



New South Wales

State Revenue Legislation Amendment (Electronic Transactions) Act 2014 No 67

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State Revenue Legislation Amendment (Electronic Transactions) Act 2014 No 67

Act No 67, 2014

An Act to amend certain State revenue legislation to make further provision for the assessment and payment of tax by electronic means. [Assented to 28 October 2014]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *State Revenue Legislation Amendment (Electronic Transactions) Act 2014*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Duties Act 1997 No 123

[1] Section 12 When does a liability for duty arise?

Insert after section 12 (3):

- (4) An electronic registry instrument is taken to be first executed when it is first digitally signed by a subscriber (within the meaning of the *Electronic Conveyancing National Law (NSW)*).

[2] Section 18 No double duty

Insert after section 18 (7):

- (8) Despite subsection (1), if a single dutiable transaction is effected by more than one electronic registry instrument it is sufficient that one of those instruments is duly stamped with the duty chargeable on the dutiable transaction.

Note. See section 290.

[3] Section 228A Electronic mortgages

Omit section 228A (1). Insert instead:

- (1) To avoid doubt, for the purposes of this Chapter (in particular, the definition of *mortgage*), an *instrument* includes any electronic registry instrument.

[4] Section 271 Duplicates or counterparts

Insert after section 271 (3):

- (4) An electronic registry instrument is not a counterpart of an instrument for the purposes of this section.

[5] Section 287 Form of stamps to be used

Insert “or a unique transaction identifier or reference number” after “impressed stamp” in section 287 (1).

[6] Section 287 (3)

Omit the subsection. Insert instead:

- (3) Without limiting subsection (2), the Chief Commissioner may authorise the endorsement or certification of an instrument as referred to in section 289A or 290.

[7] Section 290

Insert after section 289A:

290 Special procedures for electronic registry instruments

- (1) The Chief Commissioner may approve procedures for the payment of duty in respect of electronic registry instruments and the endorsement or certification of those instruments in a way that indicates that duty has been paid, is payable or is not chargeable.
- (2) An electronic registry instrument is taken to be duly stamped if the instrument is endorsed or certified in accordance with such a procedure.
- (3) An approved procedure may permit the endorsement or certification of an instrument before it is digitally signed but, in that case, the instrument is taken to be duly stamped only when the instrument is digitally signed in accordance with the *Electronic Conveyancing National Law (NSW)*.

- (4) The endorsement or certification of an instrument under this section:
 - (a) is not evidence of an assessment of the duty payable under this Act in respect of the instrument, and
 - (b) does not affect any liability for payment of the duty in relation to the instrument under this Act.
- (5) Particulars of any procedure approved under this section are to be published on the website of the Office of State Revenue.
- (6) A person who endorses or certifies an electronic registry instrument otherwise than under and in accordance with a procedure approved under this section so as to suggest or imply that the instrument has been endorsed or certified in accordance with the procedure is guilty of an offence.
Maximum penalty: 100 penalty units.

[8] Section 312

Insert before section 313:

312 Disclosures of information in connection with ELN transactions

- (1) A tax officer (within the meaning of the *Taxation Administration Act 1996*) is authorised to disclose information relating to the assessment of a dutiable transaction or mortgage, or the payment of duty in respect of a dutiable transaction or mortgage, if:
 - (a) the disclosure is made in connection with a dutiable transaction or mortgage that is effected or partially effected by use of an Electronic Lodgment Network, and
 - (b) the disclosure is made to the Electronic Lodgment Network Operator or by use of the Electronic Lodgment Network, and
 - (c) the disclosure is made in connection with the administration or execution of this Act.
- (2) Section 84 of the *Taxation Administration Act 1996* does not apply to information obtained from a tax officer under this section.
- (3) In this section, *Electronic Lodgment Network* and *Electronic Lodgment Network Operator* have the same meanings as they have in the *Electronic Conveyancing National Law (NSW)*.

[9] Dictionary

Insert in alphabetical order in clause 1:

electronic registry instrument means a registry instrument (within the meaning of the *Electronic Conveyancing National Law (NSW)*) that is in a form that enables it to be lodged electronically under that Law.

