

# Duties Act 1997 No 123

[1997-123]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Personal Property Securities Legislation Amendment Act 2010 No 57](#) (not commenced — to commence on 30.1.2012)
  - [Duties Amendment \(First Home—New Home\) Act 2011 No 43](#) (not commenced — to commence on 1.1.2012)
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2011 No 62](#) (not commenced — to commence on 6.1.2012)
  - [Clubs, Liquor and Gaming Machines Legislation Amendment Act 2011 No 72](#) (not commenced)

### Authorisation

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# Duties Act 1997 No 123



New South Wales

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# Duties Act 1997 No 123



New South Wales

An Act to create and charge a number of duties.

## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Duties Act 1997*.

### 2 Commencement

This Act commences on 1 July 1998.

### 3 What does this Act do?

This Act creates and charges a number of duties.

**Note—**

Each duty is dealt with in a separate Chapter of this Act. The Contents pages list the Chapters and their subject-matter.

### 4 What is a duty?

A duty charged by this Act is, when a liability to pay the duty is created, a debt due to the State of New South Wales.

### 5 Arrangements for payment of duties

This Act does not contain all the provisions concerning duties. This Act is to be read together with the *Taxation Administration Act 1996*. The *Taxation Administration Act 1996* contains provisions that deal with, for example:

- how assessments of duty are made
- how assessments can be challenged
- what happens if duty is not paid on time
- how unpaid duty may be recovered
- what records must be kept by taxpayers

- how decisions made under this Act can be challenged
- the investigative powers of tax administrators.

## 6 Meaning of words and expressions used in this Act

Words and expressions used in this Act (or in any particular provision of this Act) that are defined in the Dictionary at the end of this Act have the meanings set out in the Dictionary.

## 7 Notes in the text

Notes included in this Act are explanatory notes and do not form part of this Act.

# Chapter 2 Transactions concerning dutiable property

## Part 1 Introduction and overview

### 8 Imposition of duty on certain transactions concerning dutiable property

(1) This Chapter charges duty on:

- (a) a transfer of dutiable property, and
- (b) the following transactions:
  - (i) an agreement for the sale or transfer of dutiable property,
  - (ii) a declaration of trust over dutiable property,
  - (iii) a surrender of an interest in land in New South Wales,
  - (iv) a foreclosure of a mortgage over dutiable property,
  - (v) a vesting of dutiable property by or as a consequence of an order of a court of this or another jurisdiction, whether inside or outside Australia,
  - (vi) the enlargement of a term in land into a fee simple under section 134 of the [Conveyancing Act 1919](#),
  - (vii) a vesting of land in New South Wales by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia,
  - (viii) a lease in respect of which a premium is paid or agreed to be paid.

#### Note—

See also Part 2 of Chapter 3, which treats a transfer or assignment of an option to purchase dutiable property as a transfer of the dutiable property in certain circumstances.

(2) Such a transfer or transaction is a **dutiable transaction** for the purposes of this Act.

(3) In this Chapter:

**declaration of trust** means any declaration (other than by a will or testamentary instrument) that any identified property vested or to be vested in the person making the declaration is or is to be held in trust for the person or persons, or the purpose or purposes, mentioned in the declaration although the beneficial owner of the property, or the person entitled to appoint the property, may not have joined in or assented to the declaration.

**lease** means a lease of land in New South Wales or an agreement for a lease of land in New South Wales.

**premium**, in respect of a lease entered into pursuant to an option, includes an amount paid or payable for the grant of the option.

**transfer** includes an assignment, an exchange and a buy-back of shares in accordance with Division 2 of Part 2J.1 of the *Corporations Act 2001* of the Commonwealth.

#### **8A Vesting of land in New South Wales by statute law**

- (1) Without limiting section 8 (1) (b) (vii), land in New South Wales is vested under statute law if the law vests the land in an entity that the law states is the successor in law of, continuation of or same entity as, the entity in which the land was previously vested.
- (2) However, land in New South Wales is not vested under statute law on the registration of a company under Part 5B.1 of Chapter 5B of the *Corporations Act 2001* of the Commonwealth.
- (3) The merger of a corporation (**company A**) with and into another corporation (**company B**) in circumstances where neither subsection (4) nor subsection (5) applies is taken to be a vesting of the land in New South Wales of company A in company B by statute law.
- (4) A merger of corporations (the **merging corporations**) in circumstances where another corporation (**company C**) results as a consequence of the merger is taken to be a vesting of the land in New South Wales of the merging corporations in company C by statute law.
- (5) A merger of corporations (the **merging corporations**) with and into each other in circumstances where each of the merging corporations continues in existence is taken to be a vesting in the merging corporations, jointly, of 50% (in value) of the land in New South Wales of the merging corporations by statute law.

#### **9 Imposition of duty on dutiable transactions that are not transfers**

- (1) The duty charged by this Chapter on a dutiable transaction referred to in section 8 (1) (b) is to be charged as if each such dutiable transaction were a transfer of dutiable

property.

- (2) Accordingly, for the purpose of charging duty under this Chapter, in relation to a dutiable transaction specified in Column 1 of the following Table:
- (a) the property specified opposite the dutiable transaction in Column 2 is taken to be the property transferred (and a reference in this Act to property transferred includes a reference to such property), and
  - (b) the person specified opposite the dutiable transaction in Column 3 is taken to be the transferee of the dutiable property (and a reference in this Act to a transferee includes a reference to such a person), and
  - (c) the transfer of the dutiable property is taken to have occurred at the time specified opposite the dutiable transaction in Column 4 (and a reference in this Act to the time at which a transfer occurs includes a reference to such a time).

**Table**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Dutiable transaction</b>	<b>Property transferred</b>	<b>Transferee</b>	<b>When transfer occurs</b>
agreement for sale or transfer	the property agreed to be sold or transferred	the purchaser or transferee	when the agreement is entered into
declaration of trust	the property vested or to be vested in the declarant	the person declaring the trust	when the declaration is made
surrender	the surrendered property	the person to whom the property is surrendered	when the surrender takes place
foreclosure	the mortgaged property	the mortgagee	when the foreclosure order is made
vesting by court order	the vested property	the person in whom the property is vested	when the order is made
enlargement of a term in land into a fee simple	the estate in fee simple	the person who acquires the estate in fee simple	when the term is enlarged
vesting by statute law	the vested land in New South Wales	the person in whom the land is vested	when the vesting by statute law occurs

lease

the leased property the lessee

when the lease is  
entered into

## 10 What form must a dutiable transaction take?

It is immaterial whether or not a dutiable transaction is effected by a written instrument or by any other means, including electronic means.

## 11 What is “dutiable property”?

(1) **Dutiable property** is any of the following:

- (a) land in New South Wales,
- (b) **transferable floor space** (also known as heritage floor space), being floor space area that:
  - (i) is recorded on a register kept by a local government council in New South Wales, and
  - (ii) derives from the unutilised development potential of land in New South Wales that contains improvements of heritage value, and
  - (iii) may, subject to obtaining all necessary consents and approvals, be utilised in the development of other land in New South Wales,
- (c) a land use entitlement,
- (d) shares:
  - (i) in a NSW company, or
  - (ii) in a corporation incorporated outside Australia that are kept on the Australian register kept in New South Wales,

### Notes—

**Shares** is defined in the Dictionary to include rights to shares.

Some shares (namely, shares quoted on the ASX or a recognised stock exchange) are not dutiable property—see subsection (2).

- (e) units in a unit trust scheme, being units:
  - (i) registered on a register kept in New South Wales, or
  - (ii) that are not registered on a register kept in Australia, but in respect of which the manager (or, if there is no manager, the trustee) of the unit trust scheme is a NSW company or is a natural person resident in New South Wales,

### Notes—

**Units** is defined in the Dictionary to include rights to units.

Some units (namely, units quoted on the ASX or a recognised stock exchange) are not dutiable property—see subsection (2).

(f) (Repealed)

(g) a **business asset**, being, at any relevant time:

- (i) the goodwill of a business, if the business has supplied goods in New South Wales, or provided services in New South Wales, to a customer of the business during the previous 12 months, or
- (ii) intellectual property that has been used or exploited in New South Wales during the previous 12 months, but only if the intellectual property is the subject of an arrangement that includes a dutiable transaction over goodwill referred to in subparagraph (i), or
- (iii) a statutory licence or permission under a Commonwealth law, if the rights under the licence or permission have been exercised, during the previous 12 months, in respect of New South Wales or in an area that includes New South Wales or a part of New South Wales,

**Note—**

**Intellectual property** is defined in the Dictionary. Business assets are subject to apportionment under section 28.

(h) a statutory licence or permission under a New South Wales law,

(h1) a poker machine entitlement within the meaning of the [Gaming Machines Act 2001](#),

(i) a **partnership interest**, being an interest in a partnership that has partnership property that is dutiable property elsewhere referred to in this section,

(j) goods in New South Wales, if the subject of an arrangement that includes a dutiable transaction over any dutiable property (other than intellectual property) elsewhere referred to in this section, not including the following:

- (i) goods that are stock-in-trade,
- (ii) materials held for use in manufacture,
- (iii) goods under manufacture,
- (iv) goods held or used in connection with land used for primary production,
- (v) livestock,
- (vi) a registered motor vehicle,

- (vii) a ship or vessel,
- (k) an option to purchase land in New South Wales,
- (l) an interest in any dutiable property referred to in the preceding paragraphs of this section, except to the extent that:
  - (i) it arises as a consequence of the ownership of a unit in a unit trust scheme and is not a land use entitlement, or
  - (ii) it is, or is attributable to, an option over dutiable property, or
  - (iii) it is an interest in a marketable security, being an interest that is traded on the Sydney Futures Exchange.

**Note—**

In relation to interests in land, see clause 4 of the Dictionary.

- (2) Despite subsection (1), the following marketable securities are not dutiable property:
  - (a) shares, or units in a unit trust scheme, that are quoted on the Australian Stock Exchange or a recognised stock exchange,
  - (b) an interest in shares, or an interest in units in a unit trust scheme, if:
    - (i) the shares or units are quoted on the Australian Stock Exchange or a recognised stock exchange, or
    - (ii) the interest is quoted on the Australian Stock Exchange or a recognised stock exchange.
- (3) In the definition of **business asset** in this section, a reference to services provided to a customer includes a reference to anything done for a customer pursuant to a contractual obligation.

**Note—**

Part 4 of this Chapter provides for the abolition, in stages, of duty on some of the types of dutiable property listed above.

The duty imposed on dutiable transactions involving shares and units referred to in section 11 (1) (d) and (e) is abolished on 1 July 2012. Marketable securities cease to be dutiable property on that date.

The duty imposed on dutiable transactions involving business assets referred to in section 11 (1) (g), statutory licences or permissions referred to in section 11 (1) (h) and poker machine entitlements referred to in section 11 (1) (h1) is abolished on 1 July 2012. Those things cease to be dutiable property on that date.

## **12 When does a liability for duty arise?**

- (1) A liability for duty charged by this Chapter arises when a transfer of dutiable property occurs.

- (2) However, if a transfer of dutiable property is effected by a written instrument, liability for duty charged by this Chapter arises when the instrument is first executed.
- (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.

### **13 Who is liable to pay the duty?**

Duty charged by this Chapter is payable by the transferee, unless this Chapter requires another person to pay the duty.

### **14 The liability of joint tenants**

For the purpose of assessing duty charged by this Chapter, joint tenants of dutiable property are taken to hold the dutiable property as tenants in common in equal shares.

### **15 Necessity for written instrument or written statement**

- (1) If a dutiable transaction that is liable to ad valorem duty under this Chapter is not effected by a written instrument, the transferee must make a written statement in an approved form.
- (2) The written statement must be made within 3 months after the liability arises.
- (3) (Repealed)
- (4) If a dutiable transaction is completed or evidenced by a written instrument within 3 months after the date on which the dutiable transaction occurs, the requirement to lodge a statement and pay duty in respect of the statement may be satisfied by the lodgment of and payment of duty on the written instrument within 3 months after the date on which the dutiable transaction occurs.

### **16 Lodging written instrument or written statement with Chief Commissioner**

- (1) A transferee who is liable to pay duty in respect of a dutiable transaction must, within 3 months after the liability arises, lodge with the Chief Commissioner:
  - (a) the written instrument that effects the dutiable transaction or, if there is more than one such written instrument, each one of them as provided by section 18 (1),  
or
  - (b) the written statement made in compliance with section 15.
- (2) (Repealed)



## 17 When must duty be paid?

- (1) A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if duty is paid within 3 months after the liability to pay the duty arises.
- (2) (Repealed)

## 18 No double duty

- (1) If a dutiable transaction is effected by more than one instrument, one instrument is to be stamped with the duty payable on the dutiable transaction and each other instrument is chargeable with duty of \$50.

### Note—

**Instrument** includes a written statement.

- (2) The duty chargeable in respect of a transfer of dutiable property made in conformity with an agreement for the sale or transfer of the dutiable property is \$10 if the duty chargeable in respect of the agreement has been paid.
- (3) The duty chargeable in respect of a transfer of dutiable property that is not made in conformity with an agreement for the sale or transfer of the dutiable property is \$10 if:
  - (a) the duty chargeable in respect of the agreement has been paid, and
  - (b) the transfer would be in conformity with the agreement if the transferee was the purchaser under the agreement, and
  - (c) the transfer occurs at the same time as, or proximately with, the completion or settlement of the agreement, and
  - (d) at the time the agreement was entered into, and at the completion or settlement of the agreement:
    - (i) the purchaser under the agreement and the transferee under the transfer are related persons, except as provided by subparagraph (ii), or
    - (ii) if the purchaser purchased as a trustee, the transferee and the beneficiary are related persons.
- (4) The duty chargeable on a transfer to a trustee of dutiable property subject to a declaration of trust is \$10 if ad valorem duty has been paid on the declaration of trust in respect of the same dutiable property.
- (5) The duty chargeable on a transfer of dutiable property as a consequence of a foreclosure order is \$10 if ad valorem duty has been paid on the foreclosure.
- (6) The duty chargeable on a declaration of trust that declares the same trusts as those upon and subject to which the same dutiable property was transferred to the person

declaring the trust is \$10 if ad valorem duty has been paid on the transfer.

(6A) The duty chargeable on a declaration of trust is \$50 if the Chief Commissioner is satisfied that:

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

(7) A dutiable transaction in respect of marketable securities that confer a land use entitlement is taken to be a dutiable transaction in respect of the land use entitlement only. If duty has been paid on the dutiable transaction in accordance with a law of another Australian jurisdiction, the duty charged by this Chapter on the dutiable transaction is to be reduced by the amount of the duty so paid.

## **19 What is the rate of duty?**

Duty is charged on the dutiable value of the dutiable property subject to the dutiable transaction at the relevant rate set out in Part 3.

## **20 Concessions and exemptions from duty**

Concessions and exemptions from duty charged by this Chapter are dealt with in Parts 6, 7 and 8.

## **Part 2 Dutiable value**

### **21 What is the “dutiable value” of dutiable property?**

- (1) The ***dutiable value*** of dutiable property that is subject to a dutiable transaction is the greater of:
  - (a) the consideration (if any) for the dutiable transaction (being the amount of a monetary consideration or the value of a non-monetary consideration), and

(b) the unencumbered value of the dutiable property.

- (2) The ***dutiable value*** of dutiable property transferred by way of foreclosure is the unencumbered value of the dutiable property and not the value of the debt secured by the mortgaged property.
- (3) The ***dutiable value*** of a business asset to which section 28 applies is to be determined in accordance with that section.
- (4) The ***dutiable value*** of a partnership interest referred to in section 29 is to be determined in accordance with that section.
- (5) The ***dutiable value*** of leased property transferred by way of a lease is taken to be the amount of the premium paid or payable in respect of the lease.

## **22 What is the consideration for the transfer of dutiable property?**

- (1) The consideration for the transfer of dutiable property is taken to include the amount or value of all encumbrances, whether certain or contingent, subject to which the dutiable property is transferred.
- (2) The consideration for the transfer of the interest of a transferee under an uncompleted agreement for the sale or transfer of dutiable property is taken to include the balance of the amount or value of the consideration that would be required from the transferee under the agreement in order to complete it in accordance with its terms.
- (3) The consideration for the transfer of the goodwill of a business is taken to include the amount or value of the consideration for any restraint of trade arrangement entered into in connection with the transfer of the goodwill.

## **23 What is the “unencumbered value” of dutiable property?**

- (1) The ***unencumbered value*** of dutiable property is the value of the property determined without regard to any encumbrance to which the property is subject.
- (2) The ***unencumbered value*** of the goodwill of a business is taken to include the value of any restraint of trade arrangement entered into by the vendor in order to protect the value of the goodwill.
- (3) If, before land is transferred to a transferee, the transferee has made improvements to the land, the unencumbered value of the land is to be determined as if those improvements had not been made.
- (4) Subsection (3) does not apply to improvements made to the land for or on behalf of the transferee by the transferor.

## 24 Interests, agreements and arrangements that reduce the dutiable value

- (1) In determining the dutiable value of dutiable property under this Part, any interest, agreement or arrangement (other than an encumbrance) granted or made in respect of the dutiable property that has the effect of reducing the dutiable value is to be disregarded, subject to subsection (2).
- (2) An interest, agreement or arrangement is not to be disregarded if the Chief Commissioner is satisfied that it was not granted or made as a part of an arrangement or scheme with a collateral purpose of reducing the duty otherwise payable on the dutiable transaction.
- (3) In considering whether or not he or she is satisfied for the purposes of subsection (2), the Chief Commissioner may have regard to:
  - (a) the duration of the interest, agreement or arrangement before the dutiable transaction, and
  - (b) whether the interest, agreement or arrangement has been granted to or made with an associated person, and
  - (c) whether there is any commercial efficacy to the granting of the interest or the making of the agreement or arrangement other than to reduce duty, and
  - (d) any other matters the Chief Commissioner considers relevant.

## 25 Aggregation of dutiable transactions

- (1) Dutiable transactions relating to separate items of dutiable property, or separate parts of, or interests in, dutiable property are to be aggregated and treated as a single dutiable transaction if:
  - (a) they occur within 12 months, and
  - (ab) the transferor is the same or the transferors are associated persons, and
  - (b) the transferee is the same or the transferees are associated persons, and
  - (c) the dutiable transactions together form, evidence, give effect to or arise from what is, substantially, one arrangement relating to all of the items or parts of, or interests in, the dutiable property.

### Note—

**Associated person** is defined in the Dictionary.

- (2) Dutiable transactions are not to be aggregated under this section if the Chief Commissioner is satisfied that:
  - (a) the dutiable property to which the transactions relate are comprised of separate

allotments of vacant land, and

(b) the transferee is a person authorised to contract to do residential building work under the *Home Building Act 1989*, and

(c) the transferee intends to construct residential premises on the allotments for the purposes of sale to the public.

(3) The dutiable value of aggregated dutiable property is the sum of the dutiable values of the items or parts of, or the interests in, the dutiable property as at the time at which each dutiable transaction occurs.

(4) The amount of duty payable in accordance with this section is to be reduced by the amount of any ad valorem duty paid on a prior dutiable transaction that is, or prior dutiable transactions that are, aggregated in accordance with this section.

(5) Duty may be apportioned to the instruments effecting or evidencing the dutiable transactions, or may be charged in accordance with section 18 (1), as determined by the Chief Commissioner.

(6) A transferee to whom this section applies must disclose to the Chief Commissioner, in writing, at or before the time at which an instrument or statement relating to the dutiable transactions is lodged for stamping, details known to the transferee of:

(a) all of the items or parts of, or interests in, the dutiable property included or to be included in the arrangement referred to in subsection (1), and

(b) the consideration for each item or part of, or interest in, that dutiable property.

Maximum penalty (subsection (6)): 100 penalty units.

(7) The reference in this section to dutiable property does not include a reference to marketable securities.

(8) In this section:

**vacant land** includes land that the Chief Commissioner considers is substantially vacant apart from there being on that land the remnant of any building, or any other object or structure, that the Chief Commissioner is satisfied has been preserved because of its heritage significance.

## 26 Certain transactions concerning goods and other property

(1) The Chief Commissioner, if satisfied that it would not be just and reasonable in the circumstances to charge duty on the dutiable value of all the dutiable property in a dutiable transaction involving goods and other property, may disregard the value of the goods, or any of them, in determining the dutiable value of the property involved.

(2) This section does not enable the Chief Commissioner to disregard the value of goods

used in connection with a business in respect of which the goodwill of the business is, or is part of, the dutiable property.

(3) This section applies only to dutiable transactions that occur before 1 July 2012.

**Note—**

On 1 July 2012, duty on the transfer of business assets is abolished (see Part 4 of this Chapter). Section 26A applies in respect of transfers occurring after that date that remain dutiable transactions.

**26A Transactions involving goods and other property that occur on or after 1 July 2012**

(1) If a dutiable transaction involves goods and other dutiable property, the Chief Commissioner may disregard the value of the goods in the transaction if satisfied that the dutiable value of the other property does not exceed 10% of the dutiable value of all the dutiable property in the transaction.

(2) This section applies only to dutiable transactions that occur on or after 1 July 2012.

**27 Apportionment—dutiable property and other property**

(1) If a dutiable transaction relates to dutiable property and property that is not dutiable property, it is chargeable with duty under this Chapter only to the extent that it relates to dutiable property.

(2) If a dutiable transaction relates to different types of dutiable property for which different rates of duty are chargeable under this Chapter, the dutiable transaction is chargeable with duty under this Chapter as if a separate dutiable transaction had occurred in relation to each such type of dutiable property.

**28 Apportionment—business assets in this and other jurisdictions**

(1) **Business assets to which this section applies** This section applies to a business asset referred to in section 11 (1) (g), being:

(a) the goodwill of a business, if the business has also supplied goods outside New South Wales, or provided services outside New South Wales, to a customer of the business during the previous 12 months, or

(b) intellectual property that has also been used or exploited in one or more other Australian jurisdictions during the previous 12 months, or

(c) a statutory licence or permission under a Commonwealth law if the rights under the licence or permission have been exercised during the previous 12 months in respect of one or more other Australian jurisdictions.

