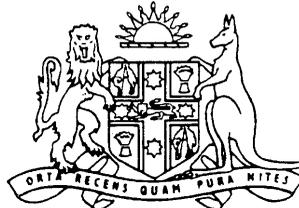


[Act 1998 No 44]



New South Wales

State Revenue Legislation Amendment Bill 1998

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 the *Duties Act 1997*, *Land Tax Management Act 1956*, *Petroleum Products Subsidy Act 1997*, *Revenue Laws (Reciprocal Powers) Act 1987*, *Stamp Duties Act 1920* and *Taxation Administration Act 1996*.

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 various days as set out in the proposed section.

Clause 3 is a formal provision giving effect to the amendments to the *Duties Act 1997* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Land Tax Management Act 1956* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Petroleum Products Subsidy Act 1997* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Revenue Laws (Reciprocal Powers) Act 1987* set out in Schedule 4.

Clause 7 is a formal provision giving effect to the amendments to the *Stamp Duties Act 1920* set out in Schedule 5.

Clause 8 is a formal provision giving effect to the amendments to the *Taxation Administration Act 1996* set out in Schedule 6.

Schedule 1 Amendment of Duties Act 1997

Chapter 2 Transactions concerning dutiable property

ADRs

Amendments are made by **Schedule 1 [1], [3], [12], [51] and [52]** to ensure that a change in the beneficial ownership of an ADR (American Depositary Receipt) continues to be exempt from duty.

Instalment warrants

Instalment warrants providing beneficial ownership in respect of shares in a NSW company are made dutiable property for the purposes of dutiable transactions by amendments made by **Schedule 1 [2], [3], [11], [24] and [52]**.

Ships and vessels

The disposition of a ship or vessel is exempted from duty by the amendment made by **Schedule 1 [4]**.

Partitions of property

Schedule 1 [5], [6] and [7] extend the concession that currently applies in relation to a partition of dutiable property to include a partition of property, some of which is dutiable property and some of which is not.

Index trusts

Schedule 1 [54] extends the exemption for the transfer of marketable securities to or from the trustee of an index trust to Tower 20 Leaders Index Trust.

Divorce settlements

Schedule 1 [13] extends the exemption for transfers of dutiable property as a consequence of a divorce to transfers pursuant to private agreements that give effect to a genuine divorce settlement, regardless of whether it is subject to an order of the Family Court.

Transfer of principal place of residence from a corporation or special trust to certain persons

Schedule 1 [14], [15] and [16] preserve a stamp duty concession for certain transfers of principal places of residence by overcoming an unintended consequence, for duty purposes, of amendments made to section 10(1)(r) of the *Land Tax Management Act 1956* by Schedule 3 [4] to the *State Revenue Legislation Amendment Act 1997*.

Chapter 3 Certain transactions treated as transfers

Profit a prendre

A profit a prendre is excluded, by **Schedule 1 [17]**, from the types of land holdings to which the “land-rich” provisions of the *Duties Act 1997* applies.

Duty on relevant acquisitions

Duty on a relevant acquisition is reduced, by **Schedule 1 [18]**, by an amount of duty paid on the acquisition under other sections of the “land-rich” provisions.

Exemptions

The exemption provisions are amended, by **Schedule 1 [19]**, to ensure that, while the specific acquisitions remain exempt, the interests acquired by an exempt acquisition can still be considered in determining if a person has a majority interest in the relevant corporation or unit trust.

Phasing-in of duty

Schedule 1 [20] amends the provision for the phasing-in of duty to deal with a situation where, at one stage in an acquisition that is aggregated over 3 years, the unencumbered value of land holdings in New South Wales of the private corporation was less than \$1 million.

Subsidiaries of private corporations

Schedule 1 [21] treats a subsidiary of a private corporation as the owner of land where the subsidiary is the vendor or purchaser under an uncompleted agreement.

Double duty

Schedule 1 [22] avoids the possibility of double duty under Part 4 (Acquisition of land use entitlements by allotment of shares or issue of units) of Chapter 3 and Part 5 (Allotment of shares by direction) of that Chapter.

Public unit trust schemes

Schedule 1 [57] widens the definition of *public unit trust scheme* in the Dictionary to include schemes that will, in the opinion of the Chief Commissioner, become public unit trust schemes within 12 months.

