

[Act 1995 No 98]



New South Wales

State Revenue Legislation Further Amendment Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to make miscellaneous amendments to certain State revenue Acts and other legislation, in particular, the *Business Franchise Licences (Petroleum Products) Act 1987*, the *Business Franchise Licences (Tobacco) Act 1987*, the *Debits Tax Act 1990*, the *Land Tax Management Act 1956*, the *Pay-roll Tax Act 1971*, the *Recovery of Imposts Act 1963* and the *Stamp Duties Act 1920*. The Bill also amends certain regulations under those Acts.

* Amended in committee—see table at end of volume.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 January 1996, except as otherwise provided. Alternative commencement dates are mentioned below in relation to each of the amendments concerned.

Clauses 3–10 are formal provisions giving effect to the Schedules of amendments.

Schedules 1–8 amend the Acts and regulations referred to above.

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

Transfer of procedural matters relating to the off-road diesel fuel scheme into the Act from the regulations

The *Business Franchise Licences (Petroleum Products) Act 1987* contains provisions providing for an off-road diesel fuel scheme. Those provisions are augmented by provisions of the regulations under that Act. The proposed Act transfers those provisions from the regulations into the Act. See Schedule 1 [1]–[6] and [14].

Transfer of procedural matters in relation to appeals into the Act from the regulations

The *Business Franchise Licences (Petroleum Products) Act 1987* contains provisions enabling appeals to be made against decisions on objections to the granting of licences under that Act. Those provisions are augmented by provisions of the regulations under that Act. The regulations also specify the rate of interest payable on amounts that are refunded to an objector as a result of an appeal, provide for the rounding-off of interest and provide for the payment of expenses of persons who are required to attend hearings conducted in connection with investigations being carried out under that Act. The proposed Act transfers those provisions from the regulations into the Act. See Schedule 1 [7]–[13].

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

Transfer of procedural matters in relation to appeals into the Act from the regulations

The *Business Franchise Licences (Tobacco) Act 1987* contains provisions enabling appeals to be made against decisions on objections to the granting of licences under that Act. Those provisions are augmented by provisions of the regulations under that Act. The regulations also specify the rate of interest payable on amounts that are refunded to an objector as a result of an appeal, provide for the rounding-off of interest and provide for the payment of expenses of persons who are required to attend hearings conducted in connection with investigations being carried out under that Act. The proposed Act transfers those provisions from the regulations into the Act. See Schedule 2 [1]–[7].

Disclosure of information obtained under the Business Franchise Licences (Tobacco) Act 1987 to the Director-General of the Department of Health

The *Business Franchise Licences (Tobacco) Act 1987* prohibits the disclosure of certain information, subject to specified exceptions. The proposed Act adds to those exceptions so as to permit information to be disclosed to the Director-General of the Department of Health for the purposes of facilitating the administration of the *Public Health Act 1991* and the *Tobacco Advertising Prohibition Act 1991*. See Schedule 2 [8]–[10].

Schedule 3 Amendment of Debits Tax Act 1990

Tax exemptions for bodies associated with the year 2000 Olympic Games

The proposed Act exempts the Sydney Organising Committee for the Olympic Games and Sydney Paralympic Organising' Committee Limited from the requirement to pay debits tax under the *Debits Tax Act 1990*. See Schedule 3 [1] .

Tax exemptions for companies with regional headquarters within New South Wales

The proposed Act removes a current tax exemption in relation to companies that have regional headquarters within New South Wales. See Schedule 3 [2].

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Notional separation of debits for debits tax purposes

The proposed Act provides for a single debit with respect to multiple transactions effected by a single third party cheque arrangement to be treated as multiple debits for debits tax purposes under the *Debits Tax Act 1990*. The new section replaces an existing section that contains more general provisions with respect to multiple transactions. See Schedule 3 [3].

