



New South Wales

Duties Amendment (Abolition of State Taxes) Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
This Bill is cognate with the *Appropriation Bill 2006*.

Overview of Bill

The object of this Bill is to amend the *Duties Act 1997* as follows:

- (a) to abolish duty on the hire of goods with effect on 1 July 2007,
- (b) to abolish duty on leases with effect on 1 January 2008,
- (c) to abolish duty on marketable securities that are currently dutiable with effect on 1 January 2009,
- (d) to reduce by 50% the duty payable on mortgages with effect on 1 January 2010,
- (e) to abolish duty on mortgages with effect on 1 January 2011,
- (f) to abolish duty on the transfer of business assets (other than real property), statutory licences or permissions, and poker machine entitlements with effect on 1 July 2012.

Duty on lease premiums is retained. The payment of a premium in respect of a lease will continue to be treated in a similar manner to a transfer of land.

The Bill also provides for a number of transitional matters regarding the application of the duties referred to above prior to their abolition, particularly with respect to mortgage duty, and provides for anti-avoidance measures.

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.

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

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Hire of goods

Schedule 1 [23] abolishes duty on a hire of goods, with effect on 1 July 2007.

Schedule 1 [44] includes savings and transitional provisions (proposed clauses 61 and 62) in relation to the abolition of the duty. These provisions ensure that the abolition of the duty does not affect an obligation to pay the hiring duty in respect of hiring charges received, or a hire of goods entered into, before the abolition date.

Schedule 1 [24] is a consequential amendment.

Duty on leases

Schedule 1 [17] abolishes duty on leases, with effect on 1 January 2008. The abolition will apply in respect of leases entered into on or after that date.

Schedule 1 [20] and [21] are an anti-avoidance measure. The amendments prevent a refund of lease duty being given if a lease is terminated before the abolition date, unless the Chief Commissioner of State Revenue is satisfied the leased premises are not being occupied by the lessee or an associated person and that the lessee or an associated person does not propose to resume occupation of the leased premises.

Schedule 1 [44] includes provision for transitional matters in relation to the abolition of lease duty (proposed clause 58). These include provision for the making of a final estimate by the Chief Commissioner of State Revenue of the cost of a lease entered into before the abolition date, so as to enable a final assessment of the duty payable.

Schedule 1 [1]–[3] ensure that duty continues to be payable, under Chapter 2 of the *Duties Act 1997*, on any premium paid or payable in respect of a lease. This duty applies to a narrower class of leases than the general duty on leases. It is proposed that the duty on lease premiums will also be payable if a lease is entered into pursuant to an option and an amount is paid or payable for the grant of the option.

Schedule 1 [5] provides for the charging of duty on the amount of the premium (or the amount paid for the option).

Schedule 1 [10] and [13] preserve existing concessions and exemptions relating to the duty payable on lease premiums.

Schedule 1 [18], [19], [22] and [45] are consequential amendments.

Schedule 1 [44] includes a transitional provision (proposed clause 59) to ensure that the amendments relating to lease premiums apply only to leases entered into on or after 1 July 2006.

Duty on marketable securities

At present, the *Duties Act 1997* charges duty on a transfer of marketable securities only if the marketable security is not quoted on the Australian Stock Exchange or a recognised stock exchange. **Schedule 1 [9]** (proposed section 34) abolishes duty on all marketable security transfers, with effect on 1 January 2009. The abolition will apply only in respect of transfers occurring on or after that date.

Schedule 1 [15] abolishes the duty on entitlements arising from capital reductions or rights alterations, with effect on 1 January 2009.

Schedule 1 [16] abolishes the duty on an allotment of shares with effect on 1 January 2009.

Schedule 1 [4] and [14] are consequential amendments.

Mortgage duty

Schedule 1 [25] abolishes mortgage duty, with effect on 1 January 2011. Mortgage duty will continue to apply in respect of mortgages and other instruments of security executed before that date, but not in respect of any further advances made on or after that date.

Schedule 1 [30] reduces the mortgage duty rate by 50%, with effect on 1 January 2010. **Schedule 1 [28] and [29]** are consequential amendments.

Schedule 1 [26], [27] and [31]–[41] make miscellaneous amendments relating to the transitional application of mortgage duty. These changes do not affect the abolition of mortgage duty on 1 January 2011. **Schedule 1 [44]** (proposed clause 60) provides for the transitional application of the changes.

Schedule 1 [26] and [27] extend mortgage duty to instruments of security where certain property in New South Wales is affected by the instrument after the date the instrument is first executed. The amendment extends an existing provision relating to instruments of security that affect land in New South Wales after first execution. The extension will not apply to instruments of security that affect certain marketable securities and other interests.

