

## STAMP DUTIES (AMENDMENT) BILL 1989

### NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to change the basis on which stamp duty is assessed in relation to policies of insurance; and
- (b) to make other miscellaneous amendments to the Stamp Duties Act 1920, including amendments which:
  - (i) provide for an exemption from stamp duty on the conveyance of certain family homes and conveyances of certain land subject to special trusts (within the meaning of the Land Tax Management Act 1956);
  - (ii) provide for an exemption from loan security duty for securities executed to secure bail money;
  - (iii) enable the Chief Commissioner to make compromise assessments of stamp duty;
  - (iv) enable the Chief Commissioner to collect debts from third parties; and
  - (v) effect statute law revision; and
- (c) to make a consequential amendment to the Land Tax Management Act 1956.

---

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent, subject to several exceptions. Those exceptions are summarised elsewhere in this Explanatory Note in relation to the provisions to which they apply.

Clause 3 gives effect to the Schedules of amendments.

Clause 4 makes an amendment to the Land Tax Management Act 1956 consequent on the amendment made by Schedule 2 (1).

*Stamp Duties (Amendment) 1989*

---

**SCHEDULE 1 - AMENDMENTS RELATING TO INSURANCE**

The amendments made by this Schedule are to change the basis on which stamp duty is assessed in relation to insurance, other than life insurance.

At the present time, stamp duty on a policy of insurance is assessed according to the amount insured under the policy but so as not to exceed 25% of the premium. While the amendments will not affect the basis on which stamp duty is assessed in relation to policies of life insurance, for other forms of insurance, stamp duty will, as from 1 November 1989, be assessed according to the amount of the premium paid in respect of the policy. The relevant rates will be:

- . Class 1 insurance (that is, all insurance other than Class 2 insurance, life insurance or exempt insurance) 11.5%
- . Class 2 insurance (that is, motor vehicle insurance, aviation insurance, disability income insurance and occupational indemnity insurance, not being exempt insurance) 2.5%

Schedule 1 (1) substitutes Division 24 of Part 3 with a new Division which contains the following proposed sections:

Section 86 contains definitions for the purposes of the proposed Division.

Section 87 lists the types of insurance which are exempt from payment of stamp duty.

Section 88 provides that duty is not chargeable in respect of insurance in so far as it relates to property which is outside New South Wales or a risk which can only occur outside New South Wales.

Section 88A requires a person who carries on insurance business (not being life insurance business) to be registered under the proposed Division by the Chief Commissioner. A person does not carry on insurance business only because the person is an insurance broker. The section also specifies the circumstances in which a person's registration may be cancelled.

Section 88B requires a registered person to lodge a monthly return with the Chief Commissioner showing the total amount of premiums for Class 1 insurance and the total amount of premiums for Class 2 insurance received by the person for the month. The person is required to pay stamp duty on the return in respect of the premiums so shown (and in respect of policies of life insurance effected during the month).

Section 88C enables the Chief Commissioner to apportion a premium paid in respect of different types of insurance.

Section 88D requires a person (other than a registered person) who arranges with a person who is not a registered person insurance of property in New South Wales or against a risk which would normally occur in New South Wales to lodge a return with the Chief Commissioner and to pay duty on the return as if the person were a registered person.

Section 88E enables certain persons who are not required to be registered under the proposed Division to give an undertaking to the Chief Commissioner

## *Stamp Duties (Amendment) 1989*

---

to pay the stamp duty those persons would be required to pay if they were registered under the proposed Division.

Section 88F enables the Chief Commissioner to vary the time for lodging returns under the proposed Division.

Sections 88G and 88H make provision for the lodging of a return with the Chief Commissioner and the payment of duty in respect of a policy of life insurance issued outside New South Wales which relates to the life of a person who, at the time the policy was effected, was domiciled within New South Wales. Section 88G imposes the obligation on a person resident in New South Wales who effects life insurance for which a policy is issued outside New South Wales. Section 88H imposes the obligation on a person who effects insurance for a person resident in New South Wales for which a policy is issued outside New South Wales.

Section 88I applies the provisions of sections 88G and 88H to companies which are registered under the Companies (New South Wales) Code and companies which carry on business in New South Wales.

Section 88J creates a liability to duty of a policy of insurance, and a renewal of any such policy, issued outside New South Wales and received in New South Wales.

Section 88K enables a reduction in duty in respect of so much of a policy to which section 88G, 88H or 88J applies as relates to the life of a person domiciled outside New South Wales.

Section 88L requires the making and keeping of records by registered persons of premiums received by or on their behalf.

Section 88M provides for the manner in which stamp duty paid on a return or a policy of life insurance is to be denoted.