Imposition of tax on persons and bodies having Crown immunity

The proposed Act enables the Governor to apply the whole or any specified provisions of the *Debits Tax Act 1990* to any specified body (whether statutory or otherwise) that has Crown immunity. See Schedule 3 [4].

Schedule 4 Amendment of Land Tax Management Act 1956

Exemption of State owned corporations from land tax in limited circumstances

The proposed Act enables regulations under the *Land Tax Management Act 1956* to exclude State owned corporations from land tax liability in the same way as electricity and gas distributors can be excluded. See Schedule 4 [1].

Imposition of tax on persons and bodies having Crown immunity

The proposed Act enables the Governor to apply the whole or any specified provisions of the *Land Tax Management Act 1956* to any specified body (whether statutory or otherwise) that has Crown immunity. A consequential provision exempts lessees of lands held by the Crown from payment of land tax in circumstances in which the Crown body from which the land is leased is liable for land tax. See Schedule 4 [2] and [3].

Schedule 5 Amendment of Pay-roll Tax Act 1971

Disclosure of pay-roll tax information to the WorkCover Authority

The *Pay-roll Tax Act 1971* prohibits the disclosure of certain information, subject to specified exceptions. The proposed Act adds to those exceptions so as to permit information to be disclosed to the Workcover Authority so as to enable that Authority to exercise its functions. See Schedule 5 [1], [2] and [3].

Correction of formulae

The proposed Act corrects typographical errors in a formula used in connection with the calculation of pay-roll tax. See Schedule 5 [4] and [5]. The amendments are taken to have commenced on 1 January 1995.

Schedule 6 Amendment of Recovery of Imposts Act 1963

Recovery of impost

The proposed Act overcomes the decision of the High Court in *Commissioner of State Revenue v Royal Insurance* (1994) 126 ALR 1. In that case, the High Court considered the effect of section 20A of the *Limitation Act 1958* (Vic). That provision was, before its amendment in 1993, in similar terms to the present version of section 2 of the *Recovery of Imposts Act 1963*. Section 2 of the *Recovery of Imposts Act 1963* presently creates limitation periods in respect of proceedings against the Crown and its various agents to recover taxes paid “under the authority or purported authority of any Act”. The decision in *Royal Insurance* suggests that the words “under the authority or purported authority of any Act” do not apply to mistaken payments resulting from a misreading of a statute. See Schedule 6.

Schedule 7 Amendment of Stamp Duties Act 1920

Recognition of CUFS as a species of share

Interests known as CHESS Units in Foreign Securities (“CUFS” for short) are used to settle transactions relating to foreign shares and units in public unit trust schemes that are traded on the Australian stock exchange. The proposed Act recognises CUFS as a species of share for the purposes of various provisions of the *Stamp Duties Act 1920*. See Schedule 7 [1], [2], [13], [15], [16], [17] and [34].

Licences to sell duty stamps

The proposed Act removes the requirement under the *Stamp Duties Act 1920* that stamps be sold at specially licensed premises only and that a sign be displayed at the premises showing the licensee’s name and the words “Licensed to sell duty stamps”. A Variation of Statute approved by the Treasurer dispensed with these requirements on 4 January 1995. See Schedule 7 [3], [4] and [5]. The amendments are taken to have commenced on 4 January 1995.

Prohibition of “contract splitting” to avoid stamp duty

The proposed Act extends the provisions of the *Stamp Duties Act 1920* that give rise to a presumption that different interests in the same property that are conveyed between the same parties within 12 months of each other are a single transaction for stamp duty purposes to conveyances in which the parties are not the same but are related to the original parties. See Schedule 7 [6].

Exclusion from oral contract provisions

Division 3A of Part 3 contains provisions dealing with “Clayton’s contracts”, ie provisions for the payment of duty where dutiable instruments may not be involved. Section 44 (3) deals with the transactions to which Division 3A does not apply. The proposed Act restores this provision to the form in which it was prior to its amendment by the *State Revenue Legislation (Amendment) Act 1994*, and preserves the effect of a regulation made in relation to that provision. See Schedule 7 [7] and [47] (proposed clause 42 in Part 13 of the Tenth Schedule). The amendments are taken to have commenced on 1 September 1994.

