



New South Wales

## State Revenue Legislation Further Amendment Act 1995 No 98

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New South Wales

## **State Revenue Legislation Further Amendment Act 1995 No 98**

Act No 98, 1995

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An Act to make miscellaneous amendments to certain State revenue Acts and other legislation; and for other purposes. [Assented to 21 December 1995]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *State Revenue Legislation Further Amendment Act 1995*.

**2 Commencement**

- (1) This Act commences, or is taken to have commenced, on 1 January 1996, except as provided by this section.
- (2) Each of the following provisions of this Act are taken to have commenced on the day specified in respect of that provision:
  - (a) Schedule 4, 31 December 1995,
  - (b) Schedule 5 [4] and [5], 1 January 1995,
  - (c) Schedule 7 [3], [4] and [5], 4 January 1995,
  - (d) Schedule 7 [7], 1 September 1994,
  - (e) Schedule 7 [8], 14 September 1994,
  - (f) Schedule 7 [10], 1 January 1989,
  - (g) Schedule 7 [11], 1 January 1995,
  - (h) Schedule 7 [12], 1 September 1995,
  - (i) Schedule 7 [14], 27 January 1995,
  - (j) Schedule 7 [37], 3 March 1995,
  - (k) Schedule 7 [38], 15 September 1995,
  - (l) Schedule 7 [39], 4 October 1994,
  - (m) Schedule 7 [40], 17 February 1995,
  - (n) Schedule 7 [41], 6 March 1995.
- (3) Schedule 7 [20] commences on a day or days to be appointed by proclamation.

**3 Amendment of Business Franchise Licences (Petroleum Products) Act 1987 No 94**

The *Business Franchise Licences (Petroleum Products) Act 1987* is amended as set out in Schedule 1.

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**4 Amendment of Business Franchise Licences (Tobacco) Act 1987 No 93**

The *Business Franchise Licences (Tobacco) Act 1987* is amended as set out in Schedule 2.

**5 Amendment of Debits Tax Act 1990 No 112**

The *Debits Tax Act 1990* is amended as set out in Schedule 3.

**6 Amendment of Land Tax Management Act 1956 No 26**

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

**7 Amendment of Pay-roll Tax Act 1971 No 22**

The *Pay-roll Tax Act 1971* is amended as set out in Schedule 5.

**8 Amendment of Recovery of Imposts Act 1963 No 21**

The *Recovery of Imposts Act 1963* is amended as set out in Schedule 6.

**9 Amendment of Stamp Duties Act 1920 No 47**

The *Stamp Duties Act 1920* is amended as set out in Schedule 7.

**10 Amendment of other instruments**

- (1) Each instrument referred to in Schedule 8 is amended as set out in that Schedule.
- (2) The amendments made by this Act to the instruments referred to in Schedule 8 do not affect the future amendment or repeal of those instruments.

**Schedule 1 Amendment of Business Franchise Licences (Petroleum Products) Act 1987**

(Section 3)

**[1] Section 48C Authorities to sell diesel fuel for off-road purposes**

Insert “this Act and” after “imposed by” in section 48C (2).

**[2] Section 48C (3)**

Omit the subsection. Insert instead:

- (3) Schedule 1A has effect in relation to the granting, variation and cancellation of authorities.
- (4) It is a condition of an authority that, at or before the time the holder of the authority first delivers diesel fuel for off-road purposes (other than marine purposes) to the holder of a permit, the holder of the authority must sign the permit.

**[3] Section 48D Permits to purchase diesel fuel for off-road purposes**

Insert “this Act and” after “imposed by” in section 48D (2).

**[4] Section 48D (3)**

Omit the subsection. Insert instead:

- (3) Schedule 1A has effect in relation to the granting, variation and cancellation of permits.
- (4) The holder of a permit must notify the Chief Commissioner in writing of any change in the particulars furnished in the application for the permit within 7 days of the change occurring.

Maximum penalty: 50 penalty units.

- (5) A permit may specify the maximum volume (in litres) of diesel fuel for off-road purposes (other than marine purposes) that may be purchased by the holder of the permit during any particular period.
- (6) The holder of a permit must not purchase diesel fuel for off-road purposes (other than marine purposes) if the purchase (along with all other such purchases by the permit holder during the period concerned) exceeds the maximum volume (if any) specified in the permit for the period concerned.

Maximum penalty: 50 penalty units.

- (7) The holder of a permit must not allow the permit to be used by any other person for the purpose of purchasing diesel fuel for off-road purposes.

Maximum penalty: 50 penalty units.

**[5] Section 48E Effect of authorities and permits**

Insert “this Act and” after “in accordance with” wherever occurring.

**[6] Section 48G**

Omit the section.

**[7] Section 51 Applications for extensions of time**

Omit section 51 (5). Insert instead:

- (5) An application to the Tribunal for an extension of time for lodging an objection must be in writing.
- (6) The hearing of the application by the Tribunal is limited to the grounds specified in the application to the Chief Commissioner for the extension.

- (7) The Tribunal determines the application by recording its decision in writing and giving copies of the decision to the applicant and to the Chief Commissioner.

**[8] Section 52B Review by Tribunal**

Omit “in the prescribed manner” from section 52B (1).  
Insert instead “in accordance with this Division”.