[10] Dictionary, clause 5

Insert after clause 4:

5 References to written instruments—Electronic Conveyancing National Law (NSW)

A reference in this Act to a written instrument or a dutiable transaction effected by a written instrument includes a reference to an electronic registry

instrument or a dutiable transaction effected by an electronic registry instrument, respectively.

Note. The *Electronic Conveyancing National Law (NSW)* provides that a registry instrument that is digitally signed in accordance with that Law is taken to be in writing for the purposes of the laws of New South Wales.

Schedule 2 Amendment of Taxation Administration Act 1996 No 97

[1] Section 37 Approval of special tax return arrangements

Omit section 37 (1) (b). Insert instead:

- (b) a specified agent or other person on behalf of a specified taxpayer, a specified class of taxpayers or taxpayers for whom that agent or other person is authorised to act, or
- (c) any other specified person who is a party to a transaction or class of transactions in respect of which a liability for tax arises.

[2] Section 37 (5) and (6)

Insert after section 37 (4):

- (5) For the purposes of this Division, an arrangement approved under this section is a *special arrangement* and the person to whom the approval is given is an *approval holder*.
- (6) A special arrangement does not transfer a taxpayer's tax liability from a taxpayer to an approval holder.

[3] Section 39 Conditions of approval

Omit section 39 (2) (g). Insert instead:

- (g) conditions requiring the keeping of specified records.

[4] Section 39A

Insert after section 39:

39A Registration of approval holders

- (1) The Chief Commissioner may, by written notice served on a person at the time of, or subsequent to, approving the person to pay tax or lodge returns under a special arrangement, register the person as a person who is approved to pay tax under the special arrangement.
- (2) The Chief Commissioner may, by order in writing served on the person at the time of, or subsequent to, registration, direct the person to pay tax in respect of any transaction or class of transactions that is the subject of a special arrangement in accordance with the special arrangement.
- (3) Tax that is the subject of such a direction must be paid in accordance with the special arrangement.
- (4) The Chief Commissioner may revoke the registration of a person under this section if the Chief Commissioner cancels an approval under this Division.

[5] Section 40 Variation and cancellation of approvals

Omit "taxpayer or agent". Insert instead "approval holder".

[6] Section 41

Omit the section. Insert instead:

41 Contravention of approval

- (1) An approval holder must not fail to comply with the conditions of a special arrangement.
Maximum penalty: 100 penalty units.

- (2) A person does not commit an offence against subsection (1) for a failure to comply with the conditions of a special arrangement in relation to a particular tax liability if the provisions of the taxation law under which it is levied (disregarding the special arrangement) are complied with in relation to that tax liability.
- (3) Subsection (2) does not apply in relation to a tax liability for a transaction or class of transactions if the approval holder has been directed under section 39A to pay tax in respect of the transaction or class of transactions in accordance with the special arrangement.

Note. An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 121.

[7] Section 107 Means and time of payment

Insert after section 107 (1):

- (1A) The Chief Commissioner may, by order in writing served on a person, direct the person to pay an amount of tax, or a specified type of tax, by electronic means approved by the Chief Commissioner.
- (1B) Tax that is the subject of such a direction must be paid in accordance with the direction.

[8] Section 121 Liability of directors etc for offences by corporation—offences attracting executive liability

Omit “41 (1) or (2)” from section 121 (1) (b). Insert instead “41 (1)”.

[9] Schedule 1 Savings, transitional and other provisions

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

Part Provisions arising from enactment of State Revenue Legislation Amendment (Electronic Transactions) Act 2014

Registration of approval holder

Section 39A, as inserted by the *State Revenue Legislation Amendment (Electronic Transactions) Act 2014*, extends to a special arrangement approved by the Chief Commissioner, or a person approved to pay tax under a special arrangement, before the commencement of section 39A.

[Second reading speech made in—

Legislative Assembly on 10 September 2014

Legislative Council on 22 October 2014]