

# State Revenue Legislation Amendment Act 2002 No 108

[2002-108]



New South Wales

## Status Information

### Currency of version

Historical version for 29 November 2002 to 30 June 2003 (accessed 26 November 2024 at 10:54)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Does not include amendments by**  
[Australian Crime Commission \(New South Wales\) Act 2003 No 13](#) (not commenced — to commence on 1.7.2003)

### Authorisation

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# State Revenue Legislation Amendment Act 2002 No 108



New South Wales

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# State Revenue Legislation Amendment Act 2002 No 108



New South Wales

An Act to make miscellaneous amendments to certain State revenue legislation; and for other purposes.

## 1 Name of Act

This Act is the *State Revenue Legislation Amendment Act 2002*.

## 2 Commencement

- (1) This Act commences on the date of assent, except as provided by this section.
- (2) The amendments made by Schedule 1 to sections 8, 9, 24, 114, 115 and 118 of the *Duties Act 1997* are taken to have commenced on 13 November 2002.
- (3) The following provisions commence, or are taken to have commenced, on the dates indicated:
  - Schedule 1 [13]-[28], [30], [31] and [38] and Schedule 6 on 1 January 2003
  - Schedule 2 on 31 December 2002.
- (4) Section 4, and Schedules 4, 7 and 8 commence on a day or days to be appointed by proclamation.

## 3 Amendment of Acts and instruments

The Acts and instruments specified in Schedules 1–8 are amended as set out in those Schedules.

## 4 Repeal

The *Revenue Laws (Reciprocal Powers) Act 1987* and the *Revenue Laws (Reciprocal Powers) Regulation 2000* are repealed.

## Schedule 1 Amendment of **Duties Act 1997**

(Section 3)

### [1] Section 8 Imposition of duty on certain transactions concerning dutiable property

Insert after section 8 (1) (b) (v):

- (vi) the enlargement of a term in land into a fee simple under section 134 of the [Conveyancing Act 1919](#).

### [2] Section 9 Imposition of duty on dutiable transactions that are not transfers

Insert at the end of the table to the section in Columns 1, 2, 3 and 4:

enlargement of a term in land into a fee simple	the estate in fee simple	the person who acquires the estate in fee simple	when the term is enlarged
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### [3] Section 18 No double duty

Insert after section 18 (6):

- (6A) The duty chargeable on a declaration of trust is \$10 if the Chief Commissioner is satisfied that:
- (a) the declaration of trust supersedes another declaration of trust in respect of which duty has been paid and declares the same trusts as were declared under the superseded declaration of trust, and
  - (b) the beneficiary under the declaration of trust is the same as under the superseded declaration of trust, and
  - (c) the dutiable property subject to the declaration of trust:
    - (i) is wholly or substantially the same as the property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust, or
    - (ii) represents the proceeds of re-investment of property that was the subject of the superseded declaration of trust at the time of the declaration of the superseded declaration of trust, or
    - (iii) is property to which both subparagraphs (i) and (ii) apply.

### [4] Section 24

Omit the section. Insert instead:

## **24 Arrangements that reduce dutiable value**

An arrangement affecting the dutiable value of dutiable property that is subject to a dutiable transaction is to be disregarded in determining the dutiable value of the dutiable property if:

- (a) the dutiable transaction is between associated persons, or
- (b) the Chief Commissioner is satisfied that a significant purpose of any party to the arrangement was the reduction of the dutiable value of the dutiable property.

### **[5] Section 50A**

Insert after section 50:

#### **50A Cancelled transfers of dutiable property**

- (1) A transfer of dutiable property that is effected by a written instrument is not liable to duty under this Chapter if the Chief Commissioner is satisfied that:
  - (a) the transfer instrument has been cancelled and the dutiable property has not been transferred to the transferee, and
  - (b) the transfer was not cancelled to give effect to a subsale, and
  - (c) the transferee has not claimed any equitable interest in the dutiable property the subject of the transfer (such as, in the case of land, by lodging a caveat on the title to the property).
- (2) If duty has been paid on a transfer of dutiable property that is not liable to duty under this Chapter because of this section, the Chief Commissioner must reassess and refund the duty if an application for a refund is made within 5 years of the initial assessment.
- (3) The transfer instrument in respect of which the application is made must be surrendered to the Chief Commissioner unless the Chief Commissioner dispenses with that requirement.
- (4) In this section, **cancelled** includes abandoned.

### **[6] Section 64**

Omit the section. Insert instead:

## 64 Conversion of land use entitlement to different form of title

The duty chargeable on the transfer of a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or a lot in a deposited plan is \$10 if:

- (a) the transferee, immediately before registration of the strata plan or deposited plan, held a land use entitlement in respect of the land or part of the land the subject of the strata plan or deposited plan, and
- (b) the transfer is part of an arrangement under which the transferee will take an interest in the lot similar in effect to and in substitution for the interest the transferee had under the land use entitlement immediately before registration of the strata plan or deposited plan, and
- (c) one of the following applies:
  - (i) ad valorem duty was paid at the time the land use entitlement was acquired by the transferee,
  - (ii) section 55, 57 or 63 applied to the acquisition of the land use entitlement by the transferee, and duty was paid as provided for by the section that applied,
  - (iii) no duty was chargeable on the acquisition of the land use entitlement by the transferee because of section 68.

## [7] Section 66 Exemptions—marketable securities

Insert after section 66 (8A):

- (9) **Trust mergers** No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of units in a qualifying unit trust scheme to the responsible entity or trustee of another qualifying unit trust scheme or a custodian or agent of the responsible entity or trustee if it is proved to the satisfaction of the Chief Commissioner that:
  - (a) the purpose of the transfer is to give effect to a merger of 2 qualifying unit trust schemes or a takeover of a qualifying unit trust scheme by another qualifying unit trust scheme, and
  - (b) the units are registered on a register kept in New South Wales, and
  - (c) the transfer would qualify as a roll-over under Subdivision 124-M of the *Income Tax Assessment Act 1997* of the Commonwealth.
- (9A) For the purposes of subsection (9), **qualifying unit trust scheme** means a unit trust scheme:
  - (a) any of the units in which are listed for quotation on the Australian Stock

Exchange or on a recognised stock exchange, or

(b) in respect of which:

- (i) units in the scheme have been issued to the public and 50 or more persons are beneficially entitled to units in the scheme, or
- (ii) a majority of units in the scheme are acquired by, for or on account of, a complying superannuation fund, a pooled superannuation trust or a life company, or

(c) that, in the opinion of the Chief Commissioner, will satisfy paragraph (b) within 12 months after the Chief Commissioner gives written notice of that opinion to a person who has requested the Chief Commissioner to express that opinion in relation to the unit trust scheme.

**[8] Section 107 When is a private corporation “land-rich”?**

Insert after section 107 (2) (f):

- (g) shares or units in a subsidiary of the private corporation,
- (h) property consisting of an interest as a beneficiary in a discretionary trust (within the meaning of section 110),

**[9] Section 114 What is a “relevant acquisition”?**

Insert after section 114 (a) (ii):

- (iii) that, when aggregated with other interests in the corporation acquired by another person or other persons under transactions that form, evidence, give effect to or arise from what is substantially one arrangement, results in an aggregation that amounts to a majority interest in the corporation, or

**[10] Section 114 (2)**

Insert at the end of the section:

- (2) However, an acquisition of an interest in a land-rich private corporation under an arrangement that results in the land-rich private corporation ceasing to be a private corporation is not a relevant acquisition because of subsection (1) (a) (iii).

**[11] Section 115 Acquisition statements**

Insert “by the person on that date (or, if the relevant acquisition results from the aggregation of the interests of associated persons, particulars of the interests acquired by

the person and any associated persons on that date)” after “particulars of the interest acquired” in section 115 (2) (c).

**[12] Section 118 How duty is charged on relevant acquisitions**

Insert after section 118 (1):

(1A) If a relevant acquisition results from the aggregation of the interests of associated persons, the reference in subsection (1) to the interest acquired includes a reference to any interests acquired by associated persons on the same date.

**[13] Section 204 Imposition of duty**

Omit “sections 216–218” from the note. Insert instead “sections 216–218C”.

**[14] Section 205 What is a mortgage?**

Omit “at the date of its first execution” from section 205 (a).

Insert instead “at the liability date”.

**[15] Section 205 (b)**

Omit the paragraph.

**[16] Section 206 What is an advance?**

Omit “, and” wherever occurring from section 206 (a) (i), (ii) and (iii).

Insert instead “, or”.

**[17] Section 208 When does a liability arise?**

Insert “under this or a corresponding Act” after “liability to duty last arose in respect of it” in section 208 (2).

**[18] Section 208 (3)**

Insert “, unless it is duly stamped under a corresponding Act or is exempt from duty” after “the land”.

**[19] Section 209 When must duty be paid?**

Omit the note.

**[20] Section 210 How is mortgage duty charged?**

Omit “sections 216–218” from the note. Insert instead “sections 216–218C”.