**[9] Section 52BA Furnishing of information and documents to, and giving evidence before, the Tribunal**

Omit section 52BA (4). Insert instead:

- (4) A person, other than the appellant or an employee or representative of the appellant, who attends at a hearing because of a notice under this section is entitled to be paid by the State expenses according to the scales of expenses allowable to witnesses in civil proceedings in the District Court.

**[10] Sections 52BB–52BE**

Insert after section 52BA:

**52BB Manner of hearing and determining review**

- (1) The hearing of a review:
- (a) is to take place at a time and place determined by the Tribunal, and
  - (b) is not open to the public unless the Tribunal, on the application of the objector, otherwise directs, and
  - (c) may be from time to time adjourned by the Tribunal.



- (2) The objector and the Chief Commissioner must each be given at least 21 days notice, or such shorter notice as the Tribunal on the application of the objector or the Chief Commissioner directs, of the time and place at which the hearing is to take place.
- (3) A review:
  - (a) may be heard in the absence of the Chief Commissioner, if there is no appearance by or on behalf of the Chief Commissioner, or
  - (b) may be struck out for want of prosecution by the objector.

#### **52BC Evidence at a review**

In hearing a review, the Tribunal is not bound by the rules of evidence and may inform itself in such manner as it thinks fit.

#### **52BD Representation at a review**

- (1) The parties at a hearing of a review may each be represented by a person who is not a barrister or solicitor.
- (2) A party at the hearing of a review may, with the consent of the Tribunal and the other party, be represented by a barrister or solicitor.
- (3) The Chief Commissioner may, at a hearing of a review, be represented by a permanent employee of the Crown who is a barrister or solicitor.
- (4) If the Crown is represented by a permanent employee of the Crown who is a barrister or solicitor, the objector at that hearing may be represented by a barrister or solicitor without obtaining the consent of the Tribunal or the Chief Commissioner.

**52BE Parties to be heard at a review**

A review is to be determined by the Tribunal after hearing the objector or the objector's representative and, if the Chief Commissioner or the Chief Commissioner's representative appears, the Chief Commissioner or the Chief Commissioner's representative.

**[11] Section 52F Payment of fee assessed by Tribunal or Supreme Court**

Omit "the prescribed rate" from section 52F (1) (b).

Insert instead "the rate for the time being prescribed under section 95 (1) of the *Supreme Court Act 1970* for payment of interest on a judgment debt".

**[12] Section 52F (3)**

Insert after section 52F (2):

- (3) If an amount of interest calculated in accordance with subsections (1) and (2) is not a multiple of 1 cent, the following applies:
  - (a) in a case where the amount of interest is a multiple of 0.5 cent, the amount of interest is to be increased by 0.5 cent,
  - (b) in any other case, the amount of interest is to be increased or decreased, as the case requires, to the nearest multiple of 1 cent.

**[13] Section 55 Particulars of dealings with petroleum products**

Omit section 55 (3). Insert instead:

- (3) A person, other than the person or an employee or representative of the person whose business or liability is being investigated, who attends at a hearing because of a notice under this section is entitled to be paid by the State expenses according to the scales of expenses allowable to witnesses in civil proceedings in the District court.

**[14] Schedule 1A**

Insert after Schedule 1:

**Schedule 1A Authorities and permits under the  
off-road diesel fuel scheme**

(Sections 48C and 48D)

**Part 1 Preliminary**

**1 Definitions**

In this Schedule:

*authority* means an authority to sell diesel fuel for off-road purposes granted under section 48C.

*permit* means a permit to purchase diesel fuel for off-road purposes granted under section 48D.

**Part 2 Provisions relating to authorities**

**2 Chief Commissioner may grant authorities**

The Chief Commissioner may grant an authority on the Chief Commissioner's own motion or on the application of any other person.

**3 Applications for authorities**

An application for an authority:

- (a) must be in a form approved by the Chief Commissioner, and
- (b) must provide such information as may be required by the form.

**4 Duration of authorities**

- (1) An authority takes effect from the date specified in the authority and remains in force (unless sooner cancelled or surrendered) until such date of expiry as is specified in the authority.
- (2) The expiry date for an authority may be extended from time to time by the Chief Commissioner.

## **5 Variation of conditions of authorities**

- (1) The Chief Commissioner may, from time to time, vary or revoke any condition, or add to the conditions, specified in an authority by notice in writing to the holder of the authority.
- (2) Any such variation, addition or revocation has effect from the date specified in the notice served on the holder of the authority.
- (3) This clause does not allow the Chief Commissioner to vary or revoke any condition imposed by this Act or the regulations.

## **Part 3 Provisions relating to permits**

### **6 Chief Commissioner may grant permits**

The Chief Commissioner may grant a permit on the written application of any person.

### **7 Applications for permits**

An application for a permit:

- (a) must be in a form approved by the Chief Commissioner, and
- (b) must provide such information as may be required by the form.

### **8 Duration of permits**

- (1) A permit takes effect from the date specified in the permit and remains in force (unless sooner cancelled or surrendered) until such date of expiry as is specified in the permit.
- (2) The expiry date for a permit may be extended from time to time by the Chief Commissioner.

