



New South Wales

State Revenue Legislation Further Amendment Act 2005 No 111

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Acts	2
Schedule 1 Amendment of Duties Act 1997 No 123	3
Schedule 2 Amendment of First Home Owner Grant Act 2000 No 21	10
Schedule 3 Amendment of Insurance Protection Tax Act 2001 No 40	13
Schedule 4 Amendment of Land Tax Management Act 1956 No 26	14
Schedule 5 Amendment of Pay-roll Tax Act 1971 No 22	18
Schedule 6 Amendment of Petroleum Products Subsidy Act 1997 No 112	20
Schedule 7 Amendment of Taxation Administration Act 1996 No 97	27
Schedule 8 Consequential amendment of Administrative Decisions Tribunal Act 1997 No 76	29



New South Wales

State Revenue Legislation Further Amendment Act 2005 No 111

Act No 111, 2005

An Act to make miscellaneous amendments to certain State revenue legislation; and
for other purposes. [Assented to 7 December 2005]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *State Revenue Legislation Further Amendment Act 2005*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) The following provisions commence, or are taken to have commenced, on the dates specified:
 - Schedule 1 [10]–[14]—the date on which the Bill for this Act was introduced into the Legislative Assembly
 - Schedule 1 [15]—1 August 2005
 - Schedule 1 [16]—31 January 2005
 - Schedule 5 [1], [2] and [4]—1 July 2006
 - Schedule 5 [3]—1 July 2005

3 Amendment of Acts

The Acts specified in Schedules 1–8 are amended as set out in those Schedules.

Schedule 1 Amendment of Duties Act 1997 No 123

(Section 3)

[1] Section 61 Transfers of property in connection with persons changing superannuation funds

Omit section 61 (1). Insert instead:

- (1) This section applies to a relevant transfer that occurs in connection with a person:
 - (a) ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, a superannuation fund that is a complying superannuation fund or was a complying superannuation fund within the period of 12 months before the transfer was made, and
 - (b) becoming a member of, or otherwise becoming entitled to benefits in respect of, another superannuation fund that is also a complying superannuation fund or will, in the opinion of the trustees of both funds concerned, be a complying superannuation fund within 12 months after the transfer is made.

(1A) For the purposes of this section, each of the following is a *relevant transfer*:

- (a) a transfer of dutiable property from a trustee of a superannuation fund, or a custodian of the trustee, to the trustee of another superannuation fund, or to a custodian of the trustee of another superannuation fund,
- (b) a transfer of dutiable property from a trustee of a superannuation fund to a custodian of the trustee, or from a custodian of the trustee of a superannuation fund to the trustee,
- (c) a transfer of marketable securities from a trustee of a pooled superannuation trust, made in exchange for a redemption of units in the trust, to the trustee of a superannuation fund, or a custodian of the trustee of a superannuation fund.

[2] Section 61 (3) (b)

Omit “complying”.

[3] Section 61 (3) (e)

Insert “the person will become a member of, or otherwise become entitled to benefits in respect of,” after “fund” where firstly occurring.

[4] Section 65 Exemptions from duty

Insert after section 65 (14):

(15) Home equity release schemes

No duty is chargeable under this Chapter on the transfer of, or an agreement to transfer, land, a land use entitlement, or an interest in land or a land use entitlement if:

- (a) the land concerned is used as the principal place of residence of the transferor, and
- (b) the transferor, or, if there is more than one transferor, at least one of them, is aged 65 years or older, and
- (c) the transfer or agreement is entered into in connection with an approved home equity release scheme.

In this subsection:

approved home equity release scheme means a home equity release scheme approved, or of a class approved, by the Chief Commissioner, in accordance with any guidelines approved by the Treasurer that are published in the Gazette.

home equity release scheme means a scheme that enables an owner of residential property to obtain money from a person (*the lender*) in exchange for an agreement that a proportion of the value of the residential property will be paid to the lender on the occurrence of a specified event (such as the sale of the residential property or the death of the owner).

[5] Section 73 Ineligible persons

Omit “16 years” wherever occurring in section 73 (3) and (4).

Insert instead “18 years”.

[6] Section 111 Exemptions

Insert after section 111 (1) (a):

- (aa) the call option is assigned to a body established solely for the purpose of raising funds in relation to an investment scheme promoted by the person who assigns the call option, or

[7] Section 163DA

Insert after section 163D:

163DA Meaning of “associated person”

- (1) Without limiting the meaning of *associated person* in the Dictionary, a public company and a subsidiary (within the

meaning of the *Corporations Act 2001* of the Commonwealth) of a public company are taken to be associated persons for the purposes of this Chapter.