**[21] Section 211 Consequences of non-payment of duty**

Insert at the end of the section:

- (2) A mortgage mentioned in section 216 or 217 on which duty is required by this Chapter to be paid is, while any duty remains unpaid on it, enforceable only to the extent of the dutiable proportion on which duty has been paid under this Act.

**[22] Section 213**

Omit sections 213 and 214. Insert instead:

**213 Amount secured by mortgage**

- (1) For the purposes of this Chapter, the **amount secured by a mortgage** is the amount of advances actually secured by it and (but for this Chapter) recoverable under it.
- (2) However, if:
  - (a) a mortgage has been duly stamped under this Act, or is stamped or exempt from duty under a corresponding Act, for an amount of advances secured by the mortgage, and
  - (b) a further advance secured by the mortgage is made, and
  - (c) the total amount secured by the mortgage exceeds the amount for which the mortgage has been duly stamped under this Act, or is stamped or exempt from duty under a corresponding Act,the amount on which duty is charged is, for the purposes of section 210 (2), the excess amount mentioned in paragraph (c).

**[23] Sections 216-218C**

Omit sections 216-218. Insert instead:

**216 Mortgages over property not wholly within New South Wales**

- (1) Mortgage duty is to be assessed for a mortgage over property that is partly within and partly outside New South Wales as if the amount secured by the mortgage were only the dutiable proportion.
- (2) The **dutiable proportion** is to be calculated in accordance with the following formula:

$$DP = AS \times \frac{V}{T}$$

where:

**DP** is the dutiable proportion.

**AS** is the amount secured by the mortgage on which duty would, but for this section, be charged at the liability date.

**V** is the value of the property in New South Wales affected by the mortgage.

**T** is the value of all property affected by the mortgage, excluding property within a Territory or outside Australia.

- (3) The dutiable proportion is to be calculated by reference to the value of the properties according to any referable point specified in subsection (4).
- (4) A referable point is any of the following prepared within 12 months before the liability date for the mortgage:
  - (a) an independent valuation of the secured property,
  - (b) a statement of the mortgagee based on information obtained by the mortgagee in deciding to make the advance to the mortgagor,
  - (c) property valuations used by the mortgagor in preparing an annual return to be lodged under the *Corporations Act 2001* of the Commonwealth,
  - (d) a financial report of the mortgagor, certified by an independent auditor as presenting a true and fair view of a corporation's financial position,
  - (e) agreed property valuations that form the basis of the mortgagor's insurance policies,
  - (f) another document the Chief Commissioner considers to be appropriate for calculating the dutiable proportion.
- (5) However, if there is more than one referable point for a mortgage, the referable point is the later or latest of the referable points, subject to subsection (6).
- (6) Also, the referable point must be the same referable point used or to be used to determine liability to duty at the liability date under a corresponding Act.

## **217 Advances secured by mortgage package**

- (1) For the purposes of this Part, 2 or more instruments of security are a **mortgage package** if:
  - (a) at a liability date, the instruments secure or partly secure the same money,

and

- (b) at least one of the instruments is a security affecting property wholly or partly outside New South Wales, and
  - (c) at least one of the instruments is a mortgage.
- (2) In the case of an initial advance, 2 or more instruments of security are taken to be part of a **mortgage package** only if the Chief Commissioner is satisfied that the mortgages were intended to be part of the same package 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) In the case of a further advance, a **mortgage package** includes:
- (a) a mortgage first executed after the initial liability date for another mortgage if the Chief Commissioner is satisfied the mortgages were intended to be part of the same package, and
  - (b) a mortgage previously collateral to an earlier advance under one or more of the other mortgages in the package.
- (4) Duty on a mortgage package is to be assessed under this Part as if the instruments comprising the mortgage package were one mortgage.
- (5) One of the mortgages in the mortgage package is to be stamped with the mortgage duty paid in New South Wales for the mortgage package and each other mortgage in the mortgage package must be stamped as a collateral mortgage.

## **218 Stamping before advance**

- (1) A mortgage may be stamped before an advance whether or not an earlier advance has been made.
- (2) If a mortgage referred to in section 216 or 217 is stamped before an advance has been made, the liability date for the mortgage is, for the purpose of determining a referable point for the mortgage, taken to be the date of stamping.

### **218A Security**

- (1) A stamped mortgage or a collateral mortgage that was, but is no longer, part of the same mortgage package and no longer secures the same money secured by that package is not security for any other advance unless duty in respect of the other advance has been paid.
- (2) The withdrawal of a mortgage from a mortgage package will not, for the

purposes of this Chapter, affect the amount for which the remaining mortgage or mortgages are security.

### **218B Collateral mortgage**

- (1) Duty is not chargeable on the amount or part of the amount secured by a collateral mortgage that is the same money as is secured by:
  - (a) a mortgage or instrument of security that is duly stamped under this Act or stamped under a corresponding Act, or
  - (b) a mortgage package that has been duly stamped under section 217 or stamped as a mortgage package under a corresponding Act.
- (2) If the same money is secured, or partly secured, by 2 or more mortgages, at least one of which is a mortgage that is exempt from duty under a corresponding Act because it effects a refinancing (an **exempt mortgage**) and at least one of which is a collateral mortgage that is chargeable with duty under this Act:
  - (a) the duty chargeable on the collateral mortgage (or, if there is more than one collateral mortgage, on one of them) is to be reduced by the amount of duty from which the exempt mortgage is exempt under the corresponding Act (subject to subsection (3)), and
  - (b) each collateral mortgage, other than the collateral mortgage referred to in paragraph (a), is chargeable with the minimum duty for collateral mortgages.
- (3) A collateral mortgage is chargeable with a minimum duty of \$10.
- (4) A collateral mortgage that no longer secures an amount secured by a mortgage, instrument or mortgage package referred to in subsection (1), or by an exempt mortgage referred to in subsection (2), is not security for another advance unless mortgage duty for the amount of the other advance is paid.

### **218C Multi-jurisdictional statement**

- (1) If mortgage duty is imposed on the dutiable proportion of a mortgage (whether for a mortgage over property not wholly in New South Wales, a mortgage package or on initial or subsequent advances), the mortgagor and mortgagee must, within 3 months after the liability arises:
  - (a) make a written statement, in an approved form, about the location and value of the secured property, and
  - (b) lodge the statement with the Chief Commissioner.

Maximum penalty: 100 penalty units.

- (2) The making and lodging of a statement under subsection (1) by either the mortgagor or the mortgagee relieves the other person from complying with that subsection.
- (3) The statement may be taken to be the mortgage, or mortgages comprising the mortgage package.

**[24] Section 220 Refinancing of loans**

Omit section 220 (1). Insert instead:

- (1) In this section:

***refinancing mortgage*** means a mortgage that:

- (a) secures the amount of the balance outstanding under an earlier mortgage that is discharged or to be discharged as part of the arrangements for the new mortgage, and
- (b) is created to secure an advance to the same borrower as under the earlier mortgage, and
- (c) is over the same or substantially the same property or part of the property as the earlier mortgage.

**[25] Section 220 (7)**

Omit the subsection.

**[26] Section 220 (8A)**

Insert after section 220 (8):

- (8A) If a borrower is a related body corporate of a borrower under an earlier mortgage, the firstmentioned borrower is taken to be the same borrower or the same person for the purposes of subsection (1) or (2).

**[27] Section 220 (9)**

Omit “an original borrower”.

Insert instead “a borrower under an earlier mortgage”.

**[28] Section 222 Exempt mortgages and supporting instruments**

Omit section 222 (1). Insert instead:

- (1) This Chapter does not apply to a mortgage executed before 1 January 1975.

**[29] Section 222 (2) (d)**

Omit the paragraph. Insert instead:

- (d) a mortgage given by the Government of the Commonwealth or the Government of New South Wales or by any public statutory body constituted under a law of this State, and

**[30] Section 222 (2) (g)**

Insert at the end of section 222 (2) (f):

, and

- (g) a mortgage that secures an amount advanced by an employer or a related body corporate of an employer to an employee of the employer, for the purpose of financing a purchase by the employee of shares in the employer, or a related body corporate of the employer, if the amount advanced (and the total of all advances that the mortgage secures) does not exceed \$16,000.

**[31] Section 223 Mortgages associated with certain credit contracts**

Omit “the mortgage is exempt from mortgage duty” from section 223 (1).

Insert instead “mortgage duty is not chargeable in respect of the mortgage”.

**[32] Section 259 What insurance is exempt from duty?**

Insert “in right of New South Wales (including a statutory body representing the Crown in right of New South Wales)” after “Crown” in section 259 (1) (a).

**[33] Section 293 Reassessments—failed instruments**

Insert after section 293 (3):

- (4) This section does not apply in respect of an instrument that effects a transfer of dutiable property.

**Note—**

Section 50A sets out the circumstances in which duty may be refunded on a cancelled transfer of dutiable property.

**[34] Section 308**

Omit the section. Insert instead:

### **308 Application of Act to Crown**

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Legislature of New South Wales permits, the Crown in all its other capacities.
- (2) However, the Crown in right of New South Wales is not liable to pay duty unless this Act or any other Act expressly imposes a liability on the Crown in that capacity to pay duty.
- (3) The Governor may, by order published in the Gazette, apply the whole or any specified provisions of this Act to any specified person or body (whether statutory or otherwise) that is exempt from duty under this section.
- (4) While any such order is in force, the specified person or body is subject to the requirements of this Act accordingly.
- (5) This section does not exempt any person or body from any liability to pay duty chargeable under Chapter 8.

