

STAMP DUTIES (MISCELLANEOUS AMENDMENTS) ACT 1990
No. 95

NEW SOUTH WALES



Act No. 95, 1990

An Act to amend the Stamp Duties Act 1920 to make further provision with respect to the imposition of stamp duties and to make consequential amendments to certain other Acts. [Assented to 7 December 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Stamp Duties (Miscellaneous Amendments) Act 1990.

Commencement

2. (1) This Act commences on 1 January 1991, except as provided by this section.

(2) Section 3 in its application to a provision of Schedules 1-3 commences or is taken to have commenced on the day on which the provision commences or is taken to have commenced.

(3) Schedule 1 (18) is taken to have commenced on 1 September 1990.

(4) Schedule 1 (22) commences on a day to be appointed by proclamation.

(5) Schedule 1 (24) is taken to have commenced on 15 June 1990.

(6) Schedule 1 (35) is taken to have commenced on 5 April 1990.

(7) Schedule 1 (37) is taken to have commenced on 13 February 1990.

(8) Schedule 2 is taken to have commenced on 11 September 1990.

Amendment of Stamp Duties Act 1920 No. 47

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

Amendment of Stamp Duties (Amendment) Act 1988 No. 130

4. The Stamp Duties (Amendment) Act 1988 is amended by omitting Schedule 5 (1), (13) and (16) (e).

Amendment of Land Tax Management Act 1956 No. 26

5. The Land Tax Management Act 1956 is amended as set out in Schedule 4.

Explanatory notes

6. Matter appearing under the heading "Explanatory note" in a Schedule does not form part of this Act.

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS

(Sec. 3)

Amendment: instruments relating to superannuation trusts

(1) Section 3 (**Interpretation**):

- (a) From section 3 (1), omit the definition of "Approved superannuation scheme".
- (b) Insert in section 3 (1) in alphabetical order:

"Complying approved deposit fund" means a fund which is a complying ADF within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth.

"Complying pooled superannuation trust" means a trust which is a pooled superannuation trust within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth.

"Complying superannuation fund" means a fund which is a complying superannuation fund within the meaning of section 267 of the Income Tax Assessment Act 1936 of the Commonwealth.

(2) Second Schedule - Stamp Duties and Exemptions

- (a) Omit the matter relating to subparagraphs (j), (j1) and (k) of paragraph (4) of the matter appearing under the heading CONVEYANCES OF ANY PROPERTY, insert instead:

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

- (j) An instrument constituting or amending the provisions of a complying superannuation fund, a complying approved deposit fund or a complying pooled superannuation trust or an instrument which contains or amends provisions relating to a superannuation fund, a deposit fund or a pooled superannuation trust, being an instrument which causes or which, in the opinion of the trustees, will cause the fund or trust to be a complying superannuation fund, a complying approved deposit fund or a complying pooled superannuation trust 20.00 The parties to the instrument.
(An adhesive stamp may be used.)
- (b) After paragraph (3) of the matter appearing under the heading DECLARATION OF TRUST, insert:
- (4) An instrument constituting or amending the provisions of a complying superannuation fund, a complying approved deposit fund or a complying pooled superannuation trust or an

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

instrument which contains or amends provisions relating to a superannuation fund, a deposit fund or a pooled superannuation trust, being an instrument which causes or which, in the opinion of the trustees, will cause the fund or trust to be a complying superannuation fund, a complying approved deposit fund or a complying pooled superannuation trust 20.00 The person declaring the trust.
(An adhesive stamp may be used.)

- (c) After the matter relating to REPLICA, insert:
SUPERANNUATION FUND INSTRUMENTS:

An instrument whereby an employer becomes a participant in or a contributor to a complying superannuation fund or a superannuation fund which, in the opinion of the trustees, will become a complying superannuation fund within 12 months after the employer becomes a participant or contributor in the fund 20.00 The parties to the instrument.
(An adhesive stamp may be used.)

Explanatory note - items (1) and (2)

Item (1), in so far as it omits the definition of "approved superannuation scheme" in section 3 (1), removes a definition which, because of changes

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

made to Commonwealth legislation governing superannuation, is now outdated.

Items (1) and (2) (a) and (b) will in most cases reduce, from \$200 to \$20, the concessional duty payable on an instrument establishing or amending a superannuation fund which qualifies for concessional tax treatment under the Income Tax Assessment Act 1936 of the Commonwealth and the Occupational Superannuation Standards Act 1987 of the Commonwealth. The duty of \$20 may be affixed by way of adhesive stamp.

The amendments made by these items, in so far as they apply to an instrument having the sole purpose of amending an approved superannuation scheme and to which an adhesive stamp is affixed, are taken to have had effect from 1 May 1990, being the day on which the Premier and Treasurer issued a Variation to Statute approving this concession.

Item (2) (c) will enable the same concession to be granted to deeds of adoption or deeds of adherence (that is, instruments whereby an employer is admitted to a master superannuation fund). This concession is to apply from 1 January 1991.

Amendment: transfer of convertible notes in a unit trust

(3) Section 3 (**Interpretation**):

In the definition of "Corporate debt security" in section 3

(1):

- (a) after "or society" where firstly occurring, insert "any convertible note issued by a company or any convertible note in a unit trust scheme issued by the trustee of a unit trust scheme";
- (b) omit "or society" where secondly occurring, insert instead "society or unit trust scheme".

Explanatory note - item (3)

The Act provides an exemption from duty for the transfer of a corporate debt security which includes a convertible note in a corporation but does not include a convertible note in a unit trust. The transfer of these notes is therefore liable to the conveyance rate of duty. Commercially, convertible notes are considered to be a marketable security. As the transfer of convertible notes in a corporation is exempt from duty, it is considered inequitable to continue to levy duty on the transfer of convertible notes in unit trusts.

Item (3) will provide an exemption from duty for the conveyance of convertible notes in a unit trust by extending the definition of "corporate debt security".

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

Amendment: increase in minimum duties

(4) Section 4A:

After section 4, insert:

Minimum amount of duty

4A (1) Despite any other provision of this Act or the regulations, if the amount of duty chargeable under this Act in respect of an instrument or transaction would, but for this section, be less than \$2, the amount of duty chargeable is \$2.

(2) This section does not apply to or in respect of Division 24 or 29 of Part 3.

(5) Section 41 (**Agreements for sale or conveyance to be chargeable as conveyances etc.**):

From section 41 (4) (a), omit "one dollar" wherever occurring, insert instead "\$2".

(6) Section 73 (**Certain conveyances not chargeable with ad valorem duty**):

From section 73 (2A) and (2AD), omit "1 dollar" wherever occurring, insert instead "\$2".

(7) Second Schedule - Stamp Duties and Exemptions:

(a) From the column headed "Amount of Duty":

(i) omit "0.50" wherever occurring, insert instead "2.00";

(ii) omit "1.00" wherever occurring, insert instead "2.00".

(b) Omit the matter relating to **DUPLICATE OR COUNTERPART** of any instrument chargeable with any duty, insert instead:

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

DUPLICATE OR The person
COUNTERPART of any chargeable on
instrument chargeable with any the original
duty - 2.00 instrument.