## **9 Variation of conditions of permits**

- (1) The Chief Commissioner may, from time to time, vary or revoke any condition, or add to the conditions, specified in a permit by notice in writing to the holder of the permit.
- (2) Any such variation, addition or revocation has effect from the date specified in the notice served on the holder of the permit.
- (3) This clause does not allow the Chief Commissioner to vary or revoke any condition imposed by this Act or the regulations.

## **Part 4 Cancellation of authorities and permits**

### **10 Cancellation of authorities and permits**

- (1) The Chief Commissioner may, by notice in writing to the holder concerned, cancel an authority or a permit if the holder of the authority or permit:
  - (a) commits an offence under this Act or the regulations, or
  - (b) contravenes or fails to comply with any condition or requirement specified in the authority or permit or imposed on the holder of the authority or permit under this Act or the regulations.
- (2) The cancellation of an authority or permit takes effect on the date specified in the notice served on the holder of the authority or permit.
- (3) The date of cancellation specified in the notice must not be earlier than 7 days after the date on which the holder is duly served with the notice.

### **11 Appeal to Tribunal against cancellation**

- (1) If an authority or permit is cancelled by the Chief Commissioner, the person who was the holder of the authority or permit may appeal to the Tribunal against the cancellation.

- (2) An application to the Tribunal for an appeal against cancellation of an authority or permit:
  - (a) may be made within 30 days after notice of the cancellation is duly served on the holder of the authority or permit, and
  - (b) must be in writing, and
  - (c) must contain such particulars in support of the application as may be requested by the Tribunal.
- (3) The procedure for hearing an appeal under this clause is to be determined by the Tribunal.
- (4) Without limiting subclause (3), at a hearing of an appeal:
  - (a) the Tribunal is not bound by the rules of evidence and may inform itself in such manner as it thinks fit, and
  - (b) a party may, with the consent of the Tribunal and the other party, be represented by a barrister, solicitor or other person.
- (5) The parties to an appeal are to bear their own costs.

## **12 Determination of appeal**

- (1) The Tribunal may determine an appeal:
  - (a) by confirming the Chief Commissioner's decision to cancel the authority or permit, or
  - (b) by directing the Chief Commissioner to grant or issue an authority or permit to the appellant in accordance with any directions given by the Tribunal.
- (2) The Tribunal is to record its decision in writing and give a copy of its decision to the appellant and a copy to the Chief Commissioner.
- (3) The Tribunal's determination of an appeal is final.

**[15] Schedule 3 Savings and transitional provisions**

Insert “**Part 1 Preliminary**” before clause 1.

**[16] Schedule 3**

Renumber clause 6 as clause 1A and move it so as to appear before clause 1.

**[17] Schedule 3**

Omit clause 1A (1) and (2) (as renumbered by item [16]).  
Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Business Franchise Licences (Petroleum Products) Act 1987*

*Business Franchise Licences (Petroleum Products) Amendment Act 1989*

*State Revenue Legislation Further Amendment Act 1995.*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

**[18] Schedule 3**

Insert “**Part 2 Provisions consequent on the Business Franchise Licences (Petroleum Products) Act 1987**” after clause 1A (as renumbered by item [16]).

**[19] Schedule 3**

Omit the heading appearing before clause 7.

Insert instead “**Part 3 Provisions consequent on the Business Franchise Licences (Petroleum Products) Amendment Act 1989**”.

State Revenue Legislation Further Amendment Act 1995 No 98

Schedule 1 Amendment of Business Franchise Licences (Petroleum Products) Act 1987

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**[20] Schedule 3**

Insert after clause 8:

**Part 4 Provisions consequent on the State Revenue Legislation Further Amendment Act 1995**

**9 Transfer of provisions into the Act from the regulations**

Any act, matter or thing that, immediately before 1 January 1996, had effect under a provision of the *Business Franchise Licences (Petroleum Products) Regulation 1995* repealed by the *State Revenue Legislation Further Amendment Act 1995* continues to have effect under the corresponding provision inserted by that Act into this Act.



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## **Schedule 2    Amendment of Business Franchise Licences (Tobacco) Act 1987**

(Section 4)

### **[1]    Section 53 Applications for extensions of time**

Insert after section 53 (4):

- (5)    An application to the Tribunal for an extension of time for lodging an objection must be in writing.
- (6)    The hearing of the application by the Tribunal is limited to the grounds specified in the application to the Chief Commissioner for the extension.
- (7)    The Tribunal determines the application by recording its decision in writing and giving copies of the decision to the applicant and to the Chief Commissioner.

### **[2]    Section 54B Review by Tribunal**

Omit “in the prescribed manner” from section 54B (1).  
Insert instead “in accordance with this Division”.

### **[3]    Section 54BA Furnishing of information and documents to, and giving evidence before, the Tribunal**

Omit section 54BA (4). Insert instead:

- (4)    A person, other than the appellant or an employee or representative of the appellant, who attends at a hearing because of a notice under this section is entitled to be paid by the State expenses according to the scales of expenses allowable to witnesses in civil proceedings in the District Court.

**[4] Sections 54BB–54BE**

Insert after section 54BA:

**54BB Manner of hearing and determining review**

- (1) The hearing of a review:
  - (a) is to take place at a time and place determined by the Tribunal, and
  - (b) is not open to the public unless the Tribunal, on the application of the objector, otherwise directs, and
  - (c) may be from time to time adjourned by the Tribunal.
- (2) The objector and the Chief Commissioner must each be given at least 21 days notice, or such shorter notice as the Tribunal on the application of the objector or the Chief Commissioner directs, of the time and place at which the hearing is to take place.
- (3) A review:
  - (a) may be heard in the absence of the Chief Commissioner, if there is no appearance by or on behalf of the Chief Commissioner, or
  - (b) may be struck out for want of prosecution by the objector.