**Note—**

However, section 259 (1) (a) provides that insurance covering only property of the Crown is exempt from duty.

- (6) For avoidance of doubt, in this section, the **Crown** includes any statutory body representing the Crown.

### **[35] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2002*

### **[36] Schedule 1, clause 9**

Insert at the end of the clause:

**Note—**

However, see the provisions consequent on the enactment of the *State Revenue Legislation Amendment Act 2002* in Part 11.

### **[37] Schedule 1, Part 11**

Insert at the end of the Schedule:

## **Part 11 Provisions consequent on enactment of State**

## Revenue Legislation Amendment Act 2002

### 28 Definitions

In this Part:

**amending Act** means the *State Revenue Legislation Amendment Act 2002*.

**amendment date** means the date of commencement of Schedule 1 [23] to the amending Act.

### 29 Application of section 50A

Section 50A, as inserted by the amending Act, applies only in respect of a transfer of dutiable property that is effected by a written instrument first executed on or after the commencement of that section.

### 30 Application of mortgage duty amendments

- (1) Subject to clause 9, an amendment to Chapter 7 made by the amending Act extends to any mortgage (within the meaning of section 205, as amended by the amending Act) first executed before the commencement of the amendment if an advance or further advance is made (as referred to in section 210) in respect of the mortgage (or a mortgage package that includes that mortgage) on or after the commencement of the amendment.
- (2) Nothing in this clause makes duty chargeable in respect of a mortgage referred to in section 225 (2) or 226 (2) (c) on the making of an advance or further advance, if the mortgage was first executed before 1 January 1999.

### 31 Mortgage duty provisions extend to some pre-1 July 1998 securities

- (1) Despite clause 9, the duty charged by Chapter 7 is also charged on a security by way of a mortgage or charge first executed on or after 1 January 1975 and before 1 July 1998 that, if it had been first executed on or after the amendment date, would be a mortgage (within the meaning of section 205), but only as provided for by this clause.
- (2) A mortgage or charge referred to in subclause (1) becomes liable to duty under Chapter 7 on the making of an advance or further advance as referred to in section 210, if the advance or further advance is made on or after the amendment date.

**Note—**

The *Stamp Duties Act 1920* provides that that Act does not apply in respect of any such further advances.

- (3) The amount of duty chargeable in respect of any such advance is to be



determined as if references in that Chapter to duty, in relation to the mortgage or charge, include references to duty charged under the *Stamp Duties Act 1920*.

- (4) Nothing in this clause makes duty chargeable in respect of:
- (a) a mortgage referred to in section 225 (2) or 226 (2) (c), or
  - (b) an advance of a kind referred to in section 206 (b), that is secured by a mortgage or charge first executed before 23 November 1994, or
  - (c) a contingent liability of a kind referred to in section 215 secured by a mortgage or charge first executed before 1 January 1991.

### **32 Saving of orders under section 308**

Any order made under section 308 (1) and in force immediately before section 308 was replaced by the amending Act is taken, on that replacement, to have been made under section 308 (3).

### **[38] Dictionary**

Insert in alphabetical order:

***amount secured***, in relation to a mortgage, has the meaning given by section 213.

***collateral mortgage*** means a mortgage that secures all or part of the same money as another mortgage, instrument of security or mortgage package.

***dutiable proportion***, in relation to a mortgage, means the dutiable proportion of the amount secured by the mortgage calculated under section 216.

***liability date***, in relation to a mortgage, means the date the mortgage becomes liable for mortgage duty under section 208.

***mortgage package*** has the meaning given by section 217.

### **[39] Dictionary, definitions of “Class 1 insurance”, “Class 2 insurance” and “Class 3 insurance”**

Omit the definitions.

### **[40] Dictionary, definition of “intellectual property”**

Insert “domain name,” after “trading name,” wherever occurring.

### **[41] Dictionary, definition of “public unit trust scheme”**

Omit the definition. Insert instead:

**public unit trust scheme** means a unit trust scheme:

- (a) any of the units in which are listed for quotation on the Australian Stock Exchange or on a recognised stock exchange, or
- (b) in respect of which:
  - (i) units in the scheme have been issued to the public, and
  - (ii) 50 or more persons are beneficially entitled to units in the scheme, and
  - (iii) more than 20 persons are beneficially entitled to at least 75% of the total units in the scheme, or
- (c) that, in the opinion of the Chief Commissioner, will satisfy paragraph (b) within 12 months after the Chief Commissioner gives written notice of that opinion to a person who has requested the Chief Commissioner to express that opinion in relation to the unit trust scheme, or
- (d) in respect of which a majority of the units in the scheme are acquired by, for or on account of a unit trust scheme of a kind referred to in paragraph (b), a pooled superannuation trust or a complying superannuation fund (other than a complying superannuation fund of a kind referred to in section 42A of the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth).

**[42] Dictionary, definition of “subsidiary”**

Omit “section 109 (3) or (5)”. Insert instead “section 109 (3), (4) or (5)”.

## **Schedule 2 Amendment of land tax legislation**

(Section 3)

### **2.1 Amendment of [Land Tax Act 1956 No 27](#)**

**[1] Section 3AH Levy of land tax after 31 December 1999**

Omit “subsections (2) and (2A)” (as inserted by the [State Revenue Legislation Further Amendment \(No 2\) Act 2001](#)) from section 3AH (1).

Insert instead “subsection (2)”.

**[2] Section 3AH (2A) (as inserted by the [State Revenue Legislation Further Amendment \(No 2\) Act 2001](#))**

Omit the subsection.

## 2.2 Amendment of **Land Tax Management Act 1956 No 26**

### [1] Section 3 Definitions

Insert in alphabetical order:

**concessional trust** has the meaning given by section 3B.

### [2] Section 3 (1), definition of “discretionary trust”

Omit the definition.

### [3] Section 3 (1), definition of “special trust”

Omit the definition. Insert instead:

**special trust** has the meaning given by section 3A.

### [4] Section 3 (4)

Omit the subsection. Insert instead:

(4) Notes included in this Act do not form part of this Act.

### [5] Section 3A

Omit the section. Insert instead:

#### **3A Special trust—meaning**

- (1) For the purposes of this Act, a trust is a **special trust** if:
  - (a) the trust property includes land, and
  - (b) the trustee of the trust is the owner of the legal estate in the land, and
  - (c) the trust is not a fixed trust.
- (2) For the purposes of this section, a trust is a **fixed trust** if the equitable estate in all of the land that is the subject of the trust is owned by a person or persons who would, but for section 25 (3), be considered to be owners of the land for land tax purposes.
- (3) For the purpose of determining whether a trust is a fixed trust under this section, any equitable interest of the trustee as trustee of the trust is to be disregarded.

- (4) A trust is not a **special trust**:
- (a) if the trust is solely a charitable trust, or
  - (b) if section 10A applies in respect of the land that is the subject of the trust, or
  - (c) if the trust is a concessional trust, or
  - (d) in relation to any land tax year in which it is a superannuation trust.
- (5) For the purposes of this section, a trust is a **superannuation trust** in relation to a land tax year if:
- (a) the trust was established on or before 30 June in the year before that land tax year and, in relation to the year of income ending in that year, the trust is:
    - (i) a complying superannuation fund (within the meaning of section 42 of the Commonwealth Act), or
    - (ii) a complying approved deposit fund (within the meaning of section 43 of the Commonwealth Act), or
    - (iii) a pooled superannuation trust (within the meaning of section 44 of the Commonwealth Act), or
  - (b) the trust was established after 30 June in the year before that land tax year and, as at midnight on 31 December in that year, the trust is:
    - (i) a regulated superannuation fund (within the meaning of the Commonwealth Act) or is taken to be a regulated superannuation fund under that Act, or
    - (ii) an approved deposit fund (within the meaning of the Commonwealth Act), or
    - (iii) a pooled superannuation trust (within the meaning of the Commonwealth Act).
- (6) Despite anything to the contrary in this section, a trust is taken to be a special trust in relation to a land tax year if the trust is classified as a special trust in respect of that land tax year under section 25A, and the classification has effect in respect of that land tax year.
- (7) In this section:

**Commonwealth Act** means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

### **3B Concessional trust—meaning**

- (1) For the purposes of this Act, a trust is a **concessional trust** if:
- (a) the trust property includes land, and
  - (b) each person who is a beneficiary of the trust is:
    - (i) a person under the age of 18 years, or
    - (ii) a person in respect of whom a guardianship order is in force under the *Guardianship Act 1987*, or
    - (iii) a person in the target group within the meaning of the *Disability Services Act 1993*.
- (2) For the purposes of this section, a person is a **beneficiary** of a trust if the person is a person, or a member of a class of persons:
- (a) in whose favour, by the terms of the trust, capital or income the subject of the trust may be applied:
    - (i) in the event of the exercise of a power or discretion in favour of the person, or
    - (ii) in the event that a discretion conferred under the trust is not exercised, or
  - (b) entitled or permitted, under the terms of the trust, to use and occupy land that is the subject of the trust.

