 of the Commonwealth.

Ineligible persons

21. (1) Companies, partnerships, and persons in their capacity as trustees, are not eligible.

SCHEDULE 3 - AMENDMENTS RELATING TO THE FIRST
HOME PURCHASE SCHEME - *continued*

(2) A person is not eligible if any stamp duty remains to be paid by the person in connection with a previous application approved under the scheme contained in this Part or Part 1 or the first home purchase scheme which operated before 23 September 1987 under the administration of the Chief Commissioner.

Eligible contracts

22. (1) The contract must be for the purchase of a first home or for the purchase of a vacant block of residential land intended to be used as the site of a first home.

(2) The total consideration payable under the contract (that is, the amount paid for the house or unit, or the land and the construction of a house or unit on the land, and any furnishings and other items acquired under the contract or any related document) must not be more than:

- (a) \$155,000 if the property is located in the Metropolitan Area and has a private dwelling built on it; or
- (b) \$145,000 if the property is located elsewhere than in the Metropolitan Area and has a private dwelling built on it; or
- (c) \$80,000 if the property is located in the Metropolitan Area and comprises a vacant block of residential land; or
- (d) \$70,000 if the property is located elsewhere than in the Metropolitan Area and comprises a vacant block of residential land.

(3) The amount paid must be the full market value. Wholly or partially gifted property is not eligible.

(4) The regulations may vary the amounts specified for the purposes of this clause.

(5) In this clause, "**Metropolitan Area**" means the following areas:

SCHEDULE 3 - AMENDMENTS RELATING TO THE FIRST HOME PURCHASE SCHEME - *continued*

County of Cumberland	City of Gosford
Shire of Wollondilly	Shire of Wyong
City of Wollongong	City of Blue Mountains
Municipality of Shellharbour	

Ineligible contracts

23. (1) A contract is not eligible if it involves the acquisition of a business or business premises. However, a contract for the purchase of a farming property on which there is a private dwelling is not excluded.

(2) A contract for the purchase of a holiday home is not eligible.

(3) A contract under which there are more than 2 purchasers is not eligible.

Other qualifications

24. (1) The home must be occupied or intended to be occupied by the purchaser or purchasers on or before settlement, or within a reasonable time after settlement, as the principal place of residence.

(2) No part of the property purchased may be rented or leased while any instalment of stamp duty remains to be paid.

Eligible mortgages

25. (1) A mortgage is eligible if it is given to assist the financing of a purchase under a contract which is eligible under the scheme.

(2) The mortgage must be over the property purchased.

(3) In the case of a property which has a private dwelling built on it, the amount secured must not be more than the amount of the total consideration permitted under clause 22 (2) (a) or (b), as the case requires.

(4) In the case of a property which comprises a vacant block of residential land, the amount secured must not be

SCHEDULE 3 - AMENDMENTS RELATING TO THE FIRST
HOME PURCHASE SCHEME - *continued*

more than the amount of the total consideration permitted under clause 22 (2) (c) or (d), as the case requires, unless the amount secured under the mortgage includes provision for the building of a private dwelling on the property. In such a case, the amount secured must not be more than the amount of the total consideration permitted under clause 22 (2) (a) or (b), as the case requires.

Making of applications

26. (1) An application is made to the Chief Commissioner by completing a statutory declaration in a form approved by the Chief Commissioner.

(2) Unless the applicant intends (or the applicants intend) to pay the duty at the discounted rate in accordance with clause 28, the application must be accompanied by an undertaking in a form approved by the Chief Commissioner to pay the duty on the contract by 5 annual instalments, the amounts of which are, as nearly as possible, to be equal.

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

Determination of applications

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

Stamping of documents if application is approved

28. (1) If an application concerning an eligible contract is approved, the purchaser is (or the purchasers are) entitled to a 30% discount of the duty otherwise payable in respect of the contract. However, this entitlement ceases if the discounted amount of duty is not paid within 2 months after the date of exchange of the contract.

SCHEDULE 3 - AMENDMENTS RELATING TO THE FIRST HOME PURCHASE SCHEME - *continued*

(2) If the discounted amount of duty is paid in accordance with this clause, the contract will be stamped as if the full amount of duty had been paid.

(3) Otherwise, if an application concerning an eligible contract is approved, the contract will be stamped as if the full amount of duty had been paid and the duty must be paid in instalments in accordance with the undertaking.

(4) The associated transfer or conveyance will be stamped as if the full amount of the duty had been paid.

(5) The amount of any duty payable on a duplicate contract and any associated transfer or conveyance may be added to the amount to be paid by instalments.

Payment of instalments

29. (1) Where instalments of duty are to be paid in accordance with the undertaking, the first instalment is to be paid by a date which is 1 year after the date of exchange of the contract.

(2) Although instalments are payable annually, payments may be made at more frequent intervals.

Payment of interest

30. (1) No interest is payable unless an instalment is overdue. An instalment is overdue if it is not paid within 14 days after the date fixed for its payment in the undertaking.

(2) Interest of 15% per annum (calculated at daily rests) is payable on an overdue instalment.

(3) A person having the benefit of the scheme is not liable, in that capacity, for any fine under this Act or any interest other than as provided by this clause.

Overdue instalments

31. As well as attracting interest, if an instalment is overdue for more than 3 months, the Chief Commissioner (or the Chief Commissioner's agent) may sue the defaulter

SCHEDULE 3 - AMENDMENTS RELATING TO THE FIRST
HOME PURCHASE SCHEME - *continued*

to recover, as a debt, the whole of the outstanding balance of the duty and any accrued interest.

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

32. (1) If the home or land is sold, leased (wholly or in part) or otherwise disposed of, or if for some other reason the home ceases to be the principal place of residence of the person or both of the persons having the benefit of the scheme:

- (a) any entitlement to a discount under clause 36 ceases immediately the home or land is sold, leased or otherwise disposed of or the home so ceases to be the principal place of residence; and
- (b) the whole of the outstanding balance of the duty and any accrued interest becomes immediately payable.

(2) The Chief Commissioner (or the Chief Commissioner's agent) may sue the person or persons owing the duty and any interest to recover, as a debt, the amount involved.

Offence

33. A person who makes an application under the scheme knowing:

- (a) that he or she is not an eligible person; or
- (b) that the contract is not an eligible contract; or
- (c) that the mortgage is not an eligible mortgage,

is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 3 months, or both.

SCHEDULE 3 - AMENDMENTS RELATING TO THE FIRST HOME PURCHASE SCHEME - *continued*

Definitions

34. In this Part:

“**contract**” means an agreement for sale or conveyance or a conveyance;

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

“**home**” means a private dwelling and includes a private dwelling which is a company title dwelling and a farming property on which a private dwelling

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

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

After Part 2, insert:

PART 3 - DISCOUNT FOR FULL PAYMENT OF REMAINING DUTY

Application of this Part

35. This Part applies to a person or persons having the benefit of the scheme set out in Part 1 or 2 or the first home purchase scheme which operated before 23 September 1987 under the administration of the Chief Commissioner.

Discount for full payment of remaining duty

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

SCHEDULE 3 - AMENDMENTS RELATING TO THE FIRST
HOME PURCHASE SCHEME - *continued*

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

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

(3) Schedule 2C (**Flood-prone housing scheme**):

In clause 5, before “Schedule 2A”, insert “Part 1 of”.

*[Minister's second reading speech made in
Legislative Assembly on 11 October 1990
Legislative Council on 24 October 1990]*

BY AUTHORITY
R. MILLIGAN, ACTING GOVERNMENT PRINTER - 1990-