

# State Revenue Legislation Amendment Act 2010 No 46

[2010-46]



New South Wales

## Status Information

### Currency of version

Historical version for 29 June 2010 to 30 June 2010 (accessed 17 February 2025 at 0:48)

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### Provisions in force

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

### Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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# State Revenue Legislation Amendment Act 2010 No 46



New South Wales

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# State Revenue Legislation Amendment Act 2010 No 46



New South Wales

An Act to make miscellaneous changes to certain State revenue and other legislation.

## 1 Name of Act

This Act is the *State Revenue Legislation Amendment Act 2010*.

## 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as otherwise provided by this section.
- (2) The amendments made by the Schedules to this Act commence on the day or days specified in those Schedules in relation to the amendments concerned. If a commencement day is not specified, the amendments commence on the date of assent to this Act.

## 3 Explanatory notes

The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

## Schedule 1 Amendment of [Duties Act 1997 No 123](#)

### 1.1

(Repealed)

### 1.2 Amendments relating to NSW Home Builders Bonus

#### [1] Section 73 Ineligible persons

Omit section 73 (7).

#### [2] Chapter 2, Part 8, Division 1B

Insert after Division 1A:

## **Division 1B NSW Home Builders Bonus (Budget 2010-11)**

### **87K Nature of scheme**

- (1) The scheme established by this Division is intended to provide an exemption from or reduction in duty in respect of the purchase or construction of a new home.
- (2) For the purposes of this Division, a **new home** is a home that has not been previously occupied or sold as a place of residence.

### **87L Relevant dates for eligibility**

- (1) The following agreements or transfers are eligible for consideration under the scheme:
  - (a) agreements for sale or transfer of dutiable property entered into on or after 1 July 2010 and before 1 July 2012,
  - (b) transfers of dutiable property that occur on or after 1 July 2010 and before 1 July 2012 (other than transfers made in conformity with an agreement for sale or transfer entered into before 1 July 2010).
- (2) An agreement for the sale or transfer of dutiable property is not eligible if:
  - (a) it replaces an agreement made before 1 July 2010, and
  - (b) the replaced agreement was an agreement for the sale or transfer of substantially the same dutiable property.

### **87M Types of agreements or transfers that are eligible**

- (1) The following types of agreement or transfer are eligible under the scheme:
  - (a) a new home purchase,
  - (b) an off the plan purchase,
  - (c) a vacant land purchase.
- (2) A **new home purchase** is an agreement for the sale or transfer, or a transfer, of land that is the site of a new home that is complete and ready for occupation.
- (3) An **off the plan purchase** is an agreement for the sale or transfer of land intended to be used as the site of a new home, which is to be built before completion of the agreement.
- (4) A **vacant land purchase** is an agreement for the sale or transfer, or a transfer, of vacant land that is intended to be used as the site of a new home and which is

not an off the plan purchase.

- (5) The agreement or transfer must be for the whole of the land or, if the land is a parcel of land on which 2 or more homes are built, or are being built, for that part of the land that is an exclusive occupancy.
- (6) Land is an exclusive occupancy only if the Chief Commissioner is satisfied that the person acquiring the land will be entitled to occupy a home that is built, or being built, on the land as a place of residence to the exclusion of other persons who occupy or are to occupy the other home or homes built or being built on the parcel of land.
- (7) In relation to a new home purchase or off the plan purchase only, a reference in this Division to a new home includes a reference to a substantially renovated home.
- (8) For the purposes of this Division, a **substantially renovated home** is a renovated home:
  - (a) that is new residential premises within the meaning of section 40-75 (1) (b) of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, and
  - (b) that, as renovated, has not been previously occupied or sold as a place of residence.

#### **87N Restrictions on eligibility**

- (1) An agreement or transfer is not eligible if the new home, or the land on which the new home is located or to be built, is intended to be used, or made available for use, for any purpose that is not ancillary to the use and occupation of the land for residential purposes (such as a commercial, industrial or professional purpose).
- (2) However, an agreement for the purchase, or a transfer, of a farming property on which there is a new home or on which a new home is to be constructed is not excluded.

#### **87O Completion requirements**

- (1) For an off the plan purchase, the agreement is not eligible unless it is completed:
  - (a) by 31 December 2012—in the case of an off the plan purchase entered into on or after 1 July 2010 and before 1 July 2011, or
  - (b) by 31 December 2013—in the case of an off the plan purchase entered into on or after 1 July 2011 and before 1 July 2012.

- (2) For a vacant land purchase, the agreement or transfer is not eligible unless:
- (a) the laying of foundations for the home commences within 26 weeks after the agreement for sale or transfer is entered into or, in the case of a transfer executed otherwise than in conformity with an agreement for sale or transfer, the transfer occurs, or within any longer period allowed by the Chief Commissioner, and
  - (b) building work is completed within 18 months after the laying of the foundations for the home begins, or within any longer period allowed by the Chief Commissioner.

### **87P Cap on dutiable value of transaction**

The dutiable value of the dutiable property that is the subject of the agreement or transfer must not exceed:

- (a) \$600,000 in the case of a new home purchase or an off the plan purchase, or
- (b) \$400,000 in the case of a vacant land purchase.

### **87Q Duty concessions available if application approved**

- (1) The following duty concessions are available in relation to an eligible agreement or transfer that is approved under the scheme:
- (a) a pre-construction duty exemption,
  - (b) a senior's principal place of residence duty exemption,
  - (c) a post-construction duty reduction.
- (2) If a pre-construction duty exemption or senior's principal place of residence duty exemption applies to the agreement or transfer, no duty is chargeable on the agreement or transfer.
- (3) No duty is chargeable on a transfer of dutiable property (including a transfer made on or after 1 July 2012) if the transfer is made in conformity with an eligible agreement approved under the scheme and the pre-construction duty exemption or senior's principal place of residence exemption applies to the agreement.
- (4) If a post-construction duty reduction applies to the agreement or transfer, the amount of ad valorem duty chargeable on the agreement or transfer is to be reduced by 25%.

### **87R Pre-construction duty exemption**

- (1) A pre-construction duty exemption applies to an off the plan purchase that is

approved under the scheme if, at the time that the off the plan purchase is entered into, construction of the new home under the off the plan purchase has not commenced.

- (2) A pre-construction duty exemption applies to a vacant land purchase that is approved under the scheme if, at the relevant date, construction of the new home on the land concerned has not commenced.
- (3) The relevant date is the date the agreement for sale or transfer of the vacant land is entered into or, in the case of a transfer executed otherwise than in conformity with an agreement for sale or transfer, the date the transfer occurs.
- (4) Construction of a new home commences when the laying of the foundations of the new home, or of the building in which it is located, begins.
- (5) For a new home that is a substantially renovated home, construction of the new home is taken to commence when construction of any new or replacement parts of the home, or of the building in which it is located, begins. Demolition work does not count as construction work.

### **87S Senior's principal place of residence duty exemption**

- (1) A senior's principal place of residence duty exemption applies to a new home purchase or an off the plan purchase that is approved under the scheme if the purchase is made in connection with a residence relocation by an eligible senior.
- (2) For the exemption to apply, the purchaser or transferee under the relevant agreement or transfer must be an eligible senior.
- (3) If there is more than one purchaser or transferee under the agreement or transfer, each purchaser or transferee must be:
  - (a) an eligible senior, or
  - (b) a spouse of an eligible senior who is another purchaser or transferee under the agreement or transfer.
- (4) No other purchasers or transferees are permitted.
- (5) A purchase is made in connection with a residence relocation by an eligible senior if the home sale requirements and the home occupation requirements for the senior's principal place of residence duty exemption are met.
- (6) For the purposes of this Division, a person is an **eligible senior** if:
  - (a) the person is 65 years of age or older, and
  - (b) the person is an Australian citizen or permanent resident, and

(c) neither the person, nor the person's spouse (if any), has previously had the benefit of the senior's principal place of residence duty exemption.

(7) A person has previously had the benefit of the senior's principal place of residence duty exemption if the person is or was a purchaser or transferee under an agreement or transfer relating to another home, to which the senior's principal place of residence duty exemption has been applied.

**87T Home sale requirements—senior's principal place of residence duty exemption**

- (1) The requirements of this section are the home sale requirements for the senior's principal place of residence duty exemption.
- (2) An eligible senior who is a purchaser or transferee under the agreement or transfer must, within 12 months before the agreement or transfer is entered into or occurs, be the owner of an eligible home used and occupied by the eligible senior as a principal place of residence (the **former home**).
- (3) The eligible senior must:
  - (a) have disposed of the former home before the agreement or transfer was entered into or occurred, or
  - (b) dispose of the former home within the period allowed for residence relocation.
- (4) The period allowed for residence relocation is 6 months after completion of the relevant agreement or transfer, or such longer period as the Chief Commissioner may approve.
- (5) The Chief Commissioner may approve a longer period for residence relocation only if satisfied that the delay in disposing of the former home is caused by circumstances beyond the control of the eligible senior.
- (6) For the purposes of this section, an agreement or transfer is completed when a purchaser or transferee becomes entitled to possession of the home and, if the interest in the land acquired by the purchaser or transferee is registrable under a law of the State, the interest is so registered.
- (7) The requirements of this section with respect to the disposal of a former home also apply to any spouse of the eligible senior who is an owner of the former home.
- (8) In this section:

**eligible home** means a home affixed to land in New South Wales.



**87U Home occupation requirements—senior’s principal place of residence duty exemption**

- (1) The requirements of this section are the home occupation requirements for the senior’s principal place of residence duty exemption.
- (2) The new home must be occupied by an eligible senior who is a purchaser or transferee under the agreement or transfer as a principal place of residence for a continuous period of at least 12 months, with that occupation starting within 12 months (or such longer period as the Chief Commissioner may approve) after completion of the agreement or transfer.
- (3) For the purposes of this section, an agreement or transfer is completed when a purchaser or transferee becomes entitled to possession of the home and, if the interest in the land acquired by the purchaser or transferee is registrable under a law of the State, the interest is so registered.
- (4) The Chief Commissioner may, if satisfied that there are good reasons to do so in a particular case:
  - (a) modify the home occupation requirements by approving a shorter period of occupation by an eligible senior, or
  - (b) exempt an eligible senior from the requirement to comply with the home occupation requirements.
- (5) The requirements of this section with respect to the occupation of the new home by an eligible senior also apply to the eligible senior’s spouse (if any).