- (c) Omit paragraph (3) of the matter appearing under the heading POLICIES OF LIFE INSURANCE.

Explanatory note - items (4)-(7)

The amendments made by these items increase the minimum amount of duty chargeable in respect of an instrument or transaction to \$2. The amendments do not apply in respect of insurance chargeable under Division 24, or financial institutions duty chargeable under Division 29, of Part 3.

Amendment: time for recovery of fines and penalties

- (8) Section 13 (**Recovery of fines**):

After section 13 (2), insert:

(2A) No statute of limitations bars or affects any action or remedy for the recovery of a fine incurred or penalty imposed under this Act.

Explanatory note - item (8)

The Limitation Act 1969 does not impose any limit on the time within which action may be taken by the Crown to recover a tax or duty, or interest on a tax or duty. There is, therefore, no time limit on the recovery of stamp duty. Action for the recovery of a fine incurred or penalty imposed under the Act is, however, subject to a limitation period of 2 years. The purpose of this item is to remove that limitation period.

Amendment: production of instruments in court

- (9) Section 29 (**Inadmissibility of unstamped and other instruments**):

After section 29 (3) insert:

(4) Sections 27 and 28 and this section do not apply to an instrument tendered as evidence on behalf of a party (not being a person who is primarily liable to duty in respect of the instrument) if the court is satisfied:

- (a) that the party has informed, or will in accordance with arrangements approved by the court inform, the Chief Commissioner of the name of the person

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

primarily liable to duty in respect of the instrument;
and

- (b) that the party will, in accordance with arrangements approved by the court, lodge the instrument or a copy of the instrument with the Chief Commissioner.

Explanatory note - item (9)

The Act provides that an instrument shall not be admitted as evidence in any court of civil judicature unless it is duly stamped and provides a mechanism for payment of duty if it has not been so stamped. Instances arise where a person not liable to duty seeks to produce as evidence in court an instrument which has not been stamped. The court will accept the document as evidence if an undertaking is given for the duty to be paid.

It is considered inappropriate to recover any duty outstanding on an instrument from a person not liable to such duty merely to allow production of the document in court particularly, for example, if the proceedings are against the person primarily liable to duty.

Item (9) amends section 29 to provide that if, in any proceedings, a person who is not primarily liable to duty seeks to have an unstamped or insufficiently stamped instrument admitted as evidence, that instrument may be admitted if satisfactory arrangements have been or are made to lodge the instrument or a copy of the instrument with the Chief Commissioner and inform the Chief Commissioner of the name of the person primarily liable.

Amendment: variation instruments

- (10) Section 39:

After section 38C, insert:

Variation instruments

39. (1) An instrument which the Chief Commissioner is satisfied:

- (a) is executed in order to vary or replace an earlier instrument; and
(b) would not have caused a greater amount of duty to be chargeable if the earlier instrument had been varied or replaced by the later instrument before the earlier instrument became chargeable with duty,

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

is subject to a credit of the amount of duty paid in respect of the earlier instrument, except as provided by subsection (2).

(2) The minimum amount of duty payable in respect of any such instrument is \$10.

(3) This section does not apply to or in respect of a loan security (within the meaning of section 83).

(11) Section 78G (**Lease substantially in conformity with earlier lease**):

Omit the section.

Explanatory note - items (10) and (11)

It currently appears that variations to original instruments stamped with ad valorem duty may also be liable to the same ad valorem duty although the variation would not operate so as to increase the duty chargeable on the original instrument.

Item (10) will allow a credit to be given for the duty paid on the original instrument, subject to payment of a minimum duty of \$10 on the variation or replacement instrument.

Item (11) omits section 78G which made an identical provision in respect of leases.

Amendment: unit trust schemes

(12) Section 3 (**Interpretation**):

(a) Section 3 (1), definition of "Marketable security":

(i) in paragraph (b), after "not;", insert "and".

(ii) from paragraph (b1), omit "security and", insert instead "security".

(iii) omit paragraph (c).

(b) Omit section 3 (2).

(13) Section 44 (**Transactions to which this Division applies**):

(a) After section 44 (1), insert:

(1 A) This Division applies to a transaction which, on or after 1 January 1991, causes or results in a change in the

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

beneficial ownership of an estate or interest in units in a unit trust scheme, being units which are:

- (a) registered on a register kept in New South Wales; or
 - (b) registered on a register kept outside New South Wales, if the manager of the unit trust scheme is a company incorporated in New South Wales or a person resident in New South Wales.
- (b) From section 44 (2), omit "subsection (1)", insert instead "this section".
- (c) After section 44 (2) insert:
- (2A) If a transaction to which this Division applies by virtue of subsection (1A) also causes or results in a change in the beneficial ownership of an estate or interest specified in subsection (1), this Division does not apply in relation to that change.

(14) Section **44A (Payment of duty on statements in absence of dutiable instruments):**

- (a) After section 4 4A insert:
- (2A) A person, being a party to a transaction to which this Division applies by virtue of section 44 (1A) which is not effected or evidenced by an instrument chargeable with ad valorem duty in accordance with section 91, shall, if the person would have been liable to pay such duty in respect of the transaction had such an instrument been executed, lodge with the Chief Commissioner a statement in respect of the transaction.
- (2B) A person is not required to lodge a statement under subsection (2) or (2A) in respect of a transaction which causes or results in a change in the beneficial ownership of an estate or interest in shares or units in a unit trust scheme or in land situated in New South Wales as a consequence of a transfer of units in a unit trust scheme:
- (a) in respect of which stamp duty of not less than an amount, that but for this paragraph, would be

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

chargeable under this section is paid in a place outside New South Wales; or

(b) which is exempt from duty in a place outside New South Wales.

(b) In section 44A (5), after "subsection (1)", insert "or (2A)".

(15) Part 3, Division 25A:

After section 89B, insert:

Division 25A - Transfer of units in unit trust schemes

Definitions

90. (1) In this Division, a reference to a transfer is a reference to a conveyance or an agreement to convey and the provisions of this Act (including sections 41 (5) and 73) apply accordingly.

(2) In this Division:

"manager" means the manager of a unit trust scheme and, if there is no manager, the trustee of the unit trust scheme.

Duty on certain transfers of units in unit trust schemes

91. (1) Duty is payable under this Act by the transferee on a transfer of units in a unit trust scheme, being units which are registered on a register kept in New South Wales.

(2) Duty is payable under this Act by the transferee on a transfer of units in a unit trust scheme, being units which are not registered on a register kept in New South Wales as referred to in subsection (1), if the manager of the unit trust scheme is a company incorporated in New South Wales or a person resident in New South Wales.

(3) The duty is payable at the rate of 6 cents for every \$10 or part thereof of the consideration in money or money's worth in the case of a sale for a consideration of not less than the unencumbered value of the units or, in any other case, of the unencumbered value of the units.

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

Prohibition on registration of transfers etc.

92. The trustee or manager of a unit trust scheme must not register, or otherwise give effect to, a transfer of units in a unit trust scheme on which duty is payable under this Act unless:

- (a) a transfer or an instrument effecting or evidencing the transfer is duly executed and delivered to the trustee or manager; and
- (b) the transfer or instrument is duly stamped under this Act.

