



New South Wales

State Revenue Legislation Amendment (Electronic Transactions) Bill 2014

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Duties Act 1997* and the *Taxation Administration Act 1996* to make further provision for the assessment and payment of tax by electronic means. The amendments are largely consequential on the enactment and implementation of the *Electronic Conveyancing National Law (NSW)* (the **National Law**). The amendments:

- (a) make it clear that electronic instruments lodged under the National Law are regarded as written instruments for the purposes of the *Duties Act 1997* and provide for the circumstances in which such an instrument is taken to be executed, and
- (b) provide for special arrangements for the assessment and payment of duty in respect of those instruments, and
- (c) permit the disclosure of information by tax officers in connection with the assessment of, and payment of duty in respect of, dutiable transactions or mortgages that are effected or partially effected electronically under the National Law, and
- (d) allow banks and other parties to a transaction in respect of which a liability for tax arises to be approved to pay tax under a special arrangement, and
- (e) simplify enforcement provisions relating to special arrangements, and
- (f) provide for the registration of persons approved to pay tax under the special arrangements, and
- (g) permit the Chief Commissioner of State Revenue (the **Chief Commissioner**) to direct an approval holder to pay tax in accordance with a special arrangement, and

- (h) permit the Chief Commissioner to direct the payment of tax by electronic means, and
- (i) provide for the phasing-out of the use of impressed stamps.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Duties Act 1997 No 123

Schedule 1 [10] provides that a reference in the *Duties Act 1997* to a written instrument or a dutiable transaction that is effected by a written instrument includes a reference to an electronic registry instrument or a dutiable transaction that is effected by an electronic registry instrument. An electronic registry instrument is a registry instrument under the National Law that is in a form that enables it to be lodged electronically under that Law. The amendment merely confirms the provisions of the National Law which state that electronic registry instruments that are digitally signed under the National Law are taken to be in writing for the purposes of the laws of New South Wales.

Schedule 1 [9] inserts a definition of *electronic registry instrument* in the *Duties Act 1997*. **Schedule 1 [3]** is a consequential amendment.

Schedule 1 [1] provides that an electronic registry instrument is taken to be first executed when it is first digitally signed by a subscriber under the National Law. Accordingly, liability for duty on a dutiable transaction that is effected under the National Law will arise when the electronic registry instrument is first digitally signed.

Schedule 1 [2] provides that if a single dutiable transaction is effected by more than one electronic registry instrument, only one of them is required to be stamped with the duty chargeable.

Schedule 1 [4] provides that an electronic registry instrument is not regarded as a counterpart for the purposes of a provision that imposes duty on counterpart instruments.

Schedule 1 [7] permits the Chief Commissioner to approve procedures for the payment of duty in respect of electronic registry instruments and for the endorsement or certification of those instruments in a way that indicates that duty has been paid, is payable or is not chargeable. An electronic registry instrument is taken to be duly stamped if the instrument is endorsed or certified in accordance with such a procedure. **Schedule 1 [6]** is a consequential amendment.

Schedule 1 [8] permits the disclosure of 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 under the National Law, 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 the *Duties Act 1997*.

Schedule 1 [5] recognises that an instrument may be stamped with a unique transaction identifier or reference number, instead of an impressed stamp. The use of impressed stamps is to be phased-out.

Schedule 2 Amendment of Taxation Administration Act 1996 No 97

Schedule 2 [1] permits the Chief Commissioner to approve special arrangements for the payment of tax by any specified person who is a party to a transaction or class of transactions in respect of which a liability for tax arises and who is not a taxpayer. For example, this would permit the Chief Commissioner to approve special arrangements for the payment of mortgage duty by a bank (even though the bank is not the taxpayer liable to pay the duty). The amendment also makes it clear that an agent or other person who acts on behalf of a taxpayer may be approved to pay tax under a special arrangement in relation to any taxpayers on whose behalf the agent or other person acts. **Schedule 2 [3]** is a consequential amendment.

Schedule 2 [6] simplifies enforcement provisions relating to approved special arrangements. Under the new provisions, it will be an offence for a person who is given approval to pay tax in accordance with the arrangements to contravene the conditions of the arrangement. The conditions will be binding only on the person who is given the approval and not on a taxpayer who is not a party to the approval. A taxpayer will still be liable for any tax not paid in accordance with the special arrangements. **Schedule 2 [2], [5] and [8]** are related amendments.

Schedule 2 [4] permits the Chief Commissioner to register a person as a person who is approved to pay tax under a special arrangement. The Chief Commissioner may, by order in writing served on the person, direct the person to pay tax to which the special arrangement applies in accordance with the special arrangement. For example, a special arrangement may provide for the payment of duty electronically and the endorsement of the instrument to indicate the payment of the duty (rather than the stamping of the instrument). If the Chief Commissioner directs an approval holder to pay duty in accordance with the special arrangement, the instrument must be endorsed under the special arrangement rather than lodged for stamping by the Chief Commissioner. **Schedule 2 [9]** is a transitional provision.

Schedule 2 [7] permits the Chief Commissioner to direct that tax be paid by electronic means.



New South Wales

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New South Wales

State Revenue Legislation Amendment (Electronic Transactions) Bill 2014

No. , 2014

A Bill for

An Act to amend certain State revenue legislation to make further provision for the assessment and payment of tax by electronic means.

