



New South Wales

# State Revenue Legislation Amendment Act 2005 No 51

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New South Wales

# **State Revenue Legislation Amendment Act 2005 No 51**

Act No 51, 2005

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An Act to make miscellaneous amendments to certain State revenue legislation; and for other purposes. [Assented to 27 June 2005]

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

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

**2 Commencement**

- (1) This Act commences on the date of assent, except as provided by subsections (2) and (3).
- (2) The following provisions commence, or are taken to have commenced, on the dates indicated:
  - (a) section 4 (2) and Schedule 4—1 July 2005,
  - (b) Schedule 2 [2] and [3]—1 July 2005.
- (3) If the *State Revenue Legislation Amendment (Budget Measures) Act 2005* is assented to after the date of assent to this Act, Schedule 1 [15]–[19] commence on the date of assent to that Act.

**3 Amendment of Acts**

The Acts specified in the Schedules to this Act are amended as set out in those Schedules.

**4 Repeals**

- (1) The *Health Insurance Levies Regulation 2003* is repealed.
- (2) The *Pay-roll Tax Regulation 1998* is repealed.

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## Schedule 1      Amendment of Duties Act 1997 No 123

(Section 3)

**[1] Section 8 Imposition of duty on certain transactions concerning dutiable property**

Insert at the end of section 8 (1):

**Note.** See also Part 2 of Chapter 3, which treats a transfer or assignment of an option to purchase dutiable property as a transfer of the dutiable property in certain circumstances.

**[2] Section 18 No double duty**

Omit section 18 (3) (d). Insert instead:

- (d) at the time the agreement was entered into, and at the completion or settlement of the agreement:
  - (i) the purchaser under the agreement and the transferee under the transfer are related persons, except as provided by subparagraph (ii), or
  - (ii) if the purchaser purchased as a trustee, the transferee and the beneficiary are related persons.

**[3] Section 29 Partnership interests**

Insert after section 29 (2):

- (3) If the property of a partnership includes a land-related asset and an interest in the land-related asset is transferred as a result of the transfer of a partnership interest, the unencumbered value of all dutiable property of the partnership ("X" in subsection (1)) is to be reduced by the unencumbered value of the interest in the land-related asset that is transferred, but only if ad valorem duty has been paid or is payable on the transfer of the interest in the land-related asset.
- (4) For the purposes of subsection (3), each of the following items of dutiable property is a *land-related asset*:
  - (a) land in New South Wales,
  - (b) transferable floor space,
  - (c) a land use entitlement,
  - (d) an interest in an item of dutiable property referred to in paragraph (a), (b) or (c).

**[4] Section 30 Partitions**

Omit section 30 (1). Insert instead:

**(1) What is a partition?**

For the purposes of this section, a partition occurs when dutiable property comprised of land in New South Wales that is held by persons jointly (as joint tenants or tenants in common) is transferred or agreed to be transferred to one or more of those persons.

**[5] Section 30 (3)**

Omit section 30 (3) and (3A). Insert instead:

**(3) Dutiable value**

The dutiable value of a partition is the greater of:

- (a) the sum of the amounts by which the unencumbered value of the dutiable property transferred, or agreed to be transferred, to a person by the partition exceeds the unencumbered value of the interest held by the person in the dutiable property transferred, or agreed to be transferred, to each person by the partition immediately before the partition, and
- (b) the sum of any consideration for the partition paid by any of the parties.

**[6] Section 54 Change in trustees**

Insert after section 54 (3A):

- (3B) Duty of \$10 is chargeable in respect of a vesting of land in New South Wales by, or expressly authorised by, statute law (as referred to in section 8 (1) (b) (vii)) in a person or responsible entity if the Chief Commissioner is satisfied that subsection (2), (3) or (3A) would apply in respect of the dutiable transaction if it were a transfer of dutiable property.

**[7] Section 54A Transfers in relation to managed investment schemes**

Insert after section 54A (2):

- (3) Duty of \$10 is chargeable in respect of a vesting of land in New South Wales by statute law (as referred to in section 8 (1) (b) (vii)) in a responsible entity if the Chief Commissioner is satisfied that subsection (2) would apply in respect of the dutiable transaction if it were a transfer of dutiable property.

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**[8] Section 65 Exemptions from duty**

Insert after section 65 (12):

**(13) Vesting by statute law—common property under strata plans**

No duty is chargeable under this Chapter on the vesting of common property in a body corporate on the registration of a strata plan or strata plan of subdivision under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

**(14) Correction of error**

No duty is chargeable under this Chapter on a transfer of dutiable property made to correct an error in a previous transfer of the same dutiable property if:

- (a) no additional consideration is paid or payable, and
- (b) the beneficial interests in the property change only to the extent necessary to correct the error.

**[9] Section 68 Exemptions—break-up of marriages and domestic relationships**

Insert “or a trustee of such a child or children” after “to a child or children of either of them” wherever occurring in section 68 (1) (a) and (2) (a).

**[10] Section 71 Restrictions on eligibility—previous ownership of residential property or first home concession**

Omit section 71 (6). Insert instead:

- (6) Despite the other provisions of this section, the previous ownership of residential property, or a previous application under the scheme that has been approved by the Chief Commissioner, may be disregarded if the Chief Commissioner is satisfied that:
  - (a) the residential property previously owned by the purchaser or transferee was vested in the purchaser or transferee on trust as guardian for a person under a legal disability, and the application under the scheme was made by the purchaser or transferee in his or her capacity as such a guardian, or
  - (b) the residential property previously owned by the purchaser or transferee was vested in the purchaser or transferee on trust, as an apparent purchaser for a real purchaser (as referred to in section 55), and the application under the scheme was made by the purchaser or transferee in his or her capacity as such an apparent purchaser, or

- (c) the purchaser or transferee who previously owned the residential property, or who has previously been a party to an application, is acquiring an interest in the property that is the subject of the application solely for the purpose of assisting the eligible persons under the scheme in financing the acquisition.

**[11] Section 73 Ineligible persons**

Omit section 73 (2). Insert instead:

- (2) However, a trustee is eligible if:
  - (a) the trustee is the guardian of a person under a legal disability and the person under a legal disability is eligible or would be eligible if he or she were the purchaser, or
  - (b) the trustee is an apparent purchaser of a kind referred to in section 55 and the real purchaser is eligible.

**[12] Section 80A Definitions**

Insert in alphabetical order:

*guardian* of a person under a legal disability includes a trustee who holds property on trust for the person under an instrument of trust or by order or direction of a court or tribunal.

**[13] Section 100 Transfer of land not used and occupied solely as a principal place of residence**

Insert “or 9D” after “section 9C” wherever occurring.

**[14] Chapter 3 Certain transactions treated as transfers**

Insert after Part 1:

## **Part 2 Transactions involving put and call options**

### **106 Definitions**

In this Part:

*assign* or *assignment* includes transfer, and a reference to the assignment of a right under a call option includes a reference to a transfer of the call option.

*call option* means a right to purchase dutiable property from a person that is conferred by an agreement or arrangement.

*put option* means a right to require a person to purchase dutiable property that is conferred by an agreement or arrangement.

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**107 Assignment of rights under call option dutiable as transfer**

- (1) If a person (*A*) assigns his or her right under a call option to purchase dutiable property from another person (*B*), so that the option is exercisable by a third person (*C*), duty under Chapter 2 is chargeable on that assignment as if the assignment were a transfer of the dutiable property concerned.
- (2) For the purposes of this section, if A enters into an agreement or arrangement under which A, for valuable consideration, relinquishes his or her right under a call option to purchase dutiable property from B and a call option to purchase the dutiable property from B is granted to C, A is to be treated as having assigned his or her right under the call option to C.
- (3) An assignment is chargeable with duty as a consequence of this Part only if the person who may be required under the call option to sell the dutiable property (that is, B) has a right under a put option to require A, an associated person of A or, following the assignment of a right under the call option, C to purchase the dutiable property.
- (4) If the assignment is chargeable with duty, Chapter 2 applies in respect of the assignment in the same way as it applies to other transfers of dutiable property, and a reference in this Act to a dutiable transaction includes such an assignment, subject to this Part.
- (5) For the purpose of Chapter 2, the transfer of dutiable property is taken to occur when the assignment is made.
- (6) This section applies regardless of when the call option or put option is exercisable.
- (7) An assignment of a right under a call option to purchase dutiable property, as referred to in subsection (1) or (2), is referred to in this Part as a *call option assignment*.

**108 Person liable to pay duty**

- (1) The duty chargeable on a call option assignment is payable by the person who assigns his or her right under the call option to purchase dutiable property (*the option holder*).
- (2) Accordingly, the option holder is taken, for the purpose of charging duty under Chapter 2, to be the transferee of the dutiable property.
- (3) The duty payable by the option holder is additional to the duty (if any) payable under Chapter 2 by a transferee on the transfer of an option to purchase land in New South Wales.



- (4) However, the duty payable by the option holder as a consequence of this Part is to be reduced by the amount of duty (if any) paid by the option holder under Chapter 2 on the transfer of the call option to the option holder.
- (5) The duty payable by the option holder on a call option assignment as a consequence of this Part is referred to as *call option assignment duty*.