Maximum penalty: 50 penalty units plus an amount equal to double the amount of duty that would have been payable if the appropriate transfer or instrument had been executed and duly stamped under this Act.

Effect of payment of duty in a place outside New South Wales

93. (1) If duty is, in a place outside New South Wales, paid on a transfer of units in a unit trust scheme (being a transfer on which duty is payable under this Act) and the amount of duty so paid

- (a) is equal to or greater than the amount of duty that, but for this paragraph, would be payable under section 91 - no duty is so payable; or
- (b) is less than the amount of duty that, but for this paragraph, would be payable under section 91 - the amount of duty payable under that section is an amount equal to the difference between the amount so paid and the amount that, but for this paragraph, would be payable under section 91.

(2) If the transfer is exempt from duty in a place outside New South Wales, no duty is payable under this Act on the transfer.

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

Concessional rates of duty

94. (1) This section applies to:

- (a) a transfer of units in a unit trust scheme without valuable consideration to the person beneficially entitled to the units under and in conformity with the trusts contained in a conveyance, declaration of trust or other instrument on which ad valorem stamp duty imposed by an Act in force at the time of its execution has been paid or which, by an Act so in force, was exempt from stamp duty but only to the extent that the units are any one or more of the following:
 - (i) the same units as, at the time of the execution of the instrument creating the trusts, were held or to be held by the trustees upon those trusts and were units in respect of which that ad valorem duty was paid or that exemption applied;
 - (ii) units that the Chief Commissioner is satisfied represent 'the proceeds of re-investment of units referred to in subparagraph (i);
 - (iii) bonus units issued by reason of a holding of units referred to in subparagraph (i) or (ii); and
- (b) a transfer of units in a unit trust scheme without valuable consideration to the person beneficially entitled to the units under and in conformity with the trusts contained in a will or arising on intestacy and, in either case, in respect of units on which death duty or duty under an Act imposing duties on the estates of deceased persons has been paid or which, by such an Act, were exempt from death duty or in respect of which no death duty is, by virtue of such an Act, chargeable; and
- (c) a transfer of units in a unit trust scheme not made for valuable consideration and made to a

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

beneficiary by a trustee, being a transfer of units the subject of a trust for sale contained in a will and in respect of units on which the death duty or duty under an Act imposing duties on the estates of deceased persons has been paid or which, by such an Act, are exempt from death duty or in respect of which no death duty is, by virtue of such an Act, chargeable.

(2) The duty payable on a transfer to which this section applies is duty payable at the rate specified in section 91 or \$10, whichever is the lower.

(16) Section 95AA:

After section 95, insert:

Definition of marketable securities for the purposes of this Division

95AA. In this Division, "marketable security" includes a right or interest (whether described as a unit or sub-unit or otherwise) of a beneficiary under a unit trust scheme.

(17) Second Schedule - Stamp Duties and Exemptions:

(a) In paragraphs (1), (2), (3) and (3A) of the matter appearing under the heading CONVEYANCES OF ANY PROPERTY, after "under the heading "Mortgage" herein" wherever occurring, insert "or units in a unit trust scheme".

(b) After paragraph (7) (b) (i) of the matter appearing under the heading CONVEYANCES OF ANY PROPERTY, insert:

(ia) the transferee being the registered owner of units in a unit trust scheme that under the trust deed for the scheme conferred that entitlement on the transferee;

Explanatory note - items (12)-(17)

In 1988, amendments were made to the Act to levy duty on the transfer of units in a unit trust scheme on the basis of the New South Wales assets of the trust. Due to concerns that the amendments would result in duty being

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

imposed in more than one jurisdiction, they have not been proclaimed to commence. Clause 4 of the Bill repeals those amendments.

Item (15) inserts a new Division 25A into Part 3 of the Act to impose duty on the transfer of units in a unit trust scheme. The new Division contains the following proposed sections:

Proposed section 90 defines "transfer" (in relation to a unit in a unit trust scheme) and "manager" (in relation to a unit trust scheme).

Proposed section 91 imposes duty on the transfer of units at the same rate as for a transfer of shares, i.e. 6c per \$10, or part, of the consideration in money or money's worth in the case of a sale for valuable consideration of not less than the unencumbered value of the units or, in any other case, of the unencumbered value of the units. The primary nexus for liability is the place at which the register is located. A secondary nexus is provided by reference to the place of incorporation or residence of the manager.

Proposed section 92 imposes a sanction against a trustee or manager who registers a transfer not duly stamped in accordance with the proposed Division.

Proposed section 93 provides a credit for duty on a transfer to the extent to which duty is paid in another jurisdiction or an exemption from duty if the transfer is exempt in another jurisdiction.

Proposed section 94 provides for the same concessional rates of duty for a transfer of units as would apply to a transfer of shares in the same circumstances.

Item (17) makes amendments to the Second Schedule so as to apply other concessional rates of duty for a transfer of units that would apply to a transfer of shares in the same circumstances.

In order to prevent avoidance of duty through oral transactions, items (13) and (14) amend the "Claytons contract" provisions to include transactions relating to units in unit trust schemes. The opportunity is also taken in those items to amend the "Claytons contract" provisions to exempt a person from the need to create a statement in New South Wales for stamp duty purposes of a share transfer registered on a register in a jurisdiction outside New South Wales on which an amount of duty which is not less than the New South Wales duty has been paid, or which is exempt from duty, in that jurisdiction.

Items (12) and (16) make amendments to provide that the transfer of a unit in a unit trust scheme which is traded on a stock exchange is to be liable to duty as a marketable security.

Amendment: public housing schemes

(18) Part 3, Division 3E:

After Division 3D, insert:

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

**Division 3E - The Public Equity Partnership
Arrangement and the Rent/Buy Scheme**

Definitions

45AC. In this Division:

"eligible land" means:

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

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

Liability to duty in respect of housing schemes to which this Division applies

45AD. (1) The New South Wales Land and Housing Corporation is to pay duty that would otherwise be payable by an eligible owner on an instrument executed in relation to eligible land for the purposes of the arrangement known as the Public Equity Partnership Arrangement or the scheme known as the Rent/Buy Scheme.

(2) The New South Wales Land and Housing Corporation is to pay the duty payable on any sovereign risk insurance policy or any correlation insurance policy issued in relation to the arrangement known as the Public Equity Partnership Arrangement.

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

(3) A payment made under this section is to be regarded as an expense of the New South Wales Land and Housing Corporation.

Explanatory note – item (18)

Item (18) requires the New South Wales Land and Housing Corporation to pay stamp duty liabilities of the N.S.W. Housing No. 1 Pty. Limited and FANMAC Pooled Superannuation Trust No. 1 in respect of instruments relating to land the subject of the public housing initiatives known as the Public Equity Partnership Arrangement and the Rent/Buy Scheme.

The proposed Division is to apply to instruments executed on or after 1 September 1990, being the day specified for the purpose in a Variation to Statute issued by the Premier and Treasurer.

Amendment: contract notes

(19) Part 3, Division 9 (**Contract notes**):

Omit the Division.