Intergenerational transfers of rural land

Section 66H of the *Stamp Duties Act 1920* provides an exemption from duty on the intergenerational transfer of rural land, subject to certain criteria being satisfied. The proposed Act extends this exemption to other property integral to primary production and transferred with the land. See Schedule 7 [8]. The amendments are taken to have commenced on 14 September 1994.

Transfer of functions from the Treasurer to the Chief Commissioner of Stamp Duties

The proposed Act amends the *Stamp Duties Act 1920* so as to enable certain functions of the Treasurer to be exercised by the Chief Commissioner of Stamp Duties. A right of appeal is conferred elsewhere in this Schedule of amendments in relation to decisions of the Chief Commissioner under the provisions as proposed to be amended. The functions relate to the granting of exemptions from duty in connection with intergenerational transfer of rural land, charitable institutions, and transfer of property between members of a group of corporations. See Schedule 7 [9] and [35]–[38].

Definition of loan security

The proposed Act extends the same exemption from loan security duty under the *Stamp Duties Act 1920* to certain instruments connected with options trading as applies to similar instruments in the money market. See Schedule 7 [10]. The amendments are taken to have commenced on 1 January 1989.

Exemptions from loan security duty for transactions between 1.1.95 and 1.1.96

Section 84CAC of the *Stamp Duties Act 1920* contains an exemption for home loan refinancing that expired on 1 January 1995. Variations of Statute were approved by the Treasurer to extend this date to 30 June 1995 and then to 31 December 1995. The proposed Act extends the date to 1 January 1996, so that advances for home loan refinancing made before this date will be eligible for the exemption. See Schedule 7 [11]. The amendments are taken to have commenced on 1 January 1995.

Exemptions from loan security duty for certain companies

Section 84EBA of the *Stamp Duties Act 1920* provides that duty is not chargeable in respect of a loan security payable by a company that established its regional headquarters in the State after 1 July 1995 and that is the subject of a determination made under section 82CE of the *Income Tax Assessment Act 1936* of the Commonwealth. The proposed Act terminates the operation of section 84EBA from 1 September 1995, except as regards any such determination made before that date. The exemption expires on 1 July 2000. The amendment does not prevent a non-statutory scheme from operating in a similar fashion. See Schedule 7 [12]. The amendments are taken to have commenced on 1 September 1995.

Exemption from stamp duty on SCH-regulated share transfers effected by mortgage or discharge of mortgage

Section 94C (2) of the *Stamp Duties Act 1920* exempts certain SCH-regulated transfers from payment of duty under Division 26A of Part 3 of that Act. The proposed Act extends those exemptions to include share transfers effected by mortgage or discharge of mortgage where the instrument concerned has been duly stamped, or is exempt from similar duty, under the law of another State or Territory. See Schedule 7 [14]. The amendments are taken to have commenced on 27 January 1995.

Declarations of trust transferring mortgages and corporate debt securities

Section 97AE of the *Stamp Duties Act 1920* and paragraph (41) of the General Exemptions in the Second Schedule to that Act exempt transfers of mortgages and corporate debt securities from duty. The amendments extend this exemption to declarations of trust over mortgages and corporate debt securities. The amendments are effective from 1 January 1995, when a Variation of Statute for this purpose came into effect. See Schedule 7 [18] and [40].

Clarification of financial institutions duty provisions

The proposed Act amends the *Stamp Duties Act 1920* to clarify the definition of *broker receipts*, and to clarify the extent of the exemption for certain involuntary transfers. See Schedule 7 [19] and [24].

Anti-avoidance provisions in relation to financial institutions duty

The proposed Act amends the *Stamp Duties Act 1920* so as to close a loop-hole in relation to the payment of financial institutions duty on funds transferred outside New South Wales and so as to clarify and restrict the definitions relating to short term dealings. See Schedule 7 [20], [21], [23] and [26] and 8.3 [5].