- (2) However, the responsible entity for a managed investment scheme and the responsible entity for another managed investment scheme are considered to be associated persons for the purposes of this Chapter only if a person who is a member of one scheme and is beneficially entitled to more than 20% of the property to which the scheme relates is also a member of the other scheme and is beneficially entitled to more than 20% of the property to which that other scheme relates.

[8] Section 163ZU Registration of wholesale unit trust schemes

Omit section 163ZU (2) (a). Insert instead:

- (a) not less than 80% of the units in the unit trust scheme are held by qualifying investors, and

[9] Section 163ZU (2A)

Insert after section 163ZU (2):

- (2A) For the purposes of this section, a *qualifying investor* in a unit trust scheme means a person who holds units in the unit trust scheme in any of the following capacities:
- (a) as trustee of a complying superannuation fund that has not less than 300 members,
 - (b) as trustee of a complying approved deposit fund that has not less than 300 members,
 - (c) as the trustee of a pooled superannuation trust,
 - (d) as the trustee of a public unit trust,
 - (e) as a life company if its holding of the units in the unit trust scheme is an investment of a statutory fund maintained by it under the *Life Insurance Act 1995* of the Commonwealth (and, for the purposes of this paragraph, the holding of units by a life company by way of an investment of a statutory fund of the life company is taken to be a holding of units by the life company in a separate capacity from a holding of units by the life company by way of investment of another statutory fund of the life company),
 - (f) as a custodian for a trustee, or a trustee for a life company, referred to in any of the preceding paragraphs in its capacity as such a custodian or trustee,
 - (g) as the trustee of another wholesale unit trust scheme,

- (h) as the custodian or trustee for an IDPS, or investor directed portfolio service, within the meaning of the relevant ASIC policy statement, if the IDPS has not less than 300 clients or investors, none of whom (individually or together with any associated person) is beneficially entitled to more than 20% of the property to which the IDPS relates,
- (i) as the responsible entity for a managed investment scheme registered under the *Corporations Act 2001* of the Commonwealth (not being a person to which paragraph (d) or (h) applies), if the managed investment scheme has not less than 300 members, none of whom (individually or together with any associated person) is beneficially entitled to more than 20% of the property to which the scheme relates,
- (j) as the Crown in right of the Commonwealth, a State or a Territory (including any statutory body representing the Crown in right of the Commonwealth, a State or a Territory),
- (k) in a capacity approved by the Chief Commissioner, being a capacity that the Chief Commissioner is satisfied corresponds to a capacity referred to in paragraphs (a)–(f) under the law of an external Territory or a foreign country,
- (l) as a corporation or unit trust scheme that is wholly owned by a person or persons who hold shares in the corporation or units in the unit trust scheme in a capacity approved by the Chief Commissioner, being a capacity that the Chief Commissioner is satisfied corresponds to a capacity referred to in paragraphs (a)–(f) under the law of an external Territory or a foreign country.

[10] Section 218 Stamping before advance

Omit section 218 (2). Insert instead:

- (2) If a mortgage referred to in section 216 or 217 is stamped before an advance has been made:
 - (a) the liability date for the mortgage is, for the purpose of determining a referable point for the mortgage, taken to be the date of stamping, and
 - (b) the mortgage may be stamped only for an amount of an advance secured by the mortgage that does not exceed the value of the property affected by the mortgage at the date of the referable point.

[11] Section 226 Payment of duty on mortgages associated with debenture issues

Insert “made before the debenture concession closure date” after “advances” wherever occurring in section 226 (2).

[12] Section 226 (3B)

Omit the subsection. Insert instead:

(3B) Section 208 (2) applies in respect of a mortgage referred to in subsection (2), if an advance or further advance is made on or after the debenture concession closure date, as if the reference to the amount secured by the mortgage at the time a liability to duty last arose were a reference to the total of:

- (a) the disclosed debenture amount, and
- (b) any advances or further advances made on or after the cut-off date in respect of which duty has been paid under this Chapter.

[13] Section 226 (4A)

Insert after section 226 (4):

(4A) To avoid any doubt, subsection (3B) extends to a mortgage executed before 1 January 1999.

[14] Section 226 (5)

Insert in alphabetical order:

debenture concession closure date means the date on which the Bill for the *State Revenue Legislation Further Amendment Act 2005* was introduced into the Legislative Assembly.

[15] Section 227A Transfer of mortgages

Omit section 227A (4). Insert instead:

- (4) This section does not apply to the following:
 - (a) a mortgage referred to in section 220 (3B),
 - (b) a transfer of a mortgage by a corporation to another corporation if the Chief Commissioner is satisfied that, had the transfer been a dutiable transaction, it would not be chargeable with duty under section 281 (relating to transfers between members of the same group of corporations),

- (c) a transfer of a mortgage in connection with, or in preparation for creating, issuing, marketing or securing, a mortgage-backed security,
- (d) a transfer of a mortgage from a person who holds the mortgage as trustee for another person to a new trustee appointed in substitution for the former trustee.