(20) Second Schedule – Stamp Duties and Exemptions:

Omit the matter relating to CONTRACT NOTE.

Explanatory note – items (19) and (20)

Stamp duty is payable on a contract note for the sale or purchase of marketable securities at 4c per \$100 of the consideration expressed in the contract note. Duty is not payable where the transaction is between brokers or agents who are members of the Stock Exchange or in respect of Government security transactions.

The duty discriminates between broker and non-broker transactions and results in loss of activity to other jurisdictions which do not impose duty on contract notes. Items (19) and (20) remove the liability to duty.

Amendment: exemption from hiring arrangement duty for hire of on-site caravans

(21) Section 74D (**Definitions**):

(a) From paragraph (iii) of the definition of "Hiring arrangement", omit "or" where lastly occurring.

(b) At the end of paragraph (iv) of the definition of "Hiring arrangement" insert:

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

;or

- (v) any arrangement relating to the hire of a caravan which is to remain on site.

Explanatory note - item (21)

Item (21) removes the duty of 15% of the hire fee of an on-site caravan where the caravan, because it is not attached to land and therefore does not comprise a fixture, is taken to be goods. While the owner of the caravan is presently liable to pay the duty, in practice it is nearly always passed on to the hirer.

In 1987, stamp duty on a "residential lease" was abolished to reduce the cost to tenants. Accommodation in motels does not attract stamp duty. The amendment made by this item will remove the inequity of charging duty in relation to the use, whether for permanent or holiday accommodation, of an on-site caravan.

Amendment: variations of leases

- (22) Section 78C:

Omit the section, insert instead:

Duty to be paid on certain variations of lease

78C. (1) An instrument varying a lease (whether the lease is in writing or not):

- (a) by increasing the total amount of the rent or other consideration payable in respect of the lease; or
- (b) by extending the term of the lease,

or both, is, subject to this Act, chargeable with duty as a lease.

(2) Duty is payable only in respect of the additional amount of rent or consideration payable as a result of the variation, except as provided by subsection (4).

(3) If an instrument varies a lease (whether the lease is in writing or not) so as to reduce the total amount of the rent or other consideration payable in respect of the lease and on which duty has been paid in accordance with this Act, the Chief Commissioner must, on being provided with such documents and information as the Chief Commissioner may require, refund to the lessee (or, where the benefit of the lease has been transferred or assigned by

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

the lessee, to the transferee or assignee) the difference between the duty actually paid and the duty which would have been payable if that duty had been assessed on the lease as so varied.

(4) The minimum amount of duty payable in respect of an instrument varying a lease is \$10.

Explanatory note - item (22)

Under amendments proposed to be made to the Real Property Act 1900 and the Conveyancing Act 1919, it will be possible to register a variation of a lease. Item (22) inserts proposed section 78C. The proposed section imposes a requirement to pay duty on the variation as if it were a lease. However, the amount of duty is to be the sum of \$10 or the duty assessed on the additional rent or consideration payable as a result of the variation, whichever is the greater.

The proposed section also requires the Chief Commissioner to make a refund of duty where a lease is varied so as to reduce the rent or consideration payable under the lease.

The proposed section is to commence on a proclaimed day so as to enable its commencement to coincide with the commencement of the related amendments proposed to be made to the Real Property Act 1900 and the Conveyancing Act 1919.

Amendment: interim stamping of leases subject to rental variations

(23) Section 78D (Duty payable in respect of rental variations):

From section 78D (5), omit "A lease marked "interim stamp only" is admissible in evidence.", insert instead "Section 41 (5) applies to a lease marked "interim stamp only" in the same way as it applies to an agreement referred to in that subsection marked "interim stamp only"."

Explanatory note - item (23)

Item (23) amends section 78D to clarify the consequences of the interim stamping of a lease subject to rental variations. Section 41 (5) of the Act specifies the circumstances in which an agreement stamped "interim stamp duty" may be admitted in evidence in court proceedings and the arrangements that are to be made to enable final stamping of the instrument to take place.

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

Amendment: leases of accommodation for aged and disabled persons

(24) Section 78FA:

After section 78F, insert:

Exemption from duty - leases of accommodation for aged and disabled persons

78FA. (1) Despite any other provision of this Act, duty is not chargeable in respect of a lease granted by or on behalf of a corporation, society or institution if:

- (a) the purpose of the lease is to grant a retired person or a disabled person the right to occupy residential accommodation; and
- (b) the lease has not been granted for the purpose of profit,

(2) In this section:

"disabled person" means a person who has attained the age of 16 years and who is:

- (a) permanently blind; or
- (b) permanently incapacitated for work;

"retired person" means a person who has attained the age of 55 years or who has retired from full-time employment and includes a person who is or was the spouse or the de facto partner (within the meaning of the De Facto Relationships Act 1984) of such a person.

Explanatory note - item (24)

Item (24) inserts proposed section 78FA which will exempt from duty an occupation lease granted to a retired or disabled person by a body which provides accommodation for those persons. The proposed section is taken to have commenced on 15 June 1990, being the day on which the Premier and Treasurer issued a Variation to Statute approving this concession.

SCHEDULE 1 – MISCELLANEOUS AMENDMENTS – *continued*

Amendment: loan security duty (property in New South Wales)

(25) Section 83 (**Definitions**):

After section 83 (4) insert:

(5) For the purposes of paragraph (c) of the definition of "Loan security" in subsection (1), property is taken to be in New South Wales in so far as the property comprises shares in a company incorporated in New South Wales.

Explanatory note – item (25)

Item (25) amends section 83 to provide, as an anti-avoidance measure, that, for the purposes of the definition of "loan security" in that section, property affected by a mortgage is taken to be in New South Wales in so far as the property comprises shares in a company incorporated in New South Wales. The amendment is intended to overcome the practice of moving shares to a register in the Australian Capital Territory where no loan security duty is currently payable.

Amendment: loan security duty (small advances)

(26) Section 84 (**Limited and unlimited loan securities**):

From section 84 (3), omit "\$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", insert instead "\$16,000, additional duty of \$4 for every \$1,000 or fractional remaining part of \$1,000 of the total amounts advanced under or secured by the loan security in excess of \$16,000".

(27) Section 84C (**Subsequent mortgages**):

Omit "\$15,000 and, where the amount of the payment exceeds \$15,000, stamp duty of \$5 for the first \$15,000 and 40 cents for every \$100 or fractional remaining part of \$100 by which the amount exceeds \$15,000", insert instead "\$16,000 and, where the amount of the payment exceeds \$16,000, stamp duty of \$5 for the first \$16,000 and \$4 for every \$1,000 or fractional remaining part of \$1,000 by which the amount exceeds \$16,000".

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

- (28) Second Schedule - Stamp Duties and Exemptions:
- (a) From paragraph (1) of the matter appearing under the heading LOAN SECURITY:
 - (i) omit "\$15,000" wherever occurring, insert instead "\$16,000";
 - (ii) omit "\$100" wherever occurring, insert instead "\$1,000";
 - (iii) omit ".40", insert instead "4.00".
 - (b) After paragraph (a) of the Exemptions appearing under the heading LOAN SECURITY, insert:
 - (a1) Any loan security in respect only of additional advances secured by the loan security, if the total additional advances so secured do not exceed \$10,000 in any 12 month period, not being the 12 month period after the initial advance.