**54BC Evidence at a review**

In hearing a review, the Tribunal is not bound by the rules of evidence and may inform itself in such manner as it thinks fit.

**54BD Representation at a review**

- (1) The parties at a hearing of a review may each be represented by a person who is not a barrister or solicitor.

- (2) A party at the hearing of a review may, with the consent of the Tribunal and the other party, be represented by a barrister or solicitor.
- (3) The Chief Commissioner may, at a hearing of a review, be represented by a permanent employee of the Crown who is a barrister or solicitor.
- (4) If the Crown is represented by a permanent employee of the Crown who is a barrister or solicitor, the objector at that hearing may be represented by a barrister or solicitor without obtaining the consent of the Tribunal or the Chief Commissioner.

**54BE Parties to be heard at a review**

A review is to be determined by the Tribunal after hearing the objector or the objector's representative and, if the Chief Commissioner or the Chief Commissioner's representative appears, the Chief Commissioner or the Chief Commissioner's representative.

**[5] Section 54F Payment of fee assessed by Tribunal or Supreme Court**

Omit "the prescribed rate" from section 54F (1) (b).

Insert instead "the rate for the time being prescribed under section 95 (1) of the *Supreme Court Act 1970* for payment of interest on a judgment debt".

**[6] Section 54F (3)**

Insert after section 54F (2):

- (3) If an amount of interest calculated in accordance with subsections (1) and (2) is not a multiple of 1 cent, the following applies:
  - (a) in a case where the amount of interest is a multiple of 0.5 cent, the amount of interest is to be increased by 0.5 cent,

- (b) in any other case, the amount of interest is to be increased or decreased, as the case requires, to the nearest multiple of 1 cent.

**[7] Section 57 Particulars of dealings with tobacco to be notified**

Omit section 57 (3). Insert instead:

- (3) A person, other than the person or an employee or representative of the person whose business or liability is being investigated, who attends at a hearing because of a notice under this section is entitled to be paid by the State expenses according to the scales of expenses allowable to witnesses in civil proceedings in the District court.

**[8] Section 69 Disclosure of information**

Insert “, (2A)” after “(2)” in section 69 (1).

**[9] Section 69 (28)**

Insert after section 69 (2):

- (2A) The Chief Commissioner may, if of the opinion that it is necessary to do so for the purpose of the administration or execution of the *Public Health Act 1991* or the *Tobacco Advertising Prohibition Act 1991*, disclose information, or publish a record, to:
  - (a) the Director-General of the Department of Health, or
  - (b) the person in charge of a unit under the control or management of an area health service under the *Area Health Services Act 1986* or of an incorporated hospital under the *Public Hospitals Act 1929*.

**[10] Section 69 (3)**

Insert “or (2A)” after “(2)”.

**[11] Schedule 3 Savings and transitional provisions**

Insert “**Part 1 Preliminary**” before clause 1.

**[12] Schedule 3**

Renumber clause 8 as clause 1A and move it so as to appear before clause 1.

**[13] Schedule 3**

Omit clause 1A (1) and (2) (as renumbered by item [12]). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Business Franchise Licences (Tobacco) Act 1987*

*Business Franchise Licences (Tobacco) Amendment Act 1989*

*State Revenue Legislation Further Amendment Act 1995.*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

**[14] Schedule 3**

Insert “**Part 2 Provisions consequent on the Business Franchise Licences (Tobacco) Act 1987**” after clause 1A (as renumbered by item [12]).

**[15] Schedule 3**

Insert “**Part 3 Provisions consequent on the Business Franchise Licences (Tobacco) Amendment Act 1989**” before clause 9.

**[16] Schedule 3**

Insert after clause 10:

**Part 4 Provisions consequent on the State Revenue Legislation Further Amendment Act 1995**

**11 Transfer of provisions into the Act from the regulations**

Any act, matter or thing that, immediately before 1 January 1996, had effect under a provision of the *Business Franchise Licences (Tobacco) Regulation 1995* repealed by the *State Revenue Legislation Further Amendment Act 1995* continues to have effect under the corresponding provision inserted by that Act into this Act.

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## Schedule 3      Amendment of Debits Tax Act 1990

(Section 5)

### [ 1 ]      Section 3 Definitions

Insert after paragraph (a) (vii) of the definition of *excluded debit* in section 3 (1):

- (viii) made to an account kept with a financial institution in the name of the Sydney Organising Committee for the Olympic Games or of Sydney Paralympic Organising Committee Limited, or

### [ 2 ]      Section 3 (1)

Omit paragraph (d1) of the definition of *excluded debit*.

### [ 3 ]      Section 4

Omit the section. Insert instead:

#### 4      Notional separation of debits

- (1) For the purposes of this Act, a single debit made to an account in respect of 2 or more account transactions:
  - (a) under a third party cheque arrangement, or
  - (b) of a kind, or in circumstances, prescribed by the regulations,has the same effect as separate debits for each of those transactions.
- (2) In this section, *third party cheque arrangement* means an arrangement under which a customer of a non-bank financial institution may draw cheques on a bank account kept in the name of the institution.