(2) **How is the dutiable value of a business asset determined?** The dutiable value (**DV**) of a business asset to which this section applies is to be determined in accordance with the following formula:

$$DV = A \times \frac{X}{Y}$$

where:

**A** is the unencumbered value of the business asset, or so much of the consideration for the dutiable transaction as relates to the business asset, whichever is the greater, and

**X** is the gross amount (expressed in Australian dollars) of goods supplied, and services provided, in New South Wales by the business to customers of the business during the last 3 completed financial years preceding the dutiable transaction, and

**Y** is the gross amount (expressed in Australian dollars) of goods supplied, and services provided, in and outside New South Wales by the business to customers of the business during the last 3 completed financial years preceding the dutiable transaction.

- (3) Subsection (2) applies to intellectual property together with goodwill as if the intellectual property and goodwill comprise a single business asset.
- (4) If an apportionment cannot be made under subsection (2), the Chief Commissioner may make an apportionment on such basis as the Chief Commissioner considers appropriate in the circumstances.
- (5) In this section, a reference to a service provided to a customer includes a reference to anything done for a customer pursuant to a contractual obligation.
- (6) This section applies only to dutiable transactions that occur before 1 July 2012.

**Note—**

On 1 July 2012, duty on the transfer of business assets is abolished (see Part 4 of this Chapter).

## **29 Partnership interests**

- (1) The dutiable value of a partnership interest (**DV**) is to be determined in accordance with the following formula:

$$DV = A \times \frac{X}{Y}$$

where:

**A** is the value of the partnership interest, or so much of the consideration for the dutiable transaction as relates to the partnership interest, whichever is the greater, and

**X** is the unencumbered value of all dutiable property of the partnership, and

**Y** is the unencumbered value of all assets of the partnership.

- (2) For the purposes of this section and despite subsection (1), the unencumbered value of dutiable property that is a business asset to which section 28 applies is the dutiable value of the business asset determined in accordance with section 28.
- (3) If the property of a partnership includes a land-related asset and an interest in the land-related asset is transferred as a result of the transfer of a partnership interest, the unencumbered value of all dutiable property of the partnership ("X" in subsection (1)) is to be reduced by the unencumbered value of the interest in the land-related asset that is transferred, but only if ad valorem duty has been paid or is payable on the transfer of the interest in the land-related asset.
- (4) For the purposes of subsection (3), each of the following items of dutiable property is a **land-related asset**:
  - (a) land in New South Wales,
  - (b) transferable floor space,
  - (c) a land use entitlement,
  - (d) an interest in an item of dutiable property referred to in paragraph (a), (b) or (c).

### 30 Partitions

- (1) **What is a partition?** For the purposes of this section, a partition occurs when dutiable property comprised of land in New South Wales that is held by persons jointly (as joint tenants or tenants in common) is transferred or agreed to be transferred to one or more of those persons.
- (2) **Single dutiable transaction** For the purposes of this section and sections 16 and 18, a partition is taken to be a single dutiable transaction.
- (3) **Dutiable value** The dutiable value of a partition is the greater of:
  - (a) the sum of the amounts by which the unencumbered value of the dutiable property transferred, or agreed to be transferred, to a person by the partition exceeds the unencumbered value of the interest held by the person in the dutiable property transferred, or agreed to be transferred, to each person by the partition immediately before the partition, and
  - (b) the sum of any consideration for the partition paid by any of the parties.
- (3A) (Repealed)
- (4) **Minimum duty** The minimum duty chargeable on a transaction that effects a partition is \$50.
- (5) **Who is liable to pay the duty?** Duty charged by this section is payable by the persons making the partition or any one or more of them.



- (6) **Anti-avoidance criteria** This section does not apply in respect of a partition if the Chief Commissioner is satisfied that the partition is part of a scheme to avoid duty on an exchange of land that was not jointly held by the parties before the scheme was entered into.

### 31 Effect of alteration in purchase price

- (1) If after an agreement for the sale or transfer of dutiable property is entered into and before the property is transferred:

- (a) the consideration under the agreement is reduced and the reduced consideration is not less than the unencumbered value of the dutiable property when the consideration was reduced, or
- (b) the consideration under the agreement is reduced because the parties have agreed not to transfer some of the dutiable property previously agreed to be transferred and the reduced consideration is not less than the unencumbered value of the dutiable property that remained to be transferred when the consideration was reduced, or
- (c) the consideration under the agreement is increased and the dutiable value when the consideration was increased is greater than the dutiable value when the agreement was entered into,

the Chief Commissioner must assess or reassess the liability to duty of the agreement in accordance with the change in the consideration.

- (2) The liability to pay additional duty arising from an increase in the consideration occurs on the date the consideration is agreed to be increased.

## Part 3 Rates of duty

### 32 General rate

- (1) The rate of duty chargeable on a dutiable transaction is as follows:

<b>Dutiable value of the dutiable property subject to the dutiable transaction</b>	<b>Rate of duty</b>
Not more than \$14,000	\$1.25 for every \$100, or part, of the dutiable value
More than \$14,000 but not more than \$30,000	\$175 plus \$1.50 for every \$100, or part, by which the dutiable value exceeds \$14,000
More than \$30,000 but not more than \$80,000	\$415 plus \$1.75 for every \$100, or part, by which the dutiable value exceeds \$30,000

More than \$80,000 but not more than \$300,000	\$1,290 plus \$3.50 for every \$100, or part, by which the dutiable value exceeds \$80,000
More than \$300,000 but not more than \$1,000,000	\$8,990 plus \$4.50 for every \$100, or part, by which the dutiable value exceeds \$300,000
More than \$1,000,000	\$40,490 plus \$5.50 for every \$100, or part, by which the dutiable value exceeds \$1,000,000

(2) This rate applies unless other provision is made by this Chapter.

**Note—**

The rates of duty chargeable on dutiable transactions in respect of marketable securities are dealt with in section 33 and section 150. Concessional rates of duty chargeable on certain dutiable transactions are dealt with in Part 6 of this Chapter.

**32A Premium rate for residential land with dutiable value exceeding \$3,000,000**

- (1) The rate of duty chargeable on a dutiable transaction in respect of residential land that has a dutiable value exceeding \$3,000,000 is \$150,490 plus \$7 for every \$100, or part, by which the dutiable value of the residential land exceeds \$3,000,000.
- (2) The rate of duty chargeable on a dutiable transaction in respect of residential land that has a dutiable value not exceeding \$3,000,000 is as provided for by section 32.
- (2A) If the dutiable property subject to a dutiable transaction comprises 2 or more individual items of residential land and 1 or more of those items has a dutiable value exceeding \$3,000,000, the rate of duty chargeable on the dutiable transaction is as follows:
  - (a) for each item of residential land that has a dutiable value exceeding \$3,000,000—\$150,490 plus \$7 for every \$100, or part, by which the dutiable value of the item exceeds \$3,000,000,
  - (b) for the rest of the dutiable property—the rate provided for by section 32.
- (3) For the purposes of this section, **residential land** means:
  - (a) a parcel of land on which there is one single dwelling or one flat, or a parcel of land on which there is a building under construction that, when completed, will constitute one single dwelling or one flat, or
  - (b) a strata lot, if it is lawfully occupied as a separate dwelling, or suitable for lawful occupation as a separate dwelling, or
  - (c) a land use entitlement, if it confers an entitlement to occupy a building, or part of a building, as a separate dwelling, or
  - (d) a parcel of vacant land that is zoned or otherwise designated for use under an

environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*) for residential or principally for residential purposes.

(4) For the purpose of subsection (3) (a), land does not cease to be regarded as land on which there is one single dwelling, or one flat, merely because the land is also used or is capable of being used for the purpose of one other residential occupancy, if that residential occupancy is an excluded residential occupancy.

(5) This section does not apply to a case in which section 32B or 32C applies.

(6) In this section:

**excluded residential occupancy** means:

- (a) one room, or
- (b) one suite of rooms (not being a flat) each room of which all occupants of the suite are entitled to occupy, or
- (c) one flat, or
- (d) one suite of rooms (not being a flat) each room of which all occupants of the suite are entitled to occupy, and one room, or
- (e) one flat and one room, or
- (f) 2 rooms, each of which is separately occupied.

**flat** means a room or suite of rooms (whether or not forming part of a building or a detached building):

- (a) occupied or used as a separate dwelling, or
- (b) so constructed, designed or adapted as to be capable of being occupied or used as a separate dwelling,

but does not include a single dwelling, a strata lot or a dwelling, or portion of a building, that is occupied under a land use entitlement.

**single dwelling** means a house:

- (a) occupied or used as a separate dwelling, or
- (b) so constructed, designed or adapted as to be capable of being occupied or used as a separate dwelling,

but does not include a strata lot or a property commonly known as a shop and dwelling.

### **32B Rate for residential land used for other purposes**

- (1) If a dutiable transaction in respect of residential land has a dutiable value exceeding \$3,000,000, and the Chief Commissioner is satisfied that the residential land is used for purposes other than residential purposes, duty is to be charged at the rate of \$7 for every \$100, or part, of the premium value of the residential land.
- (2) The **premium value** of the residential land is the amount (if any) by which the dutiable value of the residential land, when reduced by the apportionment factor, exceeds \$3,000,000.
- (3) The apportionment factor is:
  - (a) if the land is mixed development land or mixed use land and there is an apportionment factor entered in the Register of Land Values in respect of the land value of the land under Division 5 or 5A of Part 1B of the *Valuation of Land Act 1916*—that apportionment factor, or
  - (b) if paragraph (a) is not applicable—such other apportionment factor as the Chief Commissioner considers fair and reasonable to reflect the use of the land for non-residential purposes, subject to subsections (4) and (5).
- (4) If there is no apportionment factor entered in the Register of Land Values in respect of the land value of the land, and the land is mixed development land or mixed use land, the Chief Commissioner may request the Valuer-General to determine the apportionment factor in respect of the land concerned.
- (5) If a request is made under subsection (4):
  - (a) the Valuer-General must determine the apportionment factor concerned and enter it in the Register of Land Values under the *Valuation of Land Act 1916*, and
  - (b) that apportionment factor is to be applied in respect of the residential land.

**Note—**

Divisions 5 and 5A of Part 1B of the *Valuation of Land Act 1916* allow objections to be made against the amount of an apportionment factor.

- (6) Duty is to be charged, at the rate set out in section 32, in respect of the dutiable value of the dutiable property transferred reduced by the premium value of the residential land.
- (7) In this section:

**mixed development land** has the same meaning as in Division 5 of Part 1B of the *Valuation of Land Act 1916*.

**mixed use land** has the same meaning as in Division 5A of Part 1B of the *Valuation of*

*Land Act 1916.*

**residential land** has the same meaning as in section 32A.

**32C Rate for large parcels of residential land**

- (1) If a dutiable transaction in respect of residential land that is a parcel of land has a dutiable value exceeding \$3,000,000, and the area of the parcel of land exceeds 2 hectares, duty is to be charged at the rate of \$7 for every \$100, or part, of the premium value of the residential land.
- (2) The **premium value** of the residential land is the amount (if any) by which the dutiable value of the residential land, when multiplied by the apportionment factor, exceeds \$3,000,000.
- (3) The apportionment factor is the proportion that 2 hectares bears to the total area of the parcel of land in hectares.
- (4) Duty is to be charged, at the rate set out in section 32, in respect of the dutiable value of the dutiable property transferred reduced by the premium value of the residential land.
- (4A) This section does not apply in respect of residential land if section 32B applies to the land.
- (5) In this section:

**residential land** has the same meaning as in section 32A.

**33 Shares, units, derivatives and interests (marketable securities)**

- (1) The rate of duty chargeable on dutiable transactions in respect of marketable securities is 60 cents per \$100, or part, of the dutiable value of the marketable securities.
- (2) (Repealed)
- (3) A minimum rate of duty of \$10 is chargeable under this section in respect of a transfer of shares of a corporation that is not the legal or beneficial owner of land in New South Wales.
- (4) A rate of duty chargeable under this section does not apply to a dutiable transaction that confers a land use entitlement.
- (5) If a provision of this Chapter provides that a duty of \$50 is chargeable in respect of a transfer of marketable securities, and the duty charged at the rate provided for by subsection (1) would be less than \$50, the duty chargeable is that lesser amount.
- (6) This section is subject to section 273, which provides for a minimum duty of \$10.

**Note—**

Transactions in respect of shares or units that are quoted on the Australian Stock Exchange or a recognised stock exchange, or interests in such shares or units, are not dutiable transactions (see section 11 (2)).

**33A Shares in share management fisheries**

The rate of duty chargeable on dutiable transactions in respect of shares in a share management fishery (within the meaning of the *Fisheries Management Act 1994*) is 60 cents per \$100, or part, of the dutiable value of the shares.

**Part 4 Abolition of various duties**

**34 Abolition of duty on all transfers of marketable securities and commercial fishery shares—effective 1 July 2012**

- (1) On and from 1 July 2012, marketable securities and commercial fishery shares are not dutiable property (despite section 11).
- (2) Subsection (1) does not apply in respect of any transfer or transaction with respect to marketable securities or commercial fishery shares that occurs before 1 July 2012 and, accordingly, does not affect any requirement to pay duty under this Chapter in respect of the transfer or transaction.

- (3) In this section:

**commercial fishery share** means a share in a share management fishery (within the meaning of the *Fisheries Management Act 1994*).

**35 Abolition of duty on transfers of business assets—effective 1 July 2012**

- (1) On and from 1 July 2012, a business asset referred to in section 11 (1) (g) is not dutiable property (despite section 11).
- (2) Subsection (1) does not apply in respect of any transfer or transaction with respect to business assets that occurs before 1 July 2012 and, accordingly, does not affect any requirement to pay duty under this Chapter in respect of the transfer or transaction.

**36 Abolition of duty on transfers of licences, permissions and entitlements—effective 1 July 2012**

- (1) On and from 1 July 2012, a statutory licence or permission referred to in section 11 (1) (h), or a poker machine entitlement referred to in section 11 (1) (h1), is not dutiable property (despite section 11).
- (2) Subsection (1) does not apply in respect of any transfer or transaction with respect to statutory licences or permissions, or poker machine entitlements, that occurs before 1 July 2012 and, accordingly, does not affect any requirement to pay duty under this Chapter in respect of the transfer or transaction.

### **37 Anti-avoidance measures**

Sections 35 and 36 do not apply in respect of a transfer or transaction with respect to a business asset referred to in section 11 (1) (g), a statutory licence or permission referred to in section 11 (1) (h), or a poker machine entitlement referred to in section 11 (1) (h1), that occurs on or after 1 July 2012 if:

- (a) the transfer or transaction replaces a transfer or transaction involving the same business asset, statutory licence or permission, or poker machine entitlement that occurred before 1 July 2012, or
- (b) the transfer or transaction is made or entered into pursuant to an option to purchase the business asset, statutory licence or permission, or poker machine entitlement that was granted before 1 July 2012, or
- (c) the transfer or transaction was made or entered into pursuant to another arrangement, made before 1 July 2012, the only or main purpose of which was to defer the transfer or transaction until 1 July 2012, or later, so that duty would not be chargeable under this Chapter on the transfer or transaction.

### **38-48A (Repealed)**

## **Part 5 Special provisions**

### **49 Interim payment of duty**

- (1) If the full dutiable value of dutiable property subject to an agreement for sale or transfer cannot, in the Chief Commissioner's opinion, be immediately ascertained, the Chief Commissioner may make an assessment by way of estimate under section 11 (2) of the *Taxation Administration Act 1996*.
- (2) A written instrument effecting or evidencing the sale or transfer may be stamped "interim stamp only".
- (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.

#### **49A Purchases “off the plan”**

- (1) Liability for duty on an off the plan purchase agreement arises:
  - (a) on completion of the agreement, or
  - (b) on the assignment of the whole or any part of the purchaser’s interest under the agreement, or
  - (c) on the expiration of 12 months after the date of the agreement,whichever first occurs.
- (2) This section applies despite section 12.
- (3) Nothing in this section prevents the Chief Commissioner from accepting payment of duty and stamping an off the plan purchase agreement at any time after the agreement has been executed.
- (4) In this section:

***off the plan purchase agreement*** means an agreement for the sale or transfer of dutiable property, being land on which a residence is to be erected or developed before completion of the sale or transfer.

#### **50 Cancelled agreements**

- (1) An agreement for the sale or transfer of dutiable property that is cancelled is not liable to duty under this Chapter if the Chief Commissioner is satisfied:
  - (a) that the agreement was not cancelled to give effect to a subsale, or
  - (b) that the purchaser or transferee under the agreement is a promoter of a named company proposed to be incorporated and that the company is the purchaser or transferee of the dutiable property under a subsequent agreement, or
  - (c) that the purchaser or transferee under the agreement and the purchaser or transferee under a subsequent agreement relating to the same dutiable property were related persons when the agreement that is cancelled was entered into.
- (2) If duty has been paid on an agreement that is not liable to duty under this Chapter because of this section, the Chief Commissioner must reassess and refund the duty if an application for a refund is made within:
  - (a) 5 years of the initial assessment, or
  - (b) 12 months after the agreement is cancelled,whichever is the later.



- (3) In this section, **cancelled** means rescinded, annulled or otherwise terminated without completion.

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

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

#### **51 Transfers arising from mortgages of land under [Real Property Act 1900](#)**

- (1) The mortgagor and the mortgagee are jointly and severally liable to pay the duty chargeable on a transfer by way of mortgage of dutiable property that is land under the [Real Property Act 1900](#).
- (2) If the Chief Commissioner is satisfied that:
- (a) duty has been paid in accordance with this section on a transfer of dutiable property to which this section applies, and
  - (b) the dutiable property has been re-transferred to the mortgagor (or a person to whom the land has been transmitted by death or bankruptcy) and the mortgagor (or person) is the registered proprietor of the land,
- the Chief Commissioner must refund the ad valorem duty paid on the transfer less the amount of duty that would have been payable on the mortgage under Chapter 7 (Mortgages).

#### **52 Possessory applications**

- (1) A possessory application under the [Real Property Act 1900](#) is chargeable with the same duty as a transfer of the land the subject of the application as if the dutiable

value of the land were the land value of the land within the meaning of the *Valuation of Land Act 1916*.

(2) The person liable to pay the duty is the applicant.

### **53 Applications to bring land under *Real Property Act 1900***

(1) An application to bring land under the *Real Property Act 1900* is chargeable with:

(a) the same duty as on a possessory application under that Act if:

- (i) the application contains an application based on possessory title, and
- (ii) the applicant has not paid ad valorem duty on a transfer of the land, or

(b) the same duty as on a transfer of the land if the applicant nominates another person as the person for whose estate or interest a folio of the Register is to be created, or

(c) duty of \$50 in any other case.

(2) The person liable to pay the duty is:

- (a) the applicant, if subsection (1) (a) or (c) applies, or
- (b) the nominee, if subsection (1) (b) applies.

### **53A Duty on lease premiums**

In the case of property transferred by way of a lease for which a premium is paid or payable, duty is not chargeable under this Chapter on:

- (a) so much of the premium of a residential lease as relates to premises used, or intended to be used, exclusively as a residence, or
- (b) so much of the premium of a lease as relates to a moveable dwelling site used, or intended to be used, as the principal place of residence of the lessee.

## **Part 6 Concessional rates of duty**

### **Division 1 Trusts**

#### **54 Change in trustees**

(1) In this section:

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

**new trustee** means a trustee appointed in substitution for a trustee or a trustee appointed in addition to a trustee or trustees.

**responsible entity** means a responsible entity within the meaning 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.
- (2) Duty of \$50 is chargeable in respect of a transfer of dutiable property to a special trustee as a consequence of the retirement of a trustee or the appointment of a new trustee.
- (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), to a trustee of a self managed superannuation fund, 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.
- (3) Duty of \$50 is chargeable in respect of a transfer of dutiable property to a person other than a licensed trustee company, a special trustee or 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, as the case may be:
- (a) none of the continuing trustees remaining after the retirement of a trustee is or can become a beneficiary under the trust, and
  - (b) none of the trustees of the trust after the appointment of a new trustee is or can become a beneficiary under the trust, and
  - (c) 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.

If the Chief Commissioner is not so satisfied, the transfer is chargeable with the same duty as a transfer to a beneficiary under and in conformity with the trusts subject to which the property is held, unless subsection (3A) applies.

- (3A) Duty of \$50 is chargeable in respect of a transfer of dutiable property as a consequence of the retirement of a responsible entity of a managed investment

scheme or the appointment of a new responsible entity of a managed investment scheme if the Chief Commissioner is satisfied that the only beneficial interest acquired by a person in relation to the dutiable property as a result of the transfer is a beneficial interest acquired by the replacement or new responsible entity solely because of its appointment as responsible entity for the scheme.

- (3B) Duty of \$50 is chargeable in respect of a vesting of land in New South Wales by, or expressly authorised by, statute law (as referred to in section 8 (1) (b) (vii)) in a person or responsible entity if the Chief Commissioner is satisfied that subsection (2), (2A), (3) or (3A) would apply in respect of the dutiable transaction if it were a transfer of dutiable property.
- (4) Duty of \$50 is chargeable in respect of a transfer of dutiable property to a responsible entity if the Chief Commissioner is satisfied that the transfer is necessary to enable an undertaking that existed before the commencement of Chapter 5C of the *Corporations Law* to become a registered scheme within the meaning of Division 11 of Part 11.2 of the *Corporations Law* (as continued in effect by section 1408 of the *Corporations Act 2001* of the Commonwealth).

#### **54A Transfers in relation to managed investment schemes**

- (1) Duty of \$50 is chargeable in respect of a transfer of dutiable property from:
- (a) a responsible entity of a managed investment scheme, or
  - (b) a person who held the dutiable property as a trustee of a prescribed interest scheme within the meaning of the *Corporations Law* as in force immediately before 1 July 1998 when the scheme became a registered scheme within the meaning of Division 11 of Part 11.2 of the *Corporations Law* (as continued in effect by section 1408 of the *Corporations Act 2001* of the Commonwealth),
- to a custodian or agent of the responsible entity as custodian or agent of the scheme in which the transferor held the dutiable property.
- (2) Duty of \$50 is chargeable in respect of a transfer of dutiable property from the custodian of the responsible entity of a managed investment scheme to the responsible entity.
- (3) Duty of \$50 is chargeable in respect of a vesting of land in New South Wales by statute law (as referred to in section 8 (1) (b) (vii)) in a responsible entity if the Chief Commissioner is satisfied that subsection (2) would apply in respect of the dutiable transaction if it were a transfer of dutiable property.
- (4) Duty of \$50 is chargeable in respect of a transfer of dutiable property from the sub-custodian of a custodian of the responsible entity of a managed investment scheme to the custodian of the responsible entity of the managed investment scheme.