**87V Post-construction duty reduction**

- (1) A post-construction duty reduction applies to an agreement or transfer that is approved under the scheme if neither the pre-construction duty exemption nor the senior’s principal place of residence duty exemption applies to the agreement or transfer.
- (2) The duty reduction is to be applied to the ad valorem duty that would be charged under section 32, and cannot be combined with any other reduction that applies under this Act (such as under the First Home Plus scheme in Division 1).
- (3) If the agreement or transfer approved under the scheme is aggregated with other dutiable transactions, and treated as a single dutiable transaction under section 25, the 25% reduction is to be applied only to the ad valorem duty that would be chargeable (in the absence of aggregation) on the approved agreement or transfer.

### **87W Making of applications**

- (1) An application under this Division is to be made to the Chief Commissioner in an approved form.
- (2) An application must be made within 3 months after the relevant agreement for sale or transfer is entered into or, in the case of a transfer executed otherwise than in conformity with an agreement for sale or transfer, within 3 months after the transfer occurs.
- (3) The Chief Commissioner may accept an application after expiry of the 3-month period if satisfied that the delay in making an application was caused by circumstances beyond the control of the applicant or applicants.
- (4) The Chief Commissioner may at any time (whether before or after the approval of an application) require the applicant or applicants to provide such further information as the Chief Commissioner may consider necessary for the proper administration of the scheme.

### **87X Application may be approved in advance**

The Chief Commissioner may approve an application in relation to any agreement or transfer in anticipation of compliance with any of the requirements of this Division.

### **87Y Reassessment of duty payable where duty concession wrongly applied**

- (1) The Chief Commissioner may reassess the duty chargeable in respect of an agreement or transfer that is initially approved under the scheme if the Chief Commissioner forms the opinion that the agreement or transfer is not eligible under the scheme, including in a case where approval was given in anticipation of compliance with any requirements of this Division that have not been met.
- (2) The Chief Commissioner may issue a notice of assessment, based on the reassessment, for the duty chargeable in respect of the agreement or transfer.

### **87Z Charge on land for duty liability of applicant**

- (1) Any duty liability that an applicant has under the scheme in respect of an agreement or transfer is a charge on the applicant's interest in the land that is the subject of the agreement or transfer.
- (2) An applicant has a duty liability under the scheme in respect of an agreement or transfer if the applicant is required to pay an amount of duty to the Chief Commissioner, in respect of an agreement or transfer that is initially approved under the scheme, under a notice of assessment referred to in section 87Y.
- (3) The charge created by this section gives the Chief Commissioner an interest in the land and, accordingly, the Chief Commissioner may lodge a caveat in respect

of the land under the [Real Property Act 1900](#) to protect that interest.

- (4) The caveat must be withdrawn when the amount of the duty liability has been paid.
- (5) The amount of the duty liability is the amount of duty that the applicant is required to pay to the Chief Commissioner in respect of the relevant agreement or transfer, together with any interest or penalty tax payable.

- (6) In this section:

**applicant** includes a former applicant.

### **87ZA Definitions**

- (1) In this Division:

**eligible senior**—see section 87S.

**home** means a building (affixed to land) that:

- (a) may lawfully be used as a place of residence, and
- (b) is, in the Chief Commissioner's opinion, a suitable building for use as a place of residence.

**new home**—see section 87K.

**new home purchase**—see section 87M.

**off the plan purchase**—see section 87M.

**spouse** has the same meaning in relation to the scheme as it has under section 71 (4) and (5) in relation to the First Home Plus scheme.

**vacant land purchase**—see section 87M.

- (2) For the purposes of this Division, a person **disposes** of a home if the person ceases to be the owner of the home.
- (3) For the purposes of this Division, a person is the **owner** of a home if the person is the owner (within the meaning of the [Land Tax Management Act 1956](#)) of land that is the site of the home.

### **[3] Dictionary**

Insert in alphabetical order:

**Australian citizen** has the same meaning as it has in the [Australian Citizenship Act](#)

2007 of the Commonwealth.

**permanent resident** means:

- (a) the holder of a permanent visa within the meaning of section 30 of the *Migration Act 1958* of the Commonwealth, or
- (b) a New Zealand citizen who holds a special category visa within the meaning of section 32 of the *Migration Act 1958* of the Commonwealth.

**Explanatory note**

Item [2] of the proposed amendments introduces a new scheme (the NSW Home Builders Bonus) for duty exemptions or reductions on new housing purchases. The scheme applies to certain agreements for the sale or transfer of dutiable property entered into on or after 1 July 2010 and before 1 July 2012, or transfers of dutiable property that occur on or after 1 July 2010 and before 1 July 2012 (other than transfers made in conformity with an agreement for sale or transfer entered into before 1 July 2010).

The scheme applies to 3 types of purchase:

- (a) a new home purchase (which is an agreement for the sale or transfer, or a transfer, of land that is the site of a new home that is complete and ready for occupation), or
- (b) an off the plan purchase (which is an agreement for the sale or transfer of land intended to be used as the site of a new home, which is to be built before completion of the agreement), or
- (c) a vacant land purchase (which is an agreement for the sale or transfer, or a transfer, of vacant land that is intended to be used as the site of a new home and which is not an off the plan purchase).

A **new home** is a home that has not been previously sold or occupied as a place of residence. For new home purchases and off the plan purchases only, a substantially renovated home is also considered to be a new home.

Certain other eligibility requirements also apply, such as requirements relating to the commencement or completion of construction of the new home.

The dutiable value of the dutiable property the subject of the relevant agreement or transfer must not exceed \$600,000 (in the case of a new home purchase or an off the plan purchase) or \$400,000 (in the case of a vacant land purchase).

Three types of duty concession are available under the scheme.

A pre-construction duty exemption applies to an off the plan purchase or vacant land purchase if construction of the new home has not commenced at the time the relevant agreement is entered into or, in the case of a transfer that is a vacant land purchase and is executed otherwise than in conformity with an agreement for sale or transfer, the date the transfer occurs. No duty is chargeable on the agreement or transfer if the pre-construction duty exemption applies.

A senior's principal place of residence duty exemption applies to a new home purchase or an off the plan purchase if the purchase is made in connection with a residence relocation by an eligible senior. A person is an **eligible senior** if the person is 65 years of age or older, is an Australian citizen or permanent resident and neither the person, nor his or her spouse (if any), has previously had the benefit of the senior's principal place of residence duty exemption. The eligible senior is required to sell (or to have sold) his or her previous principal place of residence in New South Wales and to occupy the new home as his or her principal place of residence. No duty is chargeable on the agreement or transfer if the eligible senior's principal place of residence duty exemption applies.

A post-construction duty reduction applies to any other agreement or transfer approved under the scheme that is not eligible for the pre-construction duty exemption or the senior's principal place of residence duty exemption. The post-construction duty reduction results in a 25% reduction in the ad valorem duty payable on the agreement or transfer concerned.

The amendments contain ancillary provisions relating to the following:

- (a) the making of applications under the scheme,
- (b) the approval of applications by the Chief Commissioner of State Revenue in anticipation of compliance with scheme requirements,
- (c) the reassessment of duty where a duty concession under the scheme is wrongly applied,
- (d) the recovery of any duty liability an applicant has under the scheme via a charge on an applicant's interest in land.

The ancillary provisions are similar to existing provisions under the First Home Plus scheme and the NSW Housing Construction Acceleration Plan.

Items [1] and [3] transfer the definitions of **Australian citizen** and **permanent resident** from the First Home Plus provisions to the Dictionary, as these expressions are also used in relation to the NSW Home Builders Bonus scheme.

### 1.3 Other amendments

#### [1] Section 12 When does a liability for duty arise?

Insert after section 12 (2):

- (3) A liability for duty in respect of a dutiable transaction that is charged with duty as if it were a transfer of dutiable property arises even if the dutiable property is not in existence at the time that the transfer is taken to have occurred, or the instrument effecting the transfer is first executed, as the case requires.

#### [2] Section 49 Interim payment of duty

Insert after section 49 (2):

- (3) The Chief Commissioner must, when the full dutiable value of the dutiable property has been ascertained, reassess the duty payable in respect of the instrument.
- (4) If no further duty is payable, the interim stamp is to be cancelled and any amount paid in excess of the amount assessed is to be refunded.
- (5) If further duty is payable, liability for the further duty arises when a notice of assessment is issued, despite any other provision of this Act.
- (6) On payment of the balance of the duty (and any interest or penalty tax), the instrument is to be stamped with the amount of the balance and marked to indicate that duty has been duly paid.

#### [3] Section 54 Change in trustees

Omit the definition of **special trustee** from section 54 (1).

Insert in alphabetical order:

**licensed trustee company** means a licensed trustee company within the meaning of Chapter 5D of the *Corporations Act 2001* of the Commonwealth.

**special trustee** means:

- (a) a licensed trustee company in its capacity as trustee or administrator of a deceased estate, and
- (b) the trustee of a complying superannuation fund, within the meaning of section 42 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, in its capacity as trustee of that fund.

**[4] Section 54 (2A)**

Insert after section 54 (2):

(2A) Duty of \$50 is chargeable in respect of a transfer of dutiable property to a licensed trustee company (that is not a special trustee), or to a trustee of a special disability trust, as a consequence of the retirement of a trustee or the appointment of a new trustee, if the Chief Commissioner is satisfied that the transfer is not part of a scheme for conferring an interest, in relation to the trust property, on a new trustee or any other person, whether as a beneficiary or otherwise, to the detriment of the beneficial interest or potential beneficial interest of any person.

**[5] Section 54 (3)**

Omit "other than a special trustee".

Insert instead "other than a licensed trustee company, a special trustee or trustee of a special disability trust".

**[6] Section 54 (3B)**

Insert ", (2A)" after "(2)".

**[7] Section 59B**

Insert after section 59A:

**59B Change in custodians**

Duty of \$50 is chargeable in respect of a transfer of dutiable property by a custodian of the trustee of a trust to another custodian of the trustee of the trust if:

- (a) there is no change in the beneficial ownership of the dutiable property, and
- (b) the transferee is to hold the dutiable property solely for the trustee as trustee of the trust and there is no contemplation of the dutiable property being held for

any other person or being held in any other capacity, and

- (c) the dutiable property was held by the transferor solely for the trustee as trustee of the trust and, since the time when the dutiable property was first transferred to the transferor, no person has held the dutiable property otherwise than solely for the trustee as trustee of the trust.

**[8] Section 61 Transfers of property in connection with persons changing superannuation funds**

Insert after section 61 (1A) (c):

- (d) a transfer of marketable securities from a life company or custodian for a life company to the trustee of a superannuation fund or a custodian of the trustee of a superannuation fund if the transfer is made in consideration of the surrender or termination, by the trustee of the superannuation fund of which the person has ceased to be a member, of a policy of life insurance issued by the life company.