#### **[6] Section 9C Reduction in land value for flats**

Omit “unless paragraph (c) is applicable,” from section 9C (2) (b).

Insert instead “subject to subsections (2AA)–(2AC).”.

#### **[7] Section 9C (2) (c)**

Omit the paragraph.

#### **[8] Section 9C (2AA)–(2AC)**

Insert after section 9C (2A):

(2AA) If subsection (2) (a) does not apply, the Chief Commissioner may request the Valuer-General to determine the reduced land value to be attributed, for the purposes of assessing land tax, to the flat concerned.

(2AB) If a request is made under subsection (2AA):

- (a) the Valuer-General must determine the reduced land value concerned, and
- (b) the reduced land value so determined is (subject to subsection (2AC)) the value of the land for land tax purposes (instead of the value obtained under subsections (1) and (2)), and is to be entered in the Register accordingly.

(2AC) Part 3 (Notices and objections) and Part 4 (Appeals to Land and Environment Court) of the *Valuation of Land Act 1916* apply in respect of the reduced land value determined under subsection (2AB) in the same way as those Parts apply in respect of a valuation under that Act.

**[9] Section 9C (6A)**

Insert after section 9C (6):

- (6A) For avoidance of doubt, if a reduction in the land value of land is required under this section and the land is jointly owned, then, for the purposes of section 27 (3) (a), the individual interest of each of the owners of the land (including the owner who occupies the flat) is to be assessed on the basis of the land value of the land as reduced under this section.

**[10] Section 10 Land exempted from tax**

Insert "10AA," after "subject to sections" in section 10 (1).

**[11] Section 10 (1) (r) (i)**

Omit the subparagraph. Insert instead:

- (i) a lot under the *Strata Schemes (Freehold Development) Act 1973* or a lot under the *Strata Schemes (Leasehold Development) Act 1986*, or

**[12] Section 10 (1) (r)**

Omit "unless the owner or all of the joint owners who so used and occupied the lot or parcel (as appropriate) is such an owner by reason only of being a trustee,".

**[13] Section 10 (1D) (a)**

Omit the paragraph.

**[14] Section 10 (1E) and (1EA)**

Omit the subsections.

**[15] Section 10AA**

Insert after section 10:

### **10AA Exceptions to principal place of residence exemption**

- (1) Land is not exempt from taxation under section 10 (1) (r) if:
- (a) the land is owned by a company, unless the land is owned by a trustee company acting in its representative capacity or a company acting in its capacity as trustee of a concessional trust, or
  - (b) the owner of the land, or each of the joint owners, who use and occupy the land as a principal place of residence is an owner only by reason of being a trustee, or
  - (c) the land is owned by a person who is a trustee acting in the person's capacity as trustee of a special trust.

**Note—**

The expression **trustee company** (as referred to in subsection (1) (a)) is defined in section 3 (1).

- (2) For the purposes of section 10 (1) (r), land that is owned by a company acting in its capacity as trustee of a concessional trust is taken to be used and occupied as the principal place of residence of the owner of the land only if the person, or one of the persons, who so uses and occupies the land is a person who is a beneficiary of the trust.
- (3) For the purposes of this section, land that is a parcel of residential land or a lot under the *Strata Schemes (Freehold Development) Act 1973* is owned by a company if:
- (a) the land is owned by a company, or
  - (b) the land is owned on behalf of a company and is land of which a mortgagee or person (by way of security for money) is in possession, or
  - (c) the land is owned by a trustee for or on behalf of a company, or
  - (d) a company is jointly assessable in respect of the land with any other person.
- (4) For the purposes of this section, land that is a lot under the *Strata Schemes (Leasehold Development) Act 1986* is owned by a company if:
- (a) the lot is leased by a company, or
  - (b) the lot is leased on behalf of a company and is land of which a mortgagee or person (by way of security for money) is in possession, or
  - (c) the lot is leased by a trustee for or on behalf of a company, or

- (d) a company is jointly assessable in respect of the lot with any other person.
- (5) For the purposes of this section, a person is a **beneficiary** of a trust if the person is a person, or a member of a class of persons:
  - (a) in whose favour, by the terms of the trust, capital or income the subject of the trust may be applied:
    - (i) in the event of the exercise of a power or discretion in favour of the person, or
    - (ii) in the event that a discretion conferred under the trust is not exercised, or
  - (b) entitled or permitted, under the terms of the trust, to use and occupy land that is the subject of the trust.

**[16] Section 10R Retirement villages and nursing homes—exemption/reduction**

Omit section 10R (3B). Insert instead:

- (3B) The allowable proportion under subsection (3A) is the proportion specified in an application under subsection (3C) in respect of the land, subject to subsections (3D)–(3F).

**[17] Section 10R (3D)–(3F)**

Insert after section 10R (3C):

- (3D) Despite subsection (3B), the Chief Commissioner may request the Valuer-General to determine the reduced land value to be attributed, for the purposes of assessing land tax, to that part of the land that is used or occupied otherwise than as referred to in subsection (2).
- (3E) If a request is made under subsection (3D):
  - (a) the Valuer-General must determine the reduced land value concerned, and
  - (b) the reduced land value so determined is (subject to subsection (3F)) the value of the land for land tax purposes (instead of the value obtained under subsections (3) and (3A)), and is to be entered in the Register accordingly.
- (3F) Part 3 (Notices and objections) and Part 4 (Appeals to Land and Environment Court) of the *Valuation of Land Act 1916* apply in respect of the reduced land value determined under subsection (3E) in the same way as those Parts apply in respect of a valuation under that Act.



**[18] Section 12 Taxpayer to furnish returns**

Insert after section 12 (1B):

(1C) If land is the subject of a trust, the land tax return must also:

- (a) set out, or be accompanied by, such information in relation to the trust and the beneficiaries of the trust as may be required to complete the return, and
- (b) state the trustee's opinion as to whether the trust is a special trust.

(1D) If 2 or more trustees are legal owners of the land that is the subject of the trust, the return is to be lodged jointly by those trustees.

**[19] Section 21C Liability of lessees of land owned by Crown or council**

Omit "unless paragraph (b) applies" from section 21C (4) (a).

Insert instead "subject to subsections (4A) and (4B)".

**[20] Section 21C (4) (b)**

Omit the paragraph.

**[21] Section 21C (4A)-(4C)**

Insert after section 21C (4):

(4A) The Chief Commissioner may request the Valuer-General to determine the land value of the notional parcel.

(4B) If a request is made under subsection (4A):

- (a) the Valuer-General must determine the land value of the notional parcel, and
- (b) the land value so determined is (subject to subsection (4C)) the value of the notional parcel for land tax purposes, and is to be entered in the Register accordingly.

(4C) Part 3 (Notices and objections) and Part 4 (Appeals to Land and Environment Court) of the [Valuation of Land Act 1916](#) apply in respect of the land value determined under subsection (4B) in the same way as those Parts apply in respect of a valuation under that Act.

**[22] Section 25 Equitable owner (as substituted by the [State Revenue Legislation Further Amendment \(No 2\) Act 2001](#))**

Omit section 25 (3). Insert instead:

(3) This section does not apply in respect of land that is subject to a special trust.

**[23] Section 25A (as inserted by the [State Revenue Legislation Further Amendment \(No 2\) Act 2001](#))**

Omit the section. Insert instead:

**25A Classification of trust as a special trust**

- (1) If land is subject to a trust, the Chief Commissioner may classify the trust as a special trust for land tax purposes:
  - (a) on the application of the trustee of the trust, or
  - (b) on the Chief Commissioner's own motion.
- (2) Without limiting subsection (1) (b), the Chief Commissioner may classify a trust as a special trust in relation to a land tax year if any information required to be provided for that land tax year in relation to the trust, the land that is the subject of the trust or the beneficiaries of the trust is not provided as required under this Act.
- (3) A classification of a trust as a special trust has effect in respect of any assessment of land tax liability (being an initial assessment of land tax liability) that is made on or after the date on which the trust is classified as a special trust, and does not affect any assessment of land tax liability made before that classification.
- (4) However, if an application for classification of a trust as a special trust is duly made by the trustee within the period allowed for the lodging of an objection to a notice of assessment of land tax liability (being a notice that relates to an initial assessment of land tax liability):
  - (a) the classification of the trust as a special trust is taken to extend to the land tax year in respect of which that notice of assessment was issued, and
  - (b) liability for that land tax is to be re-assessed accordingly.
- (5) The Chief Commissioner may revoke the classification of a trust as a special trust:
  - (a) on the application of the trustee of the trust, or
  - (b) on the Chief Commissioner's own motion.
- (6) The Chief Commissioner must revoke the classification of a trust as a special trust if the trust was classified as a special trust on the application of the trustee and an application for revocation is duly made by the trustee of the trust.