## 55 Property vested in an apparent purchaser

- (1) Duty of \$50 is chargeable in respect of:
- (a) a declaration of trust made by an apparent purchaser in respect of identified dutiable property:
    - (i) vested in the apparent purchaser upon trust for the real purchaser who provided the money for the purchase of the dutiable property, or
    - (ii) to be vested in the apparent purchaser upon trust for the real purchaser, if the Chief Commissioner is satisfied that the money for the purchase of the dutiable property has been or will be provided by the real purchaser, or
  - (b) a transfer of dutiable property from an apparent purchaser to the real purchaser if:
    - (i) the dutiable property is property, or part of property, vested in the apparent purchaser upon trust for the real purchaser, and
    - (ii) the real purchaser provided the money for the purchase of the dutiable property and for any improvements made to the dutiable property after the purchase.
- (1A) For the purposes of subsection (1), money provided by a person other than the real purchaser is taken to have been provided by the real purchaser if the Chief Commissioner is satisfied that the money was provided as a loan and has been or will be repaid by the real purchaser.
- (1B) This section applies whether or not there has been a change in the legal description of the dutiable property between the purchase of the property by the apparent purchaser and the transfer to the real purchaser.

### Note—

For example, if the dutiable property is land, this section continues to apply if there is a change in the legal description of the dutiable property as a consequence of the subdivision of the land.

- (2) In this section, ***purchase*** includes an allotment.

## 56 Transfers back from a nominee

- (1) If:
- (a) dutiable property (other than marketable securities) that was transferred to a person to be held by that person as trustee for the transferor is transferred back to the transferor by the trustee, and
  - (b) no person other than the transferor has had a beneficial interest in the dutiable property (other than the trustee's right of indemnity) between its transfer to the trustee and its transfer back to the transferor,

the duty chargeable on the transfer of the dutiable property back to the transferor is \$50.

- (2) If duty of \$50 has been paid on a transfer under subsection (1), the initial transfer to the trustee is also chargeable with duty of \$50. The Chief Commissioner must reassess the initial transfer and refund any duty paid in excess of \$50 if an application for a refund is made within:
  - (a) 5 years after the initial assessment, or
  - (b) 12 months after the transfer back to the original transferor,whichever is the later.
- (3) In this section, **trustee** includes a trustee appointed in substitution for a trustee or a trustee appointed in addition to a trustee or trustees.

#### **56A Transfer of property subject to a statutory trust to a beneficial owner**

- (1) This section applies if dutiable property that is vested in a person as trustee of a statutory trust as a consequence of the making of an order under section 66G of the [Conveyancing Act 1919](#) is transferred or agreed to be transferred by the trustee to one or more of the beneficial owners of the dutiable property.
- (2) The dutiable value of the dutiable property that is the subject of the transfer or agreement is to be calculated by deducting from the unencumbered value of the dutiable property or the consideration for the transfer or agreement, whichever is the greater, the proportion of that amount that is the same as the proportion of the purchaser's beneficial interest in the dutiable property immediately before the transfer or agreement.

#### **57 Property passing to beneficiaries**

- (1) Duty of \$50 is chargeable in respect of a transfer for no consideration of dutiable property to a beneficiary made under and in conformity with the trusts contained in a declaration of trust, subject to subsections (2) and (3).
- (2) Subsection (1) applies only to the extent that the property being transferred is property that the Chief Commissioner is satisfied is:
  - (a) wholly or substantially the same as the property the subject of the declaration of trust and that:
    - (i) duty charged by this Act has been paid in respect of the declaration of trust over that property, or
    - (ii) the declaration of trust is exempt from duty, or
  - (b) dutiable property representing the proceeds of re-investment of property referred

to in paragraph (a), or

(c) property to which both paragraphs (a) and (b) apply.

- (3) Subsection (1) applies only if the transferee was a beneficiary at the time at which duty became chargeable in respect of the declaration of trust.

**58 Establishment of a trust relating to unidentified property and non-dutiable property**

- (1) Duty of \$500 is chargeable in respect of an instrument executed in New South Wales that declares a trust over New South Wales property none of which is dutiable property.
- (2) Duty of \$500 is chargeable in respect of an instrument executed in New South Wales that declares that property, although not identified in the instrument, when vested in the person executing the instrument is to be held in trust for a person or persons or a purpose or purposes mentioned in the instrument.
- (3) It is immaterial whether or not the beneficial owner or person entitled to appoint the property has joined in or assented to the instrument.
- (4) A liability for duty charged by this section arises when the instrument is first executed.
- (5) Duty charged by this section is payable by the person declaring the trust.
- (6) This section does not apply in respect of any property that is a marketable security, if the marketable security is not dutiable property because of section 11 (2).

**59 Instrument relating to managed investment scheme**

- (1) Duty of \$50 is chargeable in respect of an instrument that effects or evidences a dutiable transaction and which:
- (a) amends, varies or replaces an instrument that establishes or governs a managed investment scheme, and
  - (b) does not transfer, or have the effect of transferring, any dutiable property to a person who does not hold units in the scheme, and
  - (c) does not have the effect of reducing the number of persons who hold units in the scheme.
- (2) Duty of \$50 is chargeable in respect of a declaration of trust:
- (a) made by a trustee in respect of dutiable property that, immediately before the trust is declared, is held by the trustee as trustee of the prescribed interest scheme within the meaning of the *Corporations Law* as in force immediately before 1 July 1998, and

- (b) to hold the dutiable property on trust for the responsible entity of the managed investment scheme.

**59A Nominee transactions—unquoted marketable securities**

Duty of \$50 is chargeable in respect of a transfer of marketable securities, other than marketable securities that are not dutiable property, between any of the following persons:

- (a) the beneficial owner,
- (b) a trustee or nominee of the beneficial owner,
- (c) a custodian of a trustee or nominee of the beneficial owner,
- (d) a sub-custodian of a custodian of a trustee or nominee of the beneficial owner,

but only if:

- (e) there is no change in the beneficial ownership of the marketable securities, and
- (f) if the transferee is a person referred to in paragraph (b)–(d), the transferee is to hold the marketable securities solely for another person referred to in paragraph (a)–(c) and there is no contemplation of the marketable securities being held for any other person, and
- (g) if the transferor is a person referred to in paragraph (b)–(d), the marketable securities were held by the person solely for another person referred to in paragraph (a)–(c) and, since the time when the marketable securities were first transferred or issued to the transferor, no person has held the marketable securities other than solely for a person referred to in paragraph (a)–(c).

**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 a 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 a 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 a trustee as trustee of the trust.



## **Division 2 Superannuation**

### **60 Instruments relating to superannuation**

- (1) The following instruments are liable to duty of \$20 if they were first executed before 1 July 2001:
  - (a) an instrument that establishes, or that amends provisions governing, a superannuation fund, an approved deposit fund, a pooled superannuation trust or an eligible rollover fund, being a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund within 12 months after the instrument or amending instrument takes effect,
  - (b) an instrument under which an employer agrees to participate in or contribute to a complying superannuation fund or a superannuation fund that, in the opinion of the trustees, will become a complying superannuation fund within 12 months after the employer agrees to participate in or contribute to the fund,
  - (c) an instrument that is executed in order to set out or vary the terms of custodial arrangements concerning a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund (whether or not the instrument contains any other terms) or concerning a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund, a complying approved deposit fund, a pooled superannuation trust or an eligible rollover fund within 12 months after the instrument takes effect.
- (2) A liability for duty charged by this section arises when the instrument is first executed.
- (3) The persons liable to pay the duty are the parties to the instrument.
- (4) The duty may be denoted by adhesive stamp.
- (5) Despite subsection (1), an instrument to which this section applies is not liable to duty if:
  - (a) it is exempt from duty under a corresponding Act, or
  - (b) the duty for which it is liable under a corresponding Act has been paid.

### **61 Transfers of property in connection with persons changing superannuation funds**

- (1) This section applies to a relevant transfer that occurs in connection with a person:
  - (a) ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, a superannuation fund that is a complying superannuation fund or was a complying superannuation fund within the period of 12 months before the

transfer was made, and

- (b) becoming a member of, or otherwise becoming entitled to benefits in respect of, another superannuation fund that is also a complying superannuation fund or will, in the opinion of the trustees of both funds concerned, be a complying superannuation fund within 12 months after the transfer is made.

(1A) For the purposes of this section, each of the following is a **relevant transfer**:

- (a) a transfer of, or an agreement to transfer, dutiable property from a trustee of a superannuation fund, or a custodian of the trustee, to the trustee of another superannuation fund, or to a custodian of the trustee of another superannuation fund,
- (b) a transfer of, or an agreement to transfer, dutiable property from a trustee of a superannuation fund to a custodian of the trustee, or from a custodian of the trustee of a superannuation fund to the trustee,
- (c) a transfer of, or an agreement to transfer, marketable securities from a trustee of a pooled superannuation trust, made in exchange for a redemption of units in the trust, to the trustee of a superannuation fund, or a custodian of the trustee of a superannuation fund,
- (c1) a transfer of, or an agreement to transfer, marketable securities from the trustee of a superannuation fund, or a custodian of the trustee of a superannuation fund, made in exchange for the issue of units in a pooled superannuation trust, to a trustee of the pooled superannuation trust,
- (d) a transfer of, or an agreement to transfer, 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,
- (e) a transfer of, or an agreement to transfer, marketable securities from the trustee of a superannuation fund or a custodian of the trustee of a superannuation fund to a life company or custodian for a life company if the transfer is made in consideration of the issue, by the life company, of a policy of life insurance to the trustee of the superannuation fund of which the person has become a member.

(2) The duty chargeable on a relevant transfer to which this section applies is ad valorem duty in accordance with this Chapter or \$500, whichever is the lesser.

(2A) This section applies despite section 18 (2) and (3).

(3) An application for an assessment of duty in accordance with this section is to be

accompanied by the following:

- (a) a brief explanation of the background to the transfer and the entitlements to be extinguished and created,
  - (b) copies of the governing rules of the superannuation funds concerned,
  - (c) a statement of the property to be transferred,
  - (d) a copy of each instrument relating to the transfer,
  - (e) a statutory declaration from a trustee (or a director of a corporate trustee) of each of the superannuation funds concerned stating that, in the opinion of the trustee (or director), the fund the person will become a member of, or otherwise become entitled to benefits in respect of, will be a complying superannuation fund within 12 months after the transfer occurs.
- (4) The Chief Commissioner may require further information.
- (5) In this section, **complying superannuation fund** includes a complying approved deposit fund and an eligible rollover fund.

## **62 Transfers between trustees and custodians of superannuation funds or trusts**

(1) This section applies to the following dutiable transactions:

- (a) a transfer of, or an agreement to transfer, dutiable property from a trustee of:
  - (i) a complying superannuation fund, or
  - (ii) a pooled superannuation trust, or
  - (iii) a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund or a pooled superannuation trust within 12 months after the transfer takes effect,to a custodian of the trustee of the fund or trust, where there is no change in the beneficial ownership of the property,
- (b) a transfer of, or an agreement to transfer, dutiable property from a custodian of a trustee of:
  - (i) a complying superannuation fund, or
  - (ii) a pooled superannuation trust, or
  - (iii) a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund or a pooled superannuation trust within 12 months after the transfer takes effect,

to a trustee of the fund or trust, where there is no change in the beneficial ownership of the property,

- (c) a transfer of, or an agreement to transfer, dutiable property from a custodian of a trustee of:
- (i) a complying superannuation fund, or
  - (ii) a pooled superannuation trust, or
  - (iii) a fund or trust that, in the opinion of the trustees, will be a complying superannuation fund or a pooled superannuation trust within 12 months after the transfer takes effect,

to another custodian of the trustee of the fund or trust, where there is no change in the beneficial ownership of the property.

(2) (Repealed)

(3) The duty chargeable on a dutiable transaction to which this section applies is:

- (a) except as provided by paragraph (b), ad valorem duty in accordance with this Chapter or \$500, whichever is the lesser, or
- (b) if the dutiable property transferred, or agreed to be transferred, is marketable securities, \$10.

(4) In this section, **complying superannuation fund** includes a complying approved deposit fund and an eligible rollover fund.

#### **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) Duty of \$500 is chargeable on a transfer of, or an agreement to transfer, dutiable property from a person (the **transferor**) to the custodian of the trustee of a self managed superannuation fund but only if:

(a) the transferor is the only member of the superannuation fund, or

(b) the property is to be used solely for the purpose of providing a retirement benefit to the transferor.

(4) This section does not apply in respect of a transfer of, or an agreement to transfer, dutiable property if, as a result of the transfer, the superannuation fund will cease to be a complying superannuation fund.

## Division 3 Miscellaneous

### 63 Deceased estates

(1) Duty of \$50 is chargeable in respect of:

(a) a transfer of dutiable property by the legal personal representative of a deceased person to a beneficiary, being:

(i) a transfer made under and in conformity with the trusts contained in the will of the deceased person or arising on an intestacy, or

(ii) a transfer of property the subject of a trust for sale contained in the will of the deceased person, or

(iii) an appropriation of the property of the deceased person (as referred to in section 46 of the [Trustee Act 1925](#)) in or towards satisfaction of the beneficiary's entitlement under the trusts contained in the will of the deceased person or arising on intestacy, and

(b) a consent by a legal personal representative of a deceased person to a transmission application by a beneficiary, and

(c) a transmission application to a devisee who is also the sole legal personal representative, 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.

(2) If a transfer of dutiable property is made by a legal personal representative of a

deceased person to a beneficiary under an agreement (whether or not in writing) between the beneficiary and one or more other beneficiaries to vary the trusts contained in a will of the deceased person or arising on intestacy, the dutiable value of the dutiable property is to be reduced by the portion of the dutiable value that is referable to the dutiable property to which the beneficiary had an entitlement arising under the trusts contained in the will or arising on intestacy.

- (3) Section 25 does not apply to a dutiable transaction to which subsection (2) applies.
- (4) If the duty chargeable in respect of a transfer, consent or transmission application referred to in subsection (1) would, but for that subsection, be less than \$50, the duty chargeable is that lesser amount.
- (5) This section is subject to section 273, which provides for a minimum duty of \$10.

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

The duty chargeable on the transfer of a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or a lot in a deposited plan is \$50 if:

- (a) the transferee, immediately before registration of the strata plan or deposited plan, held a land use entitlement in respect of the land or part of the land the subject of the strata plan or deposited plan, and
- (b) the transfer is part of an arrangement under which the transferee will take an interest in the lot similar in effect to and in substitution for the interest the transferee had under the land use entitlement immediately before registration of the strata plan or deposited plan, and
- (c) one of the following applies:
  - (i) ad valorem duty was paid on the transaction by which the land use entitlement was acquired by the transferee,
  - (ii) section 55, 57 or 63 applied to the acquisition of the land use entitlement by the transferee, and duty was paid as provided for by the section that applied,
  - (iii) no duty was chargeable on the acquisition of the land use entitlement by the transferee because of section 68,
  - (iv) no duty was chargeable on the acquisition of the land use entitlement by the transferee because of section 78A (which relates to the First Home Plus scheme).

#### **64AA Enlargement of the term in land into fee simple**

The duty chargeable on the enlargement of a term in land into a fee simple under section 134 of the *Conveyancing Act 1919* is \$50 if:

- (a) the Chief Commissioner is satisfied that the grant of the term in the land, and

subsequent enlargement, are not part of a scheme to avoid duty on a transfer of land, and

(b) one of the following applies:

- (i) ad valorem duty was paid by the transferee on the transaction by which the term in the land was acquired,
- (ii) section 55, 57 or 63 applied to the acquisition of the term in the land, and duty was paid as provided for by the section that applied,
- (iii) no duty was chargeable on the acquisition of the term in the land by the transferee because of section 68.

#### **64A Amalgamation of Western Lands leases**

- (1) This section applies to the transfer of, or an agreement to transfer, a lease under the [Western Lands Act 1901](#), being a lease for a purpose specified in an order of the Governor made for the purposes of this section and published in the Gazette.

**Editorial note—**

For orders published under this section see Gazette No 92 of 13.8.1999, p 5743.

- (2) The duty chargeable on a dutiable transaction, being the transfer of, or an agreement to transfer, a lease to which this section applies is to be reduced if:
- (a) the transferee has transferred another lease under the [Western Lands Act 1901](#) within 3 years before the dutiable transaction, and
  - (b) the land subject to the dutiable transaction adjoins land held by the transferee under a lease under the [Western Lands Act 1901](#).
- (3) The duty chargeable on the dutiable transaction is to be reduced by the amount of duty paid on the transfer of, or the agreement to transfer, the other lease within 3 years before the dutiable transaction.

#### **64B Reduction of duty on transfer of marketable securities—payment in non-Australian jurisdiction**

- (1) The amount of duty chargeable under this Chapter on a transfer of marketable securities is to be reduced by the amount of duty of a similar kind paid in relation to the transfer in accordance with the law of a place outside Australia.
- (2) In this section, a reference to a transfer of marketable securities includes a reference to a dealing or arrangement affecting marketable securities by means of a dutiable transaction other than a transfer.

## Part 7 Exemptions

### 65 Exemptions from duty

- (1) **General** A dutiable transaction is exempt from duty under this Chapter if it is, or occurs as a consequence of any of the following:
- (a) the appointment of a receiver or trustee in bankruptcy,
  - (b) the appointment of a liquidator,
  - (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,
  - (d) a dutiable transaction over dutiable property arising from the discharge or transfer of a mortgage or declaration of trust over a mortgage (and a reference in this paragraph to a mortgage includes a reference to a charge and an interest in a mortgage),
  - (e) a dutiable transaction comprising:
    - (i) a transfer by way of discharge of mortgage, or
    - (ii) a transfer by way of mortgage (not being a transfer by way of mortgage of land, or an estate or interest in land, under the *Real Property Act 1900*), if duty as on a mortgage has been paid in respect of an instrument evidencing the mortgage or the instrument is exempt from, or is not liable to, duty,
  - (f) the vesting of dutiable property in a society or company by virtue of Part 7 or 8 of the *Financial Institutions (NSW) Code* or a corresponding law of another State or Territory,
  - (g) the vesting of dutiable property in a statutory trust as a consequence of the making of an order under section 66G of the *Conveyancing Act 1919*.
- (2) **Employee and employer organisations** No duty is chargeable under this Chapter on a transfer of dutiable property made pursuant to, or in accordance with the rules of:
- (a) an association of employees or employers registered as an organisation under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth, or
  - (b) an industrial union of employers or employees registered under the *Industrial Relations Act 1996*, or
  - (c) any body of a kind referred to in paragraph (a) or (b) that is approved for the time being by the Minister,
- if the transfer is made to another such association, union or body as a consequence of



the amalgamation of two or more such associations, unions or bodies.

- (3) **Registered clubs** No duty is chargeable under this Chapter on a transfer of dutiable property to give effect to the amalgamation of two or more registered clubs as referred to in Division 1A of Part 2 of the *Registered Clubs Act 1976*, if such information and documents as the Chief Commissioner may require are given to the Chief Commissioner.
- (4) **Workers compensation insurers and custodians** No duty is chargeable under this Chapter on a transfer of, or an agreement to transfer, dutiable property:
- (a) made in compliance with a requirement of the WorkCover Authority between:
- (i) a licensed insurer, or a person who was a licensed insurer, under the *Workers' Compensation Act 1926* and an insurer licensed under the *Workers Compensation Act 1987*, or
  - (ii) licensed insurers under the *Workers Compensation Act 1987*, or
  - (iii) the Authority and a licensed insurer under the *Workers Compensation Act 1987*, or
- (b) made at the direction of the WorkCover Authority:
- (i) from an insurer licensed under the *Workers Compensation Act 1987* to a custodian nominated by the Authority, or
  - (ii) from such a custodian to another such custodian.
- (5) **Incorporated legal practices** No duty is chargeable under this Chapter on the transfer of, or an agreement to transfer, dutiable property in the following cases:
- (a) dutiable property of a solicitor corporation formed under the *Legal Profession Act 1987* that is transferred or agreed to be transferred to:
- (i) an incorporated legal practice under the *Legal Profession Act 2004* if the voting shareholders of the solicitor corporation immediately before the transfer or agreement is first executed are solicitor directors or employed solicitors of the incorporated legal practice, or
  - (ii) a partnership of solicitors if the voting shareholders of the solicitor corporation immediately before the transfer or agreement is first executed are the same as the members of the partnership, or
  - (iii) a solicitor practising as a sole practitioner if the only voting shareholder of the solicitor corporation immediately before the transfer or agreement is first executed is that solicitor,
- (b) dutiable property of a partnership of solicitors formed or originally formed before

the commencement of Division 2A of Part 3 of the *Legal Profession Act 1987* that is transferred or agreed to be transferred to an incorporated legal practice under the *Legal Profession Act 2004* if the members of the partnership immediately before the transfer or agreement is first executed are solicitor directors or employed solicitors of the incorporated legal practice,

(c) dutiable property of a solicitor practising as a sole practitioner before the commencement of Division 2A of Part 3 of the *Legal Profession Act 1987* that is transferred or agreed to be transferred to an incorporated legal practice under the *Legal Profession Act 2004* if the solicitor is the sole solicitor director of the incorporated legal practice.

(6) **Transfer of liquor licence** No duty is chargeable under this Chapter on the transfer of a liquor licence approved under section 60 of the *Liquor Act 2007* if the Chief Commissioner is satisfied that:

- (a) there is no change of, or contemplated change in, the beneficial ownership of the liquor licence as a consequence of the transfer, or
- (b) the transfer is a consequence of an agreement for the sale or transfer of dutiable property on which the duty chargeable in respect of the agreement has been paid.

**Note—**

Duty on the transfer of statutory licences is abolished on 1 July 2012. This exemption is relevant only to a transfer that occurs before that date. See Part 4 of this Chapter.

(7) **Poker machine permits and entitlements** No duty is chargeable under this Chapter:

(a) on the transfer of:

- (i) a Liquor Act poker machine permit (within the meaning of the *Gaming Machines Act 2001*), or
- (ii) a poker machine entitlement (within the meaning of that Act),

that occurs as a consequence of the transfer of a hotel licence approved under section 60 of the *Liquor Act 2007* that is not chargeable with duty under this Chapter, or

(b) on the vesting or transfer of any such permit or entitlement, if the Chief Commissioner is satisfied that:

- (i) there is no change, or contemplated change, in the beneficial ownership of the permit or entitlement as a consequence of the vesting or transfer, or
- (ii) the vesting or transfer occurs as a consequence of an agreement for the sale or transfer of dutiable property on which the duty chargeable in respect of the agreement has been paid.