**[9] Section 62A**

Insert after section 62:

**62A Transfers to self managed superannuation funds**

- (1) Duty of \$50 is chargeable on a transfer of, or an agreement to transfer, dutiable property from a person (the **transferor**) to the trustee of a self managed superannuation fund but only if:
  - (a) the transferor is the only member of the superannuation fund or the property is to be held by the trustee solely for the benefit of the transferor, and
  - (b) the property is to be used solely for the purpose of providing a retirement benefit to the transferor.
- (2) Property held by the trustee of a superannuation fund is held solely for the benefit of the transferor if:
  - (a) the property is held specifically for the benefit of the transferor, as a member of the superannuation fund, and
  - (b) the property (or proceeds of sale of the property) cannot be pooled with property held for another member of the superannuation fund, and
  - (c) no other member of the superannuation fund can obtain an interest in the property (or the proceeds of sale of the property).

(3) In this section:

***self managed superannuation fund*** means a complying superannuation fund within the meaning of section 42A of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

**[10] Section 63 Deceased estates**

Insert at the end of section 63 (1) (c):

, and

(d) a declaration by an executor of a will under section 11 of the *Trustee Act 1925* if the Chief Commissioner is satisfied that the declaration is consistent with the entitlements of beneficiaries under the trusts contained in the will.

**[11] Section 65 Exemptions from duty**

Omit section 65 (1) (c). Insert instead:

(c) the transfer of dutiable property to, or vesting of dutiable property in, a former bankrupt for no consideration as a consequence of the discharge or annulment of bankruptcy,

**[12] Section 65 (10) (b)**

Omit the paragraph. Insert instead:

(b) a dutiable transaction effected by such an instrument, if the Chief Commissioner is satisfied that the primary purpose for which the transaction was effected was to comply with legal requirements relating to complying superannuation funds, complying approved deposit funds, pooled superannuation trusts or eligible rollover funds.

**[13] Section 65 (13A)**

Insert after section 65 (13):

(13A) **Vesting by statute law—association property** No duty is chargeable under this Chapter on the vesting of association property in an association on the registration of a plan or dealing by which association property is created under the *Community Land Development Act 1989*.

**[14] Section 65 (22)-(24)**

Insert after section 65 (21):



(22) **Special disability trusts** No duty is chargeable under this Chapter on:

- (a) a declaration of trust over dutiable property that is to be held by the trustee in the trustee's capacity as trustee for a special disability trust, or
- (b) a declaration of trust over property or an instrument that declares property, when vested in the person executing the instrument, is to be held in trust for a person or persons, if the instrument is executed for the purpose of establishing a special disability trust, or
- (c) a transfer of, or an agreement to transfer, dutiable property to the trustee of a special disability trust for the purpose of the trust, if there is no consideration for the transfer.

(23) **Registered maintenance liabilities** No duty is chargeable under this Chapter on the following:

- (a) a transfer of dutiable property to, or a vesting of dutiable property in, a trustee as a consequence of enforcement action taken by the Commonwealth in respect of a registered maintenance liability (within the meaning of the *Child Support (Registration and Collection) Act 1988* of the Commonwealth),
- (b) a transfer of dutiable property from a trustee to a person in respect of whom such enforcement action has been taken, as a consequence of the discharge of the person's liability under the registered maintenance liability.

(24) **Fraudulent or void transactions** No duty is chargeable under this Chapter on the following:

- (a) a transfer of dutiable property to a person if the Chief Commissioner is satisfied that the transfer is made to rectify the consequences of fraudulent conduct by another person or to reverse a transfer of dutiable property that has been registered under a law of the State or the Commonwealth and that has been declared by a court to be void or voidable,
- (b) a vesting of dutiable property in a person by court order if the Chief Commissioner is satisfied that the order was made to rectify the consequences of fraudulent conduct by another person or to reverse a transfer of dutiable property that has been registered under a law of the State or the Commonwealth and that has been declared by a court to be void or voidable.

**[15] Section 68 Exemptions—break-up of marriages and other relationships**

Insert after section 68 (4C):

(4D) **Vested bankruptcy property** This section applies in respect of vested bankruptcy property (within the meaning of the *Family Law Act 1975* of the Commonwealth) of a party to a marriage or de facto relationship in the same way as it applies to matrimonial property or relationship property.

**[16] Section 71 Restrictions on eligibility—previous ownership of residential property or first home concession**

Omit “another residential property” and “other residential property” wherever occurring in section 71 (6).

Insert instead “residential property”.

**[17] Section 74 Eligible agreements or transfers**

Omit section 74 (2). Insert instead:

(2) The agreement or transfer must be for the whole of the property.

**[18] Section 74 (4)**

Omit the subsection.

**[19] Section 74A**

Insert after section 74:

**74A Application of scheme to multiple occupancy contracts**

- (1) The provisions of this Part apply in respect of an agreement for the sale or transfer of a parcel of land on which 2 or more homes are built or being built (a **multiple occupancy contract**) as if:
  - (a) the multiple occupancy contract were a separate agreement or transfer in relation to each home built or to be built on the land as an exclusive occupancy, and
  - (b) the purchasers or transferees who will be entitled to occupy a home as an exclusive occupancy are the only purchasers or transferees under the separate agreement or transfer relating to the home.
- (2) Any such separate agreement or transfer is taken to be an agreement or transfer for the whole of the property if it is for all of the land to be used or occupied for the purposes of the exclusive occupancy.
- (3) In this Part, a reference to the dutiable property the subject of the agreement or transfer is a reference to that part of the land that is to be used or occupied for

the purposes of the exclusive occupancy.

- (4) For the purposes of this section, a home that is being acquired or built under a multiple occupancy contract is an **exclusive occupancy** only if the Chief Commissioner is satisfied that a person is or will be entitled to occupy the home as a place of residence to the exclusion of other persons who, under the contract, are to occupy the other home or homes built or being built on the relevant land.

**[20] Section 107 Assignment of rights under call option dutiable as transfer**

Omit section 107 (1) and (2). Insert instead:

- (1) If a person (**A**) who has a right under a call option to require another person (**B**) to sell dutiable property assigns that right, so that the option is exercisable by a third person (**C**), duty under Chapter 2 is chargeable on that assignment as if the assignment were a transfer of the dutiable property concerned.
- (2) For the purposes of this section:
- (a) if A enters into an agreement or arrangement under which A, for valuable consideration, relinquishes the right under a call option to require B to sell dutiable property and a call option to require B to sell the dutiable property is granted to a third person (**C**), A is to be treated as having assigned that right under the call option so that the option is exercisable by C, and
- (b) if, on or in connection with the exercise of a call option, A, for valuable consideration, enters into an agreement or arrangement under which A nominates a third person (**C**) as the purchaser or transferee of dutiable property the subject of a call option, A is to be treated as having assigned the right under the call option to require B to sell the dutiable property so that the option is exercisable by C.

**[21] Section 107 (3)**

Omit “, following the assignment of a right under the call option, C”.

Insert instead “an assignee of A”.

**[22] Section 108 Person liable to pay duty**

Omit “his or her” from section 108 (1). Insert instead “the”.

**[23] Section 147 What are the “land holdings” of a landholder?**

Omit “or by a custodian of the trustee of the unit trust scheme in its capacity as custodian” from section 147 (2).

Insert instead “, by a custodian of the trustee of the unit trust scheme in its capacity as custodian or by a sub-custodian of the custodian of the trustee of the unit trust scheme in its capacity as sub-custodian”.

**[24] Section 158 Constructive ownership of land holdings and other property: linked entities**

Insert after section 158 (4):

- (5) In this section, **person** includes a person who holds property as a trustee or custodian for a trustee of a trust or as a member of a partnership or other unincorporated body.
- (6) If a person holds property as a trustee or custodian in relation to 2 or more trusts the person is to be treated as a separate person in relation to each of those trusts and the property held under each trust is to be treated as a separate property holding.

**[25] Section 163B Exemption—break-up of marriages and other relationships**

Insert after section 163B (7):

- (7A) This section applies in respect of vested bankruptcy property (within the meaning of the *Family Law Act 1975* of the Commonwealth) of a party to a marriage or de facto relationship in the same way as it applies to matrimonial property or relationship property.

**[26] Section 163J Meaning of “associated person”**

Omit the section.

**[27] Section 163K Goods of a landholder**

Omit “or by a custodian of the trustee of the unit trust scheme in its capacity as custodian” from section 163K (3).

Insert instead “, by a custodian of the trustee of the unit trust scheme in its capacity as custodian or by a sub-custodian of the custodian of the trustee of the unit trust scheme in its capacity as sub-custodian”.

**[28] Chapter 5 Lease instruments**

Omit the Chapter.

**[29] Section 216 Mortgages over property not wholly within New South Wales**

Omit section 216 (3)–(5). Insert instead:

- (3) The dutiable proportion is to be calculated by reference to any relevant document that provides, or relevant documents that together provide, the value of all property affected by the mortgage, subject to this section.
- (4) A **relevant document** 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 or a group of which the mortgagor is a member, certified by an independent auditor as presenting a true and fair view of a corporation's or group'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) If more than one relevant document is available for determining the value of the same property, the Chief Commissioner is to give preference to the most recently prepared document, subject to this section.
- (6) If a mortgagor is a member of a group, and a financial report comprising the consolidated accounts of the group is available, and is a relevant document, the dutiable proportion is to be calculated primarily by reference to that relevant document, unless the Chief Commissioner does not consider it appropriate to do so. In such a case, the only debt or equity to be taken into account in calculating the dutiable proportion is the debt and equity as disclosed in that financial report.

**[30] Section 216A**

Insert after section 216:

**216A Calculation of dutiable proportion—goodwill and intellectual property**

For the purposes of this Chapter, if the property secured by a mortgage includes the goodwill of a business or intellectual property, the goodwill or intellectual property is taken to be property in New South Wales to the extent that it would have comprised

a business asset under Chapter 2 if it had been transferred to the mortgagor immediately before the liability date, which has a value equivalent to the dutiable value of such a transfer.

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

Omit section 222 (2) (e).

**[32] Section 227A Transfer of mortgages**

Omit “section 218B (1)” from section 227A (6). Insert instead “section 210”.

**[33] Section 267 Exemptions**

Insert after section 267 (6A):

(6B) **Vehicles transferred from trustee in bankruptcy** Subsections (6) and (6A) apply in respect of vested bankruptcy property (within the meaning of the *Family Law Act 1975* of the Commonwealth) of a party to a marriage or de facto relationship in the same way as they apply to matrimonial property or the property of a party to a de facto relationship.