Schedule 1 [32] changes the way duty is charged on certain mortgages, so as to make a distinction between all moneys mortgages and mortgages for a limited amount. The main effect of the change is that, if the amount of advances secured by a mortgage is a definite and limited sum, mortgage duty is charged on that definite and limited sum

and any advances that exceed that sum (rather than the amount of the advances). **Schedule 1 [38]** prevents the stamping of a mortgage for a limited sum before an advance is made. **Schedule 1 [31] and [41]** are consequential amendments.

Schedule 1 [33] provides for a concession in the calculation of mortgage duty on mortgages that affect property both within and outside Australia. At present, the value of the property affected outside Australia is removed from the calculation of the dutiable proportion of such a mortgage. This would operate to the disadvantage of a mortgagor under any international financing arrangement where advances were primarily secured on offshore property. The amendment allows the value of the offshore property to be taken into account in determining the proportion of the advances under the mortgage that is dutiable in New South Wales.

Schedule 1 [35] deems instruments of security that secure, or partly secure, the same money to be part of a mortgage package (and assessed as if they were one mortgage) if they are first executed within any period of 28 days. A collateral mortgage that secures or partly secures the same money will also be considered part of a mortgage package (**Schedule 1 [36]**).

Schedule 1 [37] makes further provision for the assessment of mortgage packages if the amount secured by the mortgage package over property in Australia is a definite and limited sum, or the amount secured by the mortgage package over property in New South Wales is a definite and limited sum. **Schedule 1 [34]** is a consequential amendment. The provisions ensure that the dutiable proportion of any advances made in respect of the mortgage is calculated by reference to the following:

- (a) in the case of a mortgage package with an Australian limit, the dutiable proportion of that limit,
- (b) in the case of a mortgage package with a NSW limit, the dutiable proportion of all advances made under the mortgage, or the NSW limit, whichever is lower.

Schedule 1 [40] makes provision for the stamping of collateral mortgages. Collateral mortgages are mortgages that secure the same money as is secured by another mortgage. If the other mortgage has already been stamped in this jurisdiction or another jurisdiction, no duty is chargeable. This prevents double duty. In New South Wales, mortgage duty is to be reduced by half on 1 January 2010 and abolished on 1 January 2011. Other States are reducing and abolishing mortgage duty on different dates. The purpose of the amendment is to prevent the use of a mortgage that is collateral to a mortgage that has been stamped in another jurisdiction where mortgage duty has already been reduced to avoid mortgage duty in New South Wales. The amendment allows a mortgage that is collateral to a mortgage that has been stamped in a jurisdiction with reduced mortgage duty to be assessed as if it were part of a mortgage package, with a cap on duty applying to prevent double duty. **Schedule 1 [31] and [39]** are consequential amendments.

Duty on transfers of business assets, statutory licences and permissions and poker machine entitlements

Schedule 1 [9] (proposed sections 35 and 36) abolishes, with effect on 1 July 2012, duty on transfers of the following types of dutiable property:

- (a) business assets, which includes the goodwill of a business and intellectual property (but not real property),
- (b) a statutory licence or permission under New South Wales law,
- (c) a poker machine entitlement within the meaning of the *Gaming Machines Act 2001*.

The abolition will apply in respect of transfers made on or after the abolition date.

Schedule 1 [9] (proposed section 37) is an anti-avoidance measure to ensure that abolition does not extend to certain transfers or transactions that are entered into on or after the abolition date pursuant to arrangements made before that date.

Schedule 1 [7] provides for a new rule for the assessment of dutiable transactions involving goods and other dutiable property, on the basis that business assets will no longer be dutiable property after the abolition date.

Schedule 1 [4], [6], [8], [11], [12] and [42] are consequential amendments.

Regulations

Schedule 1 [43] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Duties Amendment (Abolition of State Taxes) Bill 2006

Explanatory note

First print



New South Wales

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Duties Amendment (Abolition of State Taxes) Bill 2006

No. , 2006

A Bill for

An Act to amend the *Duties Act 1997* for the purpose of abolishing and reducing certain State taxes, and to provide for transitional matters; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Duties Amendment (Abolition of State Taxes) Act 2006</i> .	3
2 Commencement	4
(1) This Act commences, or is taken to have commenced, on 1 July 2006, except as provided by subsections (2) and (3).	5 6
(2) Schedule 1 [23] commences on 1 July 2007.	7
(3) If the <i>State Revenue Legislation Amendment Act 2006</i> is not assented to before 1 July 2006, Schedule 1 [41] commences, or is taken to have commenced, on the date of assent to that Act.	8 9 10
3 Amendment of Duties Act 1997 No 123	11
The <i>Duties Act 1997</i> is amended as set out in Schedule 1.	12
4 Repeal of Act	13
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	14 15
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	16 17