**Note—**

Duty on the transfer of statutory licences, permissions and poker machine entitlements is abolished on 1 July 2012. This exemption is relevant only to a transfer or vesting that occurs before that date. See Part 4 of this Chapter.

- (8) **Manufactured homes** No duty is chargeable under this Chapter on the transfer of, or an agreement to transfer, a manufactured home in a caravan park or manufactured home estate if the manufactured home, but not the land on which the manufactured home is located, is owned by the transferor.

In this subsection:

**manufactured home** means a manufactured home as defined in the *Local Government Act 1993* where the home is designed to allow its transportation.

**manufactured home estate** has the same meaning as in the *Local Government Act 1993*.

- (9) **Administration agreements under first home owner grant scheme** No duty is chargeable under this Chapter on an administration agreement under the *First Home Owner Grant Act 2000*.
- (10) **Instruments relating to superannuation** No duty is chargeable under this Chapter on:
- (a) an instrument referred to in section 60 (1) (a), (b) or (c) that is first executed on or after 1 July 2001, or
  - (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.
- (11) **Financial agreements** No duty is chargeable under this Chapter on a financial agreement made under section 90B, 90C or 90D of the *Family Law Act 1975* of the Commonwealth.
- (12) **Vesting by statute law—deceased estates** No duty is chargeable under this Chapter on the vesting of dutiable property in a legal personal representative of a deceased person.
- (12A) **Consents to gifts by will to interested witnesses** No duty is chargeable under this Chapter on a consent referred to in section 10 (3) (b) of the *Succession Act 2006*.
- (13) **Vesting by statute law—common property under strata plans** No duty is chargeable under this Chapter on the vesting of common property in a body corporate on the registration of a strata plan or strata plan of subdivision under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development)*

*Act 1986.*

- (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) **Correction of error** No duty is chargeable under this Chapter on a transfer of dutiable property made to correct an error in a previous transfer of the same dutiable property if:
- (a) no additional consideration is paid or payable, and
  - (b) the beneficial interests in the property change only to the extent necessary to correct the error.
- (15) **Home equity release schemes** No duty is chargeable under this Chapter on the transfer of, or an agreement to transfer, land, a land use entitlement, or an interest in land or a land use entitlement if:
- (a) the land concerned is used as the principal place of residence of the transferor, and
  - (b) the transferor, or, if there is more than one transferor, at least one of them, is aged 60 years or older, and
  - (c) the transfer or agreement is entered into in connection with an approved home equity release scheme.

In this subsection:

**approved home equity release scheme** means a home equity release scheme approved, or of a class approved, by the Chief Commissioner, in accordance with any guidelines approved by the Treasurer that are published in the Gazette.

**home equity release scheme** means a scheme that enables an owner of residential property to obtain money from a person (**the lender**) in exchange for an agreement that a proportion of the value of the residential property will be paid to the lender on the occurrence of a specified event (such as the sale of the residential property or the death of the owner).

- (16) **Leases—general** No duty is chargeable under this Chapter on the following leases:
- (a) a lease granted by or on behalf of a corporation, society or institution if:
    - (i) the purpose of the lease is to grant a retired person or a disabled person the right to occupy residential accommodation, and
    - (ii) the lease has not been granted for the purpose of profit by the lessor,

- (b) a lease of premises to the Home Care Service of New South Wales,
  - (c) a lease executed in accordance with Part V of the *National Health Act 1953* of the Commonwealth,
  - (d) a lease of premises in a retirement village within the meaning of section 5 of the *Retirement Villages Act 1999*.
- (17) **Pharmacists' body corporate** No duty is chargeable under this Chapter on the transfer of, or an agreement to transfer, dutiable property in the following cases:
- (a) dutiable property of a partnership carrying on the business of a pharmacist before 25 February 2008 that is transferred or agreed to be transferred to a pharmacists' body corporate (within the meaning of Schedule 5F to the *Health Practitioner Regulation National Law (NSW)*), if the members of the partnership immediately before the transfer or agreement is first executed are all directors and shareholders of the pharmacists' body corporate and there are no other directors or shareholders of that pharmacists' body corporate,
  - (b) dutiable property of a pharmacist carrying on the business of a pharmacist before 25 February 2008 that is transferred or agreed to be transferred to a pharmacists' body corporate (within the meaning of Schedule 5F to the *Health Practitioner Regulation National Law (NSW)*), if the pharmacist is the sole director and shareholder of that pharmacists' body corporate.
- (18) **Termination of strata scheme** No duty is chargeable under this Chapter on the vesting of an estate or interest in land by or as a consequence of the termination of a strata scheme to the extent that the persons who were proprietors of the lots the subject of the strata scheme concerned acquire, on the termination, an interest in the land that was the subject of the strata scheme in proportion to their unit entitlements immediately before the termination.
- (19) In subsection (18), a reference to the termination of a strata scheme is a reference to an order under section 51 or 51A of the *Strata Schemes (Freehold Development) Act 1973* terminating a strata scheme under that Act.
- (20) **Termination of scheme under Community Land Development Act 1989** No duty is chargeable under this Chapter on the vesting of an estate or interest in land by or as a consequence of the termination of a scheme to the extent that the persons who were the proprietors in the scheme concerned acquire, on the termination, an interest in the land that was the subject of the scheme in proportion to their unit entitlements immediately before the termination.
- (21) In subsection (20), a reference to the termination of a scheme is a reference to an order under section 70 or 72 of the *Community Land Development Act 1989* terminating a scheme under that Act.

(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.

## 66 Exemptions—marketable securities

(1)-(4) (Repealed)

(5) **Share buy-backs** No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of shares comprising a buy-back of the shares in accordance with Division 2 of Part 2J.1 of the *Corporations Act 2001* of the

Commonwealth, unless the buy-back is effected by the purchaser pursuant to one or more agreements, understandings or arrangements that the purchaser will issue marketable securities.

- (6) **Rights to shares** No duty is chargeable under this Chapter on the transfer to a person of rights to shares if an earlier transfer of the shares to the person included a right to shares and duty in respect of the rights was paid in connection with that earlier transfer or the earlier transfer was exempt from duty.
- (7) **Bonus or rights issue** No duty is chargeable under this Chapter on the transfer of shares to a person (the **transferee**) if:
- (a) as a consequence of the transfer of shares in a company:
    - (i) in respect of which ad valorem duty under this Act or a corresponding Act has been paid or that is exempt from duty, and
    - (ii) that is not registered in the share register of the company,the transferee is, on a bonus issue or the issue of a right to shares subsequent to the transfer, entitled to other shares registered in the name of the transferor, and
  - (b) the transferee pays the amount, if any, necessary to take up the other shares.
- (8) (Repealed)
- (8A) **ADRs** No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of an ADR if:
- (a) the ADR relates to rights to shares that upon issue, on exercise of those rights, will be quoted on the Australian Stock Exchange or a recognised stock exchange, and
  - (b) the transfer, or the sale or transfer to which the agreement relates, is to:
    - (i) a foreign resident on the foreign resident's own behalf, or
    - (ii) a foreign resident acting on behalf of a trustee for another foreign resident, and
  - (c) the ADR is to be registered on an overseas register of legal or beneficial title.
- (9) **Trust mergers** No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of units in a qualifying unit trust scheme to the responsible entity or trustee of another qualifying unit trust scheme or a custodian or agent of the responsible entity or trustee if it is proved to the satisfaction of the Chief Commissioner that:
- (a) the purpose of the transfer is to give effect to a merger of 2 qualifying unit trust schemes or a takeover of a qualifying unit trust scheme by another qualifying unit

trust scheme, and

- (b) the units are registered on a register kept in New South Wales, and
- (c) the transfer would qualify as a roll-over under Subdivision 124-M of the *Income Tax Assessment Act 1997* of the Commonwealth.

(9A) For the purposes of subsection (9), **qualifying unit trust scheme** means a unit trust scheme:

- (a) any of the units in which are quoted on the Australian Stock Exchange or on a recognised stock exchange, or
- (b) in respect of which:
  - (i) units in the scheme have been issued to the public and 50 or more persons are beneficially entitled to units in the scheme, or
  - (ii) a majority of units in the scheme are acquired by, for or on account of, a complying superannuation fund, a pooled superannuation trust or a life company, or
- (c) that, in the opinion of the Chief Commissioner, will satisfy paragraph (b) within 12 months after the Chief Commissioner gives written notice of that opinion to a person who has requested the Chief Commissioner to express that opinion in relation to the unit trust scheme.

(10) **Mining securities** No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of marketable securities in a company (wherever incorporated) whose sole business is either or both of the following activities:

- (a) mining in New South Wales for minerals within the meaning of the *Mining Act 1992* or the *Offshore Minerals Act 1999*, or
- (b) prospecting or mining in New South Wales for petroleum within the meaning of the *Petroleum (Onshore) Act 1991*,

if the consideration for the transfer or agreement is not less than the unencumbered value of the marketable securities.

(11) **“Top hatting” arrangements** No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of marketable securities, or a vesting of marketable securities by or as a consequence of an order of a court, if the Chief Commissioner is satisfied that the transfer or vesting is made to give effect to a scheme that would qualify as a roll-over under Subdivision 124-Q of the *Income Tax Assessment Act 1997* of the Commonwealth.

**Note—**



No duty is chargeable on transactions relating to shares or units that are quoted on the Australian Stock Exchange or a recognised stock exchange or relating to interests in such shares or units (see section 11 (2)).

The duty on all marketable securities is to be abolished on 1 July 2012. See Part 4 of this Chapter.

## **67 Exemptions—transfers to married couples and de facto partners**

- (1) No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of dutiable property if it is proved to the satisfaction of the Chief Commissioner that:
- (a) as a result of the transfer or agreement, the property is or will be held by a married couple or de facto partners as joint tenants or as tenants in common in equal shares, and
  - (b) the dutiable property:
    - (i) is land that has erected on it a private dwelling house and was solely or principally used, as at the date of transfer, as the principal place of residence of the married couple or de facto partners, or
    - (ii) is vacant land and the married couple or de facto partners intend to use it as the site of a private dwelling house to be solely or principally used as their principal place of residence, or
    - (iii) is shares that confer an entitlement to exclusive possession of a company title dwelling that was solely or principally used, as at the date of transfer, as the principal place of residence of the married couple or de facto partners, and
  - (c) both the transferor and the transferee are the married couple or one of them or the de facto partners or one of them and no other person is a party to the transfer, and
  - (d) in the case of de facto partners, the parties to the relationship have lived in the relationship for at least the 2 years before the date of the transfer.
- (1A) For the purposes of subsection (1) (b), a private dwelling house may be principally used as the principal place of residence of a married couple or de facto partners despite the fact that it may be partly owned by another person or persons or that it may also be the principal place of residence of another person or persons.
- (2) In this section, **private dwelling house** includes a lot within the meaning of the *Strata Schemes (Freehold Development) Act 1973* used as a place of residence.

## **68 Exemptions—break-up of marriages and other relationships**

- (1) **Break-up of marriage** No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of matrimonial property if:
- (a) the property is transferred, or agreed to be sold or transferred, to the parties to a

marriage that is dissolved or annulled, or in the opinion of the Chief Commissioner has broken down irretrievably, or to either of them, or to a child or children of either of them or a trustee of such a child or children, and

(b) the transfer or agreement is effected by or in accordance with:

(i) a financial agreement made under section 90B, 90C or 90D of the *Family Law Act 1975* of the Commonwealth that, under that Act, is binding on the parties to the agreement, or

(ii) an order of a court under that Act, or

(iia) an agreement that the Chief Commissioner is satisfied has been made for the purpose of dividing matrimonial property as a consequence of the dissolution, annulment or breakdown of the marriage, or

(iii) a purchase at public auction of property that, immediately before the auction, was matrimonial property where the public auction is held to comply with any such agreement or order.

**(1A) Break-up of de facto relationship** No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of relationship property if:

(a) the property is transferred, or agreed to be sold or transferred, to the parties to a de facto relationship that has, in the opinion of the Chief Commissioner, broken down or to either of them, or to a child or children of either of them or a trustee of such a child or children, and

(b) the transfer or agreement is effected by or in accordance with:

(i) a financial agreement made under section 90UB, 90UC or 90UD of the *Family Law Act 1975* of the Commonwealth that, under that Act, is binding on the parties to the agreement, or

(ii) an order of a court under that Act, or

(iii) a purchase at public auction of property that, immediately before the auction, was relationship property where the public auction is held to comply with any such agreement or order.

**(2) Break-up of domestic relationship** No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of relationship property if:

(a) the property is transferred, or agreed to be sold or transferred, to the parties to a domestic relationship that has, in the opinion of the Chief Commissioner, been terminated or to either of them, or to a child or children of either of them or a trustee of such a child or children, and

(b) the transfer or agreement is effected by or in accordance with:

- (i) an order of a court made under the *Property (Relationships) Act 1984*, or
- (ii) a termination agreement within the meaning of section 44 of the *Property (Relationships) Act 1984* that has been certified in accordance with section 47 of that Act, or
- (iii) a purchase at public auction of property that, immediately before the auction, was relationship property where the public auction is held to comply with any such order or agreement.

(3) **Associated transactions** No duty is chargeable under this Chapter on a dutiable transaction to the extent that:

- (a) for purposes of or ancillary to a transfer referred to in subsection (1), (1A) or (2), it transfers a share that is matrimonial property or relationship property to a person not a party to the relevant marriage or relationship, in order to comply with a requirement of or prescribed under the *Corporations Act 2001* of the Commonwealth, or
- (b) it is a declaration of trust, by the transferee of a share transferred as referred to in paragraph (a), for the benefit of a party to the marriage or relationship.

(4) **Refunds—break-up of marriage** If:

- (a) ad valorem duty was paid on a transfer, or an agreement for the sale or transfer, of matrimonial property to the parties to a marriage or to either of them, or to a child or children of either of them or to a trustee of such a child or children, and
  - (b) the transfer or agreement was effected as referred to in section 68 (1) (b), and
  - (c) the marriage has been dissolved or annulled or has broken down irretrievably,
- the Chief Commissioner must reassess the transfer or agreement and refund the duty paid.

(4AA) **Refunds—break-up of de facto relationship** If:

- (a) ad valorem duty was paid on a transfer, or an agreement for the sale or transfer, of relationship property to the parties to a de facto relationship or to either of them, or to a child or children of either of them or to a trustee of such a child or children, and
- (b) the transfer or agreement was effected as referred to in section 68 (1A) (b), and
- (c) the de facto relationship has broken down,

the Chief Commissioner must reassess the transfer or agreement and refund the duty

paid.

**(4A) Refunds—break-up of domestic relationship** If:

- (a) ad valorem duty was paid on a transfer, or an agreement for the sale or transfer, of relationship property to the parties to a domestic relationship or to either of them, or to a child or children of either of them or to a trustee of such a child or children, and
- (b) the transfer or agreement was effected as referred to in section 68 (2) (b), and
- (c) the domestic relationship has been terminated,

the Chief Commissioner must reassess the transfer or agreement and refund the duty paid.

**(4B) Evidence of exemption** A party to a marriage, de facto relationship or domestic relationship may provide a statement to the Chief Commissioner, in the form of a statutory declaration, to the effect that:

- (a) in the case of a marriage:
  - (i) the party intends to apply for a dissolution or annulment of the marriage, or
  - (ii) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed, or
- (b) in the case of a de facto relationship or domestic relationship, the relationship has broken down or been terminated.

The Chief Commissioner is required to have regard to any such statement in exercising his or her functions under this section.

**(4C) Power to require other evidence** Subsection (4B) does not limit the functions of the Chief Commissioner under section 72 of the *Taxation Administration Act 1996*.

**(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.

**(5) Definitions** In this section:

**marriage** includes a void marriage.

**matrimonial property** of a marriage means property of the parties to the marriage or of either of them.

**party** to a marriage includes a person who was a party to a marriage that has been

dissolved or annulled, in Australia or elsewhere.

**relationship property** of a de facto relationship or domestic relationship means property of the parties to the relationship or of either of them.

## **Part 8 Exemption, discounts and instalment payment schemes**

### **Division 1 First Home Plus**

#### **Subdivision 1 Agreements and associated mortgages**

##### **69 The nature of the scheme**

This scheme is intended to help people who are acquiring their first home. Under the scheme, the acquisition and any mortgage given to assist the financing of the acquisition is subject to a concession or exemption from duty.

##### **70 Commencement**

The following transactions and instruments are eligible for consideration under the scheme:

- (a) agreements for sale or transfer entered into on or after 4 April 2004,
- (b) transfers that occur on or after 4 April 2004 (other than transfers made in conformity with an agreement for sale or transfer entered into before 4 April 2004),
- (c) mortgages over land the subject of those agreements or transfers.

##### **71 Restrictions on eligibility—previous ownership of residential property or first home concession**

- (1) A purchaser or transferee under an agreement or transfer may apply under the scheme, but will be eligible only if the purchaser or transferee is a first home owner.
- (2) A **first home owner** is an individual:
  - (a) who has not at any time owned residential property in Australia (either solely or with someone else) and has not previously been a party to an application under the scheme that was approved by the Chief Commissioner, and
  - (b) whose spouse (if any) has not at any time owned residential property in Australia (either solely or with someone else) and has not previously been a party to an application under the scheme that was approved by the Chief Commissioner.
- (3) (Repealed)
- (4) For the purpose of this section, a person is the **spouse** of another person if:
  - (a) they are legally married, or

(b) they are living together as a couple in a de facto relationship.

(5) If the Chief Commissioner is satisfied that, at the time of making an application under the scheme, a purchaser or transferee:

(a) is legally married but not cohabiting with the person to whom the applicant is legally married, and

(b) has no intention of resuming cohabitation,

the person to whom the purchaser or transferee is legally married is not to be regarded as the applicant's spouse.

(6) For the purpose of determining eligibility, the ownership at any time of residential property, or a previous application under the scheme, is to be disregarded if the residential property owned by the purchaser or transferee is or was vested in the purchaser or transferee on trust, or as an executor under a will, or the application was made by the purchaser or transferee in his or her capacity as trustee or executor.

(7) The fact that a purchaser or transferee under an agreement or transfer is not a first home owner does not prevent the agreement or transfer from being eligible under the scheme if:

(a) one or more of the purchasers or transferees under the agreement or transfer is a first home owner, and

(b) the total ownership share in the property to which the application relates that is being acquired by purchasers or transferees who are not first home owners does not exceed 5%.

**Note—**

A purchaser or transferee is not considered to be a first home owner unless both the purchaser or transferee, and his or her spouse (if any), have not owned residential property before. See subsection (2).

(8) For the purposes of this section, a person who is, or has at any time been, the holder of a leasehold interest granted by the Commonwealth in residential property in the Australian Capital Territory is taken to own or have owned that residential property.

**72 (Repealed)**

**73 Ineligible persons**

(1) Companies, partnerships, and persons in their capacity as trustees, are not eligible.

(2) However, a trustee is eligible if:

(a) the trustee is the guardian of a person under a legal disability and the person under a legal disability is a first home owner who will be occupying the home to which the agreement or transfer relates as a principal place of residence in

accordance with the residence requirement under section 76, or

- (b) the trustee is an apparent purchaser of a kind referred to in section 55 and the real purchaser is a first home owner.
- (3) A purchaser or transferee under an agreement or transfer who is under 18 years of age is not eligible.
- (4) Despite subsection (3), the Chief Commissioner may determine that a purchaser or transferee under 18 years of age is eligible if the Chief Commissioner is satisfied that:
  - (a) the home to which the agreement or transfer relates will be occupied by the purchaser or transferee as his or her principal place of residence in accordance with the residence requirement under section 76, and
  - (b) the application does not form part of a scheme to circumvent limitations on, or requirements affecting, eligibility under the scheme.
- (5) A purchaser or transferee under an agreement or transfer is not eligible unless the person is an Australian citizen or a permanent resident, subject to subsection (6).
- (6) If there is more than one purchaser or transferee under an agreement or transfer and at least one of them is a first home owner who is an Australian citizen or permanent resident, the other purchasers or transferees are exempt from compliance with subsection (5).
- (7) (Repealed)

### **73A Application of eligibility criteria to joint purchasers and transferees**

- (1) If there is more than one purchaser or transferee under an agreement or transfer, they may apply under the scheme, but the agreement or transfer will be eligible under the scheme only if all of the purchasers or transferees are eligible under the scheme.
- (2) This section is subject to section 78B.

**Note—**

Section 78B allows a limited duty concession under the scheme to be claimed in respect of residential property that is purchased subject to a shared equity arrangement between a first home owner and a person who is not a first home owner.

### **74 Eligible agreements or transfers**

- (1) The agreement or transfer must be for the acquisition of a first home or for the acquisition of a vacant block of residential land intended to be used as the site of a first home.
- (2) The agreement or transfer must be for the whole of the property.
- (3) The dutiable value of the dutiable property that is the subject of the agreement or

transfer must be less than:

- (a) \$600,000 if the property has a private dwelling built on it, or
- (b) \$450,000 if the property comprises a vacant block of residential land.

**Note—**

The **dutiable value** of dutiable property is the greater of:

- (a) the consideration (if any) for the dutiable transaction (being the amount of a monetary consideration or the value of a non-monetary consideration), and
- (b) the unencumbered value of the dutiable property.

(4) (Repealed)

**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.

**75 Ineligible agreements and transfers**

- (1) An agreement or transfer is not eligible if it involves the acquisition of a business or business premises. However, an agreement for the purchase, or a transfer, of a farming property on which there is a private dwelling is not excluded.