**[34] Section 274 Transfer of certain business property between family members**

Insert after section 274 (5):

(5A) This section does not apply if the transferee acquires the land or shares concerned as a trustee.

**[35] Section 275 Charitable and benevolent bodies**

Omit section 275 (1). Insert instead:

(1) Duty under this Act is not chargeable on the following:

- (a) a transfer, or an agreement for the sale or transfer, of dutiable property to an exempt charitable or benevolent body,
- (b) a declaration of trust over dutiable property held or to be held on trust for an exempt charitable or benevolent body,
- (c) a surrender of an interest in land in New South Wales to an exempt charitable or benevolent body,
- (d) a vesting of dutiable property in an exempt charitable or benevolent body,
- (e) a lease of dutiable property to an exempt charitable or benevolent body,

- (f) a mortgage given by or on behalf of an exempt charitable or benevolent body.

**[36] Section 275A Partial exemption for certain transactions by charitable and benevolent bodies**

Omit section 275A (1). Insert instead:

- (1) If the Chief Commissioner is satisfied, in relation to any dutiable transaction by which an exempt charitable or benevolent body acquires land or an interest in land, that the land concerned is used or to be used by the charitable or benevolent body partly for an exempt purpose, the dutiable value of the land concerned is, for the purposes of charging duty under Chapter 2, to be reduced by the portion of that dutiable value that is referable to the portion of the land used or to be used for an exempt purpose.

**[37] Section 282**

Omit the section. Insert instead:

**282 Mortgage-backed securities**

- (1) Duty under this Act is not chargeable in respect of a mortgage to the extent that it is a mortgage over the interest of a person in a pool of mortgages relating to debt securities that are mortgage-backed securities issued by the person to secure the repayment of financial accommodation provided to the person.
- (2) Duty under this Act is not chargeable in respect of a mortgage to the extent that it is a mortgage of a mortgage or pool of mortgages or part of a pool of mortgages in connection with creating, issuing, marketing or securing a mortgage-backed security.
- (3) Duty under this Act is not chargeable in respect of a transaction or instrument to the extent that it is, or effects:
- (a) the issue or making of a mortgage-backed security, or
  - (b) the transfer or assignment of or other dealing with a mortgage-backed security, or
  - (c) the discharge, cancellation or termination of a mortgage-backed security.
- (4) Duty under this Act is not chargeable in respect of a mortgage executed on or after 1 July 1998 to the extent that it is a mortgage of a mortgage or pool of mortgages or part of a pool of mortgages for the purpose of creating, issuing, marketing or securing a mortgage-backed security:
- (a) to a person entitled to a mortgage-backed security or a trustee or agent for

such a person, or

- (b) by or to a person who issues, makes or endorses a mortgage-backed security, or
- (c) to a person who provides security (whether as a guarantor, surety or otherwise) to a person entitled to a mortgage-backed security or a trustee or agent for such a person.

**Note—**

**Mortgage, mortgage-backed security** and **pool of mortgages** are defined in the Dictionary.

**[38] Section 283 Instruments issued for the purpose of creating, issuing or marketing mortgage-backed securities**

Insert “to the extent that it was executed for that purpose” after “securities”.

**[39] Section 284**

Omit the section. Insert instead:

**284 Asset-backed securities**

Duty is not chargeable in respect of a transaction or instrument to the extent that it is, or effects, any of the following:

- (a) the issue or making of an asset-backed security,
- (b) the transfer or assignment of or other dealing with an asset-backed security,
- (c) the discharge, cancellation or termination of an asset-backed security,
- (d) an instrument that, in the Chief Commissioner’s opinion, was executed for the purpose of creating, issuing or marketing asset-backed securities,
- (e) a mortgage over the interest of a person in a pool of assets, being a mortgage relating to debt securities that are asset-backed securities issued by the person to secure the repayment of financial accommodation provided to the person,
- (f) a mortgage over a financial asset or pool of assets or part of a pool of assets in connection with creating, issuing, marketing or securing an asset-backed security,
- (g) a policy of insurance covering any or all assets in a pool of assets acquired or held for the purpose of issuing asset-backed securities, but only so far as the instrument relates to asset-backed securities.

**Note—**



**Asset-backed security** and **pool of assets** are defined in the Dictionary.

**[40] Section 288A Reassessment following interim payment of duty**

Omit the section.

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

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2010*

**[42] Schedule 1, Part 33**

Insert after Part 32:

## **Part 33 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2010**

### **83 Definition**

In this Part:

**Schedule 1.3 amendments** means the amendments made to this Act by Schedule 1.3 to the *State Revenue Legislation Amendment Act 2010*.

### **84 General application of amendments**

- (1) The Schedule 1.3 amendments do not affect any liability for duty that arose before 1 July 2010.
- (2) In particular, the repeal of Chapter 5 by the Schedule 1.3 amendments does not affect any obligation to pay duty under this Act in respect of a lease instrument first executed before 1 January 2008 and this Act, as in force immediately before 1 July 2010, continues to apply in respect of any such obligation.

### **85 Amendments relating to assessment of duty on dutiable transactions**

The Schedule 1.3 amendments apply in respect of any dutiable transaction that occurs on or after 1 July 2010.

### **86 Amendments to call option assignment duty**

The amendments made to section 107 by the Schedule 1.3 amendments do not apply in respect of an agreement or arrangement entered into before 1 July 2010.

## 87 Mortgage duty

- (1) The Schedule 1.3 amendments, in relation to mortgage duty, apply to the assessment of mortgage duty in respect of the following:
  - (a) a mortgage first executed on or after 1 July 2010 or that first becomes liable to duty as a mortgage on or after 1 July 2010,
  - (b) an instrument of security that first affects property in New South Wales on or after 1 July 2010 (whether or not the instrument was first executed before that date).
- (2) The Schedule 1.3 amendments, in relation to mortgage duty, extend to the assessment of duty in respect of a mortgage first executed before 1 July 2010 or that first became liable to duty as a mortgage before 1 July 2010 if an advance or further advance is made on or after 1 July 2010 that is secured by the mortgage.

### [43] Dictionary

Omit the definitions of ***loan-backed security*** and ***pool of loans***.

Insert in alphabetical order:

***asset-backed security*** means:

- (a) an instrument or property creating, conferring or comprising a right or interest (whether described as a unit, bond or otherwise) of or on a beneficiary in a scheme under which the profits, distributions of capital or income in which beneficiaries participate arise or arises from the acquisition, holding, management or disposal of financial assets, a pool of assets or a part of a pool of assets, or any instrument which evidences such a right or interest, or
- (b) a debt security:
  - (i) the payments under which by the person that issues or makes the instrument are derived substantially from the acquisition, holding, management or disposal of financial assets, a pool of assets or a part of a pool of assets, and
  - (ii) that is secured by a mortgage or charge over financial assets, a pool of assets or a part of a pool of assets, or
- (c) an instrument of a class or description of instruments, or property of a class or description of property, prescribed by the regulations to be an asset-backed security for the purposes of this definition.

***financial asset*** means:

- (a) a loan, including any security for the loan, or
- (b) a credit card account, or
- (c) a hire purchase agreement, or
- (d) a chattel lease, whether finance or operating, or
- (e) a vehicle dealer floor plan agreement, or
- (f) a contract under which insurance or any other financial service or product is provided, or
- (g) any rights of a lender, bailor or financial service or product provider that are usually conferred in relation to a financial asset referred to above or that are incidental to a financial asset referred to above.

**pool of assets** means a pool of assets that is comprised substantially of any one or more of the following:

- (a) financial assets,
- (b) cash,
- (c) notes, debentures, loans, stock, promissory notes, bonds or other securities of a government body,
- (d) bills of exchange, promissory notes or other negotiable instruments accepted, drawn or endorsed by a bank, a permanent building society or a government body,
- (e) deposits with, or the acquisition of certificates of deposit or any other security issued by, a bank, a permanent building society or a government body,
- (f) asset-backed securities,
- (g) mortgage-backed securities,
- (h) a guaranteed investment contract of a type approved by the Chief Commissioner,
- (i) assets of a class or description of assets prescribed by the regulations for the purposes of this definition.

**[44] Dictionary, definitions of “cost”, “fit-out costs”, “franchise”, “franchise arrangement”, “franchisee”, “franchisor” and “variation”**

Omit the definitions.

**[45] Dictionary**

Insert in alphabetical order:

**special disability trust** has the meaning given by section 1209L of the [Social Security Act 1991](#) of the Commonwealth.

#### Explanatory note

##### Duties exemptions and concessions

Items [4] and [14] (proposed section 65 (22)) of the proposed amendments provide for a nominal amount of duty, or an exemption from duty, in respect of certain dutiable transactions and declarations of trust that are made in connection with a special disability trust. These are certain trusts that are established for the purpose of making financial provision for people with disabilities and that comply with requirements under the [Social Security Act 1991](#) of the Commonwealth. Item [45] contains a definition of **special disability trust**.

Item [3] refines the circumstances in which certain transactions that are made as a consequence of the retirement of a trustee and the appointment of a new trustee are chargeable with nominal duty. Under the existing provisions, a nominal amount is charged in such circumstances if the dutiable property concerned is transferred to a special trustee. The amendment limits the definition of **special trustee**, so that the concession applies only to a licensed trustee acting in its capacity as trustee or administrator of a deceased estate or the trustee of a complying superannuation fund acting in its capacity as trustee of that fund. Item [4] includes new requirements that must be met before a transfer of dutiable property to a licensed trustee company that is not acting in its capacity as trustee or administrator of a deceased estate will be chargeable with nominal duty.

Items [5] and [6] are a consequential amendments to the amendments made by items [3] and [4].

Item [7] provides for nominal duty on certain transfers of dutiable property that are made by the custodian for the trustee of a trust to another custodian of the trustee of the trust, where there is no change in the beneficial ownership of the dutiable property and certain other requirements are met.

Item [8] extends an existing duty concession for certain transfers that are made in connection with a person changing superannuation funds. The concession is extended to a transfer of marketable securities from a life company or custodian for a life company to the trustee, or the custodian of the trustee, of a superannuation fund that is made in the consideration of the surrender or termination of a policy of life insurance issued by the life company.

Item [9] provides for the charging of a nominal amount of duty on a transfer or an agreement to transfer dutiable property from a person to the trustee of a self managed superannuation fund, if:

- (a) the transferor is the only member of the superannuation fund or the property is to be held by the trustee of the superannuation fund solely for the benefit of the transferor, and
- (b) the property is to be used solely for the purpose of providing a retirement benefit to the transferor.