- (7) A revocation of a classification has effect in respect of any assessment of land tax liability (being an initial assessment of land tax liability) that is made on or after the date on which the classification is revoked, and does not affect any assessment of land tax liability that was made before that revocation.
- (8) However, if an application for revocation is duly made by the trustee within the period allowed for the lodging of an objection to a notice of assessment of land tax liability (being an initial assessment of land tax liability), and the Chief Commissioner revokes the classification:
- (a) the revocation is taken to extend to the land tax year in respect of which that notice of assessment was issued, and
  - (b) liability for land tax is to be re-assessed accordingly.
- (9) An application under this section is to be made in a form approved by the Chief Commissioner, and is to include such supporting information as the Chief Commissioner requires.
- (10) The Chief Commissioner may, despite anything to the contrary in this section:
- (a) reject any application under this section if it is made in contravention of the trust or trust deed that declares the trust concerned, and
  - (b) reject any application for revocation of the classification of a trust as a special trust if any information required to be provided in relation to the trust, the land that is the subject of the trust or the beneficiaries of the trust has not been provided as required under this Act or the [Taxation Administration Act 1996](#).

**[24] Section 27 Joint owners**

Omit “Subject to subsection (3A), each” from section 27 (3).

Insert instead “Each”.

**[25] Section 27 (3A)**

Omit the subsection.

**[26] Section 28 Separate parcels used for partnership purposes**

Omit the section.

**[27] Schedule 2 Savings and transitional provisions**

Insert at the end of clause 1A (1):

*State Revenue Legislation Amendment Act 2002*

**[28] Schedule 2, Part 14**

Insert after Part 13:

**Part 14 Provisions consequent on enactment of [State Revenue Legislation Amendment Act 2002](#)**

**32 Amendments to principal place of residence exemption**

The amendments made to section 10, and the insertion of section 10AA, by the [State Revenue Legislation Amendment Act 2002](#) apply in respect of a land tax year commencing on or after the commencement of section 10AA and do not affect any existing liability for land tax.

**Schedule 3 Amendment of pay-roll tax legislation**

(Section 3)

**3.1 Pay-roll Tax Act 1971 No 22**

**[1] Section 3 Definitions**

Omit the definitions of ***Education and Training Foundation Fund*** and ***Pay-roll Tax Suspense Account*** from section 3 (1).

**[2] Section 17A Employer may elect to contribute to the Education and Training Foundation Fund**

Omit the section.

**[3] Section 31A Pay-roll Tax Suspense Account and Education and Training Foundation Fund**

Omit the section.

**3.2 Pay-roll Tax Regulation 1998**

**Clause 12 Application of Education and Training Foundation Fund**

Omit the clause.

## Schedule 4 Amendment of petroleum products subsidy legislation

(Section 3)

### 4.1 Petroleum Products Subsidy Act 1997 No 112

#### [1] Section 3 Definitions

Omit the definitions of **marine purpose**, **off-road purpose** and **registered** from section 3 (1).

Insert in alphabetical order:

**diesel fuel** means fuel consisting primarily of a petroleum or shale product used or capable of use in propelling a diesel engined road vehicle.

**direct retail sale** of petroleum products is defined in section 5.

**motor spirit** means fuel consisting primarily of gasoline, or another petroleum or shale spirit, having a flash point of less than 23° Celsius when tested in an Abel Pensky closed test apparatus, but does not include aviation gasoline, solvents, special boiling point spirits or liquefied petroleum gas.

**off-road purpose** means any purpose other than an on-road purpose.

**on-road purpose** means the purpose of propelling road vehicles on roads that are open to or used by the public.

**ordinary retail sale** of petroleum products is defined in section 5.

**premises** does not include the following:

- (a) a motor vehicle (whether or not capable of being driven),
- (b) a train or other vehicle used on a railway,
- (c) a caravan, trailer, tanker or anything else constructed to be drawn by a vehicle or animal.

**registered person** means a person who is registered under section 8 and whose registration is in force.

**subsidised diesel fuel** means any diesel fuel in respect of which a subsidy has been paid or claimed, or in respect of which a registered person is entitled to claim a subsidy.

**subsidised petroleum products** means any petroleum products in respect of which a subsidy has been paid or claimed, or in respect of which a registered person is entitled to claim a subsidy.

**zone** means a zone prescribed for the purposes of section 4 (1).

**zone consumer** is defined in section 5.

**zone retailer** is defined in section 5.

**[2] Section 3A**

Insert after section 3:

**3A Notes**

Notes included in this Act do not form part of this Act.

**[3] Section 4 Payment of subsidies**

Omit “or consumed” from section 4 (1).

**[4] Section 4 (3)**

Omit the subsection.

**[5] Section 5 (as amended by the [Intergovernmental Agreement Implementation \(GST\) Act 2000](#))**

Omit the section. Insert instead:

**5 Entitlement to subsidies**

- (1) A subsidy is payable under this Act in respect of the following sales of eligible petroleum products:
  - (a) a sale of eligible petroleum products by retail by a zone retailer at premises within a zone if the petroleum products are delivered for sale, at those premises, into the running tank of a road vehicle (an **ordinary retail sale** of petroleum products),
  - (b) a sale of eligible petroleum products by retail to a zone consumer if the petroleum products are delivered for sale to the premises of the zone consumer, being premises within a zone (a **direct retail sale** of petroleum products).
- (2) Only a registered person is entitled to claim or be paid a subsidy in respect of a sale of eligible petroleum products.

**Note—**

Section 8 provides for registration of persons to claim subsidies.

- (3) A subsidy may be claimed:

- (a) by a registered person who sells eligible petroleum products by wholesale to a person who sells them by retail (by means of ordinary retail sale or direct retail sale), or
  - (b) if the wholesale seller is not a registered person, or is otherwise not entitled to claim a subsidy in respect of the eligible petroleum products, and the person who sells them by retail (by means of ordinary retail sale or direct retail sale) is a registered person, by the retail seller.
- (4) A subsidy may be claimed by a registered person only if the petroleum products:
- (a) are to be sold by retail by means of an ordinary retail sale, or
  - (b) are to be sold by retail by means of a direct retail sale and consumed by a zone consumer in the course of a business or activity conducted on premises within a zone.
- (5) In addition, if the petroleum products consist of diesel fuel, a subsidy may be claimed by a registered person only if:
- (a) the diesel fuel is to be sold by retail by means of an ordinary retail sale, or
  - (b) the diesel fuel is to be consumed for on-road purposes.

**Note—**

Part 2A requires petroleum products in respect of which a subsidy has been claimed by a registered person to be sold or consumed as provided for by this section.

- (6) The subsidy payable to a registered person is to be calculated by reference to the zone in which the relevant premises are located, the relevant premises being:
- (a) in the case of petroleum products to be sold by ordinary retail sale—the premises at which the petroleum products are to be sold by retail by a zone retailer, and
  - (b) in the case of petroleum products to be sold by direct retail sale—the premises to which the petroleum products are delivered for sale, being the premises at which the business or activity of the zone consumer is conducted.
- (7) A subsidy must not be claimed by or paid to a person in respect of petroleum products sold by the person if:
- (a) another person has been paid, or is entitled to claim, a subsidy in respect of the petroleum products (unless the amount of the subsidy has been repaid under section 7), or

- (b) an amount already paid to another person in respect of the petroleum products by the government of another State or Territory is, in the opinion of the Chief Commissioner, in the nature of a payment corresponding to a subsidy under this Act, or
  - (c) the person failed to give to the purchaser of the petroleum products an approved notice (within the meaning of Part 2A) within 30 days after the delivery of the petroleum products (unless section 7B does not apply in respect of the sale).
- (8) This section has effect subject to sections 6 and 7 and the conditions of the registration of a registered person.
- (9) For the purposes of this Act:

**zone consumer** means a person who consumes petroleum products in the ordinary course of a business or activity conducted by the person in New South Wales on premises within a zone.

**zone retailer** means a person who sells petroleum products by retail in the ordinary course of a business or activity conducted by the person in New South Wales, being a business or activity conducted on premises within a zone.

## [6] Section 6

Omit the section. Insert instead:

### 6 Maximum subsidy

- (1) The Chief Commissioner may, when issuing a certificate of registration, specify in the certificate the maximum volume for each type of petroleum product, and for each of the different purposes for which subsidised petroleum products may be sold or consumed, on which the relevant subsidy rate prescribed by order of the Treasurer under section 4 (2) (b) will be paid to the person in a financial year.
- (2) The Chief Commissioner may, at any time after the issue of a certificate of registration, by written notice to a registered person, vary the maximum volume specified for the person.
- (3) If the variation increases the maximum subsidy, the variation takes effect from the date specified in the notice, which may be a date before the issue of the notice. If the variation decreases the maximum subsidy, the variation takes effect from the beginning of the next financial year.
- (4) The maximum amount of subsidy that may be paid to a person in any financial year in respect of a particular type of petroleum product is the amount determined by multiplying the rate of subsidy in respect of that type of



petroleum product by the maximum volume of the petroleum product on which the subsidy rate will be paid as specified in the certificate of registration issued to the person or as later varied under this section.