Schedule 1	Amendments	1				
	(Section 3)	2				
[1]	Section 8 Imposition of duty on certain transactions concerning dutiable property	3 4				
	Insert after section 8 (1) (b) (vii):	5				
	(viii) a lease in respect of which a premium is paid or agreed to be paid.	6 7				
[2]	Section 8 (3)	8				
	Insert in alphabetical order:	9				
	<i>lease</i> means a lease of land in New South Wales or an agreement for a lease of land in New South Wales.	10 11				
	<i>premium</i> , in respect of a lease entered into pursuant to an option, includes an amount paid or payable for the grant of the option.	12 13				
[3]	Section 9 Imposition of duty on dutiable transactions that are not transfers	14 15				
	Insert at the end of the Table to the section, in Columns 1, 2, 3 and 4 respectively:	16 17				
	<table border="0" style="width: 100%;"> <tr> <td style="width: 25%;">lease</td> <td style="width: 25%;">the leased property</td> <td style="width: 25%;">the lessee</td> <td style="width: 25%;">when the lease is entered into</td> </tr> </table>	lease	the leased property	the lessee	when the lease is entered into	
lease	the leased property	the lessee	when the lease is entered into			
[4]	Section 11 What is “dutiable property”?	18				
	Insert at the end of the section:	19				
	Note. Part 4 of this Chapter provides for the abolition, in stages, of duty on some of the types of dutiable property listed above.	20 21				
	The duty imposed on dutiable transactions involving shares and units referred to in section 11 (1) (d) and (e) is abolished on 1 January 2009. Marketable securities cease to be dutiable property on that date.	22 23 24				
	The duty imposed on dutiable transactions involving business assets referred to in section 11 (1) (g), statutory licences or permissions referred to in section 11 (1) (h) and poker machine entitlements referred to in section 11 (1) (h1) is abolished on 1 July 2012. Those things cease to be dutiable property on that date.	25 26 27 28 29				
[5]	Section 21 What is the “dutiable value” of dutiable property?	30				
	Insert after section 21 (4):	31				
	(5) The <i>dutiable value</i> of leased property transferred by way of a lease is taken to be the amount of the premium paid or payable in respect of the lease.	32 33 34				

[6] Section 26 Certain transactions concerning goods and other property	1
Insert after section 26 (2):	2
(3) This section applies only to dutiable transactions that occur before 1 July 2012.	3
Note. On 1 July 2012, duty on the transfer of business assets is abolished (see Part 4 of this Chapter). Section 26A applies in respect of transfers occurring after that date that remain dutiable transactions.	4
	5
	6
	7
[7] Section 26A	8
Insert after section 26:	9
26A Transactions involving goods and other property that occur on or after 1 July 2012	10
	11
(1) If a dutiable transaction involves goods and other dutiable property, the Chief Commissioner may disregard the value of the goods in the transaction if satisfied that the dutiable value of the other property does not exceed 10% of the dutiable value of all the dutiable property in the transaction.	12
	13
	14
	15
	16
(2) This section applies only to dutiable transactions that occur on or after 1 July 2012.	17
	18
[8] Section 28 Apportionment—business assets in this and other jurisdictions	19
	20
Insert after section 28 (5):	21
(6) This section applies only to dutiable transactions that occur before 1 July 2012.	22
	23
Note. On 1 July 2012, duty on the transfer of business assets is abolished (see Part 4 of this Chapter).	24
	25
[9] Chapter 2, Part 4	26
Insert after Part 3:	27
Part 4 Abolition of various duties	28
34 Abolition of duty on all transfers of marketable securities—effective 1 January 2009	29
	30
(1) On and from 1 January 2009, marketable securities are not dutiable property (despite section 11).	31
	32