The Legislature of New South Wales enacts:

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1 Name of Act

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

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2 Commencement

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

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Schedule 1	Amendment of Duties Act 1997 No 123	1
[1] Section 12	When does a liability for duty arise?	2
	Insert after section 12 (3):	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 <i>Electronic Conveyancing National Law (NSW)</i>).	4 5 6
[2] Section 18	No double duty	7
	Insert after section 18 (7):	8
	(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.	9 10 11
	Note. See section 290.	12
[3] Section 228A	Electronic mortgages	13
	Omit section 228A (1). Insert instead:	14
	(1) To avoid doubt, for the purposes of this Chapter (in particular, the definition of <i>mortgage</i>), an <i>instrument</i> includes any electronic registry instrument.	15 16
[4] Section 271	Duplicates or counterparts	17
	Insert after section 271 (3):	18
	(4) An electronic registry instrument is not a counterpart of an instrument for the purposes of this section.	19 20
[5] Section 287	Form of stamps to be used	21
	Insert “or a unique transaction identifier or reference number” after “impressed stamp” in section 287 (1).	22 23
[6] Section 287 (3)		24
	Omit the subsection. Insert instead:	25
	(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.	26 27 28
[7] Section 290		29
	Insert after section 289A:	30
290	Special procedures for electronic registry instruments	31
	(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.	32 33 34 35
	(2) An electronic registry instrument is taken to be duly stamped if the instrument is endorsed or certified in accordance with such a procedure.	36 37
	(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 <i>Electronic Conveyancing National Law (NSW)</i> .	38 39 40 41

(4)	The endorsement or certification of an instrument under this section:	1
(a)	is not evidence of an assessment of the duty payable under this Act in respect of the instrument, and	2 3
(b)	does not affect any liability for payment of the duty in relation to the instrument under this Act.	4 5
(5)	Particulars of any procedure approved under this section are to be published on the website of the Office of State Revenue.	6 7
(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.	8 9 10 11
	Maximum penalty: 100 penalty units.	12
[8]	Section 312	13
	Insert before section 313:	14
312	Disclosures of information in connection with ELN transactions	15
(1)	A tax officer (within the meaning of the <i>Taxation Administration Act 1996</i>) 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:	16 17 18 19
(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	20 21 22
(b)	the disclosure is made to the Electronic Lodgment Network Operator or by use of the Electronic Lodgment Network, and	23 24
(c)	the disclosure is made in connection with the administration or execution of this Act.	25 26
(2)	Section 84 of the <i>Taxation Administration Act 1996</i> does not apply to information obtained from a tax officer under this section.	27 28
(3)	In this section, <i>Electronic Lodgment Network</i> and <i>Electronic Lodgment Network Operator</i> have the same meanings as they have in the <i>Electronic Conveyancing National Law (NSW)</i> .	29 30 31
[9]	Dictionary	32
	Insert in alphabetical order in clause 1:	33
	<i>electronic registry instrument</i> means a registry instrument (within the meaning of the <i>Electronic Conveyancing National Law (NSW)</i>) that is in a form that enables it to be lodged electronically under that Law.	34 35 36
[10]	Dictionary, clause 5	37
	Insert after clause 4:	38
5	References to written instruments—Electronic Conveyancing National Law (NSW)	39 40
	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	41 42

instrument or a dutiable transaction effected by an electronic registry instrument, respectively. 1
2
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. 3
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Schedule 2	Amendment of Taxation Administration Act 1996	1
	No 97	2
[1]	Section 37 Approval of special tax return arrangements	3
	Omit section 37 (1) (b). Insert instead:	4
	(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	5 6 7
	(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.	8 9
[2]	Section 37 (5) and (6)	10
	Insert after section 37 (4):	11
	(5) For the purposes of this Division, an arrangement approved under this section is a <i>special arrangement</i> and the person to whom the approval is given is an <i>approval holder</i> .	12 13 14
	(6) A special arrangement does not transfer a taxpayer's tax liability from a taxpayer to an approval holder.	15 16
[3]	Section 39 Conditions of approval	17
	Omit section 39 (2) (g). Insert instead:	18
	(g) conditions requiring the keeping of specified records.	19
[4]	Section 39A	20
	Insert after section 39:	21
	39A Registration of approval holders	22
	(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.	23 24 25 26
	(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.	27 28 29 30
	(3) Tax that is the subject of such a direction must be paid in accordance with the special arrangement.	31 32
	(4) The Chief Commissioner may revoke the registration of a person under this section if the Chief Commissioner cancels an approval under this Division.	33 34
[5]	Section 40 Variation and cancellation of approvals	35
	Omit "taxpayer or agent". Insert instead "approval holder".	36
[6]	Section 41	37
	Omit the section. Insert instead:	38
	41 Contravention of approval	39
	(1) An approval holder must not fail to comply with the conditions of a special arrangement.	40 41
	Maximum penalty: 100 penalty units.	42

(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.	1 2 3 4 5
(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.	6 7 8 9
	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.	10 11 12
[7]	Section 107 Means and time of payment	13
	Insert after section 107 (1):	14
(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.	15 16 17
(1B)	Tax that is the subject of such a direction must be paid in accordance with the direction.	18 19
[8]	Section 121 Liability of directors etc for offences by corporation—offences attracting executive liability	20 21
	Omit “41 (1) or (2)” from section 121 (1) (b). Insert instead “41 (1)”.	22
[9]	Schedule 1 Savings, transitional and other provisions	23
	Insert at the end of the Schedule with appropriate Part and clause numbering:	24
Part	Provisions arising from enactment of State Revenue Legislation Amendment (Electronic Transactions) Act 2014	25 26 27
	Registration of approval holder	28
	Section 39A, as inserted by the <i>State Revenue Legislation Amendment (Electronic Transactions) Act 2014</i> , 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.	29 30 31 32