**[4] Section 45A**

Insert after section 45:

**45A Application of Act to persons or bodies having Crown immunity**

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

**[5] Schedule 3, heading**

Insert “Savings and” before “transitional”.

**[6] Schedule 3**

Insert after clause 1:

**1A Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
  
*State Revenue Legislation Further Amendment Act 1995*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.



- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Schedule 4 Amendment of Land Tax Management Act 1956**

(Section 6)

### **[1] Section 10 Land exempted from tax**

Insert after section 10 (1) (l):

- (m) land owned by a State owned corporation (within the meaning of the *State Owned Corporations Act 1989*) specified in the regulations to the extent, and from the date (whether that date is before or after the commencement of the regulations), prescribed by the regulations in respect of the corporation,

### **[2] Section 21C Liability of lessees of land owned by the Crown etc**

Insert after section 21C (6) (d):

- (e) a lease of land in respect of which the Crown is liable for land tax,

### **[3] Section 63B**

Insert after section 63A:

#### **63B Application of Act to persons or bodies having Crown immunity**

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

**[4] Schedule 2 Savings and transitional provisions**

Insert before clause 1:

**1A Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*State Revenue Legislation Further Amendment Act 1995*

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

## **Schedule 5 Amendment of Pay-roll Tax Act 1971**

(Section 7)

### **[1] Section 5 Disclosure of information**

Insert “, (2A)” after “(2)” in section 5 (1).

### **[2] Section 5 (2A)**

Insert after section 5 (2):

(2A) The Chief Commissioner may, if of the opinion that it is necessary to do so for the purpose of the administration or execution of the Workers Compensation Act 1987, disclose information, or publish a record, to the WorkCover Authority of New South Wales, so as to enable that Authority to exercise or perform a power, authority, duty or function conferred or imposed on it by law.

### **[3] Section 5 (3)**

Insert “or (2A)” after “(2)”.

### **[4] Schedule 1 Calculation of pay-roll tax for the financial year commencing on 1 July 1994**

Omit “GTW” where appearing in the numerator of the fraction in the formula in clause 12.

Insert instead “TW”.

**[5] Schedule 2 Calculation of pay-roll tax liability from 1 July 1995**

Omit “GTW” where appearing in the numerator of the fraction in the formula in clause 12.

Insert instead “TW”.

**[6] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Further Amendment Act 1995*

## **Schedule 6 Amendment of Recovery of Imposts Act 1963**

(Section 8)

**[1] Section 2 Limitation on time for the bringing of proceedings to recover taxes**

Omit “of any tax paid, under the authority or purported authority of any Act” from section 2 (1).

Insert instead “paid by way of tax or purported tax and recoverable on restitutionary grounds (including but not limited to mistake of law or fact)”.

**[2] Section 2 (1) (a)**

Insert “in the case of a payment made” before “before the commencement of this Act”.

**[3] Section 2 (1) (b)**

Insert “in the case of a payment made” before “subsequent to the commencement of this Act”.

**[4] Section 2 (2)**

Omit the subsection. Insert instead:

- (2) Subsection (1) does not apply to any proceedings brought pursuant to any specific provisions of any Act:
  - (a) providing for the mode of challenging the validity or for the recovery of the whole or any part of any tax actually paid, and
  - (b) specifying a different period within which such proceedings must be brought.

**[5] Section 7 Application**

Insert “, and applies whether or not the payment was made under the authority or purported authority of any Act” after “protest” in section 7 (1).

**[6] Section 7 (5)**

Insert after section 7 (4):

- (5) The amendments made to this Act by Schedule 6 to the *State Revenue Legislation Further Amendment Act 1995*:
  - (a) apply to money paid, and proceedings commenced, whether before or after the commencement of the amendments, and
  - (b) have effect for all purposes, and are taken always to have effect for all purposes, as from the commencement of this Act.

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## **Schedule 7 Amendment of Stamp Duties Act 1920**

(Section 9)

### **[1] Section 3 Definitions**

Insert after the definition of *Corporate debt security* in section 3 (1):

*CUFS* means any interest, issued by or on behalf of CHESS Depository Nominees Pty Ltd, that provides beneficial ownership in respect of

(a) shares in a corporation incorporated outside Australia, or

(b) units in a public unit trust scheme,

being shares or units that are quoted on the market operated by Australian Stock Exchange Limited.

### **[2] Section 3 (1)**

Insert at the end of the definition of *Marketable security*:

and

(c) any CUFS.

### **[3] Section 12 Licences to deal in stamps**

Omit “, and a description of every building at which he is authorised to deal in stamps, and such person shall not be thereby entitled to deal in stamps at any place not described in his licence” from section 12 (2).

### **[4] Section 12 (3)**

Omit the subsection.



**[5] Section 12 (4) (b) and (c)**

Omit the paragraphs.

**[6] Section 41 Agreements for sale or conveyance to be chargeable as conveyance etc**

Insert “or between different parties who are related persons (within the meaning of Division 30, as provided by section 99A (8))” after “parties” in section 41 (3B) (a).