**Note.** The following is an example of how this Part operates:

B grants A a call option that confers a right on A (or any assignee of A) to purchase land from B. A also grants B a put option that confers on B a right to require A (or any assignee of A) to purchase the land from B. No duty is payable at this point.

A then transfers the call option to C. Duty is payable as follows:

- (a) A (as the option holder) must pay call option assignment duty, as a consequence of this Part, as if the transfer of the option were a transfer of the land. Duty is payable on the dutiable value of the land (determined as provided for by this Part),
- (b) C (as the transferee of the option) must pay duty under Chapter 2 on the transfer of the option. Duty is payable on the dutiable value of the option (determined as provided for by Chapter 2).

C then transfers the option to D. C (as the option holder) is required to pay call option assignment duty as if the option were a transfer of the land. However, in this case C will receive a credit for the duty paid by C on the transfer of the option to C. D (as the transferee of the option) is required to pay duty under Chapter 2 on the transfer.

#### **109 Determination of dutiable value of transfer**

For the purposes of Chapter 2, the *dutiable value* of dutiable property that is subject to a call option assignment is taken to be the greater of:

- (a) the sum of the consideration for the assignment of the right under the call option and the consideration payable in the event that the call option is exercised (being in either case the amount of monetary consideration or the value of non-monetary consideration), and
- (b) the unencumbered value of the dutiable property.

#### **110 Stamping or endorsement of transactions**

- (1) If an instrument that effects or evidences a transfer of an option to purchase land in New South Wales also effects or evidences a call option assignment, and it is stamped under this Act to indicate payment of duty, it must be stamped in a manner approved by the Chief Commissioner to indicate the type of duty (that is, purchaser duty or call option assignment duty) that has been paid.

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- (2) If an instrument that effects or evidences a transfer of an option to purchase land in New South Wales also effects or evidences a call option assignment, and it is endorsed under this Act to indicate payment of duty, it must be endorsed in a manner approved by the Chief Commissioner to indicate the type of duty (that is, purchaser duty or call option assignment duty) that has been paid.
  - (3) An instrument that effects or evidences a transfer of an option to purchase land in New South Wales and a call option assignment is not duly stamped unless it is stamped or endorsed in accordance with this section.
  - (4) In this section:  
*purchaser duty* means the duty (if any) payable under Chapter 2 by a transferee on the transfer of an option to purchase land in New South Wales.

#### 111 Exemptions

- (1) No duty is chargeable as a consequence of this Part on a call option assignment if the Chief Commissioner is satisfied that:
  - (a) the call option and put option were granted by the parties concerned for the sole purpose of obtaining finance, or
  - (b) the call option and the put option form part of a scheme of call options and put options granted by proprietors of a business that:
    - (i) were granted for the sole purpose of facilitating the continuation of the business by one or more of the proprietors (*the continuing proprietors*), and
    - (ii) are not exercisable except on the occurrence of a specified event that would cause the continuing proprietors to seek to acquire the interest of one or more of the other proprietors of the business.
- (2) This section does not affect the duty payable under Chapter 2 (if any) by the transferee on a transfer of an option to purchase land in New South Wales.
- (3) In this section:  
*proprietor* of a business means:
  - (a) in the case of a business carried on by a partnership, a partner, or
  - (b) in the case of a business carried on by a company, a shareholder, or

- (c) in the case of a business carried on by a unit trust scheme, a unit holder, or
- (d) in any other case, a person the Chief Commissioner determines to be a proprietor of the business.

**[15] Section 162M What is the vendor acquisition date?**

Omit section 162M (6) (a) (as inserted by the *State Revenue Legislation Amendment (Budget Measures) Act 2005*).

Insert instead:

- (a) the vendor acquisition date is taken to be the most recent date (before that dutiable transaction occurred) on which another dutiable transaction occurred that was an ad valorem duty transaction in relation to the land-related property, and

**[16] Section 162M (6A)**

Insert after section 162M (6):

- (6A) If the land-related property the subject of a vendor duty transaction was acquired by the vendor by means of a dutiable transaction that was not chargeable with duty under section 281:
  - (a) the vendor acquisition date is taken to be the most recent date (before that dutiable transaction occurred) on which another dutiable transaction occurred that was an ad valorem duty transaction in relation to the land-related property, and
  - (b) the vendor is taken, for the purposes of this Division, to have acquired the land-related property on that date.

**[17] Section 162M (7)**

Insert “or (6A)” after “subsection (6)”.

**[18] Section 162M (8)**

Insert after section 162M (7) (before the note):

- (8) In this section:  
*ad valorem duty transaction*, in relation to land-related property, means a dutiable transaction that was chargeable with ad valorem duty under Chapter 2 as a transfer of the land-related property.

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**[19] Section 162M, note**

Insert at the end of the note:

A similar rule applies under subsection (6A) if land-related property is transferred between corporations who are members of the same group. Such transfers are not chargeable with duty under section 281. In such a case, the vendor acquisition date is not the date on which the corporation acquired the land-related property, but the date the most recent ad valorem duty transaction occurred.

**[20] Section 163ZB Exempt transactions**

Omit section 163ZB (1) (h). Insert instead:

- (h) if the land holding of the landholder comprises land used for primary production and the Chief Commissioner is satisfied that, had the landholder transferred the land to the person acquiring an interest as a result of the acquisition or disposal immediately before that disposal or acquisition, the transfer of the land would not be chargeable with duty under this Act because of the application of section 274, or

**[21] Section 173 Estimate and subsequent adjustment**

Omit section 173 (3) (b) and (c). Insert instead:

- (b) in respect of any interval in the term of the lease in which the amount of a cost component, although unascertainable, is subject to a certain approximate rate—the amount of the cost component that would be paid if it were payable at that approximate rate, and
- (c) in respect of any interval in the term of the lease in which the amount of a cost component, although unascertainable, is subject to a certain minimum rate and to which paragraph (b) cannot be applied—the amount of the cost component that would be paid if it were payable at that minimum rate, and
- (d) in respect of any interval in the term of the lease in which the amount of a cost component is unascertainable and to which paragraphs (b) and (c) cannot be applied—the amount of the cost component that would be paid during the interval if it were payable at the highest certain rate prevailing immediately before the commencement of the interval.

**[22] Section 212 Where is property located?**

Insert at the end of the section:

- (2) Subsection (1) (a) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to section 1070A (4) of that Act.

**[23] Section 222 Exempt mortgages and supporting instruments**

Insert after section 222 (6):

- (7) Duty under this Chapter is not chargeable on a charge over land that is created under an agreement for the sale or transfer of the land if any part of the deposit or balance of the purchase price for the land is paid to the vendor (or as the vendor directs) before completion of the sale or transfer.

**[24] Section 243A**

Insert after section 243:

**243A Meaning of “premium”**

*Premium*, in relation to a policy of life insurance or a life insurance rider, has the same meaning as it does in Part 1 in relation to general insurance.

**[25] Section 247 Who is an insurer?**

Omit “registered under” from section 247 (2) (c).

Insert instead “authorised as a general insurer under”.

**[26] Section 274**

Omit the section. Insert instead:

**274 Transfer of certain business property between family members**

- (1) Duty under this Act is not chargeable in respect of a transfer or agreement for the sale or transfer of land, a lease of land, or a transfer or assignment of a lease or permit in respect of land, used for primary production or aquaculture together with any other property that is an integral part of the business of primary production or aquaculture, if the Chief Commissioner is satisfied that:
  - (a) the transferor, lessor or assignor, or the person directing the transferor, lessor or assignor, is an ancestor of the transferee, lessee or assignee, and

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- (b) the land was land used for primary production or aquaculture in connection with a business carried on by the transferee, lessee or assignee, or by an ancestor of the transferee, lessee or assignee, (whether alone or with others) immediately before the transaction or the date of first execution of the instrument, and
    - (c) the business is to continue to be carried on by the transferee, lessee or assignee (whether alone or with others).
  - (2) Duty under this Act is not chargeable in respect of a transfer of shares in a share management fishery within the meaning of the *Fisheries Management Act 1994*, if the Chief Commissioner is satisfied that:
    - (a) the transferor, or the person directing the transferor, is an ancestor of the transferee, and
    - (b) the shares are held in connection with a fishing business carried on by the ancestor (whether alone or with others) immediately before the transaction or the date of first execution of the instrument, and
    - (c) the business is to continue to be carried on by the transferee (whether alone or with others).
  - (3) For the purposes of this section, the ***person directing*** a transferor, lessor or assignor is:
    - (a) in the case of a transferor, lessor or assignor who is acting in the capacity of executor of a deceased estate—the deceased person, or
    - (b) in the case of a transferor, lessor or assignor which is a proprietary limited company—a shareholder or shareholders in the company who:
      - (i) are beneficially entitled to those shares, and
      - (ii) are entitled to vote at meetings of the company, and
      - (iii) are entitled as shareholders to not less than 25% of the assets of the company on winding up, being an entitlement that existed for at least 3 years prior to the date of the transfer, lease or assignment or that existed from the date of incorporation of the company, or
    - (c) in the case of a transferor, lessor or assignor acting in the capacity of trustee of a bare trust—a person who is a named beneficiary of the trust, or