(2)	Subsection (1) does not apply in respect of any transfer or transaction with respect to marketable securities that occurs before 1 January 2009 and, accordingly, does not affect any requirement to pay duty under this Chapter in respect of the transfer or transaction.	1 2 3 4 5
35	Abolition of duty on transfers of business assets—effective 1 July 2012	6 7
(1)	On and from 1 July 2012, a business asset referred to in section 11 (1) (g) is not dutiable property (despite section 11).	8 9
(2)	Subsection (1) does not apply in respect of any transfer or transaction with respect to business assets that occurs before 1 July 2012 and, accordingly, does not affect any requirement to pay duty under this Chapter in respect of the transfer or transaction.	10 11 12 13 14
36	Abolition of duty on transfers of licences, permissions and entitlements—effective 1 July 2012	15 16
(1)	On and from 1 July 2012, a statutory licence or permission referred to in section 11 (1) (h), or a poker machine entitlement referred to in section 11 (1) (h1), is not dutiable property (despite section 11).	17 18 19 20
(2)	Subsection (1) does not apply in respect of any transfer or transaction with respect to statutory licences or permissions, or poker machine entitlements, that occurs before 1 July 2012 and, accordingly, does not affect any requirement to pay duty under this Chapter in respect of the transfer or transaction.	21 22 23 24 25
37	Anti-avoidance measures	26
	Sections 35 and 36 do not apply in respect of a transfer or transaction with respect to a business asset referred to in section 11 (1) (g), a statutory licence or permission referred to in section 11 (1) (h), or a poker machine entitlement referred to in section 11 (1) (h1), that occurs on or after 1 July 2012 if:	27 28 29 30 31
(a)	the transfer or transaction replaces a transfer or transaction involving the same business asset, statutory licence or permission, or poker machine entitlement that occurred before 1 July 2012, or	32 33 34 35
(b)	the transfer or transaction is made or entered into pursuant to an option to purchase the business asset, statutory licence or permission, or poker machine entitlement that was granted before 1 July 2012, or	36 37 38 39

	(c) the transfer or transaction was made or entered into pursuant to another arrangement, made before 1 July 2012, the only or main purpose of which was to defer the transfer or transaction until 1 July 2012, or later, so that duty would not be chargeable under this Chapter on the transfer or transaction.	1 2 3 4 5 6
[10]	Section 53A	7
	Insert after section 53:	8
	53A Duty on lease premiums	9
	In the case of property transferred by way of a lease for which a premium is paid or payable, duty is not chargeable under this Chapter on:	10 11 12
	(a) so much of the premium of a residential lease as relates to premises used, or intended to be used, exclusively as a residence, or	13 14 15
	(b) so much of the premium of a lease as relates to a moveable dwelling site used, or intended to be used, as the principal place of residence of the lessee.	16 17 18
[11]	Section 65 Exemptions from duty	19
	Insert after section 65 (6):	20
	Note. Duty on the transfer of statutory licences is abolished on 1 July 2012. This exemption is relevant only to a transfer or vesting that occurs before that date. See Part 4 of this Chapter.	21 22 23
[12]	Section 65 (7), note	24
	Insert after section 65 (7):	25
	Note. Duty on the transfer of statutory licences, permissions and poker machine entitlements is abolished on 1 July 2012. This exemption is relevant only to a transfer or vesting that occurs before that date. See Part 4 of this Chapter.	26 27 28 29
[13]	Section 65 (16)	30
	Insert after section 65 (15):	31
	(16) Leases—general	32
	No duty is chargeable under this Chapter on the following leases:	33
	(a) a lease granted by or on behalf of a corporation, society or institution if:	34 35

(i)	the purpose of the lease is to grant a retired person or a disabled person the right to occupy residential accommodation, and	1 2 3
(ii)	the lease has not been granted for the purpose of profit by the lessor,	4 5
(b)	a lease of premises to the Home Care Service of New South Wales,	6 7
(c)	a lease executed in accordance with Part V of the <i>National Health Act 1953</i> of the Commonwealth,	8 9
(d)	a lease of premises in a retirement village within the meaning of section 5 of the <i>Retirement Villages Act 1999</i> .	10 11
[14]	Section 66 Exemptions—marketable securities	12
	Insert at the end of the note to the section:	13
	The duty on all marketable securities is to be abolished on 1 January 2009. See Part 4 of this Chapter.	14 15
[15]	Section 124	16
	Insert in Part 3 of Chapter 3, before section 125:	17
	124 Abolition of duty charged by this Part—effective 1 January 2009	18
(1)	The duty charged by this Part is abolished on and from 1 January 2009.	19 20
(2)	The duty charged by this Part remains chargeable on a dutiable entitlement that is acquired before 1 January 2009.	21 22
[16]	Section 137A	23
	Insert in Part 5 of Chapter 3, before section 138:	24
	137A Abolition of duty charged by this Part—effective 1 January 2009	25
(1)	The duty charged by this Part is abolished on and from 1 January 2009.	26 27
(2)	The duty charged by this Part remains chargeable on an allotment of shares referred to in section 138 that occurs before 1 January 2009.	28 29 30
[17]	Section 164 Imposition of duty	31
	Insert at the end of the section (before the note):	32
(2)	The duty charged by this Chapter is abolished on and from 1 January 2008. This Chapter does not apply in respect of a lease first executed on or after 1 January 2008.	33 34 35