- (2) An agreement for the purchase, or a transfer, of a holiday home is not eligible.
- (3) (Repealed)

## **76 Residence requirement**

- (1) The home must be occupied by the first home owner or one of the first home owners who is acquiring it as a principal place of residence for a continuous period of at least 6 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. This requirement is referred to as ***the residence requirement***.
- (2) The Chief Commissioner may, if satisfied there are good reasons to do so in a particular case:
  - (a) modify the residence requirement by approving a shorter period of occupation by a first home owner, or
  - (b) exempt a first home owner from the requirement to comply with the residence requirement.
- (3) In the case of an agreement or transfer for the acquisition of a vacant block of residential land, it is sufficient that the Chief Commissioner is satisfied that the vacant block is intended to be used as the site of a home to be occupied by the first home owner or one of the first home owners who is acquiring it as a principal place of residence.
- (4) (Repealed)
- (5) For the purpose 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.
- (6) The residence requirement does not apply to an application under the scheme if, on the date of the agreement or transfer:
  - (a) the applicant or, if there are 2 or more of them, at least one of the applicants is a member of the Permanent Forces of the Australian Defence Force (within the meaning of the *Defence Act 1903* of the Commonwealth), and
  - (b) the applicant or, if there are 2 or more of them, each of the applicants is enrolled to vote in State elections (under the *Parliamentary Electorates and Elections Act 1912*).

## **76A Approval of application in advance of satisfaction of residence requirement**

- (1) The Chief Commissioner may approve an application in anticipation of compliance

with the residence requirement under section 76 if the Chief Commissioner is satisfied that each applicant required to comply with the residence requirement intends to occupy the home as his or her principal place of residence for a continuous period of at least 6 months, with that occupation starting within 12 months after completion of the agreement or transfer or within a longer period approved by the Chief Commissioner.

- (2) If an application is approved in anticipation of compliance with the residence requirement, the approval is given on condition that, if the residence requirement is not complied with, the applicant must within 14 days after the end of the period allowed for compliance:
  - (a) give written notice of that fact to the Chief Commissioner, and
  - (b) pay the relevant duty to the Chief Commissioner.
- (3) The **relevant duty** is the difference between the total amount of duty that would have been payable on the transactions and instruments the subject of the application, if they had not been eligible under the scheme, and the total amount of duty (if any) paid in respect of those transactions and instruments.
- (4) A person who fails to comply with the condition prescribed by this section is guilty of an offence.  
Maximum penalty: 50 penalty units.
- (5) A failure to comply with the condition prescribed by this section is a tax default for the purposes of the [Taxation Administration Act 1996](#).

## 77 Eligible mortgages

- (1) A mortgage is eligible if:
  - (a) it is given to assist the financing of a purchase under an agreement or transfer that is eligible under the scheme, and
  - (b) the purchaser or purchasers under the agreement or transfer are eligible under the scheme (including if the agreement or transfer is eligible under the scheme for a shared equity concession).
- (2) The mortgage must be over the property purchased.
- (3) In the case of a property that has a private dwelling built on it, the amount of advances secured must not be more than the amount of the dutiable value permitted under section 74 (3) (a).
- (4) In the case of a property that comprises a vacant block of residential land, the amount of advances secured must not be more than the amount of the dutiable value

permitted under section 74 (3) (b), unless the amount of advances secured under the mortgage includes provision for the building of a private dwelling on the property. In such a case, the amount of advances secured must not be more than the amount of the dutiable value permitted under section 74 (3) (a).

**Note—**

See also section 221B, which extends a general mortgage duty exemption to all mortgages associated with owner occupied housing, and takes effect on and from 1 September 2007.

**78 Making of applications**

- (1) An application is made to the Chief Commissioner by completing a statutory declaration in an approved form.
- (2) (Repealed)
- (3) 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.

**78A Duty payable if application approved**

- (1) If an application concerning an eligible agreement or transfer is approved and the dutiable value of the dutiable property that is the subject of the agreement or transfer is not more than the following amounts, no duty is chargeable on the agreement or transfer:
  - (a) \$500,000 if the property has a private dwelling built on it, or
  - (b) \$300,000 if the property comprises a vacant block of residential land.
- (2) If an application concerning an eligible agreement or transfer is approved and subsection (1) does not apply to the agreement or transfer, duty is chargeable on the agreement or transfer as follows:
  - (a) if the property has a private dwelling built on it—at the rate of 22.49% of the dutiable value of the dutiable property that is the subject of the agreement or transfer, less \$112,450, or
  - (b) if the property comprises a vacant block of residential land—at the rate of 10.49% of the dutiable value of the dutiable property that is the subject of the agreement or transfer, less \$31,470.
- (3) This section does not apply in respect of an agreement or transfer that is eligible under the scheme only for a shared equity concession.

### **78B Special concession for shared equity arrangements**

- (1) If there is more than one purchaser or transferee under an agreement or transfer, and one or more of them is a first home owner, but the agreement or transfer is not eligible under the scheme because one or more of the other purchasers or transferees is not eligible under the scheme, the agreement or transfer may still be eligible for a duty concession under the scheme (a **shared equity concession**).
- (2) In order to be eligible for a shared equity concession:
  - (a) the purchasers or transferees who are first home owners must acquire not less than a 50% share in the ownership of the property, and
  - (b) the agreement or transfer must be an agreement or transfer that would be eligible under the scheme if the first home owners were the sole purchasers or transferees under the agreement or transfer.
- (3) If an application concerning an agreement or transfer that is eligible under the scheme for a shared equity concession is approved, duty is chargeable as follows:

$$D = R \times (100\% - E) + E \times C$$

where:

**D** is the duty chargeable.

**R** is the duty that would be chargeable on the dutiable value of the property if this Subdivision did not apply in respect of the agreement or transfer.

**E** is the ownership share in the property of the first home owner or owners, expressed as a percentage.

**C** is the duty (if any) that would be chargeable under section 78A on the agreement or transfer if that section applied in respect of the agreement or transfer.

- (4) Despite anything to the contrary in this section, an agreement or transfer under which one or more of the purchasers or transferees is a company is not eligible under the scheme for a shared equity concession if the Chief Commissioner is satisfied that the application relating to that agreement or transfer should not be approved for any good reason.
- (5) To avoid doubt, a reference in this Subdivision (except section 78A) to an application that has been approved under the scheme includes an application that has been approved under the scheme because of eligibility for a shared equity concession.

### **79 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 (because of failure to comply with the residence requirement or otherwise).

- (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.

### **80 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:
- (a) under a condition of approval referred to in section 76A, or
- (b) under a notice of assessment referred to in section 79.
- (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.

**80AA** (Renumbered as sec 78B)

### **80A Definitions**

In this Subdivision:

**first home owner** has the meaning given by section 71.

**guardian** of a person under a legal disability includes a trustee who holds property on trust for the person under an instrument of trust or by order or direction of a court or tribunal.

**notice of assessment** means a notice of assessment under the [Taxation Administration Act 1996](#).

**residence requirement**—see section 76.

**residential property** means:

- (a) land on which there is a building that is lawfully occupied as a place of residence or suitable for occupation as a place of residence, or
- (b) a company title dwelling.

**shared equity concession** has the meaning given by section 78B.

## **Subdivision 1A Payment of instalments under First Home Purchase Scheme prior to 1 August 1998**

### **81 Payment of instalments**

- (1) Where instalments of duty are to be paid in accordance with an undertaking given under section 78 (2) as in force before 1 August 1998, the first instalment is to be paid by a date which is 1 year after the date of exchange of the agreement.
- (2) Although instalments are payable annually, payments may be made at more frequent intervals.

### **82 Payment of interest**

- (1) No interest is payable unless an instalment is overdue. An instalment is overdue if it is not paid within 21 days after the date fixed for its payment in the undertaking.
- (2) Interest on an instalment that is overdue is payable as on a tax default by a taxpayer under the [Taxation Administration Act 1996](#).
- (3) A person having the benefit of the scheme is not liable, in that capacity, for any penalty under this Act or any interest other than as provided by this section.

### **83 Overdue instalments**

As well as attracting interest, if an instalment is overdue for more than 3 months, the Chief Commissioner (or the Chief Commissioner's agent) may sue the defaulter to recover, as a debt, the whole of the outstanding balance of the duty and any accrued interest and may, in addition, lodge and maintain a caveat over the subject property until all duty has been paid.

### **84 Sale or leasing of home or land before all instalments are paid**

- (1) If the home or land is sold, leased (wholly or in part) or otherwise disposed of, or if for some other reason the home ceases to be the principal place of residence of the person or both of the persons having the benefit of the scheme:
  - (a) any entitlement to a discount under section 87 ceases immediately the home or

land is sold, leased or otherwise disposed of or the home so ceases to be the principal place of residence, and

(b) the whole of the outstanding balance of the duty and any accrued interest becomes immediately payable.

(2) The Chief Commissioner (or the Chief Commissioner's agent) may sue the person or persons owing the duty and any interest to recover, as a debt, the amount involved.

## **85 (Repealed)**

## **Subdivision 2 Discount for full payment of remaining duty**

### **86 Application of Subdivision 2**

This Subdivision applies to a person or persons having the benefit of the scheme set out in Subdivision 1 or a first home purchase scheme that operated under the [Stamp Duties Act 1920](#).

### **87 Discount for full payment of remaining duty**

- (1) A person or persons to whom this Subdivision applies may choose at any time to pay out, at a discount of 50%, the total of all instalments of duty remaining at that time.
- (2) There is no entitlement to a discount under this section at any time when an instalment is overdue or any interest payable on an overdue instalment remains unpaid.

## **Division 1A NSW Housing Construction Acceleration Plan (Budget 2009-10)**

### **87A Nature of the scheme**

The scheme established by this Division is intended to provide a reduction in duty in respect of the purchase or construction of new homes by persons who are not eligible for an exemption or reduction under the First Home Plus scheme in Division 1 or a grant under the [First Home Owner Grant Act 2000](#).

### **87B 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 2009 and before 1 July 2010,
  - (b) transfers of dutiable property that occur on or after 1 July 2009 and before 1 July 2010 (other than transfers made in conformity with an agreement for sale or transfer entered into before 1 July 2009).

- (2) An agreement for the sale or transfer of dutiable property is not eligible if:
  - (a) it replaces an agreement made before 1 July 2009, and
  - (b) the replaced agreement was an agreement for the sale or transfer of substantially the same dutiable property.

### **87C Agreements or transfers must be for acquisition of new home**

- (1) An agreement for the sale or transfer of dutiable property is eligible under the scheme if:
  - (a) it is an agreement for the acquisition of a new home that is complete and ready for occupation, or
  - (b) it is an agreement for the sale or transfer of land on which a new home is to be built before completion of the sale or transfer (an **off the plan purchase agreement**).
- (2) A transfer is eligible under the scheme if the transfer is for the acquisition of a new home that is complete and ready for occupation.
- (3) 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, and includes a substantially renovated home.
- (4) An off the plan purchase agreement is eligible only if the agreement states that the sale or transfer must be completed before 31 December 2011 or, in any other case, the agreement is completed before 31 December 2011 or by such later date as the Chief Commissioner may allow for delay caused by circumstances beyond the control of the parties.
- (5) In any case, 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) For the purposes of this section, 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) The Chief Commissioner may approve an application in relation to an off the plan purchase agreement in anticipation of compliance with the eligibility requirements of this section.

### **87D Restrictions on eligibility**

- (1) An agreement or transfer is not eligible if:



- (a) the agreement or transfer is eligible under the First Home Plus scheme in Division 1, or
  - (b) the transferee, or any of the transferees, is eligible for or has been paid a grant under the *First Home Owner Grant Act 2000* in respect of the purchase or construction of the new home on the land.
- (2) 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).
- (3) 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.

#### **87E 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 \$600,000.

#### **87F Duty payable if application approved**

- (1) If an application concerning an eligible agreement or transfer is approved, the amount of ad valorem duty chargeable on the agreement or transfer is to be reduced by 50%.
- (2) If an eligible agreement or transfer is aggregated with other dutiable transactions, and treated as a single dutiable transaction under section 25, the 50% 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.

#### **87G Making of applications**

- (1) An application under this Division is to be made to the Chief Commissioner in an approved form.
- (2) 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.

#### **87H 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 eligibility requirements 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.

### **87I 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 87H.
- (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.

### **87J Definitions**

- (1) In this Division:  
**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 87C.
- (2) For the purposes of this Division, a home is a **substantially renovated home** if:  
(a) the home 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) the home, as renovated, has not been previously occupied or sold as a place of residence.

## Division 1B NSW Home Builders Bonus

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

#### **87O (Repealed)**

#### **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.
  - (1A) A pre-construction duty exemption applies to an off the plan purchase that is approved under the scheme if the off the plan purchase replaces another off the plan purchase that was approved under the scheme, and to which the pre-construction duty exemption applied, whether or not construction has 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, subject to this section.
  - (4A) If an off the plan purchase relates to a new home that is to be constructed as part of

a staged development, construction of the new home commences when construction of the first residential level of the building in which the new home is located begins.

(4B) For the purposes of this section:

(a) a new home is to be constructed as part of a **staged development** if the new home is part of a development that will comprise 2 or more multi-storey buildings that have common foundations, and which are to be constructed in separate stages, and

(b) a **residential level** of a building is any level of the building that is to be used as a place of residence.

(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.

(6) A pre-construction duty exemption also applies to an off the plan purchase that is approved under the scheme if:

(a) construction of the new home commenced when the land was owned by a person who is not the vendor under the off the plan purchase, and

(b) no more than 25% of the construction work required to construct the new home, or the building in which it is located, has been completed, and

(c) no construction work in relation to the new home has been carried out between the date that the vendor acquired the land and the date the off the plan purchase was entered into.

### **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 55 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.
- (6A) However, a person who is under the age of 65 years is not an eligible senior unless the relevant agreement or transfer is a complying agreement or transfer that is eligible for consideration under the scheme.
- (6B) A **complying agreement or transfer** is:
- (a) an agreement for sale or transfer of dutiable property entered into on or after 1 July 2011, or
  - (b) a transfer of dutiable property that occurs on or after 1 July 2011 (other than a transfer made in conformity with an agreement for sale or transfer entered into before 1 July 2011).
- (6C) An agreement for sale or transfer of dutiable property is not a complying agreement or transfer if:
- (a) it replaces an agreement made before 1 July 2011, and
  - (b) the replaced agreement was an agreement for the sale or transfer of substantially the same dutiable property.
- (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.

### **87ZAA Replacement agreements—off the plan purchases**

- (1) An application may be made under the scheme in relation to an off the plan purchase entered into on or after 1 July 2012 if the off the plan purchase replaces an off the plan purchase that was approved under the scheme.
- (2) The replacement off the plan purchase is taken to be eligible for consideration under the scheme, despite section 87L.

### **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.
- (4) For the purposes of this Division, an off the plan purchase **replaces** another off the plan purchase only if the agreements concerned relate to substantially the same property and have the same purchaser or purchasers.

## Division 2 Flood-prone housing scheme

### 88 The nature of the scheme

This scheme is intended to assist a person who, as an owner of a home on flood-prone land, has entered into an agreement for the sale of the land to the council of the local government area in which the land is situated and then purchases another home. The scheme enables such a person to choose to pay duty on the agreement for the purchase of the new home by instalments over a period of 5 years (instead of at the time of purchase).

### 89 Commencement

Agreements for sale or transfer entered into on or after the commencement of this Division are eligible for consideration under the scheme.

## 90 Eligible persons

A person may apply under the scheme if:

- (a) the person was the owner of at least 50% of the beneficial interest in the land sold or being sold to the council, and
- (b) the person has entered into an agreement for the purchase of a home intended to be occupied as the person's principal place of residence.

## 91 Eligible agreements

The agreement for the purchase of the new home is eligible for consideration under the scheme if the amount paid for the home is the full market value. Wholly or partially gifted property is not eligible.

## 92 Other provisions

- (1) Section 76 applies to this scheme in the same way as it applies to First Home Plus.
- (2) Sections 78 and 81–84 apply to this scheme in the same way as they applied to the First Home Purchase Scheme before 1 August 1998.

## Division 3 Exemption from or reduction in duty for certain transfers

### 93 The nature of the scheme

The scheme is intended to provide an exemption from or reduction in duty in respect of:

- (a) the transfer of a principal place of residence from a corporation or special trust to certain persons, or
- (b) the transfer of any land owned as at 31 December 1986 by a special trust from the trust to certain persons.

### 94 Definitions

In this Division:

**corporation** has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

**land** includes any estate or interest in land.

**land tax** has the same meaning as in the [Land Tax Management Act 1956](#).

**principal shareholder** in a corporation means:

- (a) any person (other than a corporation) whose voting entitlement (whether or not through the holding of shares) in the corporation is 50% or more, or

- (b) any person (other than a corporation) who has a voting entitlement (whether or not through the holding of shares) in the corporation where all the persons who have a voting entitlement in the corporation have an equal voting entitlement.

**shareholder** includes member.

**special trust** has the same meaning as in the [Land Tax Management Act 1956](#).

**voting entitlement** has the meaning given by section 95.

#### **95 Meaning of “voting entitlement”**

- (1) A person’s voting entitlement in a corporation is that proportion of the total voting rights of all shareholders entitled to vote at general meetings of the corporation which the person is entitled to exercise, as a shareholder, at general meetings of the corporation.
- (2) A person is to be considered to have a voting entitlement in a corporation (**corporation A**) if the person has a voting entitlement in another corporation (**corporation B**) which itself has a voting entitlement in corporation A.
- (3) In a case to which subsection (2) applies, the person’s voting entitlement in corporation A is the proportion which results from multiplying the person’s voting entitlement in corporation B by corporation B’s voting entitlement in corporation A.
- (4) If a person has a voting entitlement in the same corporation under different provisions of this section, or under different applications of the same provision of this section, the person’s voting entitlement in the corporation is the aggregate of those entitlements.
- (5) In determining a person’s voting entitlement for the purposes of this section, proxies and other authorities to vote held by a shareholder are to be disregarded.

#### **96 Transfer by corporation of principal place of residence to principal shareholder or spouse**

- (1) A transfer of land by a corporation is eligible for exemption under this Division if:
  - (a) the corporation owned the land on 11 September 1990, and
  - (b) the transferee or each of the transferees is a principal shareholder in the corporation or the spouse of such a principal shareholder (whether or not the principal shareholder is one of the transferees), and
  - (c) had the transferee or each of the transferees been an owner of the land within the meaning of the [Land Tax Management Act 1956](#) on 31 December that last preceded the date of the transfer, the land would, by the operation of section 10 (1) (r) of the [Land Tax Management Act 1956](#), be exempt from land tax in respect of the year in which the transfer took effect.

- (2) If land is transferred by a corporation to two or more persons jointly, each of those persons is, for the purposes of this section (but without affecting any entitlement to be considered to be a principal shareholder apart from this subsection), to be considered to be a principal shareholder in the corporation if:
- (a) each of the persons has a voting entitlement in the corporation, and
  - (b) the aggregate of the voting entitlements in the corporation of each of those persons would be sufficient to qualify any one person as a principal shareholder in the corporation.

**97 Transfer of principal place of residence by special trust to beneficiary etc**

A transfer of land subject to a special trust is eligible for exemption under this Division if:

- (a) the land was subject to the special trust on 11 September 1990, and
- (b) the transferee or each of the transferees was:
  - (i) the settler of the land or the person who actually paid the purchase money for the land when the land was acquired by the trustee under the trust, or
  - (ii) a beneficiary of the special trust immediately before the transfer took effect and a beneficiary of the trust when the land was acquired by the trustee under the trust, or
  - (iii) the spouse of a person referred to in subparagraph (i) or (ii), and
- (c) the transferee or each of the transferees will hold the land beneficially, and
- (d) had the transferee or each of the transferees been an owner of the land within the meaning of the *Land Tax Management Act 1956* on 31 December that last preceded the date of the transfer, the land transferred would, by the operation of section 10 (1) (r) of the *Land Tax Management Act 1956*, be exempt from land tax in respect of the year in which the transfer took effect.

**98 Transfer of principal place of residence by corporation to beneficiary of special trust**

A transfer of land by a corporation (not acting in the capacity of a trustee) is eligible for exemption under this Division if:

- (a) the corporation owned the land on 11 September 1990, and
- (b) the transferee or each of the transferees is a person, or the spouse of a person, who is a beneficiary under a special trust and was a beneficiary under the trust when the land was acquired by the corporation, and
- (c) the trustee under the special trust is a principal shareholder in the corporation (or would, if the trustee were not a corporation, be a principal shareholder in the

corporation) at the time of the transfer, and

- (d) had the transferee or each of the transferees been the owner within the meaning of the *Land Tax Management Act 1956* on 31 December that last preceded the date of the transfer, the land transferred would, by the operation of section 10 (1) (r) of the *Land Tax Management Act 1956*, be exempt from land tax in respect of the year in which the transfer took effect.

### **99 Transfer by special trust to corporation**

- (1) A transfer of land to a corporation by a person in the person's capacity as trustee of a special trust is eligible for exemption under this Division if:
- (a) the land was subject to the special trust on, and at all times between, 31 December 1986 and 11 September 1990, and
  - (b) Division 122 of Part 3-3 of the Commonwealth *Income Tax Assessment Act 1997* applies to the disposal of land effected by the transfer, and
  - (c) pursuant to that section, Part IIIA (Capital Gains and Capital Losses) of that Act (except that section) does not apply to that disposal.
- (2) Chapter 3 (Certain transactions treated as transfers) and Chapter 4 (Acquisition of interests in landholders) do not apply to the issue or allotment of shares in a corporation pursuant to a transfer for which an exemption from the payment of duty is granted under this Division.

### **100 Transfer of land not used and occupied solely as a principal place of residence**

If:

- (a) a transfer of land would be eligible for exemption under section 96, 97 or 98 but for the fact that the land is not land to which section 96 (1) (c), 97 (d) or 98 (d) applies because it was not used and occupied solely as a principal place of residence at the relevant time, and
- (b) the land value of the land was entitled to be reduced under section 9C or 9D of the *Land Tax Management Act 1956* at the relevant time,

the amount on which the transfer is to be charged with ad valorem duty is to be reduced in the same proportion as the land value was entitled to be reduced under section 9C or 9D of the *Land Tax Management Act 1956*.

### **101 Making of applications**

- (1) An application under this Division is to be made to the Chief Commissioner in an approved form.
- (2) If the land to which the transfer relates is or includes land under the *Real Property Act*

1900, the application must be accompanied by an undertaking from the transferee in an approved form that:

- (a) the duty that would be payable on the transfer but for the granting of an exemption under this Division will be paid if the transferee does not become the registered proprietor of the land within 3 months (or such longer period as the Chief Commissioner may at any time determine and notify in writing to the transferee) after the transfer is stamped as exempt from the payment of duty, and
- (b) the transferee will, within 1 month after becoming the registered proprietor of the land (or such longer period as the Chief Commissioner may at any time determine and notify in writing to the transferee), provide evidence of that fact to the satisfaction of the Chief Commissioner.