**[7] Section 44 (3)**

Omit the subsection. Insert instead:

- (3) This Division does not apply to:
  - (a) an SCH-regulated transfer within the meaning of section 9 of the Corporations Law, or
  - (b) a transaction or property that is prescribed, or is of a class prescribed, for the purposes of this subsection.

**[8] Section 66H Intergenerational rural transfers**

Insert “, together with any other property that is an integral part of the business of primary production” after “primary production” where firstly occurring in section 66H (1).

**[9] Section 66H**

Omit “Treasurer” where firstly and thirdly occurring.  
Insert instead “Chief Commissioner”.

**[10] Section 83 Definitions**

Omit paragraph (e) of the definition of *loan security* in section 83 (1). Insert instead:

- (e) an instrument executed (whether or not in New South Wales) after 1 January 1989 which, on the deposit of documents of title over property in New South Wales or instruments creating a charge on property in New South Wales, evidences the terms of a mortgage or becomes a mortgage, but does not include:
  - (i) an instrument which is executed by a person for the purpose of conducting the person's money market trading operations, or
  - (ii) an agreement by which a clearing member agrees to lodge securities with, or to make securities available to, Options Clearing House Limited.

**[11] Section 84CAC Exemption for certain home loan transactions**

Omit "1 January 1995" from section 84CAC (2) (b).  
Insert instead " 1 January 1996".

**[12] Section 84EBA Exemption for loan securities of companies with regional headquarters in NSW**

Insert at the end of the section:

- (2) This section:
  - (a) applies to a company, but only if a determination under section 82CE of the *Income Tax Assessment Act 1936* of the Commonwealth was made in relation to it before 1 September 1995, and
  - (b) ceases to apply to a company on 1 July 2000.

**[13] Section 94C Application of Division (Duty on certain SCH-regulated transfers)**

Omit section (1) (c) (i). Insert instead:

- (i) a share or a right to a share in (or a CUFS in respect of) the stock or funds of a relevant company, or

**[14] Section 94C (2) (e)**

Insert after section 94C (2) (d):

- (e) a transfer by way of mortgage or discharge of mortgage, if an instrument evidencing the mortgage has been duly stamped as a loan security or is exempt from stamp duty of a like nature under the law of another State or Territory.

**[15] Section 96A Duty on certain transfers of shares**

Insert “(or a transfer of a CUFS in respect of)” after “shares in” in section 96A (1).

**[16] Section 96B Duty on transfer of listed shares**

Insert “(or on a transfer of a CUFS)” after “any shares”.

**[17] Section 96B**

Insert “or CUFS” after “the shares”.

**[18] Section 97AE Charging of duty on transfer etc of certain mortgages**

Insert “, or on any declaration of trust made on or after 1 January 1995 over property that is identified in the declaration of trust as a mortgage” after “1983”.

**[19] Section 98 Definitions**

Omit the definition of *broker receipts* in subsection (1). Insert instead:

*broker receipts* means:

- (a) receipts (after the deduction of any trading losses) in the nature of profits from trading, including dividends, or
- (b) receipts of brokerage (whether from trading in equities, options, futures, fixed interest or any other source), or
- (c) receipts of underwriting or sub-underwriting commissions (after deduction of sub-underwriting commissions paid), or
- (d) dividends received otherwise than from trading, or
- (e) receipts of interest and management fees, or
- (f) receipts of fees from a member of the group of which the broker is a member, or
- (g) receipts from the sale of capital assets not traded in the ordinary course of the business of the broker,

calculated on a monthly basis in such a way that a net loss in any month is taken to be a nil net receipt for that month, and cannot be transferred to or be considered in the calculations for any subsequent month.

**[20] Section 98 (14)**

Insert at the end of the subsection:

This subsection does not, however, apply in respect of the transfer of any amount between exempt accounts kept in the name of the same person, being a designated person who holds each account in the same capacity (and not, for example, as the trustee or administrator of different trusts).

**[21] Section 98A Receipts to which Division does not apply**

Omit “a receipt which, as a result of a corresponding debit to a customer’s account with the designated person, is credited to another account of the customer with that person only because” from section 98A (ib).

Insert instead “a receipt resulting from the transfer of a credit or debit balance from one account to another (being accounts kept by the designated person in the name of the same customer), but only if the transfer has arisen because”.

**[22] Section 98A (ie)**

Insert after section 98A (id):

- (ie) a receipt comprising the crediting of an account kept solely for clearing amounts in respect of transactions for the purposes of the Solicitors’ Electronic Information Settlement Interchange Network, or

**[23] Section 98Q Cancellation of certificate as short term dealer**

Omit “referred to in section 98O (1)” from section 98Q (a).

Insert instead “of an undertaking made under section 98O”.

**[24] Section 98RA**

Insert after section 98R:

**98RA Return relating to contraventions**

- (1) A short term dealer into whose exempt bank account payment of an amount (in this section called the *irregular payment*) has been made otherwise than in accordance with this Act must, within 28 days after the payment is made:

- (a) lodge a return in the approved form with the Chief Commissioner in relation to the irregular payment and, at the same time, pay to the Chief Commissioner an amount equal to the duty that would have been payable in respect of the irregular payment had it been a payment into an account that is not an exempt account, or
- (b) if, within that time, the irregular payment is transferred to an account that is not an exempt account, lodge a return in the approved form with the Chief Commissioner in relation to the irregular payment and its subsequent transfer.