- (d) in the case of a transferor, lessor or assignor acting in the capacity of trustee of a discretionary trust—a person or persons who are entitled (as takers in default of appointment) to not less than a 25% interest in the capital of the trust, being an entitlement that existed for at least 3 years prior to the date of the transfer, lease or assignment, or that existed from the date of establishment of the trust, or
  - (e) in the case of a transferor, lessor or assignor acting in the capacity of trustee of a private unit trust scheme—a unit holder or unit holders in the unit trust scheme who:
    - (i) hold the units beneficially, and
    - (ii) are entitled (as unit holders) to not less than 25% of the assets of the unit trust scheme on winding up, being an entitlement that existed for at least 3 years prior to the date of the transfer, lease or assignment, or from the date of establishment of the trust.
- (4) In the case of a transfer, lease or assignment by a proprietary limited company or unit trust scheme (a *subsidiary entity*) that is owned by another proprietary limited company or unit trust scheme (*the parent entity*), a person is taken to be a person directing the subsidiary entity if the Chief Commissioner is satisfied that, had the parent entity been the transferor, lessor or assignor, the person would be the person directing the parent entity under subsection (3).
- (5) Except as provided by subsections (3) and (4), there are no other cases in which a person is considered to be a person directing a transferor, lessor or assignor.
- (6) In this section:

**ancestor** of a transferee, lessee or assignee means:

- (a) a parent, step-parent, grand-parent, brother, sister, uncle or aunt of the transferee, lessee or assignee, or of the spouse or de facto partner of the transferee, lessee or assignee, or
- (b) a spouse or de facto partner of a person referred to in paragraph (a).

**land used for aquaculture** means land subject to an aquaculture permit within the meaning of the *Fisheries Management Act 1994*.

**Note.** **Land used for primary production** is defined in the Dictionary.

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**[27] Section 305**

Omit the section. Insert instead:

**305 Valuation of property**

- (1) The Chief Commissioner may, for the purpose of determining whether a person is liable for duty or determining a person's liability for duty:
  - (a) require the person, by notice in writing given to the person, to provide a valuation of property prepared by a registered valuer or to provide such other evidence of the value of property as the Chief Commissioner considers appropriate, or
  - (b) obtain a valuation of property, or
  - (c) rely on a valuation of property prepared for any purpose (whether or not for the purpose of determining liability for duty) by a registered valuer or other person the Chief Commissioner is satisfied is properly qualified to provide evidence of the value of property.
- (2) The Chief Commissioner may assess duty on the basis of a valuation or evidence referred to in subsection (1).
- (3) If a person is liable to pay duty under this Act that is chargeable by reference to the value of property, the Chief Commissioner may recover from the person the cost of obtaining a valuation of the property under this section.
- (4) In this section:  
*registered valuer* has the meaning given by the *Valuers Act 2003*.

**[28] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2005*



[29] **Schedule 1**

Insert at the end of the Schedule with appropriate Part and clause numbers:

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

**Amendment to section 100 to have effect from 31 December 2004**

- (1) The amendment made to section 100 of this Act by the *State Revenue Legislation Amendment Act 2005* has effect as if it had commenced on 31 December 2004.
- (2) Anything done or omitted to be done on or after 31 December 2004 and before the date of assent to the *State Revenue Legislation Amendment Act 2005*, that would have been validly done or omitted if that amendment had been in force at the time that it was done or omitted, is taken to have been validly done or omitted.

**Changes to vendor duty concession**

- (1) The amendments made by the *State Revenue Legislation Amendment Act 2005* to section 162M are taken to have effect as if they had commenced on the date on which the Bill for the *State Revenue Legislation Amendment Act 2005* was introduced in the Legislative Assembly (the **effective date**).
- (2) Accordingly, section 162M (6A) applies in respect of any vendor duty transaction that occurs on or after the effective date.
- (3) If a vendor duty transaction that occurred before the relevant date of assent becomes chargeable with duty or additional duty as a result of the amendments made by that Act to section 162M, the vendor duty transaction is taken (if the duty or additional duty has not already been paid) to become chargeable with that duty or additional duty on the relevant date of assent.
- (4) For the purposes of this clause, the **relevant date of assent** is the following:
  - (a) the date of assent to the *State Revenue Legislation Amendment Act 2005*, unless paragraph (b) applies,
  - (b) if the *State Revenue Legislation Amendment (Budget Measures) Act 2005* is assented to after the date of assent to the *State Revenue Legislation Amendment Act 2005*, the date of assent to the *State Revenue Legislation Amendment (Budget Measures) Act 2005*.

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- (5) In section 162M, as amended by the *State Revenue Legislation Amendment Act 2005*:
- (a) a reference to an ad valorem duty transaction includes an ad valorem duty transaction that occurred before the effective date, and
  - (b) a reference to Chapter 2 of this Act includes a reference to any corresponding provisions of the *Stamp Duties Act 1920* that have been repealed.

**[30] Dictionary**

Omit “and that remain the property of the lessee” from the definition of *fit-out costs*.

Insert instead “, being improvements that either remain the property of the lessee or are fixtures removable at the option of the lessee”.

**[31] Dictionary, definition of “Metropolitan Area”**

Omit the definition.

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## Schedule 2 Amendment of Fines Act 1996 No 99

(Section 3)

**[1] Section 38 Circumstances in which person issued with penalty reminder notice for vehicle or vessel offence is not liable to pay penalty**

Insert in alphabetical order in section 38 (4):

*statutory declaration* means a statutory declaration made under the *Oaths Act 1900* or the *Statutory Declarations Act 1959* of the Commonwealth.

**[2] Section 117AA**

Insert after section 117:

**117AA Access to information held by employers**

The State Debt Recovery Office is authorised to obtain information about the address and employment details of a fine defaulter from an employer or past employer of the fine defaulter for the purposes of the enforcement of a garnishee order (within the meaning of section 73).

**[3] Sections 117A and 117B**

Omit section 117A. Insert instead:

**117A Disclosure of information by State Debt Recovery Office**

- (1) The State Debt Recovery Office, the Director of the Office, a member of the staff of the Office or any other person engaged in the administration of this Act, may disclose personal information obtained in relation to a person in the administration or execution of this Act:
  - (a) in connection with the administration or execution of this Act (including for the purpose of the imposition, administration or enforcement of a fine), or
  - (b) with the consent of the person to whom the information relates or at the request of a person acting on behalf of the person to whom the information relates, or
  - (c) in the case of information obtained in relation to a fine defaulter:
    - (i) to a government agency that is a prosecuting authority in relation to the offence concerned or on whose behalf the offence was prosecuted, or

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- (ii) to a government agency on whose behalf the penalty notice for the offence concerned was issued, or
  - (iii) to the Hardship Review Board.
- (2) Without limiting subsection (1) (a), personal information may be disclosed to an employer or past employer of a fine defaulter for the purposes of the administration, enforcement or execution of a garnishee order (within the meaning of section 73).
  - (3) Information may be disclosed to an agency referred to in subsection (1) (c) (i) or (ii) only if the disclosure is reasonably necessary to monitor the status of outstanding fines.
  - (4) In this section:  
*personal information* has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

**117B Confidentiality**

- (1) A person engaged in the administration of this Act must not disclose any personal information obtained in relation to any person in the administration or execution of this Act except as authorised or required by this Act or any other Act or law.  
Maximum penalty: 100 penalty units.
- (2) In this section:  
*personal information* has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

**[4] Schedule 1 Statutory provisions under which penalty notices issued**

Omit “*Criminal Procedure Act 1986*, section 161”.

Insert instead “*Criminal Procedure Act 1986*, section 333”.

**[5] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2005*

## **Schedule 3 Amendment of Health Insurance Levies Act 1982 No 159**

(Section 3)

**[1] Section 4 Definitions**

Omit the definition of *New South Wales revenue law* from section 4 (1).

**[2] Section 16C Authorised agents**

Omit “Fund, or” from section 16C (1) (d). Insert instead “Fund,”.

**[3] Section 16C (1) (d1)**

Insert after section 16C (1) (d):

(d1) Grand United Friendly Society Limited, or

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## Schedule 4      Amendment of Pay-roll Tax Act 1971 No 22

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*award* means:

- (a) an industrial instrument within the meaning of the *Industrial Relations Act 1996*, or
- (b) any agreement with respect to salaries or wages entered into under any other law of the State between an employer constituted by that law and an association or organisation representing a group or class of employees, or
- (c) an award, agreement or other instrument under the law of the Commonwealth or of another State or Territory, being an award, agreement or other instrument of a similar nature to an instrument or agreement referred to in paragraph (a) or (b).

### [2] Section 3 (4)

Omit the subsection.

### [3] Section 3AA Wages

Omit “the value of any contribution that is taken to constitute wages under section 3AD or 3AE” from section 3AA (2A).

Insert instead “the grant of any share or option that constitutes wages under section 3AD or 3AF”.