[16] Section 233 Types of general insurance

Omit “1 February 2005” from section 233 (3) (c).

Insert instead “31 January 2010”.

[17] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2005

[18] Schedule 1, Part 23

Insert after Part 22:

**Part 23 Provisions consequent on enactment of
State Revenue Legislation Further
Amendment Act 2005**

54 Definition

In this Part:

amending Act means the *State Revenue Legislation Further Amendment Act 2005*.

55 Changes to eligibility for First Home Plus

The amendment to section 73 made by the amending Act applies to applications under the First Home Plus scheme that are made on or after the commencement of the amendment.

56 Stamping before advance: section 218

- (1) The amendment to section 218 made by the amending Act applies to any mortgage stamped on or after the introduction date, regardless of when the mortgage was first executed.
- (2) If a mortgage is stamped on or after the introduction date, and before the date of assent to the amending Act, for an amount exceeding the amount for which it may be stamped under section 218, as amended by the amending Act, it is taken to be duly

stamped, but only for an amount of an advance secured by the mortgage that does not exceed the value of the property affected by the mortgage at the date of the referable point.

- (3) If a mortgage stamped before the date of assent to the amending Act becomes chargeable with duty, or additional duty, under Chapter 7 as a consequence of the amendment made to section 218 by the amending Act or this clause, the liability to pay the duty is taken, for the purposes of section 209, to arise on the date of assent to that Act.
- (4) In this clause:
introduction date means the date the Bill for the amending Act was introduced into the Legislative Assembly.

57 Closure of debenture concession

- (1) Section 226 (3B), as in force immediately before its substitution by the amending Act, continues to apply in respect of an advance or further advance referred to in that subsection that was made before the debenture concession closure date.
- (2) Any liability to pay duty, or additional duty, under Chapter 7 that arises under section 226 (as amended by the amending Act) because of the making of an advance or further advance on or after the debenture concession closure date but before the date of assent to the amending Act, being a liability that would not arise but for the amendments made to that section by that Act, is taken, for the purposes of section 209, to arise on the date of assent to that Act.
- (3) In this clause:
debenture concession closure date means the date the Bill for the amending Act was introduced into the Legislative Assembly.

[19] Dictionary

Omit “and, for the purposes of Chapter 4A (Acquisition and disposal of interests in land rich landholders), a public company and a subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of a public company are taken to be associated persons” from the definition of *associated person*.

[20] Dictionary, definition of “qualifying investor”

Omit the definition. Insert instead:

qualifying investor in a unit trust scheme has the meaning given by section 163ZU (2A).

Schedule 2 Amendment of First Home Owner Grant Act 2000 No 21

(Section 3)

[1] Section 3 Definitions

Omit the definition of *residence requirement*. Insert instead:
residence requirement—see section 12.

[2] Section 8A Criterion 1A—Applicant to be at least 18 years of age

Omit “16 years” wherever occurring. Insert instead “18 years”.

[3] Section 10 Criterion 3—Applicant (or applicant’s spouse) must not have received an earlier grant

Omit section 10 (2). Insert instead:

- (2) An applicant is not ineligible if the grant was paid but later paid back, together with any penalty payable under section 45.

[4] Section 11 Criterion 4—Applicant (or applicant’s spouse) must not have had relevant interest in residential property

Omit section 11 (3). Insert instead:

- (3) An applicant is also ineligible if the applicant or the applicant’s spouse has, at any time before the commencement date of the eligible transaction to which the application relates:
- (a) held a relevant interest in residential property in New South Wales or an interest in residential property in another State or a Territory that is a relevant interest under the corresponding law of that State or Territory, and
 - (b) occupied the property as a place of residence for a continuous period of at least 6 months.

[5] Section 12

Omit the section. Insert instead:

12 Criterion 5—Residence requirement

- (1) An applicant for a first home owner grant must:
- (a) commence occupation of the home to which the application relates as the applicant’s principal place of residence within 12 months after completion of the eligible transaction or the period approved by the Chief Commissioner under this section, and

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- (b) occupy the home as a principal place of residence for a continuous period of at least 6 months or the period approved by the Chief Commissioner under this section.
 - (2) This requirement is referred to in this Act as the *residence requirement*.
 - (3) The Chief Commissioner may, if satisfied there are good reasons to do so, do either or both of the following:
 - (a) approve the commencement of occupation by the applicant of the home to which the application relates as a principal place of residence more than 12 months after completion of the eligible transaction,
 - (b) approve the occupation of the home as a principal place of residence for a period of less than 6 months.
 - (4) The Chief Commissioner may, if satisfied there are good reasons to do so, exempt an applicant from the residence requirement.
 - (5) An approval or exemption under this section may be given by the Chief Commissioner at any time, even if the period of 12 months after completion of the eligible transaction has already expired or the applicant's occupation of the home as a principal place of residence has already ceased.
 - (6) If an application is made by joint applicants and at least one (but not all) of the applicants complies with the residence requirement, the non-complying applicant or applicants are exempted from compliance with the residence requirement.