Maximum penalty: 100 penalty units.

- (2) A short term dealer who is liable to pay an amount under subsection (1) is also liable to pay to the Chief Commissioner at the same time, by way of additional duty, double that amount. The Chief Commissioner may, however, for reasons the Chief Commissioner thinks sufficient, remit the additional duty or any part of it.

**[25] Section 98U Exempt accounts**

Omit section 98U (5). Insert instead:

- (5) The Chief Commissioner:
  - (a) may cancel the certificate issued in respect of an exempt account, if the Chief Commissioner is satisfied that an amount has been paid to the credit of the account in contravention of this Act or any undertaking made under this Act, or that the account is not being maintained in accordance with such an undertaking, and
  - (b) must cancel such a certificate after cancelling the registration of a registered person or the certification of a short term dealer who keeps an exempt account or on whose behalf an exempt account is kept.

- (5A) Cancellation under subsection (5) is effected by notice in writing to the person to whom the certificate was issued, and where the account was a bank account, a copy of the notice is to be sent by the Chief Commissioner to the bank concerned.

**[26] Section 98U (8)**

Insert after section 98U (7):

- (8) The Chief Commissioner is not to issue a certificate of approval on the ground referred to in subsection (1) (c) in respect of an account held for or on behalf of a person or body the subject of an order in force under section 145.

**[27] Section 124 Objections and appeals**

Insert at the end of section 124 (1) (b):

- , or
- (c) who has applied for an exemption under section 66H, or paragraph (24) (b) or (32) of the General Exemptions from Stamp Duty in the Second Schedule, and who is dissatisfied with a decision of the Chief Commissioner with respect to the application,

**[28] Section 124B Onus on objector**

Insert “or that the decision referred to in section 124 (1) (c) was incorrectly reached” after “incorrectly calculated”.

**[29] Section 145**

Insert after section 144:

**145 Application of Act to persons or bodies having Crown immunity**

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

- (2) While any such order is in force, the specified person or body is subject to the requirements of this Act accordingly.

**[30] Second Schedule Stamp duties and exemptions**

Insert after paragraph (8) of the matter appearing under the heading “**Transfer of shares**” in the first column of the Schedule:

- (9) In paragraphs (1)–(8) and in the following exemptions from the duties imposed by those paragraphs:
- (a) a reference to shares generally includes a reference to CUFS, and
  - (b) a reference to shares in relation to any stock or fund includes a reference to CUFS in relation to that stock or fund.

**[31] Second Schedule General exemptions from stamp duty under Part 3**

Omit “Minister” wherever occurring in paragraphs (24) (b) and (32).

Insert instead “Chief Commissioner”.

**[32] Second Schedule**

Omit “Minister for Finance” from paragraph (24) (b).

Insert instead “Chief Commissioner”.

**[33] Second Schedule**

Insert “in accordance with guidelines approved by the Treasurer” after “may approve” in paragraph (24) (b).

**[34] Second Schedule**

Insert “in accordance with guidelines approved by the Treasurer” before “(except” in paragraph (32).



**[35] Second Schedule**

Insert after paragraph (35):

- (35A) Any instrument executed for the purposes of or in connection with the Community Housing Program administered within the Department of Housing.

**[36] Second Schedule**

Insert “, or a declaration of trust made on or after 1 January 1995 over property that is identified in the declaration of trust as a corporate debt security” after “option to acquire a corporate debt security” in paragraph (41).

**[37] Second Schedule**

Insert after paragraph (42):

- (42A) The issue or transfer of a share ratio contract.

**[38] Second Schedule**

Insert after paragraph (46):

- (47) A deed of release executed by a HomeFund borrower in connection with the restructuring scheme under the *HomeFund Restructuring Act 1993*.

**[39] Second Schedule**

Insert in numerical order:

- (48) A costs agreement under section 184 of the *Legal Profession Act 1987* made on or after 4 October 1994.

**[40] Second Schedule**

Insert in numerical order:

- (49) A conveyance to a solicitor corporation formed under the *Legal Profession Act 1987* of property of
- (a) a partnership of solicitors formed or originally formed before 8 March 1991, where the

conveyance is executed on or after 17 February 1995 and the members of the corporation are the same as the members of the partnership immediately before the conveyance is executed, or

- (b) a solicitor practising as a sole solicitor before 8 March 1991, where the conveyance is executed on or after 17 February 1995 and the solicitor becomes the sole member of the corporation.

**[41] Second Schedule**

Insert in numerical order:

- (50) An agreement made by or on behalf of the Department of Training and Education Co-ordination (or any predecessor) on or after 6 March 1995 in connection with the funding of employment or training programs conducted by community employment organisations.

**[42] Tenth Schedule Savings, transitional and other provisions**

Insert before Part 1:

**Part 1A Preliminary**

**1A Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
- State Revenue Legislation Further Amendment Act 1995*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**[43] Tenth Schedule**

Insert after Part 12:

**Part 13 State Revenue Legislation Further  
Amendment Act 1995**

**41 Definition**

In this Part, *amending Act* means the *State Revenue Legislation Further Amendment Act 1995*.

**42 Regulation concerning ADRs**

Clause 5 of the *Stamp Duties Regulation 1991* is unaffected by the repeal of section 44 (3) by the *State Revenue Legislation (Amendment) Act 1994*, and continues to have effect (and is taken always to have had effect) for the purposes of section 44 (3), as inserted by the amending Act, and may be amended or repealed accordingly.