### [4] Section 3AA (6BB)

Insert after section 3AA (6BA):

- (6BB) Wages include an amount paid or payable by a person who is an employer under a relevant contract (within the meaning of section 3A) as a consequence of the termination of the supply of the services of an employee under the contract, whether or not paid to the employee or to any other person, if the amount would be an eligible termination payment (within the meaning of section 27A of the *Income Tax Assessment Act 1936* of the Commonwealth) if the amount had been paid or payable as a consequence of termination of employment.

**[5] Section 3AA (6C)**

Omit “subsection (6B) or (6BA)”.

Insert instead “subsection (6B), (6BA) or (6BB)”.

**[6] Section 3AA (7)**

Omit the subsection.

**[7] Section 3AC Inclusion of trust distributions as wages**

Insert “or by a person connected with the trust” after “by the person” wherever occurring in section 3AC (1) and (3) (a).

**[8] Section 3AC (2A)**

Insert after section 3AC (2):

- (2A) The provision of services to the trustee of a trust that is related to the trust under which the distribution is made or for the purposes of a business conducted by the trustee of a trust that is related to the trust under which the distribution is made is taken to constitute work done for the trust under which the distribution is made.

**[9] Section 3AC (4)**

Omit “by the person”. Insert instead “by a person”.

**[10] Section 3AC (6)**

Insert “and whether made under the trust or under a trust that is related to that trust” after “following financial year”.

**[11] Section 3AC (7) (a) and (b)**

Omit “an industrial instrument” wherever occurring.

Insert instead “an award”.

**[12] Section 3AC (7) (c)**

Omit “in accordance with the regulations”.

Insert instead “in accordance with Schedule 1A”.

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**[13] Section 3AC (8)**

Insert after section 3AC (7):

- (8) For the purposes of this section:
  - (a) a person is *connected with a trust* only if the trustee is a company and the person is a director or member of the governing body of the company, and
  - (b) a trust is *related* to another trust if the trusts are members of the same group (within the meaning of Part 4A).

**[14] Sections 3AD–3AF**

Omit sections 3AD and 3AE. Insert instead:

**3AD Inclusion of grant of shares and options as wages**

- (1) The grant of a share or option to an employee by an employer in respect of services performed or rendered by the employee constitutes *wages* for the purposes of section 3AA.
- (2) Any such wages are taken, for the purpose of the imposition of pay-roll tax, to be paid or payable on the relevant day.
- (3) For the purposes of this section, the *relevant day* is:
  - (a) in the case of wages constituted by the grant of a share—the date on which the share is granted to the employee, or
  - (b) in the case of wages constituted by the grant of an option—the date on which the option is granted to the employee, or the vesting date, whichever date the employer elects to treat as the date on which the wages are paid or payable.
- (4) A share or option is *granted* to a person if:
  - (a) in the case of a share—the share is transferred to, allotted to or vests in the person or the person otherwise acquires a legal interest in the share, or
  - (b) in the case of an option—the option is granted to the person or the person otherwise acquires a legal interest in the option.
- (5) The *vesting date* in respect of an option is one of the following dates (whichever happens first):
  - (a) the date on which the share to which the option relates is granted to the employee,
  - (b) the date on which the employee acquires an actual right under the option to have the share the subject of the option



transferred to, allotted to or vest in him or her, whether or not the employee exercises that right.

- (6) If an employer grants an option to an employee and the value of the grant of the option is not included in the taxable wages of the employer for the financial year in which the option was granted, the employer is taken to have elected to treat the wages constituted by the grant of that option as being paid or payable on the vesting date.
- (7) If an employer grants an option to an employee and the value of the grant of the option is nil, the employer is taken to have elected to treat the wages constituted by the grant of that option as being paid or payable on the date on which the option was granted.
- (8) If an employer includes the value of a grant of a share or option in the taxable wages of the employer for a financial year and the grant is rescinded by the employer because the conditions attaching to the grant were not met, the taxable wages of the employer, in the financial year in which the grant is rescinded, are to be reduced by the value of the grant as previously included in the taxable wages of the employer. This subsection does not apply because an employee fails to exercise an option or to otherwise exercise his or her rights in respect of a share or option.
- (9) The grant of the share by an employer does not constitute wages for the purposes of this Act if the employer is required to grant the share as a consequence of the exercise of an option by a person and:
  - (a) the grant of the option to the person constitutes wages for the purposes of this Act, or
  - (b) the option was granted to the person before 1 July 2003.
- (10) To avoid doubt, the grant of a share or option is valuable consideration for the purposes of section 3D.
- (11) In this section:

*option* means an option or right, whether actual, prospective or contingent, of a person to acquire a share or to have a share transferred or allotted to the person.

*share* means a share in a company.

**3AE Value of shares and options**

- (1) If the grant of a share or option constitutes wages under section 3AD, the amount paid or payable as wages is taken, for the purposes of this Act, to be the market value of the share or option

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(expressed in Australian currency) on the relevant day (within the meaning of section 3AD).

- (2) The market value of a share or option on the relevant day is to be determined in accordance with the Commonwealth income tax provisions.
- (3) For that purpose, the Commonwealth income tax provisions apply with the following modifications, and any other necessary modifications:
  - (a) the market value of an option is to be determined as if it were a right to acquire a share,
  - (b) a reference to a taxpayer is to be read as a reference to the employee,
  - (c) a reference to the Commissioner of Taxation is to be read as a reference to either that Commissioner or the Chief Commissioner (within the meaning of this Act).
- (4) In this section:

***Commonwealth income tax provisions*** means the provisions of Subdivision F of Division 13A of Part III of the *Income Tax Assessment Act 1936* of the Commonwealth.

**3AF Inclusion of shares and options granted to directors and others as wages**

- (1) The grant of a share, or option, by a company to a director or member of the governing body of the company by way of remuneration for the appointment or services of the director or member that would be wages under section 3AD if the director or member were an employee of the company constitutes **wages** for the purposes of section 3AA.
- (2) For that purpose, sections 3AD and 3AE apply in respect of any such grant as if a reference to the employer were a reference to the company and a reference to the employee were a reference to the director or member of the governing body of the company.
- (3) In this section, a reference to a director or member of the governing body of the company includes a reference to the following:
  - (a) a person who, under a contract or other arrangement, is to be appointed as a director or member of the governing body of the company,
  - (b) a former director or former member of the governing body of the company.

- (4) In this section, *share* and *option* have the same meanings as they have in section 3AD.

**[15] Section 3A Application of this Act to certain contracts**

Insert after section 3A (5):

- (5A) The wages that are liable to taxation under this section do not include amounts paid or payable by an AFS licence holder in respect of services provided by a financial planner if the exemption conditions are satisfied. The exemption conditions are the conditions set out in Schedule 1B.
- (5B) In subsection (5A):
- AFS licence holder* means a financial services licensee within the meaning of the *Corporations Act 2001* of the Commonwealth.
- financial planner* means a person who provides financial services (within the meaning of the *Corporations Act 2001* of the Commonwealth) by either or both of the following means:
- (a) providing financial product advice (within the meaning of the *Corporations Act 2001* of the Commonwealth),
  - (b) dealing in a financial product (within the meaning of that Act) as agent for an AFS licence holder, other than by underwriting securities or managed investment products (within the meaning of that Act).

**[16] Section 3D**

Insert after section 3C:

**3D Inclusion of wages paid by or to third parties**

- (1) If any of the following amounts of money or other valuable consideration would, if paid or given or to be paid or given directly by an employer to an employee, be regarded as wages paid or payable by the employer to the employee for the purposes of this Act, they are taken to be wages paid or payable by the employer to the employee:
- (a) any money or other valuable consideration paid or given, or to be paid or given, to an employee, for the employee's services as an employee of an employer, by a person other than the employer,
  - (b) any money or other valuable consideration paid or given, or to be paid or given, by an employer, for an employee's services as the employee of the employer, to a person other than the employee,

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- (c) any money or other valuable consideration paid or given, or to be paid or given, by a person other than an employer, for an employee's services as an employee of the employer, to a person other than the employee.
- (2) If any of the following amounts of money or other valuable consideration would, if paid or given or to be paid or given directly by a company to a director or member of the governing body of the company, be regarded as wages paid or payable by the company to the director or member for the purposes of this Act, they are taken to be wages paid or payable by the company to the director or member:
- (a) any money or other valuable consideration paid or given, or to be paid or given, to a director or member of the governing body of a company, by way of remuneration for the appointment or services of the director or member to the company, by a person other than the company,
  - (b) any money or other valuable consideration paid or given, or to be paid or given, by a company, by way of remuneration for the appointment or services of a director or member of the governing body of the company to the company, to a person other than the director or member,
  - (c) any money or other valuable consideration paid or given, or to be paid or given, by any person, by way of remuneration for the appointment or services of a director or member of the governing body of the company to the company, to a person other than the director or member.
- (3) In this section, a reference to a director or member of the governing body of a company includes a reference to the following:
- (a) a person who, under a contract or other arrangement, is to be appointed as a director or member of the governing body of the company,
  - (b) a former director or former member of the governing body of the company.