[18] Section 164A What is a “lease”?	1
Omit “ <i>Lease</i> ”. Insert instead “For the purposes of this Chapter, <i>lease</i> ”.	2
[19] Section 170 General rate	3
Omit section 170 (2).	4
[20] Section 177 Reassessment of duty—early termination	5
Omit “may apply in writing” from section 177 (1).	6
Insert instead “may apply in an approved form”.	7
[21] Section 177 (5) and (6)	8
Insert after section 177 (4):	9
(5) The Chief Commissioner must not refund any duty under this section unless satisfied that neither the lessee, nor an associated person in relation to the lessee, has occupied the premises the subject of the lease with the express or implied agreement of the lessor at any time after the termination of the lease and that neither the lessee, nor an associated person, proposes to so occupy those premises at any time after the termination of the lease.	10 11 12 13 14 15 16 17
(6) Subsection (5) does not apply to an occupation that is consequential on the sale of the premises to the lessee or an associated person.	18 19 20
[22] Section 179 Exemptions	21
Omit section 179 (5).	22
[23] Chapter 6 Hire of goods	23
Omit the Chapter.	24
[24] Chapter 6, note	25
Insert after the heading to the Chapter:	26
Note. This duty will be abolished on 1 July 2007 as a consequence of the <i>Duties Amendment (Abolition of State Taxes) Act 2006</i> .	27 28
[25] Section 203A	29
Insert in Chapter 7, before section 204:	30
203A Abolition of mortgage duty—effective 1 January 2011	31
(1) Mortgage duty is abolished on and from 1 January 2011.	32

(2)	However, mortgage duty remains chargeable, and this Chapter continues to apply, in respect of the following:	1
		2
(a)	a mortgage first executed before 1 January 2011 (including any advances or further advances made in respect of the mortgage before that date),	3
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		5
(b)	an instrument of security referred to in section 208 (3) that first affects land in New South Wales before 1 January 2011,	6
		7
		8
(c)	an instrument of security referred to in section 208 (3A) that first affects relevant property in New South Wales before 1 January 2011,	9
		10
		11
(d)	an instrument that first becomes a mortgage or evidences the terms of a mortgage, as referred to in section 208 (4), before 1 January 2011.	12
		13
		14
(3)	A mortgage does not become liable to the additional duty referred to in section 208 (2) in respect of an advance or further advance that is made on or after 1 January 2011 (even if the mortgage was first executed before that date).	15
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[26]	Section 208 When does a liability arise?	19
	Insert after section 208 (3):	20
(3A)	An instrument of security that does not affect property in New South Wales at the date of first execution but that, at any time after execution, affects relevant property in New South Wales identified in the instrument or identified under an arrangement in place when the instrument was first executed, becomes liable to duty on the date it first affects that property, unless it is duly stamped under a corresponding Act or is exempt from duty.	21
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		25
		26
		27
[27]	Section 208 (6)	28
	Insert after section 208 (5):	29
(6)	For the purposes of this section, <i>relevant property</i> means any property, excluding land and the following kinds of property:	30
		31
(a)	a marketable security that is quoted on the Australian Stock Exchange,	32
		33
(b)	an interest in a marketable security referred to in paragraph (a), or an interest in a marketable security if the interest is quoted on the Australian Stock Exchange,	34
		35
		36

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Schedule 1 Amendments

(c)	an interest in a unit trust scheme, being a unit trust scheme in respect of which units in the scheme have been issued to the public and 50 or more persons are beneficially entitled to units in the scheme,	1 2 3 4
(d)	property the Chief Commissioner is satisfied is of a similar nature to property referred to in paragraph (a), (b) or (c).	5 6
[28]	Section 210 How is mortgage duty charged?	7
	Omit “provided by subsection (2)” from section 210 (1).	8
	Insert instead “provided by subsections (2)–(4)”.	9
[29]	Section 210 (2)	10
	Insert “, except as provided by subsection (4)” after “of the amount secured”.	11
[30]	Section 210 (3) and (4)	12
	Insert after section 210 (2) (before the notes to the section):	13
(3)	If a mortgage is first executed on or after 1 January 2010, the amount of duty chargeable on the mortgage is:	14 15
(a)	\$5.00, if the mortgage secures no amount or if the amount secured by the mortgage is not more than \$16,000, or	16 17
(b)	if the amount secured by the mortgage is more than \$16,000—\$5.00, plus a further \$2.00 for every \$1,000, or part, by which the amount secured exceeds \$16,000.	18 19 20
(4)	The amount of duty chargeable on a mortgage in respect of an advance or further advance made on or after 1 January 2010 is calculated on the amount secured by it as determined under Part 2. The amount of duty is \$2.00 for every \$1,000, or part, of the amount secured.	21 22 23 24 25
[31]	Section 211 Consequences of non-payment of duty	26
	Omit “section 216 or 217” from section 211 (2).	27
	Insert instead “section 216, 217, 217A or 218BA”.	28