[6] Section 25 Objections

Omit section 25 (1). Insert instead:

- (1) An applicant (or former applicant) for a first home owner grant who is dissatisfied with any of the following decisions of the Chief Commissioner may lodge a written objection to the decision with the Chief Commissioner:
 - (a) a decision on the person's application for a first home owner grant (including a decision to vary or reverse an earlier decision made independently of an objection under this Act),
 - (b) a decision to require the person to repay an amount under section 45,
 - (c) a decision to require the person to pay a penalty under section 45.

- (1A) A person who is dissatisfied with a decision of the Chief Commissioner to require the person, instead of a grant recipient, to pay a recoverable amount under section 46A may lodge a written objection to the decision with the Chief Commissioner.

[7] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2005

[8] Schedule 1, Part 5

Insert after Part 4:

**Part 5 Provisions consequent on enactment of
State Revenue Legislation Further
Amendment Act 2005**

9 Application of amendments

- (1) The amendments to this Act made by the *State Revenue Legislation Further Amendment Act 2005* in relation to the eligibility criteria for a first home owner grant apply in respect of applications for a first home owner grant that are made on or after the commencement of the amendments.
- (2) The amendment to section 25 made by the *State Revenue Legislation Further Amendment Act 2005* applies in respect of decisions made by the Chief Commissioner referred to in that section of which he or she gives notice on or after the commencement of the amendment.

Schedule 3 **Amendment of Insurance Protection Tax Act 2001 No 40**

(Section 3)

[1] **Section 3 Definitions**

Insert after paragraph (k) of the definition of *exempt insurance*:

- (l) insurance under which the class of persons who take out the insurance are liable, or may become liable, under a contract of insurance or by or under an Act, to meet the cost of claims made under policies of insurance issued to members of that class in the event that the insurer is unable to meet the cost of those claims (due to the insolvency of the insurer, a shortfall in the funds available to the insurer to meet the cost of the claims or for any other reason), and which is insurance, or insurance of a class, for the time being approved by the Treasurer for the purposes of this paragraph.

[2] **Section 28**

Insert after section 27:

28 Transitional—State Revenue Legislation Further Amendment Act 2005

- (1) The amendment made to this Act by the *State Revenue Legislation Further Amendment Act 2005* applies in respect of an assessment, or reassessment, of liability for tax imposed by this Act that is made for the year commencing 1 July 2006 or any subsequent year.
- (2) For that purpose, a reference in this Act to premiums received for or in relation to general insurance in the year preceding the year commencing 1 July 2006, in connection with an assessment or reassessment of liability for the tax imposed by this Act for the year commencing 1 July 2006, does not include premiums received for or in relation to insurance that is exempt insurance as a consequence of the amendments made to this Act by the *State Revenue Legislation Further Amendment Act 2005*.
- (3) This Act, as in force immediately before the amendment made to this Act by the *State Revenue Legislation Further Amendment Act 2005*, continues to apply in respect of an assessment, or reassessment, of liability for tax imposed by this Act that is made in respect of a year before the year commencing 1 July 2006.

Schedule 4 Amendment of Land Tax Management Act 1956 No 26

(Section 3)

[1] Section 3 Definitions

Omit the definition of *Land used for primary production* from section 3 (1).

[2] Section 3A Special trust—meaning

Omit “section 10A” from section 3A (4) (b).

Insert instead “clause 9 of Schedule 1A”.

[3] Section 10 Land exempted from tax

Omit “1927” from section 10 (1) (b). Insert instead “1983”.

[4] Section 10 (1) (b)

Omit “pastures protection board constituted under the *Pastures Protection Act 1934*”.

Insert instead “rural lands protection board constituted under the *Rural Lands Protection Act 1998*”.

[5] Section 10 (1) (p)

Omit the paragraph.

[6] Section 10 (1) (p1)

Omit “or a trust agreement registered as referred to in section 36 of the *Nature Conservation Trust Act 2001*”.

Insert instead “, or a trust agreement registered as referred to in section 36 of the *Nature Conservation Trust Act 2001*, being in either case an agreement that remains in force in perpetuity”.

[7] Section 10 (2C)

Insert “, being in either case an agreement that remains in force in perpetuity” before “(as referred to”.