Explanatory note - items (26)-(28)

Items (26)-(28) are designed to simplify the rate of duty on loan securities and to provide an exemption from loan security duty for small additional advances.

The stamp duty payable on loan securities is \$5 for the first \$15,000 advanced and 40 cents per \$100 or part thereof thereafter. In order to reduce the costs imposed by banks for the collection of stamp duty payable on small advances, it is proposed to increase the \$5 flat rate from \$15,000 to \$16,000 and widen the bracket from 40 cents per \$100 to \$4 per \$1,000 or part thereof. This is done by the amendments made by items (26), (27) and (28)

(a).

Additional advances of up to \$10,000 in any 12 month period are proposed to be exempted from duty. In order to counter any avoidance or minimisation of duty, the exemption is not to be available within 12 months of the initial advance and if the additional advances in any 12 month period exceed \$10,000, duty is to be payable on the total of the additional advances. This is done by the amendment made by item (28) (b).

Amendment: loan security duty (guarantees, indemnities and other instruments)

- (29) Section 84 (**Limited and unlimited loan securities**):
Omit section 84 (3C), insert instead:

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

(3C) If a loan security is used or is capable of being used (whether directly, or through a chain of relationships) to recover the whole or any part of an amount payable by a guarantor, an indemnifying party or a party to another instrument (whether of the same or of a different kind), the loan security shall, unless the Chief Commissioner is satisfied that there is no connection between the loan security and any advance by any party to the arrangements, be liable to duty as a loan security:

- (a) in the case of a loan security of the type referred to in subsection (1) - in accordance with subsection (1), (2) or (2A):
 - (i) in respect of the total amount secured or to be ultimately recoverable under the loan security and
 - (ii) in respect of the contingent liability under the guarantee, indemnity or other instrument (or, where there is more than one guarantee, indemnity or other instrument, the greatest contingent liability) as if that liability were an advance; or
- (b) in the case of a loan security of the type referred to in subsection (3) - in accordance with subsection (3) as if the advances made under or secured by the loan security included the amount of the contingent liability under the guarantee, indemnity or other instrument (or, where there is more than one guarantee, indemnity or other instrument, the greatest contingent liability).

Explanatory note - item (29)

Section 84 (3C) determines the liability to duty of a loan security which might be used to recover an advance made, not necessarily to the person who has executed the loan security, as part of a chain of relationships of which the loan security is one link. The subsection assumes that the advance may be recovered only in the event of a default by a person in the chain. As some advances are liable to be repaid on demand, rather than on default, item (29) amends section 84 (3C) so as not to limit its application to circumstances dependent on default.

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

Because doubt has arisen as to whether this provision is effective in the case where there is a loan security securing only the last guarantee or indemnity in a chain of relationships, the provision is being tightened to make it clear that it applies to a loan security protecting any instrument in the chain.

Amendment: loan security duty (collaterals)

(30) Section 84B (Collateral security):

- (a) After "duty paid" wherever occurring, insert "or payable".
- (b) After "was paid" wherever occurring, insert "or is payable".
- (c) In section 84B (1) (b), after "amount" where secondly occurring, insert "of the same money".

Explanatory note - item (30)

A collateral loan security which secures the same money as a prime loan security on which stamp duty has been paid is entitled to a credit in respect of the loan security duty paid on the prime loan security. Problems may arise where the prime loan security is liable to duty in a number of jurisdictions and, at the time of stamping in New South Wales, duty is yet to be paid in another jurisdiction. At present, a credit is not allowable for duty payable but not yet paid. Items (30) (a) and (b) make amendments which will allow the granting of such a credit,

Item (30) (c) amends section 84B to make it clear that a credit for duty payable on a collateral security is available only to the extent to which stamp duty has been paid on the primary security in respect of the same money secured by the collateral security as is secured by the primary security.

Amendment: mortgage-backed securities

(31) Section 84FA (Charging of duty on issue etc, of mortgage-backed securities):

After section 84FA (2), insert:

(3) Notwithstanding any other provision of this Act, duty (other than duty payable in respect of a receipts return within the meaning of section 98 (1) or a short term dealers return within the meaning of that subsection or under Division 29) shall not be chargeable in respect of a mortgage or charge of a mortgage or pool of mortgages or part of a pool of mortgages for the purpose of creating, issuing, marketing or securing a mortgage-backed security:

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

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

where the mortgage or charge is executed on or after 1 January 1991 .

Explanatory note - item (31)

Item (31) amends section 84FA to exempt from duty a mortgage given over specified property by a person who provides security to a person entitled to a mortgage-backed security or a trustee or agent for such a person.

Amendment: policies of insurance etc.

(32) Section 88D (**Duty payable by insured in certain circumstances**):

- (a) From section 88D (1), omit "within 1 month after obtaining, effecting or renewing the insurance", insert instead "within 21 days after the end of the month in which the premium relating to the insurance is paid to an agent, broker or insurer".

- (b) After section 88D (3), insert:

(4) The payment of a periodic premium in respect of disability income insurance which is continued, but not renewed, on the payment of the premium is taken to effect the insurance for the purposes of this section.

(33) Section 88P (**Exemption from duty of certain instruments**):

At the end of section 88P, insert:

(2) This section does not apply to a policy of disability income insurance effected before 1 January 1991 in so far as a payment of premium is made in relation to the policy on or after that date.

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

Explanatory note - items (32) and (33)

From 1 November 1989 the provisions imposing stamp duty on policies of insurance (other than life insurance) were amended. Previously duty was payable on a percentage of the sum insured, subject to a maximum of 25 per cent of the premium. Following the amendments, duty is payable in respect of a policy issued or renewed on or after 1 November 1989 on a percentage of premium basis.

When a person effects insurance with a person not required to be registered, the Act requires the firstmentioned person to lodge a return within 1 month of obtaining, effecting or renewing the insurance. As not all persons have to pay the premium when effecting insurance, compliance with the legislation is not possible in some instances.

Under the Act, registered insurers must pay stamp duty within 21 days of the end of the month in which the premium was received. Item (32) (a) will enable a person who is not a registered insurer to lodge a return and pay stamp duty within 21 days of the end of the month in which the premium was paid to the insurance company. The amendment is given effect from 23 April 1990, being the day on which the Premier and Treasurer issued a Variation to Statute approving of the change.

Items (32) (b) and (33) relate to non-cancellable disability income policies. These policies are continuous policies which are not "renewed" each year, even though an annual premium is payable. Therefore, policies taken out prior to 1 November 1989 would continue to be charged with duty on the sum insured basis each time an annual premium is paid. This would be cumbersome for insurance companies because they will have to calculate duty in either of 2 ways, depending on the date on which the policy commenced

It is therefore proposed to apply the new method of calculating duty to any non-cancellable disability income policy taken out before 1 November 1989, in respect of premiums received on or after 1 January 1991.