[32] Sections 213 and 214	1
Omit section 213. Insert instead:	2
213 Secured limited amount	3
(1) If the amount of advances secured or to be secured by a mortgage is a definite and limited sum, the <i>amount secured by the mortgage</i> is, for the purposes of this Chapter, the definite and limited sum, until such time (if any) as a greater amount of advances is secured by the mortgage.	4 5 6 7 8
(2) If any advance or further advance is made so that the amount of advances secured by the mortgage exceeds, at any time, the definite and limited sum mentioned in subsection (1), the amount on which duty is chargeable is, for the purposes of section 210 (2) or (4) (as appropriate), the amount by which the advances or further advances secured by it exceeds the amount on which duty has been paid under this section.	9 10 11 12 13 14 15
(3) For the purposes of this Chapter, any increase in the definite and limited sum referred to in subsection (1) is taken to be a further advance for the amount of the increase.	16 17 18
214 “All moneys” mortgage	19
(1) If the amount of advances secured by a mortgage is not a definite and limited sum, the <i>amount secured by the mortgage</i> is, for the purposes of this Chapter, the amount of advances actually secured by it.	20 21 22 23
(2) If any advance or further advance is made so that the amount of advances for the time being secured by the mortgage subsequently exceeds the amount of the advances for which the mortgage has been duly stamped under this Act, the amount on which duty is chargeable is, for the purposes of section 210 (2) or (4) (as appropriate), the amount by which the advances or further advances secured by it exceeds the amount on which duty has been paid under this section.	24 25 26 27 28 29 30 31
[33] Section 216 Mortgages over property not wholly within New South Wales	32
Omit “, excluding property outside Australia” from the definition of <i>T</i> in section 216 (2).	33 34
[34] Section 216 (7)	35
Insert after section 216 (6):	36
(7) This section is subject to the provisions of section 217A in relation to the assessment of mortgage packages.	37 38

[35] Section 217 Advances secured by mortgage package	1
Omit section 217 (2) and (3). Insert instead:	2
(2) Two or more instruments of security are taken to be part of a <i>mortgage package</i> only if the Chief Commissioner is satisfied that the instruments were first executed within any period of 28 days and in such a case are taken, for the purpose of assessing duty, to be first executed on the day the last of the instruments to be executed was executed.	3 4 5 6 7 8
[36] Section 217 (6)	9
Insert after section 217 (5):	10
(6) In the case of a further advance, a mortgage package includes an instrument of security executed after the initial liability date for a mortgage package that secures or partly secures the same money as the mortgage package.	11 12 13 14
[37] Section 217A	15
Insert after section 217:	16
217A Assessment of mortgage packages where one or more instruments secure a limited amount	17 18
(1) This section applies if a mortgage package assessed as one mortgage under section 217 has a NSW limit, or an Australian limit, or both.	19 20 21
(2) If a mortgage package assessed as one mortgage under section 217 has a NSW limit, mortgage duty is to be assessed on the mortgage as if the amount secured by the mortgage were the NSW proportion of all advances secured by the mortgage, or the amount of the NSW limit, whichever is less.	22 23 24 25 26
(3) The NSW proportion of all advances secured by the mortgage is to be calculated in the same manner as the dutiable proportion under section 216, but as if “AS” in the formula were the amount of advances secured by all instruments of security in the mortgage package at the liability date.	27 28 29 30 31
(4) If a mortgage package assessed as one mortgage under section 217 has an Australian limit, mortgage duty is to be assessed on the mortgage as if the amount secured by the mortgage were the NSW proportion of the Australian limit.	32 33 34 35

(5)	The NSW proportion of the Australian limit is to be calculated in the same manner as the dutiable proportion under section 216, but as if “AS” in the formula were the amount of the Australian limit and “T” excluded the value of all property outside Australia.	1 2 3 4
(6)	For the purposes of this section, a mortgage package has a <i>NSW limit</i> if the instruments of security comprising the package affect property partly within and partly outside New South Wales and, disregarding section 216, the amount secured by those instruments over property wholly within New South Wales is a definite and limited sum. In such a case, the amount of the NSW limit is taken to be that definite and limited sum.	5 6 7 8 9 10 11
(7)	For the purposes of this section, a mortgage package has an <i>Australian limit</i> if the instruments of security comprising the package affect property partly within Australia and partly outside Australia, disregarding section 216, the amount secured by those instruments over property wholly within Australia is a definite and limited sum, and that amount is a single amount that applies in respect of all property within Australia that is affected by the mortgage. In such a case, the amount of the Australian limit is taken to be that definite and limited sum.	12 13 14 15 16 17 18 19 20
	Note. The provisions relating to mortgage packages with an Australian limit do not apply to mortgage packages that specify separate limits in relation to property in different States or Territories (eg \$10 million for NSW, \$10 million for Victoria).	21 22 23 24
(8)	A mortgage package that has a NSW limit and that does not affect property in Australia that is outside New South Wales, but does affect property outside Australia, is not to be treated as a mortgage package that has an Australian limit.	25 26 27 28
[38]	Section 218 Stamping before advance	29
	Insert after section 218 (2):	30
(3)	This section does not apply in respect of a mortgage if the amount of advances secured by the mortgage is a definite and limited sum.	31 32 33
[39]	Section 218B Collateral mortgage	34
	Insert “, subject to section 218BA,” after “under this Act” wherever occurring in section 218B (1) (a) and (b).	35 36