### **102 Determination of applications**

- (1) (Repealed)
- (2) An application is not to be granted unless the Chief Commissioner is satisfied that all land tax payable in respect of the land (including any additional land tax payable by way of penalty or otherwise) has been paid.
- (3) If the application is granted, the Chief Commissioner is to stamp the transfer as exempt from the payment of duty.

### **103 Reassessment of duty if undertaking not met**

If a requirement of an undertaking from a transferee is not met, the Chief Commissioner may reassess the duty payable on the transfer as if this Division does not apply.

### **104 Application of scheme to company titles**

This Division applies to the transfer of shares in a private company or units in a private unit trust scheme, the ownership of which entitles the owner to the exclusive possession, or substantially exclusive possession, of a dwelling in a building containing more than one separate dwelling, in the same way as it applies to a transfer of land, with such modifications as may be necessary.

## **Chapter 3 Certain transactions treated as transfers**

### **Part 1 Preliminary**

#### **105 Introduction and overview**

This Chapter charges duty at the same rate as for a transfer of dutiable property under Chapter 2 on certain transactions which are not “dutiable transactions” under Chapter 2.

### **Part 2 Transactions involving put and call options**



## 106 Definitions

In this Part:

**assign** or **assignment** includes transfer, and a reference to the assignment of a right under a call option includes a reference to a transfer of the call option.

**call option** means a right to require a person to sell dutiable property that is conferred by an agreement or arrangement (being an agreement or arrangement that is not a dutiable transaction).

**put option** means a right to require a person to purchase dutiable property that is conferred by an agreement or arrangement (being an agreement or arrangement that is not a dutiable transaction).

## 107 Assignment of rights under call option dutiable as transfer

- (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.
- (3) An assignment is chargeable with duty as a consequence of this Part only if the person who may be required under the call option to sell the dutiable property (that is, B) has a right under a put option to require A, an associated person of A or an assignee of A to purchase the dutiable property.
- (4) If the assignment is chargeable with duty, Chapter 2 applies in respect of the assignment in the same way as it applies to other transfers of dutiable property, and a reference in this Act to a dutiable transaction includes such an assignment, subject to this Part.
- (5) For the purpose of Chapter 2, the transfer of dutiable property is taken to occur when

the assignment is made.

- (6) This section applies regardless of when the call option or put option is exercisable.
- (7) An assignment of a right under a call option to purchase dutiable property, as referred to in subsection (1) or (2), is referred to in this Part as a **call option assignment**.

### 108 Person liable to pay duty

- (1) The duty chargeable on a call option assignment is payable by the person who assigns the right under the call option to require another person to sell dutiable property (**the option holder**).
- (2) Accordingly, the option holder is taken, for the purpose of charging duty under Chapter 2, to be the transferee of the dutiable property.
- (3) The duty payable by the option holder is additional to the duty (if any) payable under Chapter 2 by a transferee on the transfer of an option to purchase land in New South Wales.
- (4) However, the duty payable by the option holder as a consequence of this Part is to be reduced by the amount of duty (if any) paid by the option holder under Chapter 2 on the transfer of the call option to the option holder.
- (5) The duty payable by the option holder on a call option assignment as a consequence of this Part is referred to as **call option assignment duty**.

#### Note—

The following is an example of how this Part operates:

B grants A a call option that confers a right on A (or any assignee of A) to require B to sell land. A also grants B a put option that confers on B a right to require A (or any assignee of A) to purchase the land from B. No duty is payable at this point.

A then transfers the call option to C. Duty is payable as follows:

- (a) A (as the option holder) must pay call option assignment duty, as a consequence of this Part, as if the transfer of the option were a transfer of the land. Duty is payable on the dutiable value of the land (determined as provided for by this Part),
- (b) C (as the transferee of the option) must pay duty under Chapter 2 on the transfer of the option. Duty is payable on the dutiable value of the option (determined as provided for by Chapter 2).

C then transfers the option to D. C (as the option holder) is required to pay call option assignment duty as if the option were a transfer of the land. However, in this case C will receive a credit for the duty paid by C on the transfer of the option to C. D (as the transferee of the option) is required to pay duty under Chapter 2 on the transfer.

### 109 Determination of dutiable value of transfer

For the purposes of Chapter 2, the **dutiable value** of dutiable property that is subject to a

call option assignment is taken to be the greater of:

- (a) the sum of the consideration for the assignment of the right under the call option and the consideration payable in the event that the call option is exercised (being in either case the amount of monetary consideration or the value of non-monetary consideration), and
- (b) the unencumbered value of the dutiable property.

### **110 Stamping or endorsement of transactions**

- (1) If an instrument that effects or evidences a transfer of an option to purchase land in New South Wales also effects or evidences a call option assignment, and it is stamped under this Act to indicate payment of duty, it must be stamped in a manner approved by the Chief Commissioner to indicate the type of duty (that is, purchaser duty or call option assignment duty) that has been paid.
- (2) If an instrument that effects or evidences a transfer of an option to purchase land in New South Wales also effects or evidences a call option assignment, and it is endorsed under this Act to indicate payment of duty, it must be endorsed in a manner approved by the Chief Commissioner to indicate the type of duty (that is, purchaser duty or call option assignment duty) that has been paid.
- (3) An instrument that effects or evidences a transfer of an option to purchase land in New South Wales and a call option assignment is not duly stamped unless it is stamped or endorsed in accordance with this section.
- (4) In this section:

***purchaser duty*** means the duty (if any) payable under Chapter 2 by a transferee on the transfer of an option to purchase land in New South Wales.

### **111 Exemptions**

- (1) No duty is chargeable as a consequence of this Part on a call option assignment if the Chief Commissioner is satisfied that:
  - (a) the call option and put option were granted by the parties concerned for the sole purpose of obtaining finance, or
  - (aa) the call option is assigned to a body established solely for the purpose of raising funds in relation to an investment scheme promoted by the person who assigns the call option, or
  - (b) the call option and the put option form part of a scheme of call options and put options granted by proprietors of a business that:
    - (i) were granted for the sole purpose of facilitating the continuation of the business by one or more of the proprietors (***the continuing proprietors***),

and

(ii) are not exercisable except on the occurrence of a specified event that would cause the continuing proprietors to seek to acquire the interest of one or more of the other proprietors of the business, or

(c) the dutiable property the subject of the call option is land and the call option is assigned by a person authorised to contract to do residential building work under the *Home Building Act 1989* who:

(i) has built or is building residential premises on the land for the purposes of sale, or

(ii) has an agreement with the person to whom the call option is assigned to build residential premises on the land, or

(d) the call option is assigned by a corporation that is a member of a group of corporations to another corporation that is a member of the same group.

(2) This section does not affect the duty payable under Chapter 2 (if any) by the transferee on a transfer of an option to purchase land in New South Wales.

(2A) For the purposes of this section, corporations are members of the same **group of corporations** if:

(a) one corporation is a wholly owned subsidiary of the other corporation (that is, the other corporation holds, otherwise than as trustee, not less than 90% of the issued share capital of the first corporation and is in a position to control not less than 50% of the maximum number of votes that might be cast at a general meeting of the first corporation), or

(b) the corporations are wholly owned subsidiaries (within the meaning of paragraph (a)) of the same corporation.

(2B) If a corporation that is a wholly owned subsidiary (within the meaning of subsection (2A) (a)) of another corporation (the **parent corporation**) holds shares, otherwise than as trustee, in a third corporation, then, for the purposes of determining whether the parent corporation and the third corporation are members of the same group of corporations, the shares held by the wholly owned subsidiary in the third corporation are taken also to be shares held by the parent corporation in the third corporation.

**Note—**

The effect of subsection (2B) is that the third corporation will be considered to be a wholly owned subsidiary of the parent corporation if the shareholdings of the parent corporation in the third corporation (if any) together with the shareholdings of any wholly owned subsidiary in the third corporation are sufficient to satisfy subsection (2A) (a).

(3) In this section:

**proprietor** of a business means:

- (a) in the case of a business carried on by a partnership, a partner, or
- (b) in the case of a business carried on by a company, a shareholder, or
- (c) in the case of a business carried on by a unit trust scheme, a unit holder, or
- (d) in any other case, a person the Chief Commissioner determines to be a proprietor of the business.

#### **112-123 (Repealed)**

### **Part 3 Entitlements arising from capital reductions or rights alterations**

#### **124 Abolition of duty charged by this Part—effective 1 July 2012**

- (1) The duty charged by this Part is abolished on and from 1 July 2012.
- (2) The duty charged by this Part remains chargeable on a dutiable entitlement that is acquired before 1 July 2012.

#### **125 Definitions**

- (1) In this Part:

**capital reduction** means:

- (a) the redemption, surrender or cancellation of a share (including cancellation as part of a buy-back of shares in accordance with Division 2 of Part 2J.1 of the [Corporations Act 2001](#) of the Commonwealth), or
- (b) a reduction in the paid up value of a share.

**company** means a NSW company that is:

- (a) a public company within the meaning of the [Corporations Act 2001](#) of the Commonwealth, and
- (b) not listed on the Australian Stock Exchange or a recognised stock exchange.

**dutiable entitlement** means a voting share entitlement in respect of whose acquisition a statement is required, under section 129, to be lodged.

**person** includes persons who are associated persons.

**Note—**

**Associated person** is defined in the Dictionary.

**rights alteration**, in relation to voting shares, means a variation, abrogation or

alteration of rights relating to the shares.

**voting shares** has the same meaning as in section 9 of the *Corporations Act 2001* of the Commonwealth.

- (2) For the purposes of this Part, if voting shares acquired by associated persons severally do not, but taken in the aggregate would, confer an entitlement to which this Part applies, the voting shares acquired by the associated persons are taken to be aggregated and are taken to confer the entitlement on the associated person who last acquired any of those voting shares.
- (3) If, by subsection (2), an entitlement to voting shares is taken to exist as the aggregate of voting shares of associated persons, the associated persons are jointly and severally liable for payment of the duty chargeable on the statement required to be lodged under this Part.
- (4) Voting shares are not to be aggregated in accordance with subsection (2) if the Chief Commissioner is satisfied that the associated persons concerned acquired their several shares independently and for no common purpose.

#### **126 When does a liability for duty arise?**

A liability for duty charged by this Part arises when a dutiable entitlement is acquired.

#### **127 When must duty be paid?**

A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if duty is paid within 3 months after the liability to pay the duty arises.

#### **128 Who is liable to pay the duty?**

- (1) Duty chargeable under this Part is payable by the person who acquires a dutiable entitlement.
- (2) If the dutiable entitlement results from an aggregation of the voting share entitlements of associated persons, the associated persons are jointly and severally liable for payment of the duty.

#### **129 Entitlement to voting shares arising from capital reduction or rights alteration**

- (1) If:
  - (a) a person becomes entitled to at least 50% of the voting shares of a company by means of capital reduction or rights alteration, or both, or
  - (b) a person who is entitled to at least 50% of the voting shares of a company becomes entitled to at least 10% more of the voting shares over a period of not more than 12 months by means of capital reduction or rights alteration, or both,

the person must lodge a statement with the Chief Commissioner in respect of the entitlement.

(2) The statement must be lodged within 3 months after the entitlement arises.

### **130 Form of statement**

The statement required to be lodged under this Part by a person is to be in an approved form and is to contain the following information:

- (a) the name and address of the person,
- (b) the name of the company,
- (c) the date on which each relevant capital reduction or rights alteration, or both, occurred,
- (d) if the person's entitlement has arisen:
  - (i) from capital reduction—the total of the unencumbered value, immediately prior to each relevant capital reduction, of the shares the subject of the capital reduction, or
  - (ii) from rights alteration—the total of the unencumbered value, immediately prior to each relevant rights alteration, of the shares the subject of the rights alteration, or
  - (iii) from capital reduction and rights alteration—the aggregate of the totals under subparagraphs (i) and (ii),
- (e) the total consideration paid to the person in relation to all relevant capital reductions or rights alterations, or both,
- (f) such other information as may be required by the Chief Commissioner.

### **131 Assessment of duty**

A statement required to be lodged under this Part by a person is chargeable with duty of 60 cents for every \$100, or part, of the higher of:

- (a) the total or aggregate obtained under section 130 (d), and
- (b) the total obtained under section 130 (e).

## **Part 4 Acquisition of land use entitlements by allotment of shares or issue of units**

### **132 When does a liability for duty arise?**

A liability for duty charged by this Part arises when a land use entitlement is acquired by an allotment of shares or an issue of units to any person otherwise than in circumstances

to which Part 5 applies.

### **133 When must duty be paid?**

A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if duty is paid within 3 months after the liability to pay the duty arises.

### **134 Who is liable to pay the duty?**

Duty chargeable under this Part is payable by the person who acquires the land use entitlement.

### **135 Acquisition of land use entitlement**

- (1) A person who acquires a land use entitlement by an allotment of shares or an issue of units must lodge a statement (an **acquisition statement**) with the Chief Commissioner in respect of the entitlement.
- (2) The statement must be lodged within 3 months after the entitlement is so acquired.

### **136 Form of statement**

An acquisition statement required to be lodged by a person is to be in an approved form and is to contain the following information:

- (a) the name and address of the person,
- (b) the name of the relevant company or unit trust,
- (c) the date on which the land use entitlement was acquired,
- (d) the consideration paid by the person for the relevant shares or units,
- (e) such other information as may be required by the Chief Commissioner.

### **137 Assessment of duty**

The share allotment or unit issue by which a person acquires a land use entitlement is chargeable with duty at the general rate of duty set out in section 32 on the dutiable value of the land use entitlement.

## **Part 5 Allotment of shares by direction**

### **137A Abolition of duty charged by this Part—effective 1 July 2012**

- (1) The duty charged by this Part is abolished on and from 1 July 2012.
- (2) The duty charged by this Part remains chargeable on an allotment of shares referred to in section 138 that occurs before 1 July 2012.



### **138 Application of Part 5**

This Part applies to an allotment of shares to any person by a NSW company that is not listed on the Australian Stock Exchange or a recognised stock exchange at another person's direction, in discharge of an obligation to that other person, whether that obligation arises as consideration for the purchase of property by the company or otherwise.

### **139 When does a liability for duty arise?**

A liability for duty charged by this Part arises when the relevant shares are allotted.

### **140 When must duty be paid?**

A tax default does not occur for the purposes of the [Taxation Administration Act 1996](#) if duty is paid within 3 months after the liability to pay the duty arises.

### **141 Who is liable to pay the duty?**

Duty chargeable under this Part is payable by the person to whom the relevant shares are allotted.

### **142 Acquisition of shares by allotment**

- (1) A person to whom any shares are allotted in an allotment to which this Part applies must lodge a statement (an **allotment statement**) with the Chief Commissioner in respect of the allotment.
- (2) The statement must be lodged within 3 months after the shares are allotted.

### **143 Allotment statement**

An allotment statement required to be lodged by a person is to be in an approved form and is to contain the following information:

- (a) the name and address of the person,
- (b) the name of the relevant company,
- (c) the date on which the shares were allotted to the person,
- (d) such other information as may be required by the Chief Commissioner.

### **144 Assessment of duty**

An allotment to which this Part applies is chargeable with duty at the rate of duty set out in section 33 in respect of a transfer of marketable securities on the dutiable value of the shares.

## **Chapter 4 Acquisition of interests in landholders**

## Part 1 Preliminary

### 145 Overview

This Chapter charges duty on certain transactions that are not “dutiable transactions” under Chapter 2.

**Note—**

Duty is chargeable under this Chapter on the acquisition by a person of a significant interest in a landholder at the same rate as the transfer duty chargeable under Chapter 2.

### 146 Meaning of “landholder”

- (1) For the purposes of this Chapter, a **landholder** is a unit trust scheme, a private company or a listed company that has land holdings in New South Wales with a threshold value of \$2,000,000 or more.
- (2) A landholder is a **private landholder** if the landholder is a private unit trust scheme or private company.
- (3) A landholder is a **public landholder** if the landholder is a public unit trust scheme or a listed company.

#### 146A Threshold value of land holdings

- (1) For the purposes of this Chapter, the **threshold value** of the land holdings of a unit trust scheme, private company or listed company is the total value of all land holdings in New South Wales of the unit trust scheme or company.
- (2) For a land holding that consists of an estate in fee simple in land (other than a strata lot), the value of the land holding is the registered land value of the land as at 1 July in the previous year.
- (3) For a land holding that consists of a proportionate interest in an estate in fee simple in land (other than a strata lot), the value of the land holding is the amount determined by applying that proportion to the registered land value of the land as at 1 July in the previous year.
- (4) For a land holding that consists of an estate in fee simple in a strata lot, the value of the land holding is an amount that bears to the registered land value of the relevant parcel (as at 1 July in the previous year) the same proportion as the unit entitlement of the lot bears to the aggregate unit entitlement.
- (5) For a land holding that consists of a proportionate interest in an estate in fee simple in a strata lot, the value of the land holding is the amount determined by applying that proportion to the amount determined under subsection (4).
- (6) The proportionate interests of joint tenants in an estate in fee simple are to be

determined as if they were tenants in common in equal shares.

- (7) For any land holding for which a value cannot be obtained under the above provisions, the value of the land holding is the unencumbered value of the land holding, determined in the same way as it is for dutiable property under Chapter 2.
- (8) For the purposes of this section, the **registered land value** of land (including a parcel) is the land value of the land as entered in the Register of Land Values kept by the Valuer-General under section 14CC of the *Valuation of Land Act 1916*.
- (9) For the purposes of this section, a **strata lot** means a lot under the *Strata Schemes (Freehold Development) Act 1973*, and expressions used in this section in relation to such a lot have the same meanings as they do in that Act.

#### **147 What are the “land holdings” of a landholder?**

- (1) For the purposes of this Chapter, a **land holding** is an interest in land other than the estate or interest of a mortgagee, chargee or other secured creditor, subject to this section.
- (2) An interest in land is a land holding of a unit trust scheme only to the extent that the interest is held by the trustee of the unit trust scheme in its capacity as trustee of the scheme, 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.
- (3) An interest in land is not a land holding of a company if the company holds the land on trust, but only if the company is not a beneficiary of the trust.
- (4) This section is in aid of, but does not limit, the operation of any provision of this Chapter providing for constructive ownership of interests.

#### **Note—**

In relation to interests in land, see also clause 4 of the Dictionary.

## **Part 2 Charging of duty on acquisitions of interests in landholders**

### **148 When does a liability for duty arise?**

A liability for duty charged by this Part arises when a relevant acquisition is made.

### **149 What is a “relevant acquisition”?**

- (1) For the purposes of this Chapter, a person makes a **relevant acquisition** if the person:
  - (a) acquires an interest in a landholder:
    - (i) that is of itself a significant interest in the landholder, or

- (ii) that, when aggregated with other interests in the landholder held by the person or an associated person, results in an aggregation that amounts to a significant interest in the landholder, or
  - (iii) that, when aggregated with other interests in the landholder acquired by the person or other persons under transactions that form, evidence, give effect to or arise from what is substantially one arrangement between the acquirers, results in an aggregation that amounts to a significant interest in the landholder, or
- (b) having a significant interest, or an interest described in paragraph (a) (ii), in a landholder, acquires a further interest in the landholder.
- (2) However, an acquisition of an interest in a private landholder under an arrangement that results in the private landholder ceasing to be a private landholder is not a relevant acquisition because of subsection (1) (a) (iii).
- (3) If a person who acquires or holds an interest in a landholder is a trustee for 2 or more trusts, any interests in the landholder acquired or held by the person for different trusts are to be treated as if they were acquired or held independently by separate persons.
- (4) If a person who acquires or holds an interest in a landholder is a life company, any interests in the landholder acquired or held by the life company for different statutory funds are to be treated as if they were acquired or held independently by separate persons.
- (5) If a life company acquires or holds an interest in a landholder otherwise than for a statutory fund, that interest is to be treated as if it were acquired or held independently of, and by a separate person to, any interest acquired or held by the life company for a statutory fund.
- (6) In this section:

**statutory fund** has the meaning given by the *Life Insurance Act 1995* of the Commonwealth.

### **150 What are “interests” and “significant interests” in landholders?**

- (1) For the purposes of this Chapter, a person has an **interest** in a landholder if the person, in the event of a distribution of all the property of the landholder, would be entitled to any of the property distributed.
- (1A) However, an entitlement that arises merely because a person has a debt interest in a landholder, or an interest that would be a debt interest if the landholder were a company for the purposes of that Division, is not an interest in a landholder.

- (2) A person who has an interest in a landholder has a **significant interest** in the landholder if the person, in the event of a distribution of all the property of the landholder immediately after the interest was acquired, would be entitled to:
  - (a) in the case of a private landholder—50% or more of the property distributed, or
  - (b) in the case of a public landholder—90% or more of the property distributed.
- (3) An interest in a landholder that was acquired at a time when the landholder did not hold land in New South Wales is not counted during the period of 12 months after the landholder first holds land in New South Wales.
- (4) In determining whether a person has a significant interest in a landholder, a distribution of property to any person in the person's capacity as the holder of a debt interest is to be disregarded.
- (5) In this section:

**debt interest** has the same meaning as it has in Division 974 of the *Income Tax Assessment Act 1997* of the Commonwealth.

**person** includes a landholder.

#### **151 How may an interest be “acquired”?**

- (1) For the purposes of this Chapter, a person acquires an interest in a landholder if the person obtains an interest, or the person's interest increases, in the landholder regardless of how it is obtained or increased.
- (2) Without limiting subsection (1), a person may acquire an interest in a landholder in the following ways:
  - (a) the purchase, gift or issue of a unit or share,
  - (b) the cancellation, redemption or surrender of a unit or share,
  - (c) the abrogation or alteration of a right for a unit or share,
  - (d) the payment of an amount owing for a unit or share,
  - (e) if the person holds an interest in the landholder (whether or not as trustee for another person) and the capacity in which the person holds the interest changes (including if there is a change in the beneficial ownership of an interest held by a person as trustee).

**Note—**

For example, the capacity in which a person holds a unit or share in a landholder changes if the person declares a trust in respect of the unit or share.

- (3) To remove any doubt, it is declared that a person may acquire an interest in a

landholder without acquiring units or shares in the landholder.