Item [10] provides for the charging of nominal duty on a declaration by an executor of a will that is made under section 11 of the [Trustee Act 1925](#) (a declaration by the executor that he or she ceases to hold property as executor and now holds property as a trustee or beneficiary).

Item [11] exempts from duty a transfer of dutiable property to, or vesting of dutiable property in, a former bankrupt for no consideration, where the transfer or vesting is made as a consequence of the discharge or annulment of bankruptcy.

Item [12] revises a duty exemption that is applicable to certain instruments relating to superannuation, so that it applies only if the Chief Commissioner of State Revenue is satisfied that the primary purpose for which the relevant transaction was effected was to comply with legal requirements relating to superannuation funds.

Item [13] exempts from duty a vesting of association property in an association that occurs on the registration of a plan or dealing by which association property is created under the [Community Land Development Act 1989](#).

Item [14] (proposed section 65 (23)) establishes a duty exemption for certain dutiable transactions that are made as a consequence of enforcement action taken in respect of a registered maintenance liability under the [Child Support \(Registration and Collection\) Act 1988](#) of the Commonwealth (such as a liability for child or spouse support).

Item [14] (proposed section 65 (24)) establishes a duty exemption for certain dutiable transactions that are made to rectify the consequences of fraudulent conduct or as a consequence of a court declaration that a registered transfer is void or voidable.

Items [15], [25] and [33] extend duty exemptions relating to the break-up of marriages and other relationships so that they apply to a transfer of vested bankruptcy property of a party to a marriage or de facto relationship in the same way as they apply to matrimonial property or relationship property.

Item [34] makes it clear that an exemption for the transfer of land used for primary production between family members does not apply if the person acquiring the land does so as a trustee.

Items [35] and [36] extend existing duty exemptions available to charitable and benevolent bodies so that they apply to a larger range of dutiable transactions.

Items [39] and [43] extend an existing exemption for securitisation arrangements so that it applies not only to loan-backed securities but to any asset-backed security. **Asset-backed security** is defined in item [43]. The amendments also ensure that the exemption applies to transactions or instruments to the extent that they relate to securitisation only. Items [37] and [38] include a similar limitation for securitisation arrangements that relate to mortgage-backed securities.

### **Dutiable transactions**

Item [1] makes it clear, for avoidance of doubt, that a liability for duty arises in respect of a transaction with respect to dutiable property that is taken to be a transfer of dutiable property (such as an agreement to transfer property or a declaration of trust over dutiable property) even if the dutiable property is not in existence at the time that the transfer is taken to have occurred.

### **First Home Plus scheme**

Item [16] ensures that a person who owns property as an executor of an estate is not prevented from being eligible under the First Home Plus scheme if he or she decides to purchase the property.

Item [19] makes further provision for the application of the First Home Plus scheme to multiple occupancy contracts. The object of the amendment is to ensure that the cap on the value of the dutiable transaction applies to that part of the land that is to be an exclusive occupancy under the contract, and not to the whole of the land. Items [17] and [18] are consequential amendments.

### **Call option assignments**

Item [20] provides for further circumstances in which the assignment of a call option will be considered to be a dutiable transaction. As a result of the amendment, an agreement or arrangement under which a person nominates another person as purchaser or transferee of dutiable property the subject of a call option will be treated as a dutiable transaction in certain circumstances. Item [21] is a consequential amendment. Item [22] is to avoid an argument that the provisions apply to natural persons only.

### **Landholder duty**

Item [24] amends the landholder duty provisions that allow the tracing of interests through linked entities. The amendment clarifies that interests can be traced through trusts and partnerships. It also ensures that where a person holds property in different capacities, the property holdings will be treated as separate property holdings for the purposes of the tracing provisions.

Items [23] and [27] are law revision amendments to clarify that certain provisions that apply with respect to the custodian of the trustee of a unit trust scheme also apply to any sub-custodian of the custodian.

Item [26] omits a redundant provision.

### **Mortgage duty**

Items [29] and [30] clarify the method for determining the value of property secured by a mortgage (for mortgage duty) when the mortgage relates to property that is partly within and partly outside New South Wales.

Item [29] makes it clear that more than one relevant document can be used for the purpose of determining the value of property affected by the mortgage. The document or documents used must provide a value of all the property affected by the mortgage. The proposed amendment also provides that, for a mortgagor who is a member of a group, the consolidated accounts of the

group (if available and relevant) are to be used for the purpose of calculating the dutiable proportion of the mortgage. In that case, the only debt or equity to be taken into account is the debt or equity as disclosed in the consolidated accounts. This last requirement prevents a practice of double-counting which reduces the dutiable proportion of the mortgage.

Item [30] provides a method for calculating the value of the goodwill of a business or intellectual property in New South Wales, using a test similar to the test for business assets in Chapter 2 of the *Duties Act 1997*.

Item [31] removes a redundant provision.

Item [32] corrects a cross-reference.

#### **Miscellaneous**

Items [28] and [44] omit provisions of the *Duties Act 1997* relating to duty on lease instruments. The provisions are redundant on account of the abolition of lease duty. Items [2] and [40] are consequential amendments.

Item [41] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Item [42] provides for specific savings and transitional matters.

## **Schedule 2 Amendment of emergency services legislation**

### **2.1 Fire Brigades Act 1989 No 192**

#### **[1] (Repealed)**

#### **[2] Section 49 When fire brigade contributions are to be paid**

Omit “1 July” from section 49 (2) (a). Insert instead “1 August”.

#### **Explanatory note**

Item [1] of the proposed amendments expressly authorises the Chief Executive, Emergency Management NSW to collect fire brigade contributions payable under Part 5 of the *Fire Brigades Act 1989* and to bank the money before it is paid into the NSW Fire Brigades Fund.

Item [2] provides that the first of the 4 fire brigade contribution instalments for a financial year is to be paid on or before 1 August instead of 1 July.

### **2.2 Rural Fires Act 1997 No 65**

#### **[1] (Repealed)**

#### **[2] Section 108 When fire brigade contributions are to be paid**

Omit “1 July” from section 108 (2) (a). Insert instead “1 August”.

#### **Explanatory note**

Item [1] expressly authorises the Chief Executive, Emergency Management NSW to collect rural fire brigade contributions payable under Part 5 of the *Rural Fires Act 1997* and to bank the money before it is paid into the NSW Rural Fire Fighting Fund.

Item [2] provides that the first of the 4 rural fire brigade contribution instalments for a financial year is to be paid on or before 1 August instead of 1 July.

### **2.3**

(Repealed)

## 2.4 State Emergency Service Act 1989 No 164

### [1] (Repealed)

### [2] Section 24G When SES contributions are to be paid

Omit “1 July” from section 24G (2) (a). Insert instead “1 August”.

#### Explanatory note

Item [1] expressly authorises the Chief Executive, Emergency Management NSW to collect SES contributions payable under Part 5A of the *State Emergency Service Act 1989* and to bank the money before it is paid into the NSW State Emergency Service Fund.

Item [2] provides that the first of the 4 SES contribution instalments for a financial year is to be paid on or before 1 August instead of 1 July.

## Schedule 3 Amendment of Gaming Machine Tax Act 2001 No 72

### [1] Section 12 Annual rate for hoteliers

Insert at the end of section 12:

#### Note—

From the 2010 tax year, tax rates 1 and 2 are nil. Accordingly, no tax is payable on profits of up to \$200,000.

### [2] Section 13 Instalment rate for hoteliers

Insert at the end of section 13:

#### Note—

From the 2010 tax year, tax rates 1 and 2 are nil. Accordingly, an instalment is not payable on profits in an instalment period of up to \$50,000.

### [3] Section 13A Tax rates for hoteliers

Omit the matter relating to 2010 and subsequent tax years from Table 1.

Insert instead:

2010 and subsequent tax years	Nil	Nil	33.0	33.0	36.0	50.0
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### [4] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2010*

#### Explanatory note

Item [3] of the proposed amendments changes the rates of gaming machine tax applicable to hotels in the year commencing 1 July 2010 and subsequent years. Hotels will no longer be liable to pay gaming machine tax on the first \$200,000 of annual gaming machine profits. For profits exceeding \$200,000 a year and up to \$5,000,000 a year, the rates are increased. For profits exceeding \$5,000,000 the rate remains the same. Items [1] and [2] are consequential amendments.

Item [4] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

## **Schedules 4-6 (Repealed)**

## **Schedule 7 Amendment of [Motor Vehicles Taxation Act 1988 No 111](#)**

### **[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

**bus** means a motor vehicle (not being a taxi-cab):

- (a) plying on a road or road related area for hire for the conveyance of passengers at separate fares, or
- (b) fitted or equipped or constructed so as to seat more than 8 adult persons and used or let or intended to be used or let for the conveyance of passengers for hire or for any consideration or in the course of any trade or business.

**lower taxed motor vehicle** means a motor vehicle not exceeding 2,500 kilograms in weight that:

- (a) is used substantially for private purposes and has been modified in a manner or to an extent that is recognised by the Authority as being solely or primarily for the transport of a wheelchair, or
- (b) is owned by at least one person who receives a carer allowance or carer payment under the [Social Security Act 1991](#) of the Commonwealth, or
- (c) is designated by the Authority as a kind of energy efficient motor vehicle in a list that is maintained for the purposes of this definition by the Authority and is made publicly available on its website or in some other manner that the Authority considers appropriate, or
- (d) is a trailer.

### **[2] Section 3 (1), definition of “motor car”**

Omit “motor omnibus”. Insert instead “bus”.

### **[3] Section 3 (1), definition of “motor omnibus”**

Omit the definition.



**[4] Section 3B**

Omit the section. Insert instead:

**3B Relationship with Part 2A of Road Transport (Vehicle Registration) Act 1997**

This Act applies to motor vehicles in respect of which an amount of tax (including a nil amount) is specified in Schedule 1, but does not apply to:

- (a) a vehicle in respect of which a registration charge (including a nil charge) is imposed under Part 2A of the *Road Transport (Vehicle Registration) Act 1997*, or
- (b) unless otherwise expressly provided in that Schedule, a vehicle that is exempt from registration charges under that Part.

**Note—**

Part 2A of the *Road Transport (Vehicle Registration) Act 1997* makes provision for registration charges for heavy vehicles.

**[5] Section 5 Amount of tax**

Omit “1996” from section 5 (1). Insert instead “2010”.

**[6] Section 5 (1A)**

Omit the subsection. Insert instead:

(1A) If registration or renewal of registration of a motor vehicle of a class described in Schedule 1 is effected for 1 year commencing on any date (referred to in this section as the **registration date**), the amount of motor vehicle tax applicable to the vehicle on registration or renewal of registration is:

- (a) in a case where the registration date occurs in the calendar year 2011—the amount of such tax specified in Schedule 1 for a motor vehicle of that class, adjusted by the prescribed proportion, or
- (b) in a case where the registration date occurs in any subsequent calendar year—the amount of such tax for which a motor vehicle of that class was liable during the previous year, adjusted by the prescribed proportion.