Chapter 4 Marketable securities—on-market transfers (Broker provisions)

On-market transfers —when order received in New South Wales

Schedule 1 [23] specifies the circumstances in which a sale or purchase of marketable securities quoted on the market operated by the Australian Stock Exchange is, in the case of a reported trade, received in New South Wales.

Stock exchange transactions relating to companies incorporated in New Zealand or Papua New Guinea

Schedule 1 [27] applies the concessional rate of duty to sales and purchases of marketable securities of a body corporate incorporated under the law of New Zealand or Papua New Guinea.

Records of sales, purchases and transfers of marketable securities

Schedule 1 [34] requires, in the case of a sale, purchase or transaction that is dutiable at the concessional rate or that is exempt from duty, the keeping of such particulars as are required to establish that the sale, purchase or transaction is dutiable at a concessional rate or is exempt from duty.

Chapter 5 Lease instruments

Cost of a lease

Schedule 1 [35] makes it clear that rent paid in advance of a lease and an amount paid or payable for the right to use land (as under a licence) comprise part of the cost of a lease on which duty is chargeable.

Periodic estimates and assessments

Schedule 1 [36] makes it clear that a periodic estimate and a periodic assessment of duty chargeable under a lease may be made more than 5 years after the initial estimate. Inclusion of this provision will mean that the Chief Commissioner will not be prevented (under section 9 (3) of the *Taxation Administration Act 1996*) from making a reassessment of duty in such cases.

Chapter 6 Hire of goods

Goods used in New South Wales and outside New South Wales

Schedule 1 [37] recognises that goods, during the course of their hire, may be used and subject to duty both in New South Wales and outside New South Wales. To avoid double duty, the expression “during the course of hire” is replaced with the expression “during any period for which a liability to duty is required to be determined”.

Special hiring agreements

Schedule 1 [38] provides that the duty on a special hiring agreement that is chargeable with the maximum amount of duty of \$10,000 cannot be reduced below \$6,000.

Chapter 7 Mortgages

Persons liable to duty

As not all instruments that come within the definition of *mortgage* in the *Duties Act 1997* have a party described as a “mortgagor”, **Schedule 1 [39]** adds a reference to the “person bound”.

Liability to additional duty

Schedule 1 [40] removes an unintended limitation on the circumstances in which a mortgage becomes liable to additional duty.

Effect of further advances

Schedule 1 [41] removes an expression that could have been wrongly construed to mean that an original liability to duty of a mortgage could be extinguished on the making of a further advance under the mortgage.

Collateral mortgages

Schedule 1 [42] clarifies the circumstances in which the duty on a collateral mortgage is to be reduced.

First home purchase scheme

Schedule 1 [43] and **[44]** extend the concession in respect of eligible mortgages under the First home purchase scheme to mortgages in support of eligible mortgages.

Chapter 8 Insurance

Annuities

Schedule 1 [46] clarifies whether an annuity is insurance for the purposes of the *Duties Act 1997* by inserting a definition of ***annuity***.

Chapter 9 Motor vehicle registration

Motor vehicles purchased by disabled veterans

Schedule 1 [47] exempts a motor vehicle certificate of registration from duty if the motor vehicle is purchased by a totally and permanently incapacitated veteran who is eligible for the special rate of pension under the Commonwealth *Veterans' Entitlements Act 1986*.

Miscellaneous amendments to continue effect of provisions of Stamp Duties Act 1920

Miscellaneous amendments are made for this purpose by **Schedule 1 [8]** (nominal duties), **Schedule 1 [9]** (change in trustees) and **Schedule 1 [10]** and **[53]** (transfer of property from one superannuation fund to another).

Minor amendments by way of clarification or Correction

Schedule 1 [25], **[26]**, **[28]–[33]**, **[45]**, **[48]–[50]** and **[56]** make minor amendments by way of clarification and correction.

Schedule 2 Amendment of Land Tax Management Act 1956

Schedule 2 [1] removes a provision that, as a consequence of the restoration of a full exemption for all land owned, regardless of its use, by a charitable or educational institution or a religious society (see Schedule 1 (4) (c) and (d) to the *Land Tax Management (Amendment) Act 1988*) is now redundant.

Schedule 2 [2] removes a provision to make it clear that section 10A of the *Land Tax Management Act 1956*, which enables an exemption granted to the owner of a principal place of residence to continue for a period of not less than 12 months after the death of the owner, applies in all cases.

Schedule 2 [3] removes the entitlement to an exemption in respect of land acquired for the purpose of building a person's future principal place of residence if the person owns and lives in a residence outside New South Wales.