**[17] Section 6 Wages liable to pay-roll tax**

Insert after section 6 (4):

- (5) For the purposes of this section, if the grant of a share or an option constitutes wages for the purposes of this Act, the services in respect of which those wages are paid or payable are taken to have been performed or rendered during the month in which the relevant day (within the meaning of section 3AD) occurs.

- (6) The wages constituted by the grant of the share or option are taken to be paid or payable in New South Wales if the share is a share in a NSW company or, in the case of an option, an option to acquire shares in a NSW company. In any other case, the wages constituted by the grant of the share or option are taken to be paid or payable outside New South Wales.

**Note.** If the wages concerned are taken to be payable outside New South Wales, because the shares concerned are shares in a company that is not a NSW company, the grant of the share or option may still be liable to pay-roll tax under this Act if the grant is made for services performed or rendered wholly, mainly or partly in New South Wales (see section 6 (1) (b), (c) and (d)).

- (7) In the case of wages constituted by the grant of a share or option by a company to a director or member of the governing body of the company by way of remuneration for the appointment of the director or member, but not for services performed:

- (a) the grant of the share or option is taken, for the purposes of this section, to be paid or payable for services performed or rendered during the month in which the relevant day (within the meaning of section 3AD) occurs, and
- (b) a reference in this section to the place or places where services are performed or rendered is a reference to the place or places where it may reasonably be expected that the services of the director or member in respect of the company will be performed or rendered.

- (8) In this section:

**NSW company** means:

- (a) a company incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth that is taken to be registered in New South Wales for the purposes of that Act, or
- (b) any other body corporate that is incorporated under an Act of New South Wales.

**[18] Section 10 Exemptions from pay-roll tax**

Insert “of New South Wales constituted under the *Home Care Service Act 1988*” after “Home Care Service” in section 10 (1) (b2).

**[19] Section 10 (1) (c1)**

Insert “of New South Wales constituted under the *Home Care Service Act 1988*” after “Home Care Service” where firstly occurring.

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**[20] Sections 10B and 10C**

Insert after section 10A:

**10B Exemption from pay-roll tax for motor vehicle allowances**

- (1) The wages payable in respect of a financial year that are liable to pay-roll tax under this Act do not include the exempt component of a motor vehicle allowance paid or payable in respect of the financial year.
- (2) Accordingly, if the total motor vehicle allowance paid or payable to an employee in respect of a financial year does not exceed the exempt component, the motor vehicle allowance does not constitute wages for the purposes of section 3AA.
- (3) If the total motor vehicle allowance paid or payable to an employee in respect of a financial year exceeds the exempt component (if any), only that amount that exceeds the exempt component of the motor vehicle allowance constitutes wages for the purposes of section 3AA.
- (4) The exempt component of a motor vehicle allowance paid or payable in respect of a financial year is calculated in accordance with the following formula:

$$E = K \times R$$

where:

*E* is the exempt component.

*K* is the number of business kilometres travelled during the financial year.

*R* is the exempt rate.

- (5) The *number of business kilometres travelled during the financial year* (“*K*”) is to be determined in accordance with the continuous recording method, or the averaging method, whichever method is selected and used by the employer in accordance with Schedule 1C.
- (6) The Chief Commissioner may, by order in writing, approve the use, by any employer or class of employer, of another method of determining the number of business kilometres travelled during the financial year (including the use of an estimate). In such a case, the number of business kilometres travelled during the financial year is to be determined in accordance with the method so approved.

- (7) For the purposes of this section, the *exempt rate* is:
- (a) in the case of an employee paid an allowance under an award that specifies the allowance as a rate for each kilometre or part of a kilometre travelled by the employee in the course of the person's employment by means of a motor vehicle provided or maintained by the person (and does not provide for the payment of any fixed amount in addition to that rate)—the rate specified in the award, or
  - (b) in any other case—the relevant rate for the financial year concerned.
- (8) The *relevant rate* for the financial year concerned is:
- (a) in the case of the financial year commencing on 1 July 2005—63 cents per kilometre, or
  - (b) in the case of any subsequent financial year—the rate prescribed by the regulations under section 28-25 of the *Income Tax Assessment Act 1997* of the Commonwealth for calculating a deduction for car expenses for a large car using the “cents per kilometre method” in the financial year immediately preceding the financial year in which the allowance is paid or payable or, if no rate is prescribed, a rate specified by the Chief Commissioner by order published in the Gazette.

**10C Exemption from pay-roll tax for accommodation allowances**

- (1) The wages that are liable to pay-roll tax under this Act do not include an accommodation allowance paid or payable to an employee in respect of a night's absence from the person's usual place of residence that does not exceed the exempt rate.
- (2) If the accommodation allowance paid or payable to an employee in respect of a night's absence from the person's usual place of residence exceeds the exempt rate, the wages liable to taxation under this Act include that allowance only to the extent it exceeds the exempt rate.
- (3) For the purposes of this section, the *exempt rate* for an accommodation allowance paid or payable to an employee in respect of a night's absence from the person's usual place of residence is:
  - (a) in the case of a person paid an allowance under an award that specifies the allowance as a rate for each night the person is absent from the person's usual place of residence—the rate specified in the award, or

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- (b) in the case of any other person—the relevant rate for the financial year concerned.
  - (4) The **relevant rate** for the financial year concerned is:
    - (a) in the case of the financial year commencing on 1 July 2005—\$191.55 for each night the person is absent from the person’s usual place of residence in the course of the person’s employment, or
    - (b) in the case of any subsequent financial year—the rate specified as the lowest capital city rate under the *Crown Employees (Public Service Conditions of Employment) Award 2002*, or such other rate as the Chief Commissioner may specify for the purposes of this section, by order published in the Gazette, being the rate as so specified immediately before the commencement of the financial year concerned.

**[21] Section 16C Grounds for excluding persons from group**

Insert after section 16C (1) (b):

- (c) a person who would, but for the determination, be a member of a group arising under section 106IA (Primary groups arising from tracing of interests in corporations) of the *Taxation Administration Act 1996*.

**[22] Section 16C (2)**

Insert “under section 106I of the *Taxation Administration Act 1996*” after “carries on another business”.

**[23] Section 16C (2A), (2B) and (3)**

Omit section 16C (3). Insert instead:

- (2A) To avoid doubt, the fact that a person referred to in subsection (1) (b) is a member of a group because of the application of the corporate grouping principle and is also a member of that group under section 106IA of the *Taxation Administration Act 1996* does not prevent the Chief Commissioner from making a determination under section 16B in respect of the person.
- (2B) In the case of a person referred to in subsection (1) (c), the determination may be made only if the person would not be a member of a group with a corporation under section 106IA of the *Taxation Administration Act 1996* if the person did not have any indirect interest in the corporation.



- (3) The Chief Commissioner must not make a determination under section 16B unless satisfied that the business carried on by the person the subject of the determination has been continuously carried on, and will continue to be carried on, substantially independently of the other members of the group.

**[24] Section 44 Records to be kept**

Omit section 44 (1B) (c). Insert instead:

- (c) the details required to be kept in accordance with the method used by the employer for the purposes of determining the number of business kilometres travelled during the financial year.

**[25] Schedules 1A–1C**

Omit Schedule 1A. Insert instead:

## **Schedule 1A Trust distributions**

(Section 3AC)

### **1 Determination of minimum wage rate applicable in respect of work done for a trust**

- (1) For the purposes of section 3AC (7) (c), the minimum wage rate applicable to work done for a trust by a person during a financial year is to be determined in accordance with one of the following methods:
- (a) the hourly rate method, as set out in clause 2,
  - (b) the daily rate method, as set out in clause 3,
  - (c) the weekly rate method, as set out in clause 4.
- (2) A person who makes a distribution to another person as beneficiary under a trust may determine which of the above methods is to be used in determining the minimum wage rate applicable in respect of any work done for the trust by the other person in a financial year.
- (3) The same method must be used in respect of all work done for the trust by the person in the financial year.

### **2 Hourly rate method**

- (1) The hourly rate method requires the average weekly wage for the financial year in which the work was done for the trust by the person to be divided by 40 in order to determine the hourly wage rate for the work.

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- (2) The minimum wage rate applicable to the work done for the trust by the person during the financial year is then determined by multiplying the hourly wage rate for the work by the total number of hours during the financial year in which work was done for the trust by the person.

**3 Daily rate method**

- (1) The daily rate method requires the average weekly wage for the financial year in which the work was done for the trust by the person to be divided by 5 in order to determine the daily wage rate for the work.
- (2) The minimum wage rate applicable to work done for the trust by the person during the financial year is then determined by multiplying the daily wage rate for the work by the total number of days during the financial year on which work was done for the trust by the person (regardless of the number of hours worked on those days).

**4 Weekly rate method**

- (1) The weekly rate method requires the minimum wage rate applicable to work done for the trust by a person during the financial year to be determined by multiplying the average weekly wage for the financial year by the total number of weeks (or parts of a week) during the financial year in which work was done for the trust by the person (regardless of the number of hours or days worked in those weeks).
- (2) In this clause:  
*week* means a period of 7 days starting on a Monday.