**[7] Section 5 (1E)**

Omit the subsection.

**[8] Section 23 Regulations**

Omit “motor omnibuses” wherever occurring in section 23 (2) (b).

Insert instead “buses”.

**[9] Schedule 1**

Omit the Schedule. Insert instead:

**Schedule 1 Motor vehicle tax for 2010**

(Section 5)

**Note—**

Clause 2 of Schedule 2 provides that the amounts of tax specified in this Schedule do not apply to motor vehicle tax payable under this Act before 1 July 2010. Registrations and renewals effected in 2011 and subsequent calendar years attract motor vehicle tax at indexed rates determined in accordance with section 5.

**1 Motor cycles**

The amount of tax for a motor cycle is \$52.

**2 Motor vehicles not exceeding 2,500 kg**

The amount of tax for a motor vehicle (other than a motor cycle) that has a weight not exceeding 2,500 kilograms is:

- (a) if the vehicle is used substantially for private purposes and is not a lower taxed motor vehicle—the amount specified in Column 2 of Table 1 to this clause shown opposite the appropriate range of weights for the vehicle in Column 1 of that Table, or
- (b) if the vehicle is not used substantially for private purposes and is not a lower taxed motor vehicle—the amount specified in Column 3 of Table 1 to this clause shown opposite the appropriate range of weights for the vehicle in Column 1 of that Table, or
- (c) if the vehicle is used substantially for private purposes and is a lower taxed motor vehicle—the amount specified in Column 2 of Table 2 to this clause shown opposite the appropriate range of weights for the vehicle in Column 1 of that Table, or
- (d) if the vehicle is not used substantially for private purposes and is a lower taxed motor vehicle—the amount specified in Column 3 of Table 2 to this clause shown opposite the appropriate range of weights for the vehicle in Column 1 of that Table.

**Table 1—Motor vehicles that are not lower taxed motor vehicles**

**Column 1**

**Column 2**

**Column 3**

Weight of vehicle		Tax if vehicle used substantially for private purposes	Tax if vehicle not used substantially for private purposes
Exceeding kg	Not exceeding kg	\$	\$
	975	176	286
975	1,150	204	325
1,150	1,500	250	394
1,500	2,500	381	594

**Table 2—Lower taxed motor vehicles**

Column 1		Column 2	Column 3
Weight of vehicle		Tax if vehicle used substantially for private purposes	Tax if vehicle not used substantially for private purposes
Exceeding kg	Not exceeding kg	\$	\$
	975	176	286
975	1,150	199	320
1,150	1,500	230	374
1,500	2,500	351	564

**3 Motor vehicles exceeding 2,500 kg that are not buses, private use vehicles, motor lorries or light self-propelled plant**

The amount of tax for a motor vehicle with all of the following characteristics is the amount specified in, or calculated in the manner specified in, Column 2 of the Table to this clause shown opposite the appropriate range of weights for the vehicle in Column 1 of that Table:

- (a) the vehicle has a weight exceeding 2,500 kilograms,
- (b) the vehicle is not liable to registration charges (including a nil charge) under Part 2A of the *Road Transport (Vehicle Registration) Act 1997* or is exempt from registration charges under that Part,
- (c) the vehicle is not used substantially for private purposes,
- (d) the vehicle is not a bus, motor lorry or light self-propelled plant as defined in clause 6.

**Table**

**Column 1**

**Column 2**

**Weight of the vehicle**

**Tax**

**Exceeding  
kg**

**Not exceeding  
kg**

**\$**

2,500	2,790	922
2,790	3,050	1,048
3,050	3,300	1,148
3,300	3,560	1,248
3,560	3,810	1,340
3,810	4,060	1,442
4,060	4,320	1,537
4,320	4,500	1,636
4,500	4,830	1,730
4,830	5,080	1,828
5,080	5,330	1,931
5,330	5,590	2,025
5,590	5,840	2,125
5,840	6,100	2,221
6,100	6,350	2,318
6,350	6,600	2,413
6,600	6,860	2,515
6,860	7,110	2,609
7,110	...	\$2,609 plus \$94.90 for each 254 kg or part thereof by which the weight exceeds 7,110 kg

**4 Buses and private use vehicles exceeding 2,500 kg**

The amount of tax for a motor vehicle with all of the following characteristics is 60 per cent of the amount applicable to a vehicle of the same weight under clause 3:

- (a) the vehicle has a weight exceeding 2,500 kilograms,

(b) the vehicle is not liable to registration charges (including a nil charge) under Part 2A of the *Road Transport (Vehicle Registration) Act 1997* or is exempt from registration charges under that Part,

(c) the vehicle is used substantially for private purposes or is a bus.

## 5 Motor lorries exceeding 2,500 kg

The amount of tax for a motor lorry that has a weight exceeding 2,500 kilograms and is not liable to registration charges (including a nil charge) under Part 2A of the *Road Transport (Vehicle Registration) Act 1997* or is exempt from registration charges under that Part is \$594.

## 6 Light self-propelled plant

(1) In this clause, **light self-propelled plant** means plant (other than a trailer) that:

(a) has a weight exceeding 2,500 kilograms, and

(b) is not liable to registration charges (including a nil charge) under Part 2A of the *Road Transport (Vehicle Registration) Act 1997* or is exempt from registration charges under that Part, and

(c) is not used substantially for private purposes.

(2) The amount of tax for a light self-propelled plant is the amount specified in Column 2 of the Table to this clause shown opposite the appropriate range of weights for the vehicle in Column 1 of that Table.

**Table**

<b>Column 1</b>		<b>Column 2</b>
<b>Weight of vehicle</b>		<b>Tax</b>
<b>Exceeding kg</b>	<b>Not exceeding kg</b>	<b>\$</b>
2,500	2,790	960
2,790	3,050	1,092
3,050	3,300	1,196
3,300	3,560	1,301
3,560	3,810	1,397
3,810	4,060	1,503
4,060	4,320	1,603

4,320

4,500

1,705

## **7 Primary producers' vehicles—special provisions**

The amount of tax for a primary producer's vehicle that is a motor lorry (other than a station wagon), a tractor or a trailer is the lesser of the following amounts:

- (a) 55 per cent of the amount which would, but for this clause, be applicable to the vehicle under clause 2 or 3,
- (b) \$564 (in the case of a lower taxed motor vehicle) or \$594 (in the case of a motor vehicle that is not a lower taxed motor vehicle).

## **8 Tractors—special provisions**

Despite any other provision of this Schedule:

- (a) the amount of tax payable for a tractor that is not a primary producer's vehicle is not to exceed:
  - (i) if the tractor is a lower taxed motor vehicle—\$960, or
  - (ii) if the tractor is not a lower taxed motor vehicle—\$990, and
- (b) the amount of tax payable for a tractor that is a primary producer's vehicle is not to exceed:
  - (i) if the tractor is a lower taxed motor vehicle—\$528, or
  - (ii) if the tractor is not a lower taxed motor vehicle—\$545.

## **9 Additional amount of tax—vehicles over 3,560 kg**

- (1) This clause applies to a motor vehicle that:
  - (a) has a weight exceeding 3,560 kilograms, and
  - (b) is not liable to registration charges (including a nil charge) under Part 2A of the *Road Transport (Vehicle Registration) Act 1997* or is exempt from registration charges under that Part, and
  - (c) is not used substantially for private purposes.
- (2) The amount of tax applicable under clause 3 or 4 to a vehicle to which this clause applies is increased:
  - (a) if the vehicle is not a bus—by \$221, or
  - (b) if the vehicle is a bus—by \$133.

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

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2010*

**[11] Schedule 2, clause 2**

Insert after clause 1:

**2 Provision consequent on enactment of State Revenue Legislation Amendment Act 2010**

The amendments made to section 5 and Schedule 1 by the *State Revenue Legislation Amendment Act 2010* do not affect any motor vehicle tax that was or is payable in relation to the registration or renewal of registration of a motor vehicle if that registration or renewal was required before 1 July 2010. Accordingly, any such motor vehicle tax is payable in accordance with this Act as in force before the commencement of those amendments.

**Explanatory note**

Item [1] of the proposed amendments includes the term **lower taxed motor vehicle** in the *Motor Vehicles Taxation Act 1988 (the Act)* and updates another term used in that Act for statute law revision purposes. The term **lower taxed motor vehicle** is defined as meaning a motor vehicle, not exceeding 2,500 kilograms in weight, that is used substantially for private purposes and is modified for wheelchair transport, that is owned by a person receiving a carer payment or carer allowance from the Commonwealth Government, that is designated by the Roads and Traffic Authority as an energy efficient motor vehicle in a list kept by the Authority and made publicly available or that is a trailer. Items [2] and [3] are consequential amendments.

Item [9] substitutes Schedule 1 to the Act which contains the amounts of motor vehicle tax. The new Schedule updates the figures which have been automatically increased, in accordance with section 5 of the Act, to reflect CPI increases since the Schedule was substituted in 1996. The new Schedule also generally increases the tax payable by vehicles not exceeding 2,500 kilograms in weight on a sliding scale of \$5 to \$30 increasing with the weight of the vehicle.

The following motor vehicles are exempt from the non-CPI related increases of tax:

- (a) lower taxed motor vehicles,
- (b) motor cycles,
- (c) motor vehicles not exceeding 975 kilograms in weight.

Items [5]-[8] are consequential amendments.

Item [4] substitutes section 3B of the Act for statute law revision purposes to clarify the relationship between the Act and Part 2A of the *Road Transport (Vehicle Registration) Act 1997* which deals with registration charges for heavy vehicles. The new section makes it clear that, if Schedule 1 to the Act expressly provides (as is currently the case), motor vehicle tax is payable in respect of certain heavy vehicles that are exempt from tax under Part 2A of the *Road Transport (Vehicle Registration) Act 1997*.

Item [10] enables regulations of a savings or transitional nature to be made consequent on the enactment of the proposed amendments.

Item [11] provides that the new rates of motor vehicle tax are not payable in relation to a motor vehicle if it was required to be registered, or its registration was required to be renewed, before 1 July 2010.

## **Schedule 8 Amendment of Payroll Tax Act 2007 No 21**

### **[1] Section 53 Maternity and adoption leave**

Insert at the end of section 53:

**Note—**

Clause 13A of Schedule 2 provides for a similar exemption for paternity leave given to a male employee. That exemption is not included in some corresponding laws.