Section 88N enables a set off of duty in respect of a premium, or part of a premium, which is refunded.

Section 88O makes it an offence to register or record an assignment or transfer of a policy of insurance before the assignment or transfer is duly stamped.

Section 88P provides that other forms of duty under the Principal Act (such as duty on an agreement under hand) are not chargeable in respect of policies of insurance issued or renewed on or after 1 November 1989 by a person who is liable to pay duty under the proposed Division.

**Schedule 1 (2) and (3)** make consequential amendments to the Second Schedule to the Principal Act.

**Schedule 1 (4)** enacts transitional provisions arising from the substitution of Division 24 of Part 3 of the Principal Act.

### **SCHEDULE 2 - MISCELLANEOUS AMENDMENTS**

**Schedule 2 (1)** inserts proposed section 73AA (Exemption from duty for certain conveyances). The section transfers from section 10A of the Land Tax Management Act 1956 to the Principal Act the provision that currently allows a refund of stamp duty paid on a conveyance of a family home from a company to the principal shareholders of the company. The relief from duty is now to be provided in the form

*Stamp Duties (Amendment) 1989*

---

of an exemption rather than a refund. The section also extends the exemption to certain conveyances of land which is subject to a special trust within the meaning of the Land Tax Management Act 1956 and which is conveyed to the settlor of that land, the person who actually paid the purchase price for the land or a person who, immediately before becoming the equitable owner of the land, was a beneficiary of the special trust.

**Schedule 2 (2)** amends section 74F (Payment of duty on hiring arrangements by return) to extend the credit allowed under section 74E for duty paid on a hiring arrangement which is liable to duty in more than one jurisdiction to duty paid on such a hiring arrangement by a person who is an approved person for the purposes of section 74F.

**Schedule 2 (3)** amends section 83 (Interpretation) to provide that paragraph (e) of the definition of "loan security" in that section (which relates to documents known as memoranda of deposit) does not apply to such memoranda executed by securities dealers or authorised money market operators. The amendment is to be taken to have commenced on 1 January 1989, being the date on which paragraph (e) commenced.

**Schedule 2 (4) and (12)** amend section 84CA (Unregistered mortgage protected by caveat) and the Second Schedule (in relation to the exemptions under the heading "Loan Security") to provide that securities executed solely in connection with the grant of bail in criminal proceedings are exempt from payment of duty. The amendments are to be taken to have commenced on 19 February 1989, being the date on which the Treasurer approved of the Principal Act being administered to grant the exemption.

**Schedule 2 (5) and (6)** make minor amendments to sections 97C (Definitions) and 97E (Duty payable in relation to relevant transactions) by way of statute law revision to adopt changes in nomenclature relating to the London Stock Exchange.

**Schedule 2 (7)** amends section 99A (Definitions) to extend the definition of "discretionary trust" to include a trust under which the whole or any part of the capital of the trust estate, or the whole or any part of the income of that capital, or both, will be divested from the person or persons in whom it is vested in the event that a discretion conferred under the trust is exercised.

**Schedule 2 (8)** amends section 99B (Acquisitions to which this Division does not apply) to prevent avoidance of Division 30 of Part 3 (Acquisitions of company and unit trust interests dutiable as conveyances of land) which might be achieved by the transfer of shares in a land-holding company to a register outside New South Wales prior to their acquisition. The amendment makes it clear that, in order to fall outside the provisions of Division 30, the land in respect of which an interest is acquired must have been capable of being transferred to the person acquiring the interest by means of an agreement or conveyance which is not chargeable with ad valorem duty.

**Schedule 2 (9)** amends section 127C (Fines in respect of returns and undertakings) to apply the late payment penalties under that section to undertakings under section 84D relating to the payment of loan security duty and to returns under the regulations.

## *Stamp Duties (Amendment) 1989*

---

**Schedule 2 (10)** amends section 129 (Chief Commissioner may compromise a claim for duty) to enable the Chief Commissioner to make compromise assessments in relation to all stamp duties in the same way as is currently available under that section in relation to death duty.

**Schedule 2 (11)** inserts proposed section 129E (Collection of debts from third parties) to introduce garnishment provisions similar to those presently contained in the Pay-roll Tax Act 1971, the Business Franchise Licences (Petroleum Products) Act 1987 and the Business Franchise Licences (Tobacco) Act 1987.

**Schedule 2 (13)** amends clause 8 of Schedule 2A (First home purchase scheme) to make an amendment by way of statute law revision. The amendment is one necessitated by the raising from \$105,000 to \$125,000 of the maximum value of a home which is eligible for consideration under the scheme. The amendment is to be taken to have commenced on 2 June 1988, being the date on which the maximum value was increased.

---