[8] Section 10AA

Insert after section 10:

10AA Exemption for land used for primary production

- (1) Land that is rural land is exempt from taxation if it is land used for primary production.

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- (2) Land that is not rural land is exempt from taxation if it is land used for primary production and that use of the land:
- (a) has a significant and substantial commercial purpose or character, and
 - (b) is engaged in for the purpose of profit on a continuous or repetitive basis (whether or not a profit is actually made).
- (3) For the purposes of this section, *land used for primary production* means land the dominant use of which is for:
- (a) cultivation, for the purpose of selling the produce of the cultivation, or
 - (b) the maintenance of animals (including birds), whether wild or domesticated, for the purpose of selling them or their natural increase or bodily produce, or
 - (c) commercial fishing (including preparation for that fishing and the storage or preparation of fish or fishing gear) or the commercial farming of fish, molluscs, crustaceans or other aquatic animals, or
 - (d) the keeping of bees, for the purpose of selling their honey, or
 - (e) a commercial plant nursery, but not a nursery at which the principal cultivation is the maintenance of plants pending their sale to the general public, or
 - (f) the propagation for sale of mushrooms, orchids or flowers.
- (4) For the purposes of this section, land is *rural land* if:
- (a) the land is zoned “rural”, “rural residential” or “non-urban” under a planning instrument, or
 - (b) the land is not within a zone under a planning instrument but the Chief Commissioner is satisfied the land is rural land.

[9] Section 10G Taxation of land owned by building societies

Omit the section.

[10] Sections 10K and 10L

Omit the sections.

[11] Section 63A Powers of company in relation to residential unit

Omit the section.

[12] Schedule 1A Principal place of residence exemption

Omit clause 6 (1). Insert instead:

- (1) An owner of unoccupied land is entitled to claim the land as his or her principal place of residence, if the owner intends to use and occupy the land solely as his or her principal place of residence. In such a case, the owner is taken, for the purpose of the principal place of residence exemption, to use and occupy the unoccupied land as his or her principal place of residence.

Note. It is an offence under section 55 of the *Taxation Administration Act 1996* to make a statement to a tax officer, or give information to a tax officer, orally or in writing, knowing that it is false or misleading in a material particular.

[13] Schedule 1A, clause 6 (2)

Omit “the Chief Commissioner is satisfied that”.

[14] Schedule 1A, clause 6 (4)

Omit “if satisfied that”.

Insert instead “if the owner of the unoccupied land demonstrates that”.

[15] Schedule 1A, clause 6 (7) (b)

Omit the paragraph. Insert instead:

- (b) the person owns land outside New South Wales that is the principal place of residence of the person or a member of the person’s family (within the meaning of clause 12), or

[16] Schedule 1A, clause 8 (3)

Omit “exemption is revoked”.

Insert instead “exemption ceases to have effect”.

[17] Schedule 1A, clause 8 (4) and (5)

Omit the subclauses (and the note).

[18] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1A (1):

State Revenue Legislation Further Amendment Act 2005

[19] **Schedule 2, Part 17**

Insert after Part 16:

**Part 17 Provisions consequent on enactment of
State Revenue Legislation Further
Amendment Act 2005**

37 Application of amendments—general

- (1) The amendments made to this Act by the *State Revenue Legislation Further Amendment Act 2005* apply in respect of the assessment of land tax in the land tax year commencing on 1 January 2006 and any subsequent land tax year.
- (2) Except as otherwise provided by this Part, the amendments made to this Act by the *State Revenue Legislation Further Amendment Act 2005* do not apply in respect of the assessment of land tax in the land tax year commencing on 1 January 2005 or any previous land tax year.
- (3) Accordingly, the provisions of this Act, as in force immediately before the date of assent to the *State Revenue Legislation Further Amendment Act 2005*, continue to apply in respect of the assessment of any land tax liability for the land tax year commencing on 1 January 2005 or any previous land tax year.

38 Amendments to principal place of residence exemption

- (1) The amendment made to section 3A of this Act by the *State Revenue Legislation Further Amendment Act 2005* has effect as if it had commenced on 31 December 2003 and accordingly extends to the assessment of any land tax payable for the land tax year commencing on 1 January 2004 or 1 January 2005.
- (2) The amendments made to clause 8 of Schedule 1A to this Act by the *State Revenue Legislation Further Amendment Act 2005* have effect as if those amendments had commenced on 31 December 2004 and accordingly extend to the assessment of any land tax payable for the land tax year commencing on 1 January 2005.
- (3) Anything done or omitted to be done before the date of assent to the *State Revenue Legislation Further Amendment Act 2005*, that would have been validly done or omitted if the amendments made to section 3A and clause 8 of Schedule 1A to this Act had been in force at the time that it was done or omitted, is taken to have been validly done or omitted.