[40] Section 218BA	1
Insert after section 218B:	2
218BA Collateral mortgages—anti-avoidance measure	3
(1) Section 218B (1) does not apply if a collateral mortgage secures the same money as is secured by a mortgage or instrument of security, or mortgage package, stamped under a corresponding Act and the rate of mortgage duty charged under the corresponding Act in respect of the amount secured is a reduced rate.	9
(2) For the purposes of this section, mortgage duty is charged at a <i>reduced rate</i> if the rate of mortgage duty charged in respect of the amount secured under the corresponding Act is less than the rate that would have applied under that Act if the mortgage or instrument had been charged with mortgage duty in respect of the same amount secured immediately before 1 July 2006.	15
(3) If the rate of mortgage duty charged under the corresponding Act in respect of the amount secured is a reduced rate, the collateral mortgage and the stamped mortgages or instruments are to be assessed under this Part as if they comprised a mortgage package first executed on the day the collateral mortgage was first executed.	21
(4) If, as a consequence of subsection (3), the total of the amount of mortgage duty charged in respect of the amount secured under this Act and the amount of mortgage duty charged in respect of the amount secured under the corresponding Act exceeds the maximum amount, the duty chargeable in respect of the collateral mortgage under this Act is to be reduced by the amount necessary to ensure that the total mortgage duty charged under this Act and the corresponding Act does not exceed the maximum amount.	29
(5) For the purposes of this section, the <i>maximum amount</i> is the amount of mortgage duty that would be chargeable in respect of the amount secured by the collateral mortgage if the mortgage were not a collateral mortgage.	33
(6) Despite section 217 (5), the collateral mortgage is to be stamped with the mortgage duty paid in New South Wales, and the instruments stamped under the corresponding Act are not required to be stamped under this Act.	37

	Note. In NSW, mortgage duty is to be reduced by half on 1 January 2010 and abolished on 1 January 2011. Other States are reducing and abolishing mortgage duty on different dates. The purpose of this section is to prevent the use of a mortgage that is collateral to a mortgage that has been stamped in a jurisdiction where duty has already been reduced to avoid mortgage duty in NSW.	1 2 3 4 5 6
[41]	Section 226 Payment on mortgages associated with debenture issues	7
	Omit section 226 (3C), as substituted by the <i>State Revenue Legislation Amendment Act 2006</i> .	8 9
	Insert instead:	10
	(3C) For the purposes of the application of section 213 (2) or 214 (2) to such a mortgage (and the application of section 218B to any collateral mortgage that secures the same money as the mortgage), duty is taken to have been paid, and the mortgage is taken to have been duly stamped, for the following amount or amounts:	11 12 13 14 15 16
	(a) the disclosed debenture amount,	17
	(b) any advances or further advances made on or after the cut-off date in respect of which duty has been paid under this Chapter.	18 19 20
[42]	Section 274 Transfer of certain business property between family members	21 22
	Insert after section 274 (2):	23
	Note. Duty on the transfer of statutory licences and permissions is abolished on 1 July 2012. This exemption is relevant only to a transfer of shares in a share management fishery that occurs before that date. See Part 4 of Chapter 2.	24 25 26 27
[43]	Schedule 1 Savings, transitional and other provisions	28
	Insert at the end of clause 1 (1):	29
	<i>Duties Amendment (Abolition of State Taxes) Act 2006</i>	30