**5 Average weekly wage—meaning**

In this Schedule:

*average weekly wage* for a financial year means:

- (a) the Full time adult ordinary time earnings of persons for New South Wales in the February quarter immediately preceding the financial year, as set out in *Average Weekly Earnings, Australia* published by the Australian Bureau of Statistics, or
- (b) if no such rate is published, the amount specified by the Chief Commissioner, by order published in the Gazette, as the average weekly wage for the relevant financial year.

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## **Schedule 1B Exemption conditions—financial planners**

(Section 3A (5A))

### **1 Exemption for payments made to financial planners**

For the purposes of section 3A (5A), the exemption conditions are as follows:

- (a) the amounts paid or payable by the AFS licence holder to or in respect of the financial planner comprise personal services income (within the meaning of the *Income Tax Assessment Act 1997* of the Commonwealth),
- (b) the amounts are paid or payable for or in connection with services supplied by the financial planner as an authorised representative of the AFS licence holder (within the meaning of section 916A of the *Corporations Act 2001* of the Commonwealth),
- (c) the financial planner conducts a personal services business (within the meaning of section 87-15 of the *Income Tax Assessment Act 1997* of the Commonwealth, as modified by section 87-40 of that Act),
- (d) the financial planner is not an employee of the AFS licence holder for the purposes of the common law,
- (e) the amounts paid or payable are either:
  - (i) paid or payable to the financial planner by the AFS licence holder, or
  - (ii) included in a payment by the AFS licence holder to another person or entity which is then required to pay the personal services income component to the financial planner.

## **Schedule 1C Motor vehicle allowances**

(Section 10B (5))

### **1 Continuous recording method**

If an employer selects the continuous recording method for the purposes of determining the number of business kilometres travelled during the financial year, the following details are required to be recorded by the employer:

- (a) the odometer readings at the beginning and end of each business journey undertaken by the person during a

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financial year by means of a motor vehicle provided or maintained by the person,

- (b) the specific purpose for which each such business journey was taken,
- (c) the distance travelled by the person during the financial year in the course of all such business journeys (which is taken to be the ***number of business kilometres travelled during the financial year***), calculated on the basis of the odometer readings referred to in paragraph (a).

## 2 Averaging method

- (1) If an employer selects the averaging method for the purposes of determining the number of business kilometres travelled during the financial year, the following details are required to be recorded by the employer:
  - (a) the odometer readings at the beginning and end of each business journey undertaken by the person during the relevant 12-week period by means of a motor vehicle provided or maintained by the person,  
**Note.** Clause 3 defines the "relevant 12-week period".
  - (b) the specific purpose for which each such business journey was taken,
  - (c) the distance travelled by the person during the relevant 12-week period in the course of all such business journeys, calculated on the basis of the odometer readings referred to in paragraph (a),
  - (d) the odometer readings at the beginning and end of the relevant 12-week period for each motor vehicle provided or maintained by the person for the purpose of undertaking business journeys,
  - (e) the distance travelled by each such vehicle during the relevant 12-week period, calculated on the basis of the odometer readings referred to in paragraph (d),
  - (f) the distance travelled by the person in the course of business journeys undertaken by means of each such vehicle during the relevant 12-week period, calculated as a percentage of the distance travelled by that vehicle during that period (***the relevant percentage***),
  - (g) the odometer readings at the beginning and end of the financial year for each vehicle provided or maintained by the person for the purpose of undertaking business journeys,

- (h) the distance travelled by each such vehicle during the financial year, calculated on the basis of the odometer readings referred to in paragraph (g),
  - (i) the distance travelled by the person in the course of business journeys undertaken by means of each such vehicle during the financial year (which is taken to be the ***number of business kilometres travelled during the financial year***), calculated on the basis that the percentage of that distance that was travelled by the person in the course of business journeys undertaken by means of each such vehicle during the financial year is the same as the relevant percentage.
- (2) For the next succeeding 4 financial years after the first financial year in which odometer details are recorded in accordance with subclause (1), an employer is not required to calculate the relevant percentage, or record the details referred to in subclause (1) (a)–(f), for the person but is required to record the other details referred to in that subclause.
  - (3) Accordingly, for the next succeeding 4 financial years after the first financial year in which odometer details are recorded in accordance with subclause (1), the number of business kilometres travelled during the financial year is to be calculated (as referred to in subclause (1) (i)) on the basis of the relevant percentage calculated for the first financial year.
  - (4) Despite subclauses (2) and (3), an employer is required to calculate the relevant percentage for a financial year, and record the details referred to in subclause (1) (a)–(f), if:
    - (a) the Chief Commissioner serves a notice on the employer before the commencement of a financial year during that period directing the employer to keep the details referred to in subclause (1) (a)–(f) for that financial year, or
    - (b) the employer wishes to use the recording method referred to in this clause for one or more additional motor vehicles used by the person in any financial year or for any other reason.
  - (5) In a situation referred to in subclause (4), the new record for the financial year replaces the relevant percentage details previously recorded and subclauses (2) and (3) apply in relation to the new record for the financial year as if it were the first financial year in which odometer details were recorded.
  - (6) An employer who has adopted and employed the method of recording referred to in subclauses (2) and (3) for a person for 4

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successive financial years must, in the next succeeding financial year, make a fresh recording of all the details specified in subclause (1) if the employer intends to continue to use the same method of recording for the person. Subclauses (2) and (3) then apply in relation to the new record for the financial year as if it were the first financial year in which odometer details were recorded.

- (7) If the odometer of a motor vehicle is replaced or recalibrated during any period for which its readings are relevant for the purposes of this clause, the odometer readings immediately before and after the replacement or recalibration are to be recorded.

### **3 Meaning of “relevant 12-week period”**

- (1) In clause 2, *relevant 12-week period* means a continuous period of at least 12 weeks, selected by the employer, throughout which a motor vehicle is provided or maintained by a person. If the motor vehicle is provided or maintained for less than 12 weeks, the period must be the entire period for which the motor vehicle is provided or maintained.
- (2) The period may overlap the start or end of the financial year, so long as it includes part of the year.
- (3) If the averaging method is used for 2 or more motor vehicles for the same financial year, the odometer readings for those motor vehicles must cover periods that are concurrent.

### **4 Replacing one motor vehicle with another motor vehicle**

- (1) For the purposes of using the averaging method, an employer may nominate one motor vehicle as having replaced another motor vehicle with effect from a day specified in the nomination.
- (2) After the nomination takes effect, the replacement motor vehicle is treated as the original motor vehicle, and the original motor vehicle is treated as a different motor vehicle. An employer need not repeat for the replacement vehicle the steps already taken for the original motor vehicle.
- (3) An employer must record the nomination in writing in the financial year in which the nomination takes effect.
- (4) However, the Chief Commissioner may allow an employer to record the nomination at a later time.

- (5) For the purposes of section 44 (1B) (c), the nomination is a detail that is required to be kept in accordance with the averaging method.

#### **5 Changing method of recording**

- (1) An employer may change from using the averaging method to using the continuous recording method with effect from the beginning of a financial year if the employer complies with clause 1 in respect of the financial year.
- (2) An employer may change from using the continuous recording method to using the averaging method with effect from the beginning of a financial year if the employer complies with clause 2 in respect of the financial year.

#### **6 Definition**

In this Schedule:

***business journey*** means:

- (a) a journey undertaken in a motor vehicle by a person otherwise than in the application of the vehicle to a private use, being an application that, if the person is paid a motor vehicle allowance for that use, results in the provision of a fringe benefit (within the meaning of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth) by the employer, or
- (b) a journey undertaken in a motor vehicle by a person in the course of producing assessable income of the person (within the meaning of the *Income Tax Assessment Act 1936* of the Commonwealth).

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

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2005*

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[27] **Schedule 6, Part 11**

Insert after Part 10:

**Part 11 Provisions consequent on enactment of  
State Revenue Legislation Amendment Act  
2005**

**18 Repeal of Pay-roll Tax Regulation 1998**

- (1) Any act, matter or thing that, immediately before the repeal of the *Pay-roll Tax Regulation 1998*, had effect under that Regulation continues to have effect under this Act.
- (2) In particular, the reference in Schedule 1C to the first financial year in which an employer chooses to adopt the averaging method includes a reference to a financial year in which that method was adopted under that Regulation before the repeal of that Regulation.

**19 Amendments relating to employee share schemes**

- (1) The employee share scheme amendments have effect as if those amendments had commenced on 1 July 2003, subject to this clause.
- (2) Any wages constituted by the grant of a share or option in the financial year commencing 1 July 2003 or 1 July 2004 are taken to be paid or payable on the date on which they would be paid or payable under the employee share scheme amendments, or the date on which they would have been paid or payable under the former provisions, whichever the employer elects.
- (3) An employer who included a contribution to a share scheme in the taxable wages for the employer for the financial year commencing 1 July 2003 or 1 July 2004, being a contribution that would be the grant of an option within the meaning of section 3AD had the employee share scheme amendments been in force when the contribution was made, is taken to have elected to treat the grant date of the option as the date on which the wages constituted by that option are paid or payable.
- (4) A grant of a share or option in the financial year commencing 1 July 2003 or 1 July 2004 may be valued in accordance with the employee share scheme amendments, or the former provisions, whichever the employer elects.