Schedule 5 Amendment of Pay-roll Tax Act 1971 No 22

(Section 3)

[1] Section 3AA Wages

Omit section 3AA (3). Insert instead:

- (3) Wages includes fringe benefits, but does not include an exempt benefit for the purposes of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth unless that exempt benefit constitutes wages under section 3AG (Inclusion of redundancy and long service contributions as wages).

[2] Section 3AA (6)

Insert after section 3AA (5):

- (6) Wages includes any contribution to a redundancy benefit scheme or to a portable long service leave fund that constitutes wages under section 3AG.

[3] Section 3AE Value of shares and options

Insert “, less the consideration (if any) paid or given by the employee for the grant of the share or option (other than consideration in the form of services performed or rendered)” after “section 3AD)” in section 3AE (1).

[4] Section 3AG

Insert after section 3AF:

3AG Inclusion of redundancy and long service contributions as wages

- (1) A contribution to a redundancy benefit scheme, or to a portable long service leave fund, constitutes *wages* for the purposes of section 3AA.
- (2) The amount paid or payable as wages is taken, for the purposes of this Act, to be the amount of the contribution.
- (3) However, the wages liable to pay-roll tax under this Act do not include the amount (if any) that the employer is entitled to recover from the scheme or fund.
- (4) A contribution to a redundancy benefit scheme, or to a portable long service leave fund, does not constitute wages under this section if it is a superannuation benefit.

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- (5) A contribution to a redundancy benefit scheme, or to a portable long service leave fund, constitutes wages under this section even if it is an exempt benefit for the purposes of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth.
- (6) In this section:
- portable long service leave fund* means a fund established to provide paid long service leave to employees in a particular industry who are employed from time to time by different employers in the industry.
- redundancy benefit scheme* means a scheme or fund that provides benefits for persons working within an industry who are made redundant, leave the industry or retire.

[5] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2005

Schedule 6 Amendment of Petroleum Products Subsidy Act 1997 No 112

(Section 3)

[1] Section 5 Entitlement to subsidies

Omit section 5 (1). Insert instead:

- (1) A subsidy is payable under this Act in respect of the following sales of eligible petroleum products:
 - (a) a sale of eligible petroleum products by retail by a zone retailer at premises within a zone, if the petroleum products are delivered to the purchaser at those premises (an *ordinary retail sale* of petroleum products),
 - (b) a sale of eligible petroleum products by retail to a purchaser who is a zone consumer, if the petroleum products are delivered to premises at which a business or activity is conducted by the zone consumer and those premises are within a zone (a *direct retail sale* of petroleum products).

[2] Section 5 (5)

Omit the subsection (and the note).

[3] Section 5 (6) (b)

Omit “for sale”. Insert instead “in connection with the sale”.

[4] Section 7 Refund of amounts paid in excess of maximum subsidy

Omit section 7 (1) and (4).

[5] Section 7 (5)

Omit the subsection. Insert instead:

- (5) If the whole or any part of an amount payable to the Chief Commissioner under this section is not paid as required, the Chief Commissioner may recover the unpaid amount as a debt to the Chief Commissioner.

[6] Section 7A Approved notice—meaning

Omit section 7A (f). Insert instead:

- (f) that a subsidy has been claimed or is to be claimed in respect of the petroleum products and the rate of subsidy claimed or to be claimed.

[7] Section 7B Notice to be given in respect of sales of subsidised petroleum products

Omit section 7B (4). Insert instead:

- (4) This section does not apply:
 - (a) in respect of an ordinary retail sale of petroleum products (including diesel fuel) if the petroleum products are delivered into the running tank of a road vehicle, or
 - (b) in respect of any other sale of diesel fuel, if the quantity sold does not exceed 100 litres (or such other amount as may be prescribed by the regulations), or
 - (c) in any other circumstances prescribed by the regulations.

[8] Section 7C Sale of subsidised petroleum products

Omit “for sale” wherever occurring in section 7C (1) and (2).

Insert instead “in connection with a sale”.

[9] Section 7C (4)

Insert “sold or” after “person who”.

[10] Section 7C (4)

Insert “or purchased” after “are sold”.

[11] Section 7C (4) and (5)

Omit “for sale” wherever occurring.

Insert instead “in connection with the sale”.

[12] Section 7E Consuming subsidised diesel fuel for off-road purposes

Omit section 7E (1). Insert instead:

- (1) A person is guilty of an offence if the person:
 - (a) makes a bulk purchase of diesel fuel, knowing that it is subsidised diesel fuel, and
 - (b) consumes the diesel fuel for off-road purposes.Maximum penalty: 100 penalty units.
- (1A) For the purposes of this section, a purchase of diesel fuel is a **bulk purchase** of diesel fuel if:
 - (a) more than 100 litres of diesel fuel is purchased in one transaction, and
 - (b) delivery of the fuel is received into a bulk tank.