Transfers between exempt accounts

The proposed Act amends the *Stamp Duties Act 1920* to confirm that transfers between exempt accounts, which are used as working accounts of non-bank financial institutions, are not subject to financial institutions duty. See Schedule 7 [22].

Exemption of SEISIN clearing transactions from financial institutions duty

Section 98A of the *Stamp Duties Act 1920* excludes certain transactions from liability for financial institutions duty. The proposed Act extends this exclusion to transactions effected for the purposes of the Solicitors' Electronic Information Settlement Interchange Network. See Schedule 7 [25].

Prescribed short term dealers

The proposed Act amends the *Stamp Duties Act 1920* to allow the Chief Commissioner to assess duty on breaches of the conditions attached to a prescribed short term dealer's account, and to cancel an exempt account if conditions or undertakings are breached. See Schedule 7 [27], [28] and [29].

Imposition of tax on persons and bodies having Crown immunity

The proposed Act enables the Governor to apply the whole or any specified provisions of the *Stamp Duties Act 1920* to any specified body (whether statutory or otherwise) that has Crown immunity. A consequential provision provides that accounts held by Crown bodies the subject of such an order will not be eligible for a certificate of approval as an exempt account under section 98U of the *Stamp Duties Act 1920* on the ground that they are Crown bodies. See Schedule 7 [30] and [33].

Rights of objection against decisions of the Chief Commissioner of Stamp Duties

The amendments confer a right of objection and appeal in connection with decisions of the Chief Commissioner under provisions previously administered by the Treasurer. See Schedule 7 [31] and [32].

Community Housing Program instruments

The proposed Act exempts instruments from liability for stamp duty if they are executed for the purposes of or in connection with the Community Housing Program administered within the Department of Housing. See Schedule 7 [39].

Share ratio contracts

The proposed Act exempts share ratio contracts from liability for stamp duty. See Schedule 7 [41]. The amendments are taken to have commenced on 3 March 1995.

HomeFund deeds of release

The proposed Act exempts deeds of release effected under the *HomeFund Restructuring Act 1993* from liability for stamp duty. See Schedule 7 [42]. The amendments are taken to have commenced on 15 September 1995.

Lawyers' costs agreements

The proposed Act exempts from duty costs agreements required to be entered into under the *Legal Profession Act 1987* between lawyers and their clients or other lawyers. Variations of Statute were approved by the Treasurer on 4 October 1994 and 6 January 1995. See Schedule 7 [43]. The amendments are taken to have commenced on 4 October 1994.

Conveyances to solicitor corporations

The proposed Act exempts conveyances to solicitor corporations from liability for stamp duty in respect of the property of firms of solicitors established before 8 March 1991. See Schedule 7 [44]. The amendments are taken to have commenced on 17 February 1995.

Agreements funding certain employment or training programs

The proposed Act exempts from duty any agreement relating to the funding or employment or training programs by the Department of Training and Education Co-ordination. This was the subject of a Variation of Statute approved by the Treasurer on 6 March 1995. The amendment operates from this date. See Schedule 7 [45].

Tax exemptions for bodies associated with the year 2000 Olympic Games

The proposed Act exempts the Sydney Organising Committee for the Olympic Games and Sydney Paralympic Organising Committee Limited from the requirement to pay financial institutions duty under the *Stamp Duties Act 1920* (Schedule 8.3 [5]—proposed clause 37 (1) of the *Stamp Duties Regulation 1991*). The proposed Bill also exempts the Australian Olympic Committee Incorporated or the New South Wales Olympic Council Incorporated from financial institutions duty in respect of accounts used solely for the purpose of receipts in connection with the year 2000 Olympic Games (but not in connection with the administrative or operating costs of either account-holder) (Schedule 8.3 [5]—proposed clause 37 (2) of the *Stamp Duties Regulation 1991*).