**43 Contract splitting for transactions beginning before  
1.1.1996**

Section 41 (3B), as in force immediately before 1 January 1996, is taken to apply to any transaction of the kind referred to in that subsection (being a transaction in respect of which the first agreement for the sale or conveyance of property was executed before 1 January 1996) as if that subsection had not been amended by the amending Act.

**44 Transfer of functions from Treasurer to Chief Commissioner**

Any decision made before 1 January 1996 by the Treasurer under section 66H is taken to have been made by the Chief Commissioner of Stamp Duties.

**45 Transfer of functions from Minister to Chief Commissioner**

Anything done before 1 January 1996 by or in relation to either of the Ministers referred to in paragraphs (24) and (32) of the General Exemptions from Stamp Duty in the Second Schedule are taken to have been done by or in relation to the Chief Commissioner of Stamp Duties.

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## **Schedule 8 Amendment of other instruments**

(Section 10)

### **8.1 Business Franchise Licences (Petroleum Products) Regulation 1995**

#### **[1] Part 2 Tribunal**

Omit the Part.

#### **[2] Part 4 Off-road diesel fuel scheme**

Omit the heading to Division 1.

#### **[3] Part 4, Divisions 2–4**

Omit the Divisions (clauses 19 and 26 excepted).

#### **[4] Clause 32**

Omit the clause.

### **8.2 Business Franchise Licences (Tobacco) Regulation 1995**

#### **[1] Part 2 Tribunal**

Omit the Part.

#### **[2] Clause 13**

Omit the clause.

### **8.3 Stamp Duties Regulation 1991**

#### **[1] Clause 3 Definitions**

Insert in alphabetical order:

*credit union* means a body that is registered as a society, and authorised to operate as a credit union, under the *Financial Institutions (NSW) Code*.

#### **[2] Clause 5 Prescribed transactions: sec 44**

Insert “, or a company incorporated outside Australia that has a register in New South Wales” after “New South Wales,”.

#### **[3] Clause 11 Exemptions from duty for share transfers: Second Schedule**

Insert at the end of clause 11 (2):

CHESSE Depositary Nominees Pty Ltd

#### **[4] Clause 16 Customary general clearance by financial institutions**

Insert at the end of the clause:

- (2) For the purposes of section 98A of the Act, a receipt by a building society or credit union (a *recognised financial institution*) that is the consequence of a customary general clearance:
  - (a) effected under an agreement between 2 or more recognised financial institutions (whether or not a registered bank is also party to that agreement) for the settlement of balances arising between them, being an agreement contemplated by the terms and conditions of any agreement between recognised financial institutions relating to customary general clearance, or

- (b) effected under an agreement between a recognised financial institution and a registered person (other than a recognised financial institution) for the settlement of balances arising between them, being an agreement contemplated by the terms and conditions of any agreement between recognised financial institutions and registered persons (other than recognised financial institutions) relating to customary general clearance,

is prescribed.

**[5] Part 3, Division 2A**

Insert after Division 2:

**Division 2A Liability to lodge or deposit money:  
sec 98LA**

**28A Reinvestment of existing investments**

For the purposes of section 98LA (3) (e) of the Act, a receipt by a person of the proceeds of an amount deposited or invested in that person's name with a registered person, or with a short term dealer, is prescribed.

**[6] Clauses 36 and 37**

Insert after clause 35:

**36 Clearing and settling accounts**

- (1) For the purposes of section 98U (1) (h) of the Act, a clearing or settlement account kept by Combined Financial Processing Pty Ltd with a bank that is a registered person (being an account used solely for the clearing of direct entry transactions between the Reserve Bank of Australia and one or more credit unions) is prescribed.

- (2) For the purposes of section 98U (1) (h) of the Act, a clearing or settlement account kept by an SCH participant (other than a registered person), being an account:
- (a) that is used solely for the purpose of depositing receipts from SCH-regulated transfers or funds transferred from another account in the name of the SCH participant for the purpose of meeting that participant's settlement obligations, and
  - (b) from which all funds are transferred, on a daily basis, to another account in New South Wales (not being an exempt account) held in the name of the SCH participant,

is prescribed.

- (3) In this clause:

*SCH participant* has the same meaning as in section 9 of the *Corporations Law*.

*SCH-regulated transfer* has the same meaning as in section 9 of the *Corporations Law*.

### **37 Accounts relating to the year 2000 Olympic Games**

- (1) For the purposes of section 98U (1) (h) of the Act, an account with a bank that is a registered person, being an account that is kept by either the Sydney Organising Committee for the Olympic Games or by Sydney Paralympic Organising Committee Limited, is prescribed.
- (2) For the purposes of section 98U (1) (h) of the Act, an account with a bank that is a registered person, being an account:
- (a) that is kept by either the Australian Olympic Committee Incorporated or the New South Wales Olympic Council Incorporated, and



- (b) that is used solely for the purpose of receipts in connection with the year 2000 Olympic Games (but not in connection with the administrative or operating costs of either account-holder),

is prescribed.

[Minister's second reading speech made in—  
Legislative Assembly on 6 December 1995  
Legislative Council on 13 December 1995]