Amendment: acquisitions of company and unit trust interests dutiable as conveyances of land

(34) Section 99A (**Definitions**):

- (a) From section 99A (3) (b), omit "landholders (if any)", insert instead "persons (if any, including a private unit trust scheme but not including a company the shares of which are listed on a recognised stock exchange or a public unit trust scheme, and whether in New South Wales or elsewhere)".

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

(b) Omit section 99A (6), insert instead:

(6) For the purposes of this Division (including any actual or notional winding-up), if a person (including any landholder or person in a chain of interests in landholders):

(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 person,

the person shall be deemed to own or to be otherwise entitled to the property the subject of the discretionary trust, unless the Chief Commissioner determines that the person shall not be deemed to own or to be otherwise entitled to the property.

(6A) In subsection (6), "person" includes a unit trust scheme.

(35) Section 99B (**Acquisitions to which this Division does not apply**):

At the end of section 99B, insert:

(2) This Division does not apply to or in respect of an acquisition if the Chief Commissioner is satisfied that it would not be just and reasonable in the circumstances for the Division to apply.

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

Explanatory note - items (34) and (35)

Division 30 of Part 3 charges stamp duty at conveyance rates on certain transactions involving a change of ownership of shares or trust units which convey a majority interest in underlying realty owned by the company or trust.

Item (34) (a) amends the tracing provisions of the Division to ensure that a chain of relationships is not broken where the chain passes through a company outside New South Wales.

Item (34) (b) amends the provisions relating to the notional winding-up of companies, to strengthen the presumption that a discretionary trust interposed in a chain of relationships will not be administered so as to break the chain and to deem the entitlement to property under a discretionary trust to be an entitlement as owner.

Item (35) amends section 99B to enable the Chief Commissioner to grant an exemption from duty under the Division if satisfied that it would not be just and reasonable for the provisions of the Division to apply. This amendment is taken to have commenced on 5 April 1990, being the day on which the Premier and Treasurer issued a Variation to Statute approving this concession.

Amendment: death duties forms

(36) Section 117 (Affidavit of value to be lodged by applicants for probate or administration):

- (a) From section 117 (1) and (5), omit "prescribed form" wherever occurring, insert instead "approved form".
- (b) From section 117 (1), omit "prescribed particulars", insert instead "particulars required by the approved form".
- (c) From section 117 (3), omit "as may be prescribed or".

Explanatory note - item (36)

The duty payable on a deceased estate (death duty) was abolished in respect of the dutiable estate of a person who died on or after 31 December 1981. Despite the length of the period which has now passed, a considerable number of estate affidavits are still to be filed for assessment and payment of duty.

Following the enactment of the Subordinate Legislation Act 1989, the Stamp Duties Regulations 1934 are being reviewed to enable repeal of unnecessary and superseded regulations.

The Stamp Duties Regulations that deal with death duty include a number of prescribed forms, some of which are no longer used. Item (36)

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

amends the death duties provisions to enable forms to be approved by the Chief Commissioner.

Amendment: instruments which after registration have the effect of a deed

(37) Second Schedule - Stamp Duties and Exemptions:

From paragraph (2) of the matter appearing under the heading DEED, omit "either before or after", insert instead "before".

Explanatory note - item (37)

Certain instruments are given, by the provisions of an Act, the operation or effect of a deed when they are registered by the Registrar-General. These instruments may not be liable to stamp duty before registration. The amendment made by item (37) will remove any liability to duty as a deed arising on registration.

The amendment is to apply to instruments executed on or after 13 February 1990, being the day on which the Premier and Treasurer issued a Variation to Statute approving this concession.

Amendment: exemption for certain transfers of shares

(38) Section 97AC (**Endorsement of transfer as to payment of duty**):

Omit section 97AC (1) (c) (ii), insert instead:

- (ii) returning shares previously borrowed from the transferee, being such shares as are necessary to restore the shareholding of the transferee to the exact number and class of shares of which the transferee would have otherwise become the registered holder, if the loan had not taken place,

(39) Second Schedule - Stamp Duties and Exemptions:

Omit paragraph (e) (ii) of the Exemptions appearing under the heading TRANSFER OF SHARES, insert instead:

- (ii) returning shares previously borrowed from the transferee, being such shares as are necessary to restore the shareholding of the transferee to the exact number and class of shares of which the

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

transferee would have otherwise become the registered holder, if the loan had not taken place.

Explanatory note - items (38) and (39)

The Australian Stock Exchange is proposing to extend a system which utilises a clearing nominee company for lending of securities. This results in 2 transactions on which liability to stamp duty needs to be determined. The Act provides for the interposing of the particular nominee company to be used and allows exemption from duty for the lending of shares to the transferee or, where the sole purpose of the transfer is to replace identical shares. When the shares are returned to the owner it is often not possible to return an identical parcel due to capital reconstruction, bonus issue or rights issue.

It is proposed to extend the exemption to cover such instances.

Amendment: exemption for offshore banking units

(40) Second Schedule - General Exemptions From Stamp Duty Under Part 3:

Omit paragraph (31), insert instead:

(31) In the case of an offshore banking unit:

(a) a loan security (other than a mortgage referred to in section 84E or a debenture the repayment of which is secured by such a mortgage) 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; or

(b) an instrument, or an instrument of a class or description, prescribed for the purposes of this paragraph,

drawn, given or executed for the purposes of, or to effect, an offshore banking function of the offshore banking unit.

In this paragraph:

"offshore banking unit" means:

(a) a person in relation to whom a declaration is in force under section 128AE (2) of the Income Tax Assessment Act 1936 of the Commonwealth; or

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

(b) a person, or a person of a class or description, prescribed for the purposes of this definition;

"offshore banking function", in relation to an offshore banking unit, means any of the following:

(a) an offshore borrowing by the offshore banking unit where the proceeds of that offshore borrowing are, or are to be, used by the offshore banking unit for:

- (i) making an offshore loan;
- (ii) repaying an offshore borrowing; or
- (iii) being placed on deposit pending the making of an offshore loan or repayment of an offshore borrowing; or
- (iv) being exchanged for an equivalent amount in a different currency where that equivalent amount is, or is to be, used for a purpose or purposes referred to in this definition; or
- (v) any combination of any of the foregoing,

(b) the repayment of an offshore borrowing by the offshore banking unit;

(c) the making of an offshore loan by the offshore banking unit;

(d) any thing, or any thing of a class or description, prescribed for the purposes of this definition.

"offshore borrowing" has the same meaning as in Division 11A of Part III of the Income Tax Assessment Act 1936 of the Commonwealth (but excludes the interest on an offshore borrowing where section 128GB of that Act does not apply to that interest by virtue of subsection (3) of that section) and includes any transaction, or a transaction of a class or description, prescribed for the purposes of this definition.

SCHEDULE 1 - MISCELLANEOUS AMENDMENTS - *continued*

"offshore loan" has the same meaning as in Division 11A of Part III of the Income Tax Assessment Act 1936 of the Commonwealth and includes any transaction, or a transaction of a class or description, prescribed for the purposes of this definition.

Explanatory note - item (40)

The purpose of this item is to amend, by way of statute law revision, the terms of the exemption granted in respect of certain instruments of offshore banking units to bring the terms of the exemption into conformity with the provisions of the Income Tax Assessment Act 1936 of the Commonwealth.