## 152 Acquisition statements

- (1) A person who has made a relevant acquisition must prepare a statement (an **acquisition statement**) and lodge it with the Chief Commissioner.
- (2) The acquisition statement is to be prepared in an approved form and must contain the following information:
  - (a) the name and address of the person who has acquired the interest,
  - (b) in relation to each interest acquired, the date on which it was acquired,
  - (c) if the relevant acquisition results from the aggregation of the interests of associated persons, particulars of the interests acquired by the person and any associated persons on the date of the relevant acquisition,
  - (d) particulars of the total interest of the person and any associated person in the landholder at that date.
- (3) The acquisition statement must also contain the following additional information:
  - (a) the unencumbered value of all land holdings and goods in New South Wales of the landholder as at the date of the relevant acquisition and, if the landholder is a private landholder, as at the date of acquisition of each interest acquired in the landholder during the statement period,
  - (b) such other information as the Chief Commissioner may require.
- (4) The additional information referred to in subsection (3) is not required in relation to any exempt acquisition.
- (5) The **statement period** is the period commencing 3 years before the date of the relevant acquisition and ending on the date of the relevant acquisition.
- (6) However, if the relevant acquisition is related to an acquisition of an interest in the landholder that was made before the start of that 3-year period (an **earlier acquisition**), the statement period is the period commencing on the date that earlier acquisition was made (or, if there is more than one, the first of them) and ending on the date of the relevant acquisition.
- (7) For the purposes of this section, a relevant acquisition is related to an earlier acquisition if it is made as a result of an arrangement entered into at the time of, or in connection with, the earlier acquisition.

### Note—

In ascertaining whether or not a liability to lodge a statement under this section exists, it is necessary to have

regard to provisions of Part 3 that deal with how a person may be taken to have acquired an interest in a landholder because of the interests in a linked entity.

### **153 When must duty be paid?**

A tax default does not occur for the purposes of the *Taxation Administration Act 1996* if duty is paid within 3 months after the liability to pay the duty arises.

### **154 Who is liable to pay the duty?**

- (1) Duty chargeable under this Part is payable by the person who makes the relevant acquisition, except as provided by subsection (2).
- (2) If a relevant acquisition results from an aggregation of the interests of associated persons, the person who made the relevant acquisition and the associated person or persons are jointly and severally liable for payment of the duty.

### **155 How duty is charged on relevant acquisitions—private landholders**

- (1) If an acquisition statement that discloses a relevant acquisition in a private landholder does not disclose any other acquisitions during the statement period, duty is chargeable, at the general rate, on the amount calculated by multiplying the unencumbered value of all land holdings and goods of the landholder in New South Wales (calculated at the date of acquisition of the interest acquired) by the proportion of that value represented by the interest acquired in the relevant acquisition.
- (2) If a relevant acquisition results from the aggregation of the interests of associated persons, the reference in subsection (1) to the interest acquired includes a reference to any interests acquired by associated persons on the same date.
- (3) If an acquisition statement disclosing a relevant acquisition in a private landholder also discloses one or more other acquisitions during the statement period, duty is chargeable, at the general rate, on the aggregate of amounts severally calculated, in the manner provided by subsection (1), in respect of each interest required to be disclosed in the statement.
- (4) Duty payable under this section is to be reduced by the sum of the duty paid or payable under this Act in respect of an acquisition, during the statement period, by the person or any associated person of an interest in the same landholder, but only in proportion to the extent to which the duty paid or payable is attributable to the amount of the duty payable under this section.
- (5) Duty payable under this section is to be reduced by the sum of the amounts severally calculated, in accordance with the following formula, in respect of each acquisition of an interest in the landholder made by the person, or an associated person, during the statement period:

$$\frac{A}{B} \times C$$

where:

**A** is the unencumbered value of the land holdings and goods in New South Wales of the landholder at the time the acquisition was made, and

**B** is the unencumbered value of all property of the landholder at that time, and

**C** is the sum of:

(a) the duty under this Act paid or payable in respect of:

- (i) a dutiable transaction in relation to the units or shares acquired, or
- (ii) a capital reduction or a rights alteration under Part 3 of Chapter 3 by which an interest in the landholder was acquired, or
- (iii) an allotment of shares under Part 5 of Chapter 3 by which an interest in the landholder was acquired, and

(b) any duty of a like nature so paid or payable under a law of another Australian jurisdiction.

- (6) If a relevant acquisition is made owing to the aggregation of the interests of associated persons, but the Chief Commissioner is satisfied that the associated persons acquired their respective interests independently, the Chief Commissioner may assess and charge duty on each separate acquisition without aggregating the interests of the person who made it with the interests of associated persons.
- (7) Duty is not chargeable under this section on the acquisition of an interest in a landholder that is required to be disclosed in an acquisition statement if the acquisition is an exempt acquisition.
- (8) This section is subject to Part 3.

### **156 How duty is charged on relevant acquisitions—public landholders**

- (1) If an acquisition statement discloses a relevant acquisition in a public landholder, the duty chargeable on the relevant acquisition is 10% of the duty that would be chargeable, at the general rate, on a transfer of all the land holdings and goods of the landholder in New South Wales (calculated as if the transfer had occurred at the date of relevant acquisition).
- (2) For that purpose, the dutiable value of the land holdings and goods is the unencumbered value of land holdings and goods at the date of the relevant acquisition.



- (3) If an acquisition disclosed in an acquisition statement is an exempt acquisition, the duty chargeable under this section is to be calculated after deducting from the dutiable value of the land holdings and goods the proportion of that value represented by the value of the interest acquired in the exempt acquisition.
- (4) If the public landholder is a widely held trust, the duty payable under this section is also to be reduced by the following amounts (if applicable):
  - (a) the amount of duty under this Act paid or payable in respect of a dutiable transaction in relation to the units concerned,
  - (b) the amount of any duty of a like nature so paid or payable under a law of another Australian jurisdiction.
- (5) If duty is chargeable in respect of a relevant acquisition made by a person in a public landholder, no duty is chargeable in respect of any further acquisition made by that person in that landholder.
- (6) This section is subject to Part 3.

#### **157 What is the “general rate” of duty?**

For the purposes of this Chapter, the **general rate** is the rate of duty specified in section 32 for a transfer of dutiable property.

### **Part 2A Charging of duty on acquisitions made by trustees**

#### **157A Application of Part**

- (1) This Part applies for the purposes of determining liability for duty under this Chapter where a person acquires or holds an interest in a landholder as bare trustee for another person.
- (2) In this Part, a **bare trustee** includes a custodian.

#### **157B Beneficial owner—meaning**

- (1) If a person who acquires or holds an interest in a landholder acquires or holds that interest as bare trustee for another person, the other person is a **beneficial owner** of that interest in the landholder.
- (2) If a person who is a beneficial owner of an interest in a landholder (whether as a result of subsection (1) or as a result of one or more applications of this subsection) holds that interest as bare trustee for another person, that other person is also a **beneficial owner** of that interest in the landholder.
- (3) For the purposes of this Part, the **ultimate beneficial owner** of an interest in a landholder is any beneficial owner of the interest in the landholder who does not hold

that interest as bare trustee for another person.

### **157C Beneficial owners liable for duty on acquisitions in landholders**

- (1) Any interest in a landholder that is acquired or held by a person (the **legal owner**) as bare trustee for another person is taken, for the purposes of this Chapter, to have been acquired by, or to be held by, the ultimate beneficial owner of the interest in the landholder, rather than the legal owner.
- (2) Accordingly, the ultimate beneficial owner of an interest acquired by the legal owner will be liable to lodge an acquisition statement, and to pay any duty chargeable under this Chapter, in respect of any relevant acquisition made as a result of that acquisition by the legal owner.

**Note—**

For example, A acquires an interest in a landholder as bare trustee for B. A is the legal owner and B is a beneficial owner of the interest in the landholder. B holds that interest as bare trustee for C. As a result, C is also a beneficial owner of the interest in the landholder acquired by A. If C does not hold the interest as bare trustee for another person, C is the ultimate beneficial owner of the interest and will be liable for any duty chargeable on the acquisition.

- (3) For the purpose of determining whether an acquisition is a relevant acquisition, section 149 applies as if a reference to a person who acquires or holds an interest in a landholder were a reference to the ultimate beneficial owner of the interest, rather than the legal owner.
- (4) That is, the acquisition is to be aggregated with other interests held by the ultimate beneficial owner of the interest or an associated person of the ultimate beneficial owner of the interest, rather than with other interests held by the legal owner or associated persons of the legal owner.

## **Part 3 General principles to be applied under this Chapter**

### **158 Constructive ownership of land holdings and other property: linked entities**

- (1) In addition to any interest in land or other property that it may hold in its own right, a unit trust scheme, private company or listed company is taken, for the purposes of this Chapter, to hold an interest in land or other property held by a linked entity of the unit trust scheme or company.
- (2) A **linked entity** of a private unit trust scheme or a private company (the **principal entity**) means a person:
  - (a) who is part of a chain of persons:
    - (i) which includes the principal entity, and
    - (ii) which is comprised of one or more links, and

- (iii) in which a link exists if a person would be entitled to receive not less than 50% of the unencumbered value of the property of another person in the event of a distribution of all the property of the person, and
  - (iv) which does not include, in any of the links between the person and the principal entity, a public unit trust scheme or a listed company, and
- (b) who is not a public unit trust scheme or a listed company.
- (3) A **linked entity** of a public unit trust scheme or listed company (the **principal entity**) means a person who is part of a chain of persons:
  - (a) which includes the principal entity, and
  - (b) which is comprised of one or more links, and
  - (c) in which a link exists if a person would be entitled to receive not less than 50% of the unencumbered value of the property of another person in the event of a distribution of all the property of the person.
- (4) The value, for duty purposes, of the interest in land or other property that a unit trust scheme, private company or listed company (being a principal entity) is taken, by this section, to hold because of a holding by a linked entity is that portion of the interest's unencumbered value to which the unit trust scheme or company would be entitled (without regard to any liabilities of the linked entity or any other person in the ownership chain) in the event of a distribution of all the property of each entity in the chain of entities.
- (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.

### **159 Constructive ownership of land holdings and other property: discretionary trusts**

- (1) A person or a member of a class of persons in whose favour, by the terms of a discretionary trust, capital the subject of the trust may be applied:
  - (a) in the event of the exercise of a power or discretion in favour of the person or class, or
  - (b) in the event that a discretion conferred under the trust is not exercised,is, for the purposes of this section, a **beneficiary** of the trust.
- (2) A beneficiary of a discretionary trust is taken to own or to be otherwise entitled to the property the subject of the trust.

- (3) For the purposes of this Chapter, any property that is the subject of a discretionary trust is taken to be the subject of any other discretionary trust:
- (a) that is, or
  - (b) any trustee of which (in the capacity of trustee) is, a beneficiary of it.
- (4) Subsection (3) extends to apply to property that is the subject of a discretionary trust only by the operation of that subsection.
- (5) In this section, **person** includes a landholder.

**Note—**

**Discretionary trust** is defined in the Dictionary.

### **160 Agreements for sale or transfer of land**

- (1) For the purposes of this Chapter, the transferor and the transferee under an uncompleted agreement for the sale or transfer of land are taken to be separately entitled to the whole of the land.

**Note—**

If duty is charged on an acquisition that relates to a land holding to which subsection (1) applies, the Chief Commissioner may defer payment of duty under section 47 of the [Taxation Administration Act 1996](#).

- (2) If:
- (a) at the time of acquisition of an interest by any person in a landholder that necessitates the lodgment of an acquisition statement under this Chapter, the landholder was the vendor under an uncompleted agreement for the sale or transfer of land, and
  - (b) the agreement is subsequently completed,
- the Chief Commissioner is to assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a land holding of the landholder.
- (3) If:
- (a) at the time of acquisition of an interest by any person in a landholder that necessitates the lodgment of an acquisition statement under this Chapter, the landholder was the purchaser under an uncompleted agreement for the sale or transfer of land, and
  - (b) the agreement is subsequently rescinded, annulled or otherwise terminated without completion,

the Chief Commissioner is to assess or reassess the statement as though the land the subject of the agreement was not, at the time of the acquisition concerned, a land holding of the landholder.

- (4) In this section, a reference to a **landholder** includes a reference to a linked entity of the landholder.

**161 Agreements for sale or issue of shares or units in landholder**

- (1) For the purposes of this Chapter, if an agreement is made to purchase or issue a share or unit in a landholder, then, on and from the agreement liability date:
- (a) the purchaser or person to whom the unit or share is to be issued is taken to have an entitlement to a distribution of property of the landholder in the event of a distribution of all the property of the landholder (as if the purchase or interest acquired by the person were registered on the agreement liability date), and
  - (b) in the case of an agreement to purchase a share or unit, the registered interest of the vendor in the unit or share is to be disregarded.

**Note—**

Accordingly, the purchaser or person to whom a share or unit is issued under an agreement for the sale or issue of a share or unit in a landholder acquires an interest in the landholder on the agreement liability date.

- (2) The **agreement liability date** is the date on which the following occurs (whichever occurs first):
- (a) the agreement is completed,
  - (b) the necessary transfer or title documents are delivered to the person acquiring the share or unit,
  - (c) the consideration for the purchase or issue is paid,
  - (d) the period of 12 months beginning on the date of first execution of the agreement, or such longer period as the Chief Commissioner may approve, expires.
- (2A) If:
- (a) at the time of acquisition of an interest by any person in a landholder that necessitates the lodgment of an acquisition statement under this Chapter, the person was the purchaser or person to whom a unit or share was to be issued under an uncompleted agreement for the purchase or issue of a share or unit in a landholder, and
  - (b) the agreement is subsequently rescinded, annulled or otherwise terminated without completion,

the Chief Commissioner is to assess or reassess the statement on the basis that the

purchaser or person to whom the unit or share was to be issued did not have an interest in the landholder as a result of the agreement.

- (3) This section does not apply in respect of shares or units in a landholder which is a listed company or a listed trust.

## **162 Valuation of property**

- (1) Subject to this Chapter, the provisions of this Act for ascertaining the value of transfers chargeable with ad valorem duty extend to an acquisition statement under this Chapter and the unencumbered value of land holdings and goods mentioned in it.
- (2) In determining the unencumbered value of land holdings or goods under this Chapter, any arrangement made in respect of the land holdings or goods that has the effect of reducing the unencumbered value is to be disregarded, subject to subsection (3).
- (3) An arrangement is not to be disregarded if the Chief Commissioner is satisfied that the arrangement was not made as part of an arrangement or scheme with a collateral purpose of reducing the duty otherwise payable in relation to the relevant acquisition.
- (4) In considering whether or not he or she is satisfied for the purposes of subsection (3), the Chief Commissioner may have regard to:
  - (a) the duration of the arrangement before the relevant acquisition, and
  - (b) whether the arrangement has been made with an associated person, and
  - (c) whether there is any commercial efficacy to the making of the arrangement other than to reduce duty, and
  - (d) any other matters the Chief Commissioner considers relevant.

## **163 Maximisation of entitlements on distribution of property**

- (1) This section applies to any calculation, for the purposes of this Chapter, of the entitlement of a person (the **interested person**) to participate in a distribution of the property of a landholder.
- (2) A calculation is to be made based, firstly, on a distribution carried out in accordance with the constitution of the landholder, and with any law relevant to the distribution, as in force at the time of distribution, and the entitlement of the interested person is to be evaluated accordingly.
- (3) Next, a calculation is to be made based on a distribution carried out after the interested person, and any other person whom the interested person has power to direct with respect to such a distribution or who is, in relation to the interested person, an associated person, had exercised all powers and discretions exercisable by them by reason of having acquired an interest in the landholder concerned:

- (a) to effect or compel an alteration to the constitution of the landholder, and
- (b) to vary the rights conferred by units or shares in the landholder, and
- (c) to effect or compel the substitution or replacement of units or shares in the landholder with other units or shares in it,

in such a manner as would maximise the value of the entitlement, and the entitlement of the interested person is to be evaluated accordingly.

- (4) The results obtained by an evaluation of the interested person's entitlement in accordance with subsections (2) and (3) are then to be compared, and whichever evaluation results in a greater entitlement is the correct evaluation, for the purposes of this Chapter, of the entitlement, unless the Chief Commissioner, being satisfied that the application of this subsection in the particular case would be inequitable, determines otherwise.

## **Part 4 Exemptions and concessions**

### **163A General exemptions**

An acquisition by a person of an interest in a landholder is an exempt acquisition:

- (a) if the interest was acquired in the person's capacity as:
  - (i) a receiver or trustee in bankruptcy, or
  - (ii) a liquidator, or
  - (iii) an executor or administrator of the estate of a deceased person, or
- (b) if the interest was acquired solely as the result of the making of a compromise or arrangement with creditors under Part 5.1 of the *Corporations Act 2001* of the Commonwealth that has been approved by a court, or
- (c) if the interest concerned is acquired solely from a pro rata increase or decrease in the interests of all unit holders or shareholders, or
- (d) if the interest was acquired solely as the result of the distribution of the estate of a deceased person, whether effected in the ordinary course of execution of a will or codicil or administration of an intestate estate or as the result of the order of a court, made under Chapter 3 of the *Succession Act 2006* or otherwise, varying the application of the provisions of a will or codicil or varying the application of the rules governing the distribution of the property of an intestate estate, or
- (e) if the land holding of the landholder comprises land used for primary production and the Chief Commissioner is satisfied that, had the landholder transferred the land to the person acquiring an interest as a result of the acquisition immediately before that

acquisition, the transfer of the land would not be chargeable with duty under this Act because of the application of section 274, or

- (f) if the acquisition of an interest in a landholder would be chargeable with duty of \$50 under section 54 or 54A if the property being acquired were land in New South Wales and the Chief Commissioner is satisfied that the acquisition is not part of a scheme to avoid duty under this Chapter, or
- (g) if the interest concerned was acquired before the landholder held land in New South Wales, or
- (h) if the interest concerned is an interest in a private unit trust scheme acquired before 10 June 1987, or
- (i) if the interest concerned is an interest in a private company acquired before 21 November 1986, or
- (j) if the interest concerned is an interest in a private landholder acquired before 1 July 2009 and, at the time of its acquisition, the private landholder was not a land rich landholder within the meaning of Chapter 4A (as in force before its repeal by the [State Revenue Legislation Further Amendment Act 2009](#)), or
- (k) if the interest concerned is an interest in a public landholder acquired before 1 July 2009.

**163B Exemption—break-up of marriages and other relationships**

- (1) An acquisition by a person of an interest in a landholder is an exempt acquisition:
  - (a) if the interest was acquired by the parties to a marriage that is dissolved or annulled, or in the opinion of the Chief Commissioner has broken down irretrievably, or by either of them, or by a child or children of either of them or a trustee of such a child or children, as a result of a transfer made in accordance with:
    - (i) a financial agreement made under section 90B, 90C or 90D of the [Family Law Act 1975](#) of the Commonwealth that, under that Act, is binding on the parties to the agreement, or
    - (ii) an order of a court made under that Act, or
    - (iii) an agreement that the Chief Commissioner is satisfied has been made for the purpose of dividing matrimonial property as a consequence of the dissolution, annulment or breakdown of the marriage, or
  - (b) if the interest was acquired by the parties to a de facto relationship that has, in the opinion of the Chief Commissioner, broken down irretrievably, or by either of them, or by a child or children of either of them or a trustee of such a child or



children, as a result of a transfer made in accordance with:

- (i) a financial agreement made under section 90UB, 90UC or 90UD of the *Family Law Act 1975* of the Commonwealth that, under that Act, is binding on the parties to the agreement, or
  - (ii) an order of a court made under that Act, or
- (c) if the interest was acquired by the parties to a domestic relationship that has, in the opinion of the Chief Commissioner, been terminated, or by either of them, or by a child or children of either of them or a trustee of such a child or children, as a result of a transfer made in accordance with:
- (i) an order of a court made under the *Property (Relationships) Act 1984*, or
  - (ii) a termination agreement within the meaning of section 44 of the *Property (Relationships) Act 1984* that has been certified in accordance with section 47 of that Act, or

**Note—**

**Domestic relationship** (defined in the Dictionary) has the same meaning as in the *Property (Relationships) Act 1984*.

- (d) to the extent that:
- (i) for purposes of or ancillary to the acquisition of an interest referred to in paragraph (a), (b) or (c), the acquisition consists of the transfer of a share that is matrimonial property or relationship property to a person not a party to the relevant marriage or relationship, in order to comply with a requirement of or prescribed under the *Corporations Act 2001* of the Commonwealth, or
  - (ii) the acquisition consists of a declaration of trust by the transferee of a share transferred as referred to in subparagraph (i) for the benefit of a party to the marriage or relationship.

(2) If:

- (a) duty was paid on the acquisition of matrimonial property by the parties to a marriage or by either of them, or by a child or children of either of them or a trustee of such a child or children, and
  - (b) the interest acquired was acquired as a result of a transfer made in accordance with an agreement or order referred to in subsection (1) (a), and
  - (c) the marriage has been dissolved or annulled or has broken down irretrievably,
- the person who paid the duty is entitled to a refund of it.

(3) If:

- (a) duty was paid on the acquisition of relationship property by the parties to a de facto relationship or by either of them, or by a child or children of either of them or a trustee of such a child or children, and
  - (b) the interest acquired was acquired as a result of a transfer made in accordance with an agreement or order referred to in subsection (1) (b), and
  - (c) the de facto relationship has broken down,
- the person who paid the duty is entitled to a refund of it.

(4) If:

- (a) duty was paid on the acquisition of relationship property by the parties to a domestic relationship or by either of them, or by a child or children of either of them or a trustee of such a child or children, and
  - (b) the interest acquired was acquired as a result of a transfer made in accordance with an order or agreement referred to in subsection (1) (c), and
  - (c) the domestic relationship has been terminated,
- the person who paid the duty is entitled to a refund of it.

(5) A party to a marriage, de facto relationship or domestic relationship may provide a statement to the Chief Commissioner, in the form of a statutory declaration, to the effect that:

- (a) in the case of a marriage:
  - (i) the party intends to apply for a dissolution or an annulment of the marriage, or
  - (ii) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed, or
- (b) in the case of a de facto relationship or domestic relationship, the relationship has broken down or been terminated.

(6) The Chief Commissioner is required to have regard to any such statement in exercising his or her functions under this section.

(7) Subsection (6) does not limit the functions of the Chief Commissioner under section 72 of the *Taxation Administration Act 1996*.

(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.