**[7] Section 7 Refund of subsidy**

Omit section 7 (1) and (2). Insert instead:

- (1) A person who, in a manner contrary to this Act or the conditions of the person's registration, sells any petroleum products in respect of which a subsidy is claimed or paid must pay to the Chief Commissioner an amount equal to the subsidy paid or payable in respect of them.

**[8] Section 7A Cessation of certain subsidies**

Omit the section.

**[9] Part 2A**

Insert after Part 2:

## **Part 2A Sale and consumption of subsidised petroleum products**

### **7A Approved notice—meaning**

For the purposes of this Part, an **approved notice**, in relation to a sale of petroleum products, is a notice in the form of an invoice, or in such other form as may be approved by the Chief Commissioner, that shows the following:

- (a) the name and address of the vendor,
- (b) the name and address of the purchaser,
- (c) the price at which the petroleum products were sold,
- (d) the date of the sale,
- (e) the volume (in litres) of the petroleum products sold,
- (f) that a subsidy has been claimed or is to be claimed in respect of the petroleum products and either, or both, of the following:
  - (i) the rate of subsidy claimed or to be claimed,
  - (ii) the zone by reference to which the subsidy claimed or to be claimed was or is to be calculated (or, if the petroleum products are sold by direct retail sale,

the address of the premises to which they are delivered for sale).

### **7B Notice to be given in respect of sales of subsidised petroleum products**

- (1) A registered person who sells any petroleum products in respect of which a subsidy has been paid or claimed, or is intended to be claimed by the registered person, must:
  - (a) give to the purchaser, within 30 days after the delivery of the petroleum products, an approved notice in relation to the sale, and
  - (b) retain a copy of the notice for not less than 5 years after the petroleum products are sold.
- (2) A person who sells petroleum products purchased from a registered person, knowing that they are subsidised petroleum products, must:
  - (a) give to the purchaser, within 30 days after the delivery of the petroleum products, an approved notice in relation to the sale, and
  - (b) retain a copy of the notice for not less than 5 years after the petroleum products are sold.
- (3) A person who fails to comply with subsection (1) or (2) is guilty of an offence.  
Maximum penalty: 100 penalty units.
- (4) This section does not apply:
  - (a) in respect of an ordinary retail sale of petroleum products (including diesel fuel), or
  - (b) in respect of a sale of diesel fuel by retail by a zone retailer if the quantity of diesel fuel sold does not exceed 100 litres, or such other amount as may be prescribed by the regulations, or
  - (c) in any other circumstances prescribed by the regulations.
- (5) For avoidance of doubt, a reference to petroleum products sold by a person includes a reference to petroleum products sold by the person through an agent of the person.

### **7C Sale of subsidised petroleum products**

- (1) A registered person who sells any petroleum products by retail, being petroleum products in respect of which a subsidy has been paid or claimed, or is intended to be claimed by the registered person, must not:
  - (a) sell them otherwise than by ordinary retail sale or direct retail sale, or

- (b) deliver them for sale to premises within a zone if the zone is not the zone by reference to which the subsidy was calculated by the registered person.
- (2) A person who purchases petroleum products from a registered person, knowing that they are subsidised petroleum products, must not:
  - (a) sell them otherwise than by ordinary retail sale or direct retail sale, or
  - (b) deliver them for sale to premises within a zone if the zone is not the zone by reference to which the subsidy was calculated by the registered person.
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence.  
Maximum penalty: 100 penalty units.
- (4) It is a defence to a prosecution for an offence against this section if the person who purchased the petroleum products pays to the Chief Commissioner, within 60 days after the petroleum products are sold, an amount determined as follows:
  - (a) in a case referred to in subsection (1) (b) or (2) (b)—an amount equal to the difference between:
    - (i) the subsidy paid or payable in respect of the petroleum products to the registered person, and
    - (ii) the subsidy that would have been paid or payable in respect of the petroleum products to the registered person if the subsidy were calculated by reference to the zone in which they were actually delivered for sale,
  - (b) in any other case—an amount equal to the subsidy paid or payable in respect of the petroleum products to the registered person.
- (5) A person does not commit an offence against subsection (1) (b) or (2) (b) if the subsidy paid or payable in respect of the petroleum products to the registered person is equal to or less than the subsidy that would have been payable in respect of the petroleum products if the subsidy had been calculated by reference to the zone in which they were actually delivered for sale.
- (6) Proceedings against a person for an offence against this section may not be taken until at least 60 days have elapsed since the petroleum products concerned were allegedly sold by the person.

## **7D Consumption of subsidised petroleum products**

- (1) A person who purchases petroleum products, knowing that they are subsidised petroleum products, and who:
  - (a) consumes them otherwise than in the course of a business or activity

conducted on premises within a zone, or

- (b) consumes them in the course of a business or activity conducted on premises within a zone, being a zone that is not the zone by reference to which the subsidy payable to a registered person in respect of the petroleum products was calculated by the registered person,

is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) This section does not apply:

- (a) in respect of petroleum products purchased by means of an ordinary retail sale, or

- (b) in any other circumstances prescribed by the regulations.

(3) It is a defence to a prosecution for an offence against this section if the person who purchased the petroleum products pays to the Chief Commissioner, within 60 days after the petroleum products are consumed, an amount determined as follows:

- (a) in a case referred to in subsection (1) (b)—an amount equal to the difference between:

- (i) the subsidy paid or payable in respect of the petroleum products to a registered person, and

- (ii) the subsidy that would have been paid or payable in respect of the petroleum products to the registered person if the subsidy were calculated by reference to the zone in connection with which they were actually consumed,

- (b) in any other case—an amount equal to the subsidy paid or payable in respect of the petroleum products to a registered person.

(4) A person does not commit an offence against subsection (1) (b) if the subsidy paid or payable in respect of the petroleum products to the registered person is equal to or less than the subsidy that would have been paid or payable in respect of the petroleum products if the subsidy had been calculated by reference to the zone in connection with which they were actually consumed.

(5) Proceedings against a person for an offence against this section may not be taken until at least 60 days have elapsed since the petroleum products concerned were allegedly consumed by the person.

## **7E Consuming subsidised diesel fuel for off-road purposes**

- (1) A person who purchases diesel fuel, knowing that it is subsidised diesel fuel, and who consumes that diesel fuel for off-road purposes is guilty of an offence.

Maximum penalty: 100 penalty units.

- (2) It is a defence to a prosecution for an offence against this section if the person who purchased the diesel fuel pays to the Chief Commissioner, within 60 days after the diesel fuel is purchased, an amount equal to the subsidy paid or payable to a registered person in respect of the diesel fuel.
- (3) Proceedings against a person for an offence against this section may not be taken until at least 60 days have elapsed since the diesel fuel concerned was purchased by the person.
- (4) In proceedings for an offence against this section, if it is proved that a person purchased diesel fuel from a person, and that the quantity of diesel fuel purchased exceeded 100 litres, or such other amount as may be prescribed by the regulations, it is to be presumed, in the absence of evidence to the contrary, that the diesel fuel was consumed for off-road purposes.
- (5) Subsection (4) does not apply:
- (a) in respect of any diesel fuel purchased by means of an ordinary retail sale, or
  - (b) in respect of any purchase of diesel fuel by a zone retailer from a registered person.

## **7F Evidentiary provisions**

- (1) In proceedings for an offence against section 7C or 7D, if it is proved that a person who sold petroleum products gave to the purchaser an approved notice in relation to the sale, the purchaser is taken to have known, from the date the notice was given, that the petroleum products were subsidised petroleum products.
- (2) In proceedings for an offence against section 7E, if it is proved that a person who sold diesel fuel gave to the purchaser an approved notice in relation to the sale, the purchaser is taken to have known, from the date the notice was given, that the diesel fuel was subsidised diesel fuel.

## **[10] Section 8 Registration**

Omit section 8 (1) and (2). Insert instead:

- (1) The Chief Commissioner may register a person under this Act if the Chief Commissioner is satisfied that the person, in the ordinary course of a business or activity conducted by the person, sells petroleum products:
  - (a) by wholesale to zone retailers, or
  - (b) by retail on premises within a zone, or
  - (c) by retail to zone consumers.

**[11] Section 8 (3A)**

Insert after section 8 (3):

- (3A) If the Chief Commissioner registers a person on the Chief Commissioner's own motion, the Chief Commissioner may, by written notice, request the registered person to lodge a completed application for registration within 14 days after service of notice of the request or such longer period as may be specified in the request.

**[12] Section 8 (8) and (9)**

Insert after section 8 (7):

- (8) An application for registration is to be made in a form approved by the Chief Commissioner.
- (9) For avoidance of doubt, any entitlement of a registered person to a subsidy under section 5 arises only in respect of petroleum products sold by the person while the registration of the person remains in force.