The exemption has been granted to ensure that stamp duty charges do not adversely affect the viability of offshore banking in New South Wales.

SCHEDULE 2 - AMENDMENTS RELATING TO EXEMPTION FROM DUTY FOR CERTAIN CONVEYANCES

(Sec. 3)

(1) Section 73AA:

Omit the section, insert instead:

Exemption from duty for certain conveyances

73AA. (1) The Chief Commissioner is to administer the exemption scheme set out in Schedule 2D.

(2) Schedule 2D has effect.

(2) Schedule 2D:

After Schedule 2C insert:

SCHEDULE 2D - EXEMPTION FROM DUTY FOR CERTAIN CONVEYANCES

(Sec. 73AA)

The nature of the exemption scheme

1. The scheme is intended to provide a stamp duty exemption, at the discretion of the Chief Commissioner, in respect of:

- (a) the conveyance of a principal place of residence from a corporation or special trust to certain persons; or

SCHEDULE 2 - AMENDMENTS RELATING TO EXEMPTION
FROM DUTY FOR CERTAIN CONVEYANCES - *continued*

- (b) the conveyance of any land owned as at 31 December 1986 by a special trust from the trust to certain persons.

Definitions

2. In this Schedule:

"**corporation**" has the same meaning as in the Companies (New South Wales) Code;

"**land**" includes any estate or interest in land;

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

"**principal shareholder**", in relation to a corporation, means:

- (a) any person (other than a corporation) whose voting entitlement in the corporation is 50 per cent or more; or
- (b) any person (other than a corporation) who has a voting entitlement in the corporation where all the persons who have a voting entitlement in the corporation have an equal voting entitlement;

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

"**voting entitlement**" has the meaning given by clause 3.

Meaning of "**voting entitlement**"

3. (1) A person's voting entitlement in a corporation is that proportion of the total voting rights of all, shareholders entitled to vote at general meetings of the corporation which the person is entitled to exercise, as a shareholder, at general meetings of the corporation.

(2) A person is to be considered to have a voting entitlement in a corporation ("corporation A") if the person has a voting entitlement in another corporation ("corporation B") which itself has a voting entitlement in corporation A.

SCHEDULE 2 - AMENDMENTS RELATING TO EXEMPTION
FROM DUTY FOR CERTAIN CONVEYANCES - *continued*

(3) In a case to which subsection (2) applies, the person's voting entitlement in corporation A is the proportion which results from multiplying the person's voting entitlement in corporation B by corporation B's voting entitlement in corporation A.

(4) If a person has a voting entitlement in the same corporation under different provisions of this clause, or under different applications of the same provision of this clause, the person's voting entitlement in the corporation is the aggregate of those entitlements.

(5) In determining a person's voting entitlement for the purposes of this clause, proxies and other authorities to vote held by a shareholder are to be disregarded.

Conveyance by corporation of principal place of residence to principal shareholder or spouse

4. (1) A conveyance of land by a corporation is eligible for exemption under this Schedule if:

- (a) the corporation owned the land on 11 September 1990; and
- (b) the transferee or each of the transferees is a principal shareholder in the corporation or the spouse of such a principal shareholder (whether or not the principal shareholder is one of the transferees); and
- (c) had the transferee or each of the transferees been an owner of the land within the meaning of the Land Tax Management Act 1956 on 31 December that last preceded the date of the conveyance:
 - (i) the land would, by the operation of section 10 (1) (r) or (u) of the Land Tax Management Act 1956, be exempt from land tax in respect of the year in which the conveyance took effect; or
 - (ii) land tax that, but for section 10 (4) or (5) of the Land Tax Management Act 1956, would be leviable or payable in respect of

SCHEDULE 2 - AMENDMENTS RELATING TO EXEMPTION
FROM DUTY FOR CERTAIN CONVEYANCES - *continued*

the land for the year in which the conveyance took effect would be reduced by the operation of section 10 (4) or (5) of that Act.

(2) If land is conveyed by a corporation to 2 or more persons jointly, each of those persons is, for the purposes of this clause (but without affecting any entitlement to be considered to be a principal shareholder apart from this subclause), to be considered to be a principal shareholder in the corporation if:

- (a) each of the persons has a voting entitlement in the corporation; and
- (b) the aggregate of the voting entitlements in the corporation of each of those persons would be sufficient to qualify any one person as a principal shareholder in the corporation.

Conveyance of principal place of residence by special trust to beneficiary etc,

5. A conveyance of land subject to a special trust is eligible for exemption under this Schedule if:

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

SCHEDULE 2 - AMENDMENTS RELATING TO EXEMPTION FROM DUTY FOR CERTAIN CONVEYANCES - *continued*

- (d) had the transferee or each of the transferees been an owner of the land within the meaning of the Land Tax Management Act 1956 on 31 December that last preceded the date of the conveyance:
 - (i) the land conveyed would, by the operation of section 10 (1) (r) or (u) of the Land Tax Management Act 1956, be exempt from land tax in respect of the year in which the conveyance took effect; or
 - (ii) land tax that, but for section 10 (4) or (5) of the Land Tax Management Act 1956, would be leviable or payable in respect of the land for the year in which the conveyance took effect would be reduced by the operation of section 10 (4) or (5) of that Act.

Conveyance of principal place of residence by corporation to beneficiary of special trust

6. A conveyance of land by a corporation (not acting in the capacity of a trustee) is eligible for exemption under this Schedule if:

- (a) the corporation owned the land on 11 September 1990; and
- (b) the transferee or each of the transferees is a person, or the spouse of a person, who is a beneficiary under a special trust and was a beneficiary under the trust when the land was acquired by the Corporation; and
- (c) the trustee under the special trust is a principal shareholder in the corporation at the time of the conveyance; and
- (d) had the transferee or each of the transferees been the owner within the meaning of the Land Tax Management Act 1956 on 31 December that last preceded the date of the conveyance:

SCHEDULE 2 - AMENDMENTS RELATING TO EXEMPTION
FROM DUTY FOR CERTAIN CONVEYANCES - *continued*

- (i) the land conveyed would, by the operation of section 10 (1) (r) or (u) of the Land Tax Management Act 1956, be exempt from land tax in respect of the year in which the conveyance took effect; or
- (ii) land tax that, but for section 10 (4) or (5) of the Land Tax Management Act 1956, would be leviable or payable in respect of the land for the year in which the conveyance took effect would be reduced by the operation of section 10 (4) or (5) of that Act.

Conveyance by special trust to corporation

7. (1) A conveyance of land to a corporation by a person in the person's capacity as trustee of a special trust is eligible for exemption under this Schedule if:

- (a) the land was subject to the special trust on, and at all times between, 31 December 1986 and 11 September 1990; and
- (b) section 160ZZN (Transfer of asset to wholly-owned company) of the Income Tax Assessment Act 1936 of the Commonwealth applies to the disposal of land effected by the conveyance; and
- (c) pursuant to that section, Part IIIA (Capital Gains and Capital Losses) of that Act (except that section) does not apply to that disposal.