[44] Schedule 1, Part 24	1
Insert after Part 23:	2
Part 24 Provisions consequent on the enactment of the Duties Amendment (Abolition of State Taxes) Act 2006	3 4 5
58 Abolition of duty on leases	6
(1) The abolition of duty on lease instruments (effective 1 January 2008) does not affect any obligation to pay duty under Chapter 5 in respect of a lease instrument executed before 1 January 2008 and that Chapter continues to apply in respect of such an instrument.	7 8 9 10 11
(2) Sections 169 (2) and 178 do not apply to or in respect of a variation of a lease instrument referred to in subclause (1) if the variation is made on or after 1 January 2008.	12 13 14
(3) If any lease executed before 1 January 2008 has any unascertainable cost components for which there is an estimate date on or after 1 January 2008:	15 16 17
(a) the Chief Commissioner must, on the first of those estimate dates to occur on or after 1 January 2008 (the <i>final estimate date</i>), make a final estimate of the cost of the lease, and	18 19 20 21
(b) the lease instrument is chargeable with duty under this Act as if that final estimate were the full cost of the lease, and	22 23
(c) no further estimates of the cost of the lease are to be made (despite section 173 (5)).	24 25
(4) Section 173 (6) applies only to the final estimate date or an estimate date that occurs before the final estimate date.	26 27
(5) Section 173 (7) and (8) do not apply in respect of any period after the final estimate date.	28 29
(6) For the purposes of this clause, <i>estimate date</i> means any of the estimate dates for a lease determined under section 173 (5).	30 31
59 Duty on lease premiums	32
(1) The amendments to sections 8 and 9 made by the <i>Duties Amendment (Abolition of State Taxes) Act 2006</i> (relating to leases) apply only in respect of leases that are first executed on or after 1 July 2006.	33 34 35 36

(2)	Sections 170 (2) and 179 (5), as in force immediately before their repeal by the <i>Duties Amendment (Abolition of State Taxes) Act 2006</i> , continue to apply in respect of lease instruments executed before the repeal of those provisions.	1 2 3 4
60	Changes to mortgage duty provisions	5
(1)	The mortgage duty amendments do not apply to a mortgage or instrument of security first executed before 1 July 2006 unless an advance or further advance is made in respect of the mortgage or instrument on or after that date (and in such a case apply in respect of the advance or further advance).	6 7 8 9 10
(2)	If the amount secured by a mortgage executed before 1 July 2006 is a definite and limited sum, but the amount of advances actually secured by the mortgage immediately before 1 July 2006 was less than the definite and limited sum, section 214, as inserted by the mortgage duty amendments, and not section 213, applies in respect of any advance or further advance made after 1 July 2006 which does not result in the total amount of advances actually secured by the mortgage exceeding that definite and limited sum. This subclause extends to a mortgage to which section 226 applies.	11 12 13 14 15 16 17 18 19 20
(3)	A reference in section 213 or 214, as inserted by the mortgage duty amendments, to an amount on which duty has been paid under section 213 or 214 extends to an amount on which duty has been paid under Chapter 7 as in force immediately before 1 July 2006.	21 22 23 24 25
(4)	Section 213 (3), as inserted by the mortgage duty amendments, extends to a variation to a mortgage made on or after 1 July 2006 in respect of a mortgage first executed before that date.	26 27 28
(5)	For the purposes of this clause, <i>the mortgage duty amendments</i> means Schedule 1 [26], [27] and [31]–[41] to the <i>Duties Amendment (Abolition of State Taxes) Act 2006</i> .	29 30 31
61	Abolition of duty on hire of goods—commercial hire businesses	32
(1)	The repeal of Chapter 6 (effective 1 July 2007) by the <i>Duties Amendment (Abolition of State Taxes) Act 2006</i> does not affect any obligation to pay duty under Part 2 of that Chapter in respect of hiring charges received in any month before July 2007 and, for that purpose, that Part is taken to continue to apply in respect of such hiring charges.	33 34 35 36 37 38

Duties Amendment (Abolition of State Taxes) Bill 2006

Schedule 1 Amendments

(2)	In particular, section 199, as in force immediately before its repeal by the <i>Duties Amendment (Abolition of State Taxes) Act 2006</i> , is taken to continue to apply to a commercial hire business, so that, after the repeal of that section:	1 2 3 4
(a)	a commercial hire business continues to be required to lodge a return in accordance with that section (but only in respect of the months before July 2007), and	5 6 7
(b)	a commercial hire business may request a reassessment of duty under section 199 (6).	8 9
62	Abolition of duty on hire of goods—other persons	10
(1)	The repeal of Chapter 6 (effective 1 July 2007) by the <i>Duties Amendment (Abolition of State Taxes) Act 2006</i> does not affect any obligation to pay duty under Part 3 of that Chapter in respect of a hire of goods entered into before 1 July 2007.	11 12 13 14
(2)	For that purpose, Part 3 of that Chapter is taken to continue to apply to a hire of goods entered into before 1 July 2007, but only if the first, or only, payment of hiring charges is paid, or becomes payable, before that date. Accordingly, if the first payment of hiring charges is paid, or become payable, before 1 July 2007, no refund of duty is payable in respect of any part of the hiring charges that is paid or becomes payable on or after 1 July 2007.	15 16 17 18 19 20 21
(3)	Subclause (2) does not prevent a reassessment of duty being made under section 199 (6) (as in force immediately before its repeal).	22 23 24
[45]	Dictionary	25
	Omit the definition of <i>lease</i> .	26