- (5) Anything done or omitted to be done on or after 1 July 2003 and before the date of assent to the *State Revenue Legislation Amendment Act 2005*, that would have been validly done or omitted if the employee share scheme amendments had been in force at the time that it was done or omitted, is taken to have been validly done or omitted.
- (6) In this clause:  
***employee share scheme amendments*** means sections 3AD and 3AE, as substituted by the *State Revenue Legislation Amendment Act 2005*, and section 3AF, as inserted by that Act.  
***former provisions*** means sections 3AD and 3AE, and Schedule 1A, as in force immediately before the employee share scheme amendments.

## 20 Amendments relating to financial planners

- (1) The financial planner exemption provisions have effect as if those provisions had commenced on 1 July 2003.
- (2) Anything done or omitted to be done on or after 1 July 2003 and before the date of assent to the *State Revenue Legislation Amendment Act 2005*, that would have been validly done or omitted if the financial planner exemption provisions had been in force at the time that it was done or omitted, is taken to have been validly done or omitted.
- (3) For the purpose of applying the financial planner exemption provisions in respect of the financial year commencing on 1 July 2003:
- a person is taken to have been an AFS licence holder during that part of the financial year that occurred before 11 March 2004 if the person was an AFS licence holder on 11 March 2004, and
  - a person is taken to have been an AFS licence holder during any period occurring before 11 March 2004 in which the person held a licence, registration or other authority, of an equivalent nature to an Australian financial services licence under the *Corporations Act 2001* of the Commonwealth, under the legislation in force at the time, and
  - a person is taken to be an authorised representative of an AFS licence holder during any period occurring before 11 March 2004 in which the person was the representative

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(within the meaning of the *Corporations Act 2001* of the Commonwealth) of a person registered as referred to in paragraph (b).

- (4) In this clause:  
***financial planner exemption provisions*** means section 3A (5A) and (5B), and Schedule 1B, as inserted by the *State Revenue Legislation Amendment Act 2005*.

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## Schedule 5 Amendment of Public Finance and Audit Act 1983 No 152

(Section 3)

### [1] Part 4A

Insert after Part 4:

## Part 4A Payment of tax-equivalents

### 58A Definitions

In this Part:

*Intergovernmental Agreement* means the Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations (as set out in Schedule 1 to the *Intergovernmental Agreement Implementation (GST) Act 2000*).

*National tax-equivalent regime* means the arrangements between the Commonwealth and the States and Territories relating to income tax equivalent payments to be made by government businesses under a National Tax Equivalent Regime, as referred to in clause 24 of the Intergovernmental Agreement and given effect to from time to time by a memorandum of understanding between the Commonwealth, the Commissioner of Taxation of the Commonwealth and the States and Territories.

*State tax-equivalent regime* means the arrangements approved from time to time by the Treasurer relating to income tax equivalent payments to be made by government businesses that are not subject to the National tax-equivalent regime, as reflected in any policy or guidelines from time to time published by the Treasury.

*statutory body* means a person, group of persons or body specified in Schedule 2.

### 58B Treasurer may direct statutory bodies to pay tax-equivalents

- (1) The Treasurer may at any time direct a statutory body:
  - (a) to pay amounts to the Treasurer under the National tax-equivalent regime, or
  - (b) to pay amounts to the Treasurer under the State tax-equivalent regime.

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- (2) The Treasurer may at any time:
    - (a) direct a statutory body to cease making payments to the Treasurer under the National tax-equivalent regime or the State tax-equivalent regime, or
    - (b) grant an exemption from payment of any amount under this Part in respect of any period.
  - (3) Amounts that a statutory body is required to pay to the Treasurer under this Part are referred to in this Part as *tax-equivalents*.

**58C Assessment of tax-equivalents—National scheme**

- (1) A statutory body that is directed by the Treasurer to pay tax-equivalents under the National tax-equivalent regime must pay to the Treasurer such amounts as the Tax Assessor determines, in accordance with the National tax-equivalent regime, to be payable by the statutory body as a tax-equivalent.
- (2) Payments are to be made on such terms as the Tax Assessor determines, in accordance with the National tax-equivalent regime, to be equivalent to the terms on which the amounts would be payable (including terms as to instalments and times of payment) if the statutory body were liable to pay corresponding taxes under the law of the Commonwealth.
- (3) A statutory body and the Treasurer may enter into agreements regarding the amounts to be paid under this section or the terms on which they are to be paid, and any such agreements have effect despite anything in subsections (1) and (2).
- (4) The determinations of the Tax Assessor under this section are to be made in such a way as to give effect to any such agreements.
- (5) Any such determination of the Tax Assessor is final, and the Treasurer and the statutory body are required to make all the necessary payments and refunds to give effect to the determination.
- (6) A statutory body is not required to make payments under this section:
  - (a) to the extent that it is or becomes liable to pay the Commonwealth taxes referred to in subsection (2), or
  - (b) if it is directed by the Treasurer to cease making payments under the National tax-equivalent regime or is granted an exemption from payment in respect of a period.

- (7) The Treasurer may nominate any person or persons to be the Tax Assessor for any one or more statutory bodies, and may revoke any such nomination.
- (8) In this section:  
*Tax Assessor*, in relation to a statutory body, means the person nominated for the time being under subsection (7) as the Tax Assessor for the statutory body.  
**Note.** Commonwealth taxation officers generally exercise the functions of Tax Assessor under the National tax-equivalent regime.

**58D Assessment of tax-equivalents—State scheme**

- (1) A statutory body that is directed by the Treasurer to pay tax-equivalents under the State tax-equivalent regime must pay to the Treasurer such amounts as the Chief Commissioner of State Revenue determines, in accordance with the State tax-equivalent regime, to be payable by the statutory body as a tax-equivalent.
- (2) The Chief Commissioner of State Revenue may require a statutory body to prepare and submit to the Chief Commissioner such accounting statements (if any), required for the determination of tax-equivalents payable by the statutory body, in such manner (if any) and such form (if any) as the Chief Commissioner determines.
- (3) A statutory body must comply with a requirement made in respect of it by the Chief Commissioner of State Revenue under this section.
- (4) The Treasurer may approve arrangements for the review of determinations made by the Chief Commissioner of State Revenue under this section. Determinations of the Chief Commissioner are reviewable in accordance with those arrangements.
- (5) A statutory body is not required to make payments under this section:
  - (a) to the extent that it is or becomes liable to pay the Commonwealth taxes that are the subject of the State tax-equivalent regime, or
  - (b) if it is directed by the Treasurer to cease making payments under the State tax-equivalent regime or is granted an exemption from payment in respect of a particular period.

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**58E Tax-equivalents to be credited to Consolidated Fund**

- (1) Amounts paid by a statutory body as tax-equivalents under this Part are to be credited to the Consolidated Fund.
- (2) Despite any other Act, the Treasurer may, in relation to a payment by a statutory body under this Part, make any one or more of the following determinations:
  - (a) that the payment is taken to be payment or part payment of another amount, specified by the Treasurer, which the statutory body is required to pay to the Treasurer,
  - (b) that the payment is to be paid in addition to any other amount which the statutory body is required to pay to the Treasurer,
  - (c) that the payment is taken to be an obligation of the statutory body under the Act by which the statutory body is constituted.
- (3) Subject to subsection (2), the Treasurer, or the Chief Commissioner of State Revenue, may refund any amount paid in excess of a statutory body's liability to pay a tax-equivalent. The Consolidated Fund is appropriated to the extent necessary to enable such refunds.

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

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2005*

**[3] Schedule 4, Part 5**

Insert after Part 4:

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

**13 Validation for tax-equivalent payments**

- (1) Anything done or omitted to be done that would have been validly done or omitted if Part 4A of this Act, and section 5 of the *Taxation Administration Act 1996*, as inserted by the *State Revenue Legislation Amendment Act 2005* had been in force at the time that it was done or omitted is validated.

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- (2) Any direction given by, or nomination made by, the Treasurer before the commencement of this clause that could have been given or made under Part 4A, had that Part been in force at the time that it was given or made, is taken to have been given or made under that Part.
- (3) Any determination made by the Chief Commissioner of State Revenue before the commencement of this clause in respect of the liability of a statutory body to make payments under the State tax-equivalent regime that could have been made under Part 4A, had that Part been in force at the time that it was made, is taken to have been made under that Part.

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## **Schedule 6      Amendment of State Owned Corporations Act 1989 No 134**

(Section 3)

**[1] Section 15 Tax-equivalents**

Insert after section 15 (6):

- (6A) If a refund is required, the Treasurer, or an authorised person, may direct payment out of the Consolidated Fund of the amount required to be refunded. The Consolidated Fund is appropriated to the necessary extent to enable payment of such refunds.

**[2] Section 15 (10)**

Insert in alphabetical order:

*authorised person* means the Chief Commissioner of State Revenue, or an officer of Treasury authorised by the Chief Commissioner of State Revenue to exercise the functions of an authorised person under this section.