(2) Division 30 of Part 3 (Acquisitions of company and unit trust interests dutiable as conveyances of land) does not apply to the issue or allotment of shares in a corporation pursuant to a conveyance for which an exemption from the payment of duty is granted under this Schedule.

Making of applications

8. (1) An application under this Schedule is to be made to the Chief Commissioner in a form approved by the Chief Commissioner, completed as required by that form.

SCHEDULE 2 - AMENDMENTS RELATING TO EXEMPTION
FROM DUTY FOR CERTAIN CONVEYANCES - *continued*

(2) If the land to which the conveyance relates is or includes land under the Real Property Act 1900, the application must be accompanied by an undertaking from the transferee in a form approved by the Chief Commissioner that:

- (a) the duty which would be payable on the conveyance but for the granting of an exemption under this Schedule will be paid if the transferee does not become the registered proprietor of the land within 2 months (or such longer period as the Chief Commissioner may at any time determine and notify in writing to the transferee) after the conveyance is stamped as exempt from the payment of duty; and
- (b) the transferee will, within 1 month after becoming the registered proprietor of the land (or such longer period as the Chief Commissioner may at any time determine and notify in writing to the transferee), provide evidence of that fact to the satisfaction of the Chief Commissioner.

Determination of applications

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

(2) An application is not to be granted unless the Chief Commissioner is satisfied that all land tax payable in respect of the land (including any additional land tax payable by way of penalty or otherwise) has been paid.

(3) If the application is granted, the Chief Commissioner is to stamp the conveyance as exempt from the payment of duty.

Recovery of duty if undertaking not met

10. If a requirement of an undertaking from a transferee is not met, the Chief Commissioner may recover from the person, as a debt in a court of competent jurisdiction, the

SCHEDULE 2 - AMENDMENTS RELATING TO EXEMPTION FROM DUTY FOR CERTAIN CONVEYANCES - *continued*

duty which, but for this Schedule, would be payable on the conveyance.

Explanatory note - items (1) and (2)

The amendments will re-enact and alter current provisions of the Act that provide an exemption from stamp duty on a conveyance of a family home to members of the family by a family company or the conveyance by a family trust to a beneficiary etc. of land owned by the trust as at 31 December 1986.

The amendments will:

- * remove the requirement that the land must have been owned by the company as at 31 December 1975 or been subject to the trust on 1 January 1987;
- * remove the requirement for company owned land that the land must have been used continuously since 31 December 1975 as the principal place of residence of the transferee;
- * change the eligible shareholder qualification from an entitlement to more than half of the voting rights to an entitlement to half or more of the voting rights;
- * enable a voting entitlement to be taken into account even if it arises indirectly as a result of a shareholding in another company which itself owns shares in the company in question;
- * enable the combined shareholding of a number of joint owners to be taken into account to determine whether the required shareholding level has been reached;
- * allow the exemption where the land is conveyed to the ownership of an eligible person and/or that person's spouse.

The amendments will also extend the stamp duty exemption to the following conveyances:

- * a conveyance of land by a corporation to a beneficiary of a special trust where the trustee under the special trust is a principal shareholder in the corporation;
- * a conveyance of land out of a special trust that existed on 31 December 1986 to a corporation where the consideration for the conveyance is shares in the corporation and all the shares in the corporation will be held on the special trust.

SCHEDULE 3 - AMENDMENT RELATING TO SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 3)

Tenth Schedule (Savings, transitional and other provisions):

After Part 6, insert:

SCHEDULE 3 - AMENDMENT RELATING TO SAVINGS AND TRANSITIONAL PROVISIONS - *continued*

PART 7 - STAMP DUTIES (MISCELLANEOUS AMENDMENTS) ACT 1990

Application of amendments - generally

20. (1) A provision of this Act as in force before the amendment of the provision by the Stamp Duties (Miscellaneous Amendments) Act 1990 continues to apply to an instrument referred to in the provision which was executed, or a transaction referred to in the provision that was entered into, before the date on which the amendment commenced or is taken to have commenced, except as provided by this Part.

(2) An amendment made by the Stamp Duties (Miscellaneous Amendments) Act 1990 does not apply to an instrument which was executed, or a transaction which was entered into, before the date on which the amendment commenced or is taken to have commenced, except as provided by this Part.

Instruments amending approved superannuation schemes

21. An instrument which has the sole purpose of amending an approved superannuation scheme is taken to be duly stamped if, on or after 1 May 1990 and before 1 January 1991, a \$20 adhesive stamp was affixed to it.

Time for recovery of fines and penalties

22. Section 13 (2A) applies in respect of a fine or penalty imposed at any time before or after the commencement of that subsection and interest which has accrued at any time before or after that commencement on any such fine or penalty.

Loan security duty (small advances)

23. The amendments made by Schedule 1 (26), (27) and (28) to the Stamp Duties (Miscellaneous Amendments) Act 1990 apply in respect of advances made on or after 1 January 1991.

SCHEDULE 3 - AMENDMENT RELATING TO SAVINGS AND TRANSITIONAL, PROVISIONS - *continued*

Policies of insurance etc,

24. The amendments made by Schedule 1 (32) and (33) to the Stamp Duties (Miscellaneous Amendments) Act 1990 apply in respect of premiums received after 1 January 1991 in relation to disability income insurance whether or not that insurance was effected before that date.

Exemption of certain conveyances

25. (1) Section POA of the Land Tax Management Act 1956, as in force immediately before the commencement of section 73AA of this Act (as enacted by the Stamp Duties (Amendment) Act 1989), continues to apply to and in respect of a conveyance executed before that commencement.

(2) Section 73AA of this Act, as in force immediately before the commencement of Schedule 2D, continues to apply to and in respect of a conveyance of the kind to which clause 4 or 5 of that Schedule applies, executed before that commencement.

SCHEDULE 4 - AMENDMENT OF LAND TAX MANAGEMENT ACT 1956

(Sec. 5)

Schedule 2 (Savings and transitional provisions):

At the end of Schedule 2, insert:

Stamp Duties (Miscellaneous Amendments) Act 1990

Stamp duty exemptions - effect on land tax

16. If a conveyance of land executed after 31 December 1990 and lodged with the Chief Commissioner of Stamp Duties before 1 July 1991 is exempt from duty under the Stamp Duties Act 1920, pursuant to Schedule 2D to that Act, the transferee under the conveyance is to be considered to have been the owner of the land on 31 December 1990 for the purposes of this Act.

SCHEDULE 4 - AMENDMENT OF LAND TAX MANAGEMENT
ACT 1956 - *continued*

Explanatory note

The insertion of this provision will deem a conveyance of a principal place of residence that is exempt from stamp duty under the amendments proposed to be made to the Stamp Duties Act 1920 by Schedule 2 to this Bill and which occurs between 31 December 1990 and 1 July 1991 to have occurred on 31 December 1990 so that land tax liability will be assessed as if the transferee had owned the land on that day. An exemption from land tax in respect of the property as the owner's principal place of residence, or the general tax-free threshold (\$160,000), will thereby apply.

*[Minister's second reading speech made in -
Legislative Assembly on 21 November 1990
Legislative Council on 28 November 1990]*