[13] Section 7E (4)–(6)

Omit section 7E (4) and (5). Insert instead:

- (4) In proceedings for an offence against this section, if evidence is given that a bulk tank has been used to store both subsidised diesel fuel and unsubsidised diesel fuel at the same time, it is to be presumed that any quantity of fuel taken from the bulk tank was taken in the same order in which it was deposited into the bulk tank. That is, if X amount of subsidised fuel was deposited in the bulk tank and then Y amount of unsubsidised diesel fuel was deposited in the bulk tank, it is to be presumed that any amount taken from the tank was taken firstly from X amount of subsidised fuel (until X amount is exhausted) and then from Y amount of unsubsidised diesel fuel.
- (5) For the purposes of this section, any purchases of diesel fuel made by the same purchaser from the same retailer on the same day are taken to be made in one transaction.
- (6) In this section:
bulk tank means a tank or other container used in connection with the storage or transport of diesel fuel, other than the running tank of a road vehicle.
unsubsidised diesel fuel means diesel fuel that is not subsidised diesel fuel.

[14] Part 5A

Insert after Part 5:

Part 5A Recovery of amounts wrongfully paid

Division 1 Recovery of amounts wrongfully paid

21A Power to require payment in respect of default against this Act

- (1) The Chief Commissioner may, by notice in writing, require a person who defaults against this Act to pay an amount to the Chief Commissioner.
- (2) For the purposes of this section, a person *defaults against this Act* if the person:
 - (a) sells, or delivers in connection with a sale, petroleum products in a manner contrary to this Act or the conditions of the person's registration, or
 - (b) consumes petroleum products in a manner contrary to this Act, or

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- (c) obtains payment of a subsidy in respect of petroleum products by a representation contrary to section 28.
- (3) The amount required to be paid in respect of a default against this Act, excluding any penalty or interest charge, must not exceed the amount of the subsidy paid or payable in respect of the petroleum products concerned.
- (4) If the default relates to the delivery of petroleum products, or the consumption of petroleum products, within a zone that is not the zone by reference to which the subsidy was calculated, the amount required to be paid must not exceed the difference between the amount of subsidy paid or payable in respect of the petroleum products and the amount that would have been paid or payable had the subsidy been calculated by reference to the zone in which the petroleum products were actually delivered or consumed.
- (5) A person may be required to pay an amount under this section:
- (a) whether or not the person is the person to whom the subsidy is paid or payable or is a registered person, and
 - (b) whether or not any proceedings have been taken, or are pending, against the person in respect of any offence alleged to arise from the person's default against this Act.
- (6) The Chief Commissioner may, by the notice in which a payment is required or a separate notice, require a person to pay a penalty in addition to the amount required to be paid under this section, not exceeding the amount required to be paid, if the Chief Commissioner is satisfied the default against this Act occurred as a result of the person's dishonesty.
- (7) If a person fails to pay an amount as required under this section, the Chief Commissioner may, by written notice, require the person to pay interest on the amount unpaid.
- (8) In imposing any penalty or interest charge under this section, the Chief Commissioner must, as far as practicable, apply the principles relating to the charging of interest and the imposition of penalties in relation to tax defaults under Part 5 of the *Taxation Administration Act 1996* (as if the person's default against this Act were a tax default under that Act).
- (9) If the whole or any part of an amount payable to the Chief Commissioner under this section is not paid as required, the Chief Commissioner may recover the unpaid amount as a debt to the Chief Commissioner.

Division 2 Objections

21B Objections

- (1) A person who is dissatisfied with a decision of the Chief Commissioner to require the person to pay an amount to the Chief Commissioner under this Part may lodge a written objection with the Chief Commissioner.
- (2) The grounds of objection must be stated fully and in detail in the notice of objection.
- (3) The objection must be lodged within 60 days after the date on which notice of the decision is served on the person.
- (4) If the objector has a reasonable excuse for failing to lodge an objection within the 60-day period, the Chief Commissioner may extend the time for lodging the objection.

21C Powers of Chief Commissioner on objection

- (1) After considering an objection, the Chief Commissioner may:
 - (a) allow the objection in whole or in part or may disallow the objection, and
 - (b) accordingly reverse, vary or confirm the decision to which the objection was made.
- (2) The Chief Commissioner must give the objector written notice of the determination of the objection.
- (3) The Chief Commissioner must, in the notice, give the reasons for disallowing the objection or for allowing the objection in part only.
- (4) The reasons for a determination of an objection must set out the matters referred to in section 49 (3) of the *Administrative Decisions Tribunal Act 1997* in respect of the determination.
- (5) The notice must also inform the objector of the objector's right to make an application for review under Division 3 in the case of a determination to disallow the objection or to allow the objection in part only.