**[3] Section 20T Tax-equivalents**

Insert after section 20T (6):

- (6A) If a refund is required, the Treasurer, or an authorised person, may direct payment out of the Consolidated Fund of the amount required to be refunded. The Consolidated Fund is appropriated to the necessary extent to enable payment of such refunds.

**[4] Section 20T (10)**

Insert in alphabetical order:

*authorised person* means the Chief Commissioner of State Revenue, or an officer of Treasury authorised by the Chief Commissioner of State Revenue to exercise the functions of an authorised person under this section.

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

Insert at the end of clause 1 (1):

- *State Revenue Legislation Amendment Act 2005*



**[6] Schedule 11, Part 4**

Insert after Part 3:

**Part 4 Provisions consequent on enactment of  
State Revenue Legislation Amendment Act  
2005**

**5 Validation for tax-equivalent payments**

Anything done or omitted to be done that would have been validly done or omitted if the amendments to sections 15 and 20T made by the *State Revenue Legislation Amendment Act 2005* had been in force at the time that it was done or omitted is validated.

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

(Section 3)

**[1] Section 3 Definitions**

Insert after the definition of *taxation law* in section 3 (1):

**Note.** See also section 5 (Application of Act to State tax-equivalent regime).

**[2] Section 5**

Insert after section 4:

**5 Application of Act to State tax-equivalent regime**

- (1) For the purpose of the administration and enforcement of the State tax-equivalent regime, the provisions of Part 4A of the *Public Finance and Audit Act 1983*, and any other provisions of that Act or the regulations under that Act, insofar as they relate to the State tax-equivalent regime, are taken to be a taxation law.
- (2) To avoid doubt, amounts payable as tax-equivalents under the State tax-equivalent regime in accordance with Part 4A of the *Public Finance and Audit Act 1983* are taxes for the purposes of this Act.
- (3) Part 10 (Objections and reviews) does not apply in respect of an assessment of liability under the State tax-equivalent regime or any other decision of the Chief Commissioner under Part 4A of the *Public Finance and Audit Act 1983*.
- (4) In this section:  
*State tax-equivalent regime* has the meaning given by Part 4A of the *Public Finance and Audit Act 1983*.

**[3] Section 82 Permitted disclosures—to particular persons**

Insert “or a corresponding law of another State or a Territory” after “*First Home Owner Grant Act 2000*” in section 82 (b) (ii).

**[4] Section 82 (k) (xv)**

Omit “or”.

**[5] Section 82 (k) (xvi)**

Insert after section 82 (k) (xv):

- (xvi) the Independent Commission Against Corruption,  
or

**[6] Section 86 Objections**

Insert “(within the meaning of section 6 of the *Administrative Decisions Tribunal Act 1997*)” after “decision” in section 86 (1) (b).

**[7] Section 96 Review by Administrative Decisions Tribunal**

Omit “(within the meaning of section 6 of the *Administrative Decisions Tribunal Act 1997*)” from section 96 (1).

**[8] Section 106E Definitions**

Insert “106IA,” after “106I,” in the definition of *primary group*.

**[9] Section 106IA**

Insert after section 106I:

**106IA Primary groups arising from tracing of interests in corporations**

- (1) An entity and a corporation form part of a primary group if the entity has a controlling interest in the corporation.
- (2) For the purposes of this section, an entity has a ***controlling interest*** in a corporation if the corporation has share capital and:
  - (a) the entity has a direct interest in the corporation and the value of that direct interest exceeds 50%, or
  - (b) the entity has an indirect interest in the corporation and the value of that indirect interest exceeds 50%, or
  - (c) the entity has an aggregate interest in the corporation and the value of the aggregate interest exceeds 50%.
- (3) Schedule 2 has effect.

**Note.** Schedule 2 sets out the manner for determining whether an entity has a direct interest, indirect interest or aggregate interest in a corporation, and the value of such an interest.
- (4) In this section:

***associated person*** has the meaning given by the *Duties Act 1997*.  
***entity*** means:

  - (a) a person, or
  - (b) a group of associated persons.

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**[10] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2005*

**[11] Schedule 2**

Insert after Schedule 1:

**Schedule 2 Business groups—tracing of interests in corporations**

(Section 106IA (3))

**1 Application**

This Schedule applies for the purposes of section 106IA.

**2 Direct interest**

- (1) An entity has a *direct interest* in a corporation if:
  - (a) in the case of an entity that is a person—the person can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting shares issued by the corporation, or
  - (b) in the case of an entity that is a group of associated persons—each of the associated persons can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, the voting power attached to any voting shares issued by the corporation.
- (2) The value of the direct interest of the entity in the corporation is the proportion (expressed as a percentage) of the voting power of all voting shares issued by the corporation that:
  - (a) in the case of an entity that is a person—the person can directly or indirectly exercise, control the exercise of, or substantially influence the exercise of, as referred to in subclause (1), or
  - (b) in the case of an entity that is a group of associated persons—the associated persons can, if acting together, directly or indirectly exercise, control the exercise of, or substantially influence the exercise of, as referred to in subclause (1).

### 3 Indirect interest

- (1) An entity has an *indirect interest* in a corporation if the corporation is linked to another corporation (the *directly controlled corporation*) in which the entity has a direct interest.
- (2) A corporation is linked to a directly controlled corporation if the corporation is part of a chain of corporations:
  - (a) that starts with the directly controlled corporation, and
  - (b) in which a link in the chain is formed if a corporation has a direct interest in the next corporation in the chain.
- (3) The following are examples of how subclauses (1) and (2) work (the examples are cumulative):
  - (a) **Example 1**

Corporation A (a directly controlled corporation) has a direct interest in corporation B. Corporations A and B form part of a chain of corporations, and corporation B is linked to corporation A. Accordingly, an entity that has a direct interest in corporation A also has an indirect interest in corporation B.
  - (b) **Example 2**

Corporation B also has a direct interest in corporation C. In this case, corporations A, B and C form part of a chain of corporations. Both corporations B and C are linked to corporation A. The entity that has a direct interest in corporation A has an indirect interest in both corporations B and C.
  - (c) **Example 3**

Corporation B also has a direct interest in corporation D. There are now 2 chains of corporations, one consisting of A, B and C, and one consisting of A, B and D. Corporations B, C and D are all linked to corporation A and an entity that has a direct interest in corporation A would have an indirect interest in corporations B, C and D. An entity that has a direct interest in corporation B would have an indirect interest in corporations C and D. However, an entity that has a direct interest in corporation C only would not have an indirect interest in corporation D, as corporation D is not linked to corporation C.
- (4) The value of the indirect interest of an entity in a corporation (an *indirectly controlled corporation*) that is linked to a directly controlled corporation is calculated by multiplying together the following:

- 
- (a) the value of the direct interest of the entity in the directly controlled corporation,
  - (b) the value of each direct interest that forms a link in the chain of corporations by which the indirectly controlled corporation is linked to the directly controlled corporation.
- (5) The following are examples of how subclause (4) works (the examples are cumulative):
- (a) **Example 1**

An entity has a direct interest (with a value of 80%) in corporation A. Corporation A has a direct interest (with a value of 70%) in corporation B. The value of the indirect interest of the entity in corporation B is  $80\% \times 70\%$  (that is, 56%). Accordingly, in this example the entity has a controlling interest (within the meaning of section 106IA) in corporation B.
  - (b) **Example 2**

Corporation B also has a direct interest (with a value of 40%) in corporation C. The value of the indirect interest of the entity in corporation C is  $80\% \times 70\% \times 40\%$  (that is, 22.4%). Accordingly, in this example the entity does not have a controlling interest in corporation C.
- (6) It is possible for an entity to have more than one indirect interest in a corporation. This may occur if the corporation is linked to more than one corporation in which the entity has a direct interest, or if the corporation is linked to only one corporation in which the entity has a direct interest but is linked through more than one chain of corporations. In that case, the entity has an aggregate interest in the corporation (see clause 4).

#### 4 Aggregation of interests

- (1) An entity has an *aggregate interest* in a corporation if:
  - (a) the entity has a direct interest and one or more indirect interests in the corporation, or
  - (b) the entity has more than one indirect interest in the corporation.
- (2) The value of the aggregate interest of an entity in a corporation is the sum of the following:
  - (a) the value of the direct interest (if any) of the entity in the corporation,
  - (b) the value of each indirect interest of the entity in the corporation.

(3) For example:

An entity has a direct interest (with a value of 40%) in corporation B.

The entity also has a direct interest (with a value of 25%) in corporation A, which in turn has a direct interest (with a value of 60%) in corporation B. Accordingly, the entity also has an indirect interest in corporation B with a value of 15% (that is,  $25\% \times 60\%$ ).

The value of the entity's aggregate interest in corporation B is the sum of the direct interest (40%) and the indirect interest (15%), which is 55%.

Accordingly, in this example, the entity has a controlling interest in corporation B (within the meaning of section 106IA).

[Second reading speech made in—  
Legislative Assembly on 10 June 2005  
Legislative Council on 22 June 2005]

BY AUTHORITY