### **[2] Schedule 1 Calculation of payroll tax liability for financial year commencing 1 July 2007 and subsequent financial years**

Omit paragraphs (c) and (d) from the definition of **R** in clause 1.

Insert instead:

(c) 5.65% on and from 1 January 2010 until the end of 30 June 2010, and

(d) 5.5% on and from 1 July 2010 until the end of 31 December 2010, and

(e) 5.45% on and from 1 January 2011.

### **[3] Schedule 2 NSW specific provisions**

Omit “who was an employee of the employer within the period of 3 months before commencing employment as a trainee” from clause 5 (5) (b).

Insert instead “who has been continuously employed by the employer for more than 3 months full-time or 12 months casual or part-time immediately prior to commencing employment as a trainee”.

### **[4] Schedule 2, clause 13A**

Insert after clause 13:

#### **13A Paternity leave**

- (1) Wages are exempt wages if they are paid or payable to an employee in respect of paternity leave, being leave given to a male employee in connection with the pregnancy of a woman with his unborn child or the birth of his child (other than sick leave, recreation leave, annual leave or any similar leave).
- (2) It is immaterial whether the leave is taken during or after the pregnancy.
- (3) The exemption is limited to wages paid or payable in respect of a maximum of 14 weeks paternity leave in respect of any one pregnancy.



- (4) For the avoidance of doubt, a reference in subclause (3) to a period of 14 weeks paternity leave is a reference to:
- (a) a period that is the equivalent of 14 weeks leave on full pay, in the case of full-time employees who take leave on less than full pay, or
  - (b) a period of 14 weeks leave at part-time rates of pay, in the case of part-time employees.
- (5) The exemption does not apply to any part of wages paid or payable in respect of paternity leave that comprises fringe benefits.
- (6) An employer wishing to claim an exemption under this clause in respect of paternity leave must obtain and keep a medical certificate in respect of, or statutory declaration by, the employee:
- (a) stating that a woman is or was pregnant with the employee's unborn child, or
  - (b) stating that a woman has given birth to the employee's child and the date of birth.

**Note—**

Section 53 of the *Taxation Administration Act 1996* requires these records to be kept for at least 5 years unless the Chief Commissioner authorises earlier destruction.

**[5] Schedule 2A Special provisions for financial years 2008-2010**

Omit the note at the end of clause 3. Insert instead:

**Note—**

This method of adding the payroll tax payable for 2 half-years accommodates the financial years commencing on 1 July 2008, 2009 and 2010, in which the rate that applies in the first half of the year is different from the rate that applies in the second half of the year.

**[6] Schedule 3 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2010*

**[7] Schedule 3, Part 6**

Insert after Part 5:

**Part 6 Provision consequent on enactment of State Revenue**

## Legislation Amendment Act 2010

### 19 Exemptions and rebates

The amendments to Schedule 2 made by the *State Revenue Legislation Amendment Act 2010* apply to wages paid or payable on or after 1 July 2010.

#### Explanatory note

Item [2] of the proposed amendments reduces the payroll tax rate payable for the period from 1 July 2010 to 31 December 2010 from 5.65% to 5.5%. This brings forward the payroll tax reduction that was due to occur on 1 January 2011. From 1 January 2011, the rate is further reduced to 5.45%. Item [5] is a consequential amendment to update a note.

Item [4] exempts from payroll tax wages that are paid or payable to a male employee for paternity leave. This exemption is similar to the exemption that applies to maternity leave and adoption leave. Item [1] inserts a note in the maternity leave exemption provisions drawing attention to the paternity leave exemption. The paternity leave provisions are in a different part of the Act because not all States and Territories have adopted a paternity leave exemption. Item [7] provides that the amendment applies to wages paid or payable on or after 1 July 2010.

Item [3] provides that the payroll tax rebate that an employer is entitled to in respect of apprentice/trainee wages does not apply to wages payable to a trainee who has been continuously employed by the employer for more than 3 months full-time or 12 months casual or part-time immediately before commencing work as a trainee. This replaces an existing exclusion for wages payable to a trainee who was an employee of the employer within the period of 3 months before becoming a trainee. Item [7] provides that the amendment applies to wages paid or payable on or after 1 July 2010.

Item [6] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

## Schedule 9 Amendment of **Public Finance and Audit Act 1983 No 152**

### Section 12A

Insert after section 12:

#### **12A Minister may delegate or authorise other Ministers to delegate expenditure of money appropriated etc to Minister**

- (1) A Minister to whom a sum of money is appropriated out of the Consolidated Fund for a use or purpose (whether by an annual Appropriation Act or other Act) may:
  - (a) delegate to another Minister or to an officer of any authority, or
  - (b) authorise another Minister to delegate to an officer of any authority, the committing or incurring of expenditure from the sum so appropriated.
- (2) A Minister who is authorised to make payments for a use or purpose from any account in the Special Deposits Account may:
  - (a) delegate to another Minister or to an officer of any authority, or
  - (b) authorise another Minister to delegate to an officer of any authority,

the committing or incurring of expenditure from the money in that account.

- (3) This section has effect for the purposes of section 12 and any other law of the State.

**Explanatory note**

The proposed amendment (which makes express provision for a Minister's authority to delegate the incurring of expenditure from money appropriated or made available to the Minister) is consequential on the revised format of the *Appropriation Bill 2010* arising from the amalgamation of government departments and other agencies. The principal agencies are responsible to more than one Minister. The *Appropriation Bill 2010* provides that the appropriation for an agency is made to one of those Ministers with the intention that the Minister will authorise other relevant Ministers (under the above amendment) to incur expenditure, or to delegate authority to incur expenditure to relevant officers of the agency, in relation to the service group for which the other Minister is responsible.

## **Schedule 10 Amendment of real property legislation**

### **10.1 Real Property Act 1900 No 25**

**[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1) (a):

***Torrens assurance levy***—has the meaning given by section 134A.

**[2] Section 117 Certificate of correctness**

Omit “1 penalty unit” from section 117 (2). Insert instead “10 penalty units”.

**[3] Section 134 Torrens Assurance Fund**

Omit section 134 (2) (a). Insert instead:

- (a) any amounts that the Minister (after consultation with the Treasurer) directs to be paid to the Fund from Torrens assurance levies paid to the Registrar-General (whether during the financial year in which the levies are paid or in subsequent financial years),

**[4] Section 134 (2A)**

Insert after section 134 (2):

- (2A) The Minister may make a direction under subsection (2) (a) at any time after the levies are paid into the Consolidated Fund, in which case the amounts are to be paid into the Torrens Assurance Fund without further appropriation.

**[5] Section 134 (4)**

Omit the subsection.

**[6] Section 134A**

Insert after section 134:

**134A Torrens assurance levy**

- (1) The regulations may require a levy (a **Torrens assurance levy**) to be paid to the Registrar-General in respect of any dealing, caveat, withdrawal of caveat, instrument, application or request lodged under this Act.
- (2) The regulations are to specify the amount of the levy or the manner of calculating the amount of the levy.
- (3) A Torrens assurance levy may comprise a specified amount, an ad valorem amount, or a specified base amount to which an ad valorem amount is added.
- (4) A Torrens assurance levy is additional to any fee that is payable under this Act for the lodgment of a dealing, caveat, withdrawal of caveat, instrument, application or request.

**[7] Section 144 Regulations**

Omit “may make regulations prescribing” from section 144 (1).

Insert instead “may make regulations for or with respect to”.

**[8] Section 144 (1) (b) and (c)**

Omit section 144 (1) (b). Insert instead:

- (b) the Torrens assurance levies payable under this Act, and
- (c) the refund or waiver of any such fees, charges, expenses or levies, and

**[9] Section 144A**

Insert after section 144:

**144A Payment and recovery of fees or levies**

- (1) The Registrar-General may enter into an arrangement with the Chief Commissioner of State Revenue for the administration and enforcement of any provision made by or under this Act for the payment of fees or levies.
- (2) The regulations may make provision, in connection with any such arrangement or proposed arrangement, for the application of the [Taxation Administration Act 1996](#), or any regulations under that Act, to any fee or levy payable under this

Act.

- (3) Without limiting the above, the regulations may provide that the *Taxation Administration Act 1996* applies in respect of a fee or levy payable under this Act, with or without modifications, as if the fee or levy were a tax and this Act were a taxation law (within the meaning of that Act).

#### **[10] Schedule 3 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*State Revenue Legislation Amendment Act 2010*, to the extent that it amends this Act and the regulation under this Act

#### **Explanatory note**

Item [6] of the proposed amendments enables the regulations under the *Real Property Act 1900 (the Act)* to require a levy (a **Torrens assurance levy**) to be paid in respect of any dealing, caveat, withdrawal of caveat, instrument, application or request lodged under the Act. The levy may comprise a specified amount, an ad valorem amount or a specified base amount to which an ad valorem amount is added.

The Torrens assurance levy replaces existing arrangements for the funding of the Torrens Assurance Fund. At present, the Act allows the Minister to direct payments to be made to the Torrens Assurance Fund from fees paid to the Registrar-General for the lodgment of any dealing, caveat or withdrawal of caveat. It also permits the fee payable to the Registrar-General for lodgment of a dealing, caveat or withdrawal of caveat to be prescribed so as to include the amount to be paid into the Torrens Assurance Fund. Under the new arrangements, the levy will be a separate charge to the administrative fees paid under the Act, and will be payable into the Consolidated Fund. The Minister may, after consultation with the Treasurer, direct that payments be made to the Torrens Assurance Fund from Torrens assurance levies paid to the Registrar-General. Any money the subject of such a direction is to be paid from the Consolidated Fund, without further appropriation. See items [3], [4] and [5]. Item [1] is a consequential amendment.

Items [7] and [8] are related amendments to broaden the regulation-making powers under the Act, so that the regulations can make further provision for the charging of the levy, and the refund or waiver of the levy.

Item [9] enables the Registrar-General to enter into arrangements with the Chief Commissioner of State Revenue for the administration and enforcement of any provision made by or under the Act for the payment of fees or levies.

Item [2] increases the penalty for making a false statement to the Registrar-General in connection with an application under the Act from 1 penalty unit (\$110) to 10 penalty units (\$1,100).

Item [10] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

## **10.2 Real Property Regulation 2008**

### **[1] Clause 4 Lodgment of dealings and caveats**

Omit clause 4 (b). Insert instead:

- (b) be accompanied by the relevant fee, as set out in Part 1 of Schedule 1, and
- (c) be accompanied by any Torrens assurance levy payable, as set out in Part 2 of Schedule 1.