Schedule 3 Amendment of Petroleum Products Subsidy Act 1997

Schedule 3 [1] and **[7]** clarify that the subsidies proposed to be granted under the *Petroleum Products Subsidy Act 1997* will be granted in respect of zones identified by regulations made under the Act.

Schedule 3 [2] and **[3]** provide that a purchaser of marine diesel is entitled to the benefit of a subsidy without the need for an off-road diesel permit.

Schedule 3 [4] removes the entitlement to a subsidy if the Commonwealth pays a rebate which includes the State subsidy.

Schedule 3 [5] and **[6]** enable the Chief Commissioner to remit or reduce the 300% penalty imposed by the *Petroleum Products Subsidy Act 1997* on a person who claims a subsidy to which the person is not entitled.

Schedule 3 [8] provides for appeals to be made to the District Court pending the establishment of the Administrative Decisions Tribunal.

Schedule 3 [9] enables, during a transitional period, the sale of petroleum products by a registered wholesaler to an unregistered consumer provided certain requirements are met.

Schedule 4 Amendment of Revenue Laws (Reciprocal Powers) Act 1987

Schedule 4 provides that the *Petroleum Products Subsidy Act 1997* is to be a revenue law for the purposes of the *Revenue Laws (Reciprocal Powers) Act 1987*. This will, among other things, allow investigations to be carried out by other Australian jurisdictions in New South Wales as to their petroleum subsidy schemes.

Schedule 5 Amendment of Stamp Duties Act 1920

Schedule 5 [1] inserts a transitional provision that will apply to the assessment of stamp duty on instruments on and from the commencement of the *Duties Act 1997* on 1 July 1998.

Schedule 5 [2], [4] and [11] provide that an exempt public sector superannuation scheme is to be a complying superannuation fund for the purposes of the *Stamp Duties Act 1920*. This will cause transfers of assets between such funds to be subject to the concessional rate of stamp duty.

Schedule 5 [3] will cause instalment notes to be subject to stamp duty in the same way as IRs.

Schedule 5 [5] removes double duty from certain novated motor vehicle leases.

Schedule 5 [6] exempts a motor vehicle certificate of registration from duty if the motor vehicle is purchased by a totally and permanently incapacitated veteran who is eligible for the special rate of pension under the Commonwealth *Veterans' Entitlements Act 1986*.

Schedule 5 [7] and [8] provide that the market value of a motor vehicle in relation to which stamp duty on a certificate of registration is to be assessed is not to include a notional amount of sales tax if the person who purchased the vehicle was not liable to pay sales tax.

Schedule 5 [9] makes a minor amendment to the definition of *options trader* to bring the definition into conformity with the Business Rules of the Australian Stock Exchange.

Schedule 5 [10] applies the concessional rate of duty to sales and purchases of marketable securities of a body corporate incorporated under the law of New Zealand or Papua New Guinea.

Schedule 5 [12] exempts from financial institutions duty receipts of certain accounts of organisations entitled to privileges and immunities under the Commonwealth *International Organisations (Privileges and Immunities) Act 1963*.

Schedule 5 [13] extends the general exemption from stamp duty to certain stock exchange index trusts.

Schedule 5 [14] grants a general exemption from stamp duty to compulsory contracts under the *Home Building Act 1989*, certain instruments made for

the purposes of family agreements under the Medicare levy and under the family tax assistance scheme of the Commonwealth and accommodation bond agreements under the Commonwealth *Aged Care Act 1997*.

Schedule 5 [15] clarifies the application of certain transitional provisions to the payment of premiums for policies of insurance.

Schedule 6 Amendment of Taxation Administration Act 1996

Schedule 6 [1] enables a reassessment of tax under a New South Wales taxation law to be carried out more than 5 years after the initial assessment if the carrying out of such a reassessment is specifically authorised by such a law.

Schedule 6 [2] authorises the Chief Commissioner to refund an amount of tax that has been overpaid, whether or not a notice of assessment has been issued in respect of the tax.

Schedule 6 [3] enables the Chief Commissioner to refuse to exercise functions under a taxation law if information or documents that are required to be provided to the Chief Commissioner are not so provided.

Schedule 6 [4] and [5] make savings and transitional provisions that will be required when the *Stamp Duties Act 1920* becomes a taxation law to which the *Taxation Administration Act 1996* applies.