**[13] Section 10 Cancellation of registration**

Omit section 10 (1) (c). Insert instead:

- (c) if the person fails to lodge a completed application for registration as required by the Chief Commissioner under section 8 (3A), or
- (c1) if the Chief Commissioner is satisfied that the benefit of subsidies received by the person is not being passed on to purchasers of the petroleum products, or

**[14] Part 3A**

Insert after Part 3:

## **Part 3A Claims for subsidies**

### **11 Claim for subsidy**

- (1) A registered person may make a claim for a subsidy by lodging a claim form with the Chief Commissioner.
- (2) A claim form must be in a form approved by the Chief Commissioner and must include any information required by the approved form.
- (3) A claim form may be lodged with the Chief Commissioner:
  - (a) by delivering it to an office of the Chief Commissioner, or
  - (b) by post, addressed to the Chief Commissioner at an office of the Chief Commissioner, or
  - (c) by a means indicated by the Chief Commissioner as being an available means of service (such as by facsimile transmission or by delivering it, addressed to the Chief Commissioner, to the facilities of a document exchange), or
  - (d) by leaving it with a person who has authority to accept documents on the Chief Commissioner's behalf.

### **11A Time for making claim for subsidy**

A claim for a subsidy must be made within 5 years after the end of the month in which the relevant eligible petroleum product was sold.

#### **[15] Part 5, heading**

Omit the heading. Insert instead "**Part 5 Investigation**".

#### **[16] Sections 19 and 20**

Omit the sections. Insert instead:

### **19 Inspection of tanks**

- (1) For the purpose of ascertaining whether records are being kept in accordance with this Act or the regulations, an authorised officer may require a person who sells petroleum products to permit or assist the authorised officer to estimate, by the use of a dip stick or by some other reasonable method proposed by the authorised officer, the volume of any petroleum products stored in a tank from which those products are sold.
- (2) A person who sells petroleum products must not:

- (a) fail to comply with a requirement under this section, or
- (b) obstruct or hinder an authorised officer in the exercise of the officer's powers under this section.

Maximum penalty (subsection (2)): 50 penalty units.

## **20 Samples of petroleum products**

- (1) For the purpose of ascertaining whether or not petroleum products are eligible petroleum products, an authorised officer may obtain a sample of any petroleum product that appears to the authorised officer to be intended for sale or to have been sold, whether by purchasing the petroleum product or otherwise.
- (2) This section does not authorise an authorised officer to enter any premises or part of any premises.
- (3) A person must not obstruct or hinder an authorised officer in the exercise of the officer's powers under this section.

Maximum penalty (subsection (3)): 50 penalty units.

### **[17] Section 21 Investigation of registered persons and others**

Omit section 21 (2) and (3).

### **[18] Section 25 Right of review**

Omit section 25 (3).

### **[19] Section 27 False or misleading statements (as amended by the [Intergovernmental Agreement Implementation \(GST\) Act 2000](#))**

Insert after section 27 (2):

- (3) Any person who, in connection with a purchase or proposed purchase of petroleum products, falsely represents that the person is a zone consumer or a zone retailer, is guilty of an offence.

Maximum penalty: 100 penalty units.

### **[20] Section 31B**

Insert after section 31A:

#### **31B Savings, transitional and other provisions**

Schedule 1 has effect.



**[21] Schedule 1**

Insert after section 32:

## **Schedule 1 Savings, transitional and other provisions**

(Section 31B)

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*State Revenue Legislation Amendment Act 2002*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 State Revenue Legislation Amendment Act 2002**

#### **2 Application of amendments to subsidy entitlements**

- (1) The amendments made to Part 2 of this Act by the *State Revenue Legislation Amendment Act 2002* apply in respect of petroleum products sold after the relevant commencement date.
- (2) Accordingly, any entitlement to a subsidy under section 5, as substituted by the *State Revenue Legislation Amendment Act 2002*, arises only in respect of petroleum products sold on or after the relevant commencement date.
- (3) In this clause:

**relevant commencement date** means the date of commencement of Schedule 4.1 [5] to the *State Revenue Legislation Amendment Act 2002*.

### **3 Cancellation of old certificates of registration**

- (1) A person registered under section 8 (1) or (2), as in force before the commencement of Schedule 4.1 [10] to the *State Revenue Legislation Amendment Act 2002*, is taken, on that commencement, to be registered under the provisions of section 8, as amended by that Act.
- (2) The Chief Commissioner may issue new certificates of registration to registered persons after the commencement of those amendments to section 8.
- (3) The Chief Commissioner may cancel the registration of a person under section 8 if satisfied the person is no longer eligible for registration under the provisions of that section, as amended by the *State Revenue Legislation Amendment Act 2002*.

## **4.2 Petroleum Products Subsidy (1997 Act) Regulation 1999**

### **[1] Part 2, heading**

Omit the heading. Insert instead “**Part 2 Zones**”.

### **[2] Clause 5 Zones**

Omit “6 zones”. Insert instead “5 zones”.

### **[3] Clause 7 Maximum subsidy**

Omit the clause.

### **[4] Part 3 Claims for subsidies**

Omit the Part.

### **[5] Part 4 Registration**

Omit the Part.

### **[6] Clauses 12-14 and 19**

Omit the clauses.

### **[7] Clauses 15 and 15A**

Omit clause 15. Insert instead:

## **15 Records to be kept in relation to purchases of petroleum products**

- (1) The following persons must keep the records required to be kept by this clause:
  - (a) a registered person,

- (b) a zone retailer or zone consumer who purchases subsidised petroleum products from a registered person.

Maximum penalty: 50 penalty units.

- (2) For each purchase of petroleum products, separate records must be made showing:
  - (a) the name and address of the vendor, and
  - (b) the price at which the petroleum products were purchased, and
  - (c) the date of the purchase, and
  - (d) the volume (in litres) of the petroleum products, and
  - (e) the address of the place at which the petroleum products were delivered to the purchaser.
- (3) However, a person is not required to keep a record in respect of the following:
  - (a) any petroleum products (including diesel fuel) purchased by the person in the course of an ordinary retail sale, or
  - (b) any diesel fuel purchased by the person from a person who sold it by retail in the ordinary course of a business or activity conducted by the retailer if the quantity of diesel fuel purchased does not exceed 100 litres, or such other amount prescribed for the purposes of section 7E of the Act.

### **15A Records to be kept by eligible consumers in relation to consumption of petroleum products**

- (1) An eligible consumer must keep, or cause to be kept, such records as are necessary, in connection with the consumer's consumption of petroleum products, to enable the assessment of whether a subsidy may be claimed in respect of those petroleum products.
- (2) Without limiting subclause (1), an eligible consumer must, for each purchase of petroleum products by the eligible consumer, keep a copy of the invoice for the sale together with a record of such of the following information as is not contained in the invoice:
  - (a) the name and address of the person from whom the petroleum products were purchased, and
  - (b) the volume (in litres) of petroleum products purchased, and
  - (c) the date on which the petroleum products were purchased, and

(d) the address at which the petroleum products were delivered to the purchaser.

(3) However, a record is not required to be kept in respect of:

(a) petroleum products (including diesel fuel) purchased in the course of an ordinary retail sale, or

(b) a purchase of diesel fuel if the quantity purchased does not exceed 100 litres, or such other amount as is prescribed for the purposes of section 7E of the Act.

(4) An eligible consumer must not fail to comply with this clause.

Maximum penalty: 50 penalty units.

**[8] Clause 16 Records to be kept by registered persons in relation to sales of petroleum products**

Omit clause 16 (2) (g). Insert instead:

(g) the address of the place at which the petroleum products were delivered to the purchaser.

**[9] Clause 16 (3)**

Omit the subclause.

**[10] Clause 17 Records to be kept in relation to retail sales in a zone**

Omit clause 17 (1) (including the maximum penalty at the end of that subclause).

Insert instead:

(1) A person who sells petroleum products by retail, by means of a pump that has an accumulative sales meter, in the ordinary course of a business or activity that is conducted in New South Wales on premises in a zone must keep the records required to be kept by this clause.

Maximum penalty: 50 penalty units.

**[11] Clause 17 (2A)**

Insert after clause 17 (2):

(2A) For any single sale of diesel fuel in excess of 100 litres, or such other amount as is prescribed for the purposes of section 7E of the Act, if the diesel fuel is sold as

referred to in subclause (2) and is not delivered into the running tank of a road vehicle, a separate record must be made showing:

- (a) the date on which the petroleum products were sold, and
- (b) the volume (in litres) of petroleum products sold, and
- (c) the price (per litre) at which the petroleum products were sold, and
- (d) the name and address of the purchaser.

**[12] Part 6**

Omit the Part.

**[13] Schedule 1 Zone boundaries**

Omit the matter relating to the residual zone.

**Schedule 5 Amendment of Premium Property Tax Act 1998**

(Section 3)

**Schedule 1 Sydney statistical division**

Omit "Concord" and "Drummoyne".

Insert in alphabetical order "Canada Bay".

**Schedule 6 Amendment of Stamp Duties Act 1920**

(Section 3)

**[1] Tenth Schedule Savings, transitional and other provisions**

Insert at the end of clause 1A (1):

*State Revenue Legislation Amendment Act 2002*

**[2] Tenth Schedule, Part 18**

Insert after Part 17:

**Part 18 State Revenue Legislation Amendment Act 2002**

**50 Application of Act to further advances on mortgages**

- (1) Division 21 of Part 3 does not apply to advances made on or after the commencement of Schedule 1 [23] to the *State Revenue Legislation Amendment Act 2002* if the advances are secured only by a loan security within the meaning

of section 83.