**[2] Clauses 10 (4), 11 (c) and 12 (1)**

Insert “Part 1 of” before “Schedule 1” wherever occurring.

**[3] Clause 12A**

Insert after clause 12:

**12A Torrens assurance levy**

- (1) A Torrens assurance levy is payable in respect of any dealing, caveat, withdrawal of caveat, instrument, application or request listed in Part 2 of Schedule 1 that is lodged with the Registrar-General.
- (2) The amount of the levy is the amount as specified or calculated in accordance with Part 2 of Schedule 1.
- (3) A levy that is not a whole dollar amount is to be rounded down to the nearest whole dollar amount.
- (4) A levy is payable on the lodgment of the relevant dealing, caveat, withdrawal of caveat, instrument, application or request or at such time and in accordance with such conditions as the Registrar-General may agree with the person paying the levy.
- (5) For the purposes of determining the levy payable, the Registrar-General is entitled (but not required) to rely on any statement made in a notice of sale (being the notice required to accompany a dealing under section 39 (1B) of the Act) as evidence of the purchase price and date on which a contract for the sale of land was entered into.

**[4] Clause 18A**

Insert after clause 18:

**18A Transitional—introduction of ad valorem Torrens assurance levy**

For a dealing to transfer the ownership in land under section 46 of the Act, the levy payable is the amount specified in item 7 of Part 2 of Schedule 1 (and not item 5 or 6) if either of the following provisions apply:

- (a) the dealing is a transfer executed to give effect to a contract for the sale of land entered into before the commencement of this clause,
- (b) the dealing is a transfer first executed before the commencement of this clause.

**[5] Schedule 1 (as amended by the Real Property Amendment (Fees) Regulation 2010)**

Insert “**and Levies**” after “**Fees**” in the heading.

**[6] Schedule 1, clause reference**

Omit “4 (b), 10 (4), 11 (c) and 12 (1)”. Insert instead “4, 10, 11, 12 and 12A”.

**[7] Schedule 1, Part 1, heading**

Insert at the beginning of the Schedule (after the clause reference):  
Part 1 **Fees**

**[8] Schedule 1, items 8-13**

Omit the items. Insert instead:

8	On lodgment of an application under section 45D of the Act by a person in possession of land to be recorded as proprietor of an estate or interest in that land	93.00
	In addition, for each quarter-hour or part of a quarter-hour occupied in examining the application	50.00
9	On lodgment of a transfer by way of discharge of mortgage where a mortgagee has been recorded as registered proprietor pursuant to section 12B of the Act	93.00
10	On lodgment of a dealing for registration or recording of a unilateral severance of a joint tenancy pursuant to section 97 of the Act	93.00
11	On lodgment of a dealing to transfer an estate in land that changes the tenancy of co-tenants without altering their shares	93.00
12	On lodgment of a dealing to transfer the ownership of an estate in land pursuant to section 46 of the Act	190.00
13	On lodgment of an application, request or dealing for which no fee is otherwise provided	93.00

**[9] Schedule 1, items 15-20**

Omit the items. Insert instead:

15	On lodgment of an application to dispose of Crown land arising from the closing of a public road under the <a href="#">Roads Act 1993</a> , regardless of how many recordings will ensue	190.00
16	On lodgment of an application or request for amendment of a folio of the Register, Crown grant or certificate of title	93.00
17	On lodgment of an application to record in the Register an appurtenant easement created by a deed	93.00
	In addition, for each quarter-hour or part of a quarter-hour occupied in processing the application	50.00
18	On lodgment of an application under section 81A of the Act for the extinguishment of a restrictive covenant	93.00
	In addition:	
	(a) for each quarter-hour or part of a quarter-hour occupied in examining the application	50.00
	(b) for the Registrar-General's costs of giving notice under section 81D of the Act by way of registered post	Such reasonable fee (determined by the Registrar-General) as is warranted by the cost incurred in posting the notice
19	On lodgment of an application under section 49 of the Act for the cancellation of an easement that has been abandoned or extinguished	93.00
	In addition, for each quarter-hour or part of a quarter-hour occupied in examining the application	50.00
20	On lodgment of an application for the determination under Part 14A of the Act of the position of the common boundary of adjoining lands	93.00

**[10] Schedule 1, items 24-29**

Omit the items. Insert instead:

24	On lodgment or recording of a caveat	93.00
25	On withdrawal or partial withdrawal of a caveat pursuant to section 74M (1) of the Act	93.00



26	On lodgment of a request for withdrawal or partial withdrawal of a Registrar-General's caveat (no fee is payable for withdrawal or partial withdrawal of a Registrar-General's caveat consequent on lodgment and registration of a dealing)	93.00
27	On lodgment of a request for the Registrar-General to direct the manner of service of a notice on a caveator pursuant to section 74N (1) (e) of the Act	93.00
28	On lodgment of an application for preparation of a notice for service on a caveator pursuant to section 74C (3), 74I (1) or (2), 74J (1) or 74JA (2) of the Act	93.00
29	On lodgment of a notice of a change of name of a caveator or of the address for service of a notice on a caveator	93.00

**[11] Schedule 1, item 34**

Omit the item. Insert instead:

34	On lodgment of an application for a new certificate of title under section 111 of the Act	190.00
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**[12] Schedule 1, items 35 and 36**

Omit the items. Insert instead:

35	On depositing an instrument declaratory of trusts	93.00
35A	On depositing any other instrument not specified	97.00
36	On lodgment of an application for a statement of reasons under section 121 of the Act	93.00

**[13] Schedule 1, Part 2**

Insert at the end of the Schedule:

**Part 2 Torrens assurance levies**

**Levy payable**

**Applications, requests and dealings**

1	Application under section 45D of the Act by a person in possession of land to be recorded as proprietor of an estate or interest in that land	\$4
2	Transfer by way of discharge of mortgage where a mortgagee has been recorded as registered proprietor pursuant to section 12B of the Act	\$4
3	Dealing for registration or recording of a unilateral severance of a joint tenancy pursuant to section 97 of the Act	\$4
4	Dealing to transfer an estate in land that changes the tenancy of co-tenants without altering their shares	\$4
5	Dealing to transfer the ownership of an estate in land under section 46 of the Act, if the dealing is a transfer executed to give effect to a sale of land and the purchase price exceeds \$500,000 but not \$1,000,000	\$4 plus 0.2% of the amount by which the purchase price exceeds \$500,000
6	Dealing to transfer the ownership of an estate in land under section 46 of the Act, if the dealing is a transfer executed to give effect to a sale of land and the purchase price exceeds \$1,000,000	\$1,004 plus 0.25% of the amount by which the purchase price exceeds \$1,000,000
7	Dealing to transfer the ownership of an estate in land under section 46 of the Act for which no levy is otherwise provided	\$4
8	Application, request or dealing which is charged with a fee under item 13 of Part 1	\$4
9	Application to dispose of Crown land arising from the closing of a public road under the <a href="#">Roads Act 1993</a> , regardless of how many recordings will ensue	\$4
10	Application or request for amendment of a folio of the Register, Crown grant or certificate of title	\$4
11	Application to record in the Register an appurtenant easement created by a deed	\$4
12	Application under section 81A of the Act for the extinguishment of a restrictive covenant	\$4
13	Application under section 49 of the Act for the cancellation of an easement that has been abandoned or extinguished	\$4
14	Application for the determination under Part 14A of the Act of the position of the common boundary of adjoining lands	\$4

### Caveats

15	Lodgment or recording of a caveat	\$4
16	Withdrawal or partial withdrawal of a caveat pursuant to section 74M (1) of the Act	\$4
17	Request for withdrawal or partial withdrawal of a Registrar-General's caveat (no levy is payable for withdrawal or partial withdrawal of a Registrar-General's caveat consequent on lodgment and registration of a dealing)	\$4
18	Request for the Registrar-General to direct the manner of service of a notice on a caveator pursuant to section 74N (1) (e) of the Act	\$4
19	Application for preparation of a notice for service on a caveator pursuant to section 74C (3), 74I (1) or (2), 74J (1) or 74JA (2) of the Act	\$4
20	Notice of a change of name of a caveator or of the address for service of a notice on a caveator	\$4

### Certificates of title

21	Application for a new certificate of title under section 111 of the Act	\$4
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### Miscellaneous

22	Instrument declaratory of trusts	\$4
23	Application for a statement of reasons under section 121 of the Act	\$4

### Explanatory note

Item [3] of the proposed amendments requires a Torrens assurance levy to be paid in respect of certain dealings, caveats, withdrawal of caveats, instruments, applications or requests lodged with the Registrar-General under the *Real Property Act 1900 (the Act)*. In most cases, the levy payable is \$4. Under existing arrangements, a \$4 amount is taken (for deposit into the Torrens Assurance Fund) from the general fee paid to the Registrar-General when certain dealings and other instruments are lodged under the Act. As a consequence of the new arrangements, the amendments revise the Schedule of fees under the Act so that, in cases where a levy is payable, the fee is reduced by \$4. (The figures used anticipate the annual increases to fees that will have effect on 1 July 2010.)

A new part is added to the Schedule, which lists the matters in respect of which the separate Torrens assurance levy is required, and the amount payable.

Under the new arrangements, the levy is calculated on an ad valorem basis in certain circumstances. An ad valorem levy applies to a dealing to transfer the ownership of an estate in land under section 46 of the Act, if the dealing is a transfer executed to give effect to a sale of land and the purchase price exceeds \$500,000.

Items [8]-[12] make the adjustments to the existing fees under the Act described above. Item [13] provides for the matters in

respect of which a Torrens assurance levy is payable, and the amount payable. Items [2] and [5]–[7] are consequential amendments.

Item [4] is a transitional provision which ensures that the new ad valorem levy will not be chargeable in respect of dealings that reflect certain agreements entered into or transfers executed before the relevant amendments commence.

Item [1] requires dealings and caveats to be accompanied by the Torrens assurance levy payable (as well as the existing fee for lodgment).

## **Schedules 11, 12 (Repealed)**

## **Schedule 13 Consequential amendments and repeals**

### **13.1, 13.2**

(Repealed)

### **13.3 Repeal of petroleum products subsidy legislation**

The following Act and regulation are repealed:

- (a) the *Petroleum Products Subsidy Act 1997 No 112*,
- (b) the *Petroleum Products Subsidy Regulation 2004*.

#### **Explanatory note**

Schedule 13.3 repeals the *Petroleum Products Subsidy Act 1997* and the *Petroleum Products Subsidy Regulation 2004*. The legislation is no longer required because the payment of subsidies under the legislation has been abolished (with effect on 1 July 2009).