Division 3 Review by Administrative Decisions Tribunal

21D Reviews by Administrative Decisions Tribunal

- (1) An objector may apply to the Administrative Decisions Tribunal for a review of a decision (*the administrator's decision*) to which an objection was made if:

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- (a) the objector is dissatisfied with the Chief Commissioner's determination of the objection, or
 - (b) 90 days have passed since the objection was lodged with the Chief Commissioner and the Chief Commissioner has not determined the objection.
 - (2) The applicant's and respondent's cases on an application for review are not limited to the grounds of the objection.
 - (3) The applicant has the onus of proving the applicant's case in an application for review.
 - (4) An application for review:
 - (a) following a determination by the Chief Commissioner of an objection—must be made not later than 60 days after the date of issue of the notice of the Chief Commissioner's determination of the objection, or
 - (b) following a failure of the Chief Commissioner to determine an objection within the relevant 90-day period—may be made at any time after the end of that period (but must be made as required by paragraph (a) following a subsequent determination of the objection by the Chief Commissioner).
 - (5) The Administrative Decisions Tribunal may extend the time for making an application for review.
 - (6) The following provisions of the *Administrative Decisions Tribunal Act 1997* do not apply to an application made under this section:
 - (a) Part 2 of Chapter 5,
 - (b) section 55 (1) (b) and (d).
 - (7) For the purposes of section 58 (1) (a) of the *Administrative Decisions Tribunal Act 1997*:
 - (a) the obligation of the Chief Commissioner under that paragraph to lodge a statement of reasons with the Administrative Decisions Tribunal in respect of an application is limited to providing the Tribunal with a statement of reasons only in respect of the matters arising from the grounds specified in the application, and
 - (b) if one of the grounds specified in the application relates to a matter raised in an objection determined by the Chief Commissioner—the Chief Commissioner may rely on reasons previously given to the objector by the Chief Commissioner under section 21C for the determination of
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the objection in explanation of that part of the administrator's decision.

21E Powers of Administrative Decisions Tribunal on review

- (1) On a review, the Administrative Decisions Tribunal may:
 - (a) affirm the administrator's decision, or
 - (b) vary the administrator's decision, or
 - (c) set aside the administrator's decision and make a new decision in substitution for the decision set aside.
- (2) Subsection (1) does not limit the generality of Division 3 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997* or the powers of the Tribunal under section 88 of that Act.

[15] Section 28 Obtaining subsidy by deceit

Omit "section 7 (4)" from section 28 (2).

Insert instead "section 21A".

[16] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2005

Schedule 7 **Amendment of Taxation Administration Act 1996 No 97**

(Section 3)

[1] Section 80A Investigations for the purposes of recognised revenue laws

Omit section 80A (2).

[2] Section 80A (5), definition of “recognised revenue law”

Omit paragraph (b) of the definition.

[3] Section 80AA

Insert after section 80A:

80AA Investigations in other jurisdictions for the purposes of taxation laws

(1) The Chief Commissioner may:

(a) enter into an agreement or arrangement with a corresponding Commissioner of a recognised jurisdiction to enable the exercise, by or on behalf of the Chief Commissioner, of investigative functions conferred or imposed under a recognised revenue law for the purposes of a taxation law, and

(b) authorise any person who is authorised to exercise a function under Division 2 to exercise such investigative functions as may be conferred or imposed on the person by the recognised revenue law for the purposes of a taxation law.

(2) In this section, *corresponding Commissioner*, *recognised jurisdiction* and *recognised revenue law* have the same meanings as they have in section 80A.

(3) In this section, *investigative function* includes any function that corresponds to a function conferred or imposed by Division 2.

[4] Section 106I Primary groups of commonly controlled businesses

Insert after section 106I (9) (before the note):

(10) A statutory State owned corporation (within the meaning of the *State Owned Corporations Act 1989*) is not a member of the same group as another statutory State owned corporation because of this section.

State Revenue Legislation Further Amendment Act 2005 No 111

Schedule 7 Amendment of Taxation Administration Act 1996 No 97

[5] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

State Revenue Legislation Further Amendment Act 2005

State Revenue Legislation Further Amendment Act 2005 No 111

Consequential amendment of Administrative Decisions Tribunal Act 1997 Schedule 8
No 76

**Schedule 8 Consequential amendment of
Administrative Decisions Tribunal Act
1997 No 76**

(Section 3)

Schedule 2 Composition and functions of Divisions

Insert in alphabetical order in clause 2 of Part 3C:

Petroleum Products Subsidy Act 1997

[Second reading speech made in—

Legislative Assembly on 15 November 2005

Legislative Council on 29 November 2005]

BY AUTHORITY