- (2) This clause applies whether or not the loan security would, if first executed on or after 1 July 1998, be a mortgage within the meaning of section 205 of the *Duties Act 1997* (despite section 1A (8) of this Act).

## Schedule 7 Amendment of **Taxation Administration Act 1996**

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

***recognised revenue law*** has the meaning given by section 80A.

### [2] Section 4 Meaning of “taxation laws”

Omit “*Revenue Laws (Reciprocal Powers) Act 1987*”.

### [3] Section 71 Circumstances in which investigative powers may be exercised

Insert at the end of the section:

**Note—**

Section 80A provides that the powers may also be exercised for the purposes of a recognised revenue law in some circumstances.

### [4] Section 76 Functions exercisable on entry

Omit “taxpayer” wherever occurring from section 76 (3).

Insert instead “person from whom the material was obtained”.

### [5] Part 9, Division 2A

Insert after Division 2 of Part 9:

## **Division 2A Investigations under other laws**

### **80A Investigations for the purposes of recognised revenue laws**

- (1) The Chief Commissioner may, by agreement with the corresponding Commissioner of a recognised jurisdiction:
- (a) authorise the corresponding Commissioner to exercise a function under Division 2 for the purposes of a recognised revenue law in force in that jurisdiction, or

- (b) exercise a function under Division 2 on behalf of the corresponding Commissioner for the purposes of a recognised revenue law in force in that jurisdiction.
- (2) The Chief Commissioner may exercise functions under this section only if a law of the recognised jurisdiction has reciprocal provisions enabling investigations by or on behalf of the Chief Commissioner for the purposes of a taxation law.
- (3) For the purposes of exercising a function under Division 2 for the purposes of a recognised revenue law:
  - (a) a reference in this Part to tax is to be read as a reference to tax payable under the recognised revenue law, and
  - (b) a reference in this Part to a tax liability is to be read as a reference to a tax liability under the recognised revenue law, and
  - (c) a reference in this Part to a taxation law is to be read as a reference to the recognised revenue law, and
  - (d) a reference in this Part to a contravention of a taxation law is to be read as a reference to a contravention of the recognised revenue law.
- (4) If the Chief Commissioner authorises a corresponding Commissioner of a recognised jurisdiction to exercise a function under Division 2:
  - (a) a reference in this Part to the Chief Commissioner is to be read as a reference to the corresponding Commissioner, and
  - (b) a reference in this Part to an authorised officer is to be read as a reference to a person authorised to exercise the function under a recognised revenue law in force in a recognised jurisdiction, and
  - (c) a reference in this Part to an authorised officer's identity card, in relation to a person authorised to exercise the function under a recognised revenue law in force in the recognised jurisdiction, is to be read as a reference to an identification card or certificate issued to the person under the recognised revenue law.
- (5) In this section:
  - corresponding Commissioner**, in relation to a recognised jurisdiction in which a recognised revenue law is in force, means the person responsible for administering the recognised revenue law or a person holding a position in the administration of that law that corresponds to the position of Chief Commissioner.

**recognised jurisdiction** means the Commonwealth, another State or a

Territory.

**recognised revenue law** means a law of the Commonwealth, another State or a Territory that:

- (a) corresponds to a taxation law, or
- (b) has reciprocal provisions to this section enabling investigations by or on behalf of the Chief Commissioner for the purposes of a taxation law, or
- (c) is declared by regulation to be a recognised revenue law.

### **80B Arrangements for exercise of functions under non-taxation laws**

- (1) Nothing in this Act, any other Act or any other law prevents the Chief Commissioner or an authorised officer:
  - (a) from exercising any investigative function conferred or imposed by or under the provisions of a non-taxation law for the purposes of that law, or
  - (b) from exercising any such investigative function in conjunction with a function exercised under this Part for the purposes of a taxation law.
- (2) Subsection (1) is subject to any express provision to the contrary in the non-taxation law concerned.
- (3) The Chief Commissioner may enter into an arrangement with a public authority in connection with the exercise of investigative functions by the Chief Commissioner or by authorised officers under a non-taxation law, for the payment of a fee or otherwise, subject to the provisions of the non-taxation law concerned.
- (4) In this section:

**investigative function** means a function conferred or imposed by or under a non-taxation law in connection with any investigation or audit that may be carried out for the purposes of that law.

**non-taxation law** means any law of this State that is not a taxation law.

**public authority** means:

- (a) a Government department or administrative office, or
- (b) a statutory body representing the Crown, or
- (c) any other public or local authority (including any State owned corporation) constituted by or under an Act.



**[6] Section 82 Permitted disclosures—to particular persons**

Omit “or” from section 82 (b) (iii).

**[7] Section 82 (b) (iv)**

Insert after section 82 (b) (iii):

(iv) a recognised revenue law, or

**[8] Section 82 (e)-(l)**

Omit section 82 (e). Insert instead:

- (e) to the Commissioner for the New South Wales Crime Commission or a person authorised by the Commissioner, or
- (f) to the Australian Securities and Investments Commission, or a person authorised by the Australian Securities and Investment Commission, for the purposes of the administration or execution of the *Corporations Act 2001* of the Commonwealth or Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth (or regulations in force under that Act or Part), or
- (g) to the National Crime Authority, or a person authorised by the National Crime Authority, for the purposes of the administration or execution of:
  - (i) the *National Crime Authority Act 1984* of the Commonwealth, or
  - (ii) a law of a State or a Territory that makes provision for the operation of that Authority in that State or Territory, or
- (h) to the Commissioner of the Australian Federal Police, or a member of the Australian Federal Police designated by the Commissioner, for the purpose of enforcing a law of the Commonwealth that creates an offence, or
- (i) to the Official Receiver in Bankruptcy for the purposes of the administration or execution of the *Bankruptcy Act 1966* of the Commonwealth, or
- (j) to the Chief Executive Officer of the Australian Customs Service for the purposes of the *Customs Act 1901* of the Commonwealth, or
- (k) to any of the following persons or a person authorised by any of the following persons:
  - (i) the Ombudsman,
  - (ii) the State Records Authority of New South Wales,

- (iii) the Australian Statistician,
  - (iv) the Auditor-General,
  - (v) the Valuer-General,
  - (vi) a member of the Public Service acting in the execution or administration of the *Country Industries (Pay-roll Tax Rebates) Act 1977*, or
  - (vii) the WorkCover Authority,
  - (viii) the Legal Services Commissioner, a member of the Law Society Council or a trust account inspector, or investigator, appointed under section 55 of the *Legal Profession Act 1987*,
  - (ix) the Head of a Department of the Public Service, the chief executive officer of a declared authority (within the meaning of Part 6.4 of the *Public Sector Employment and Management Act 2002*) or the holder of a statutory office if the information relates to land, including its description, ownership and value,
  - (x) the Hardship Review Board constituted under Division 5 of Part 10 or a member of that Board,
  - (xi) the Director-General of the Department of Gaming and Racing,
  - (xii) the Bookmakers Revision Committee constituted under the *Racing Administration Act 1998*,
  - (xiii) the Director-General of the Department of Transport, for the purposes of administration of the *Parking Space Levy Act 1992*, or
- (l) to a person prescribed by the regulations, or a person authorised by any such person.

**[9] Section 85 Further restrictions on disclosure**

Omit “or the *Revenue Laws (Reciprocal Powers) Act 1987*” from section 85 (a).

**[10] Section 85 (2)**

Insert at the end of section 85:

(2) In this section:

***authorised recipient*** means a person to whom information may be disclosed under section 82.

**[11] Section 85A**

Insert after section 85:

**85A Disclosures under other laws**

- (1) This Division does not prevent the disclosure of information obtained under or in relation to the administration of a non-taxation law, in the exercise of functions conferred or imposed by or under that law, even if those functions are exercised in conjunction with functions exercised under a taxation law.

**Note—**

Section 80B makes it clear that functions exercised by authorised officers under a taxation law may be exercised in conjunction with functions exercised by them under non-taxation laws.

- (2) However, this section does not authorise the disclosure of any such information in contravention of the non-taxation law under which the functions are exercised.

- (3) In this section:

***non-taxation law*** means any law of this State that is not a taxation law.

**[12] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2002*

**[13] Schedule 1, Part 5**

Insert after Part 4:

**Part 5 Provisions arising from enactment of [State Revenue Legislation Amendment Act 2001](#)**

**31 Application of interest rate changes**

- (1) The amendments made to section 22 by Schedule 4 [1] and [2] to the [State Revenue Legislation Amendment Act 2001](#) do not apply to the calculation of interest in respect of any day occurring before 1 July 2001.
- (2) Anything done or omitted to be done under this Act is validated to the extent that it would have been valid under this Act if this clause had been in force at the time that it was done or omitted.

## Schedule 8 Consequential amendment

(Section 3)

### Search Warrants Act 1985 No 37

#### Section 10 Definitions

Omit “section 7 of the *Revenue Laws (Reciprocal Powers) Act 1987*,” from the definition of ***search warrant***.