(8) In this section:

**marriage** includes a void marriage.

**matrimonial property** of a marriage means property of the parties to the marriage or of either of them.

**party** to a marriage includes a person who was a party to a marriage that has been dissolved or annulled, in Australia or elsewhere.

**relationship property** of a de facto relationship or domestic relationship means property of the parties to the relationship or of either of them.

### **163C Exemption for “top hatting” arrangements**

- (1) An acquisition by a person of an interest in a landholder is an exempt acquisition if the Chief Commissioner is satisfied that:
  - (a) the acquisition is made for the purpose of giving effect to a scheme that would qualify as a roll-over under Subdivision 124-Q of the *Income Tax Assessment Act 1997* of the Commonwealth, and
  - (b) when the scheme is completed, the interposed trust will be a public unit trust scheme or a landholder, and
  - (c) the acquisition is not part of a scheme a purpose of which is to minimise duty otherwise payable under this Act.

#### **Note—**

A roll-over involves a scheme for interposing a unit trust scheme (whether a new or existing unit trust scheme) between persons who have an ownership interest in 2 or more unit trust schemes, or in one or more companies and one or more unit trust schemes, and the unit trust schemes or companies in which they have an ownership interest. The interests of the unit holders or shareholders are stapled together to form stapled securities and the interposed unit trust becomes the owner of all the stapled interests.

- (2) An acquisition by a person for the purposes of a scheme referred to in Subdivision 124-Q of the *Income Tax Assessment Act 1997* of the Commonwealth ceases to be an exempt acquisition if:
  - (a) the interposed trust is not a public unit trust scheme or a landholder when the scheme is completed, or
  - (b) the interposed trust ceases to be a public unit trust scheme or a landholder at any time within 12 months after the scheme is completed.
- (3) If an acquisition ceases to be an exempt acquisition:
  - (a) duty is chargeable under this Chapter in respect of the acquisition as if the acquisition had never been an exempt acquisition, and

- (b) the person who made the acquisition must lodge an acquisition statement or a revised acquisition statement with the Chief Commissioner to reflect the fact that the acquisition has ceased to be an exempt acquisition, and
- (c) a tax default does not occur for the purposes of the *Taxation Administration Act 1996* if the duty (if any) chargeable under this Chapter as a result of the acquisition ceasing to be an exempt acquisition is paid within 3 months after the acquisition ceases to be an exempt acquisition.

(4) In this section:

**interposed trust**, in relation to a scheme, has the same meaning as it has in section 124-1045 of the *Income Tax Assessment Act 1997* of the Commonwealth.

### **163D Concession for primary producers—continuation of land rich requirement**

- (1) Duty is chargeable under this Chapter in respect of an acquisition of an interest in a primary producer only if, when the acquisition is made, the primary producer is land rich.
- (2) For the purposes of this section, a **primary producer** is a landholder whose land holdings in all places, whether within or outside Australia, wholly or predominantly comprise land used for primary production or land that would be considered to be land used for primary production if it were land in New South Wales.
- (3) A primary producer is **land rich** if:
  - (a) it has land holdings in New South Wales with an unencumbered value of \$2,000,000 or more, and
  - (b) its land holdings in all places, whether within or outside Australia, comprise 80% or more of the unencumbered value of all its property.
- (4) If at any time within the period of 5 years after an acquisition of an interest in a primary producer is made, the landholder in whom the acquisition is made ceases for any length of time to be a primary producer:
  - (a) the person who made the acquisition must immediately notify the Chief Commissioner:
    - (i) that the landholder has ceased to be a primary producer, and
    - (ii) of the date on which the landholder ceased to be a primary producer, and
  - (b) duty is chargeable under this Chapter in respect of the acquisition on the date on which the landholder ceased to be a primary producer, and
  - (c) the Chief Commissioner must make an assessment of the duty so chargeable.

- (5) Property is not to be counted in calculating the unencumbered value of the property of a primary producer for the purposes of this section if the primary producer is unable to satisfy the Chief Commissioner that the property was obtained otherwise than to reduce, for the purposes of this Chapter, the ratio of its land holdings in all places, whether within or outside Australia, to the unencumbered value of all its property.

**163E Concession for acquisitions securing financial accommodation**

- (1) If the person lodging an acquisition statement under this Chapter in relation to the acquisition of an interest in a landholder:
- (a) informs the Chief Commissioner at the time the statement is lodged that the acquisition is effected for the purpose of securing financial accommodation, and
  - (b) the Chief Commissioner is satisfied that the acquisition is effected for that purpose,
- the statement, in so far as it relates to that acquisition, is not chargeable with duty, except as provided by subsection (2).
- (2) The statement is chargeable with duty at the expiration of the period of 5 years after the date of the acquisition (or such longer period as may be determined by the Chief Commissioner in the particular case) if the interest concerned is not:
- (a) re-acquired by the person from whom it was acquired, or
  - (b) in the case of an acquisition by way of mortgage, conveyed by the mortgagee to a third person in exercise of the mortgagee's power of sale,
- within that period (or that longer period).
- (3) A person is not required to lodge an acquisition statement with the Chief Commissioner in respect of a re-acquisition by the person of the interest concerned.

**163F Concession for redemption and re-issue arrangements**

- (1) This section applies if:
- (a) the trustee of a unit trust scheme that is a widely held trust redeems any units in the trust, and
  - (b) the redemption is done for the purpose of re-issuing or re-offering the units for sale, and
  - (c) as a result of the redemption, the scheme would, but for this section, cease to be a widely held trust because a unit holder, individually or together with any associated person, is entitled to more than 20% of the units in the trust.
- (2) For a period of 30 days beginning on and including the day on which the redemption

occurs, the trust is taken to continue to be a widely held trust, but only if the trust continues to have not less than 300 unit holders none of whom, individually or together with any associated person, is entitled to more than 25% of the units of the trust.

- (3) If, at the end of that 30-day period, a unit holder, individually or together with any associated person, is entitled to more than 20% of the units in the unit trust scheme:
  - (a) the trust is taken to have ceased to be a widely held trust from the beginning of that 30-day period (as if subsection (2) had never applied), and
  - (b) the Chief Commissioner must make an assessment of the duty chargeable under this Act as if the unit trust scheme had ceased to be a widely held trust scheme at the beginning on that 30-day period, and
  - (c) a tax default occurs for the purposes of the *Taxation Administration Act 1996* if the whole of any duty assessed under paragraph (b) is not paid to the Chief Commissioner within 3 months after the assessment.

**163FA Concession for acquisitions in connection with persons changing superannuation funds**

- (1) This section applies to a relevant acquisition that results wholly from a relevant transfer and occurs in connection with a person:
  - (a) ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, a superannuation fund that is a complying superannuation fund or was a complying superannuation fund within the period of 12 months before the acquisition was made, and
  - (b) becoming a member of, or otherwise becoming entitled to benefits in respect of, another superannuation fund that is also a complying superannuation fund or will, in the opinion of the trustees of both funds concerned, be a complying superannuation fund within 12 months after the acquisition is made.
- (2) For the purposes of this section, each of the following is a **relevant transfer**:
  - (a) a transfer of property from a trustee of a superannuation fund, or a custodian of the trustee, to the trustee of another superannuation fund, or to a custodian of the trustee of another superannuation fund,
  - (b) a transfer of property from a trustee of a superannuation fund to a custodian of the trustee, or from a custodian of the trustee of a superannuation fund to the trustee,
  - (c) a transfer of a share or a unit in a unit trust scheme from the trustee of a pooled superannuation trust, made in exchange for a redemption of units in the trust, to the trustee of a superannuation fund, or a custodian of the trustee of a

superannuation fund,

- (d) a transfer of a share or a unit in a unit trust scheme from the trustee of a superannuation fund, or a custodian of the trustee of a superannuation fund, made in exchange for the issue of units in a pooled superannuation trust, to a trustee of the pooled superannuation trust,
  - (e) a transfer of a share or a unit in a unit trust scheme 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,
  - (f) a transfer of a share or a unit in a unit trust scheme from the trustee of a superannuation fund or a custodian of the trustee of a superannuation fund to a life company or custodian for a life company if the transfer is made in consideration of the issue, by the life company, of a policy of life insurance to the trustee of the superannuation fund of which the person has become a member.
- (3) The duty chargeable under this Chapter on a relevant acquisition to which this section applies is \$500.
- (4) In this section, ***complying superannuation fund*** includes a complying approved deposit fund and an eligible rollover fund.

### **163G Significant holdings in goods**

If the Chief Commissioner is satisfied that the unencumbered value of all goods in New South Wales of a landholder comprises not less than 90% of the total unencumbered value of all land holdings and goods in New South Wales of a landholder, the Chief Commissioner may disregard the value of the goods in determining the duty chargeable under this Chapter.

### **163H Discretion to grant exemption or concession**

- (1) The Chief Commissioner may, if satisfied that the application of this Chapter to an acquisition in a particular case would not be just and reasonable:
- (a) grant a full exemption in respect of the acquisition, or
  - (b) grant a partial exemption in respect of the acquisition.
- (2) If the Chief Commissioner grants a full exemption in respect of the acquisition, the acquisition is an exempt acquisition.
- (3) If the Chief Commissioner grants a partial exemption in respect of the acquisition, the Chief Commissioner may make any reduction in the duty chargeable in respect of the

acquisition that the Chief Commissioner considers just and reasonable in the circumstances.

## Part 5 Interpretation

### 163I Meaning of expressions used in this Chapter

(1) In this Chapter:

**acquisition statement**—see section 152.

**exempt acquisition** means:

- (a) an exempt acquisition under Part 4, or
- (b) an acquisition of an interest in a landholder that is not chargeable with duty because of Chapter 11.

**landholder** has the meaning given by section 146.

**private landholder**—see section 146.

**public landholder**—see section 146.

**statement period**—see section 152.

#### Note—

Other expressions are defined in the Dictionary.

(2) To avoid doubt, in this Chapter, **property** includes money, and a reference to a distribution of property includes a reference to the payment of money.

### 163J (Repealed)

### 163K Goods of a landholder

(1) In this Chapter:

**goods** does not include the following:

- (a) goods that are stock-in-trade,
- (b) materials held for use in manufacture,
- (c) goods under manufacture,
- (d) goods held or used in connection with land used for primary production,
- (e) livestock,
- (f) a registered motor vehicle,



(g) a ship or vessel.

- (2) For the purposes of this Chapter, goods are goods of a landholder if the landholder has any interest in the goods, other than an interest as mortgagee, chargee or other secured creditor.
- (3) Goods are goods of a unit trust scheme only to the extent that the interest in the goods is held by the trustee of the unit trust scheme in its capacity as trustee of the scheme, 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.
- (4) Goods are not goods of a company if the interest the company has in the goods is held on trust and the company is not a beneficiary of the trust.

#### **163L Meaning of “unit trust scheme”**

Without limiting the meaning of ***unit trust scheme*** in the Dictionary, the following are taken to be unit trust schemes for the purposes of this Chapter:

- (a) a managed investment scheme,
- (b) any sub-trust of a unit trust scheme (as defined in the Dictionary) or a managed investment scheme.

## **Chapters 4A-6**

### **163M-203 (Repealed)**

## **Chapter 7 Mortgages**

### **Part 1 Introduction and overview**

#### **203A Abolition of mortgage duty—effective 1 July 2012**

- (1) Mortgage duty is abolished on and from 1 July 2012.
- (2) However, mortgage duty remains chargeable, and this Chapter continues to apply, in respect of the following:
  - (a) a mortgage first executed before 1 July 2012 (including any advances or further advances made in respect of the mortgage before that date),
  - (b) an instrument of security referred to in section 208 (3) that first affects land in New South Wales before 1 July 2012,
  - (c) an instrument of security referred to in section 208 (3A) that first affects relevant property in New South Wales before 1 July 2012,

(d) an instrument that first becomes a mortgage or evidences the terms of a mortgage, as referred to in section 208 (4), before 1 July 2012.

(3) A mortgage does not become liable to the additional duty referred to in section 208 (2) in respect of an advance or further advance that is made on or after 1 July 2012 (even if the mortgage was first executed before that date).

#### **204 Imposition of duty**

This Chapter charges duty on instruments that fall within the definition of a **mortgage**. Duty chargeable under this Chapter is called **mortgage duty**.

##### **Notes—**

(1) Mortgage duty is calculated, in most cases, according to “the amount secured by the mortgage”.

Contingent liabilities may also be included. This is dealt with in Part 2.

(2) Ad valorem duty is only chargeable on one of a package of mortgages securing the same advance. This is dealt with in section 214.

(3) Provision is also made for the apportionment, for duty purposes, of the amount secured by any mortgage over property in different Australian jurisdictions. This is dealt with in section 216.

#### **205 What is a mortgage?**

For the purposes of this Chapter, an instrument is a **mortgage** if it is:

- (a) a security by way of mortgage or charge over property wholly or partly in New South Wales at the liability date, or
- (b) (Repealed)
- (c) a security by way of a transfer or conveyance of any property in New South Wales that is held in trust to be sold or otherwise converted into money, redeemable before such a sale or conversion either by express stipulation or otherwise, except where the transfer or conveyance is made for the benefit of creditors who accept the transfer or conveyance in full satisfaction of debts owed to them, or
- (d) an instrument that, on the deposit of documents of title to property in New South Wales or instruments creating a charge on property in New South Wales, becomes a mortgage or evidences the terms of a mortgage.

##### **Note—**

Certain instruments that would otherwise be caught by this definition are exempted under Part 4.

#### **206 What is an advance?**

In this Chapter, **advance** means the provision or obtaining of funds by way of financial accommodation, by means of:

- (a) a loan, being:
  - (i) an advance of money, or

- (ii) the payment of money for or on account of, or on behalf of, or at the request of, any person, or
  - (iii) a forbearance to require the payment of money owing on any account whatever, or
  - (iv) any transaction (whatever its terms or form) that in substance effects a loan of money, or
- (b) a bill facility, being one or more agreements, understandings or arrangements as a consequence of which a bill of exchange or promissory note:
- (i) is drawn, accepted, endorsed or made, and
  - (ii) is held, negotiated or discounted to obtain funds,
- whether or not the funds are obtained from the person who draws, accepts, endorses or makes the bill of exchange or promissory note and whether or not the funds are obtained from a person who is a party to any such agreement,
- and includes contingent liabilities of the kind referred to in section 215.

### **207 Who is liable to pay the duty?**

The person liable to pay mortgage duty is the mortgagor or the person bound.

### **208 When does a liability arise?**

- (1) A mortgage becomes liable to duty on the date of its first execution.
- (2) A mortgage becomes liable to additional duty on the making of an advance or further advance if, as a result of that advance or further advance, the amount secured by the mortgage exceeds the amount secured by the mortgage at the time a liability to duty last arose under this Act.

#### **Note—**

Section 219 exempts some further advances from duty.

- (3) An instrument of security that does not affect property in New South Wales at the date of first execution but that affects land in New South Wales at any time within 12 months after that date becomes liable to duty as a mortgage on the date on which it first affects the land, unless it is exempt from duty.
- (3A) An instrument of security that does not affect property in New South Wales at the date of first execution but that, at any time after execution, affects relevant property in New South Wales identified in the instrument or identified under an arrangement in place when the instrument was first executed, becomes liable to duty on the date it first affects that property, unless it is exempt from duty.

- (4) An instrument that, on the deposit of documents of title to property in New South Wales or instruments creating a charge on property in New South Wales, becomes a mortgage or evidences the terms of a mortgage becomes liable to duty as a mortgage on the deposit of the documents or instruments.
- (5) A reference in subsection (3) to land does not include a reference to an interest in land that is held by way of security.
- (6) For the purposes of this section, **relevant property** means any property, excluding land and the following kinds of property:
  - (a) a marketable security that is quoted on the Australian Stock Exchange,
  - (b) an interest in a marketable security referred to in paragraph (a), or an interest in a marketable security if the interest is quoted on the Australian Stock Exchange,
  - (c) an interest in a unit trust scheme, being a unit trust scheme in respect of which units in the scheme have been issued to the public and 50 or more persons are beneficially entitled to units in the scheme,
  - (d) property the Chief Commissioner is satisfied is of a similar nature to property referred to in paragraph (a), (b) or (c).

### **209 When must duty be paid?**

A tax default does not occur for the purposes of the [Taxation Administration Act 1996](#) if duty is paid within 3 months after the liability to pay the duty arises.

### **210 How is mortgage duty charged?**

- (1) The amount of duty chargeable on a mortgage is calculated by reference to the amount secured by it at the liability date, as determined under Part 2.
- (2) The amount of duty is:
  - (a) \$5.00, if no amount is secured by the mortgage or the amount secured by the mortgage is not more than \$16,000, or
  - (b) if the amount secured by the mortgage is more than \$16,000—\$5.00, plus a further \$4.00 for every \$1,000, or part, by which the amount secured exceeds \$16,000.
- (3) The amount of duty chargeable on the mortgage at a liability date is to be reduced by the amount of ad valorem duty (if any) for which the mortgage has already been duly stamped under this Act.
- (4) No refund of duty is payable because the amount of ad valorem duty for which a mortgage has already been duly stamped under this Act exceeds the duty chargeable under subsection (2) on the amount secured by the mortgage at a liability date.

## 211 Consequences of non-payment of duty

A mortgage on which duty is required by this Chapter to be paid is unenforceable to the extent of any amount secured by the mortgage on which duty has not been paid.

## 212 Where is property located?

- (1) For the purposes of this Chapter, property in the following forms is taken to be located in the place specified:
  - (a) shares in or securities of a body corporate:
    - (i) in the case of a company within the meaning of the *Corporations Act 2001* of the Commonwealth—in the place where the company is taken to be registered for the purposes of that Act, or
    - (ii) in any other case—in the place of incorporation of the body corporate,
  - (b) units in a unit trust scheme:
    - (i) in the place where the register on which the units are registered is kept, or
    - (ii) in the place of residence of the manager of the unit trust scheme, if the register on which the units are registered is not kept in Australia,
  - (c) debt securities of a Government of a State or Territory of the Commonwealth—in the State or Territory concerned.
- (2) Subsection (1) (a) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to section 1070A (4) of that Act.

## Part 2 Calculating the amount secured by a mortgage

### 213 Amount secured by mortgage

- (1) For the purposes of this Chapter, the **amount secured** by a mortgage is the amount of any advances made under an agreement, understanding or arrangement for which the mortgage is security (even if the amount of advances made exceeds the amount of advances recoverable under the mortgage).
- (2) A reference in this Chapter to an advance secured by or made under a mortgage includes a reference to any advance made under an agreement, understanding or arrangement for which the mortgage is security (whether or not the advance is recoverable under the mortgage).
- (3) To avoid doubt, an advance made under an agreement, understanding or arrangement includes any advance made as a consequence of a variation to that agreement, understanding or arrangement.

## 214 Mortgage packages

- (1) The Chief Commissioner must, at the liability date for a mortgage, assess the mortgage, together with any other instruments of security, as a ***mortgage package*** if the mortgage and other instruments secure or partly secure the same money.
- (2) This section applies regardless of when the other instruments of security were first executed.
- (3) Duty on a mortgage package is to be assessed under this Part as if the instruments comprising the mortgage package, to the extent that they secure the same moneys, were a single mortgage.
- (4) One of the mortgages in the mortgage package is to be stamped, or upstamped, with any ad valorem duty paid under this Act for the mortgage package and each other mortgage in the mortgage package is to be stamped as a collateral mortgage.
- (5) If any of the mortgages in the mortgage package partly secures other moneys, that mortgage is to continue to be treated as a separate mortgage under this Chapter in respect of the other moneys that it secures and may be stamped for the duty chargeable in respect of those other moneys.

## 215 Contingent liabilities

- (1) A mortgage that is used or is capable of being used (whether directly or through a chain of relationships) to recover the whole or any part of an amount contingently payable in connection with an advance:
  - (a) by a guarantor or indemnifying party under a guarantee or indemnity, or
  - (b) by another party under another instrument of a different kind,is liable to duty as if the amount of the contingent liability under the guarantee, indemnity or other instrument (or, where there is more than one guarantee, indemnity or other instrument, the greatest contingent liability) were a separate advance made under the agreement, understanding or arrangement for which the mortgage is security.
- (2) In the case of a mortgage that is part of a chain of relationships referred to in subsection (1), a reference in that subsection to a contingent liability is a reference to a contingent liability limited to the amount of any advance by any party in the chain, and does not include a reference to any other kind of contingent liability.
- (3) This section does not apply if the Chief Commissioner is satisfied that there is no connection between the mortgage and any advance by any party to the arrangements.
- (4) Nothing in this section requires duty to be paid more than once in respect of an

advance.

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

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

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

where:

**DP** is the dutiable proportion.

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

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

**T** is the value of all property affected by the mortgage.

- (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.
- (7) (Repealed)

#### **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.

#### **217 Collateral mortgages—minimum duty**

A collateral mortgage is chargeable with a minimum duty of \$50.

#### **217A, 218 (Repealed)**

#### **218A Security**

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

#### **218B, 218BA (Repealed)**

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

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



the secured property, and

(b) lodge the statement with the Chief Commissioner.

Maximum penalty: 100 penalty units.

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

### **Part 3 Duty concessions**

#### **218D Concession for advances charged with duty under corresponding Acts**

- (1) If the total of the amount of ad valorem duty chargeable under this Act in respect of the amount secured by a mortgage at a liability date and the amount of duty paid under a corresponding Act in respect of the mortgage exceeds the maximum duty charge in respect of the mortgage, the amount of ad valorem duty chargeable on the mortgage at the liability date is to be reduced by the amount necessary to ensure that the maximum duty charge is not exceeded.
- (2) The **maximum duty charge** in respect of the mortgage is the amount of ad valorem duty that would be chargeable in respect of the amount secured by the mortgage at the liability date if:
  - (a) it were a single mortgage over property wholly within New South Wales (that is, disregarding section 216), and
  - (b) it had not previously been stamped under this Act for any ad valorem duty.
- (3) The amount of duty paid under a corresponding Act in respect of the mortgage is the total of all ad valorem duty already paid in respect of the amount secured by the mortgage under any corresponding Act.
- (4) If a mortgage has already been duly stamped under this Act for an amount of duty, any reduction in the amount of duty chargeable on the mortgage at the liability date that is made under section 210 (3) is to be made after making any reduction required by this section.
- (5) To avoid doubt, this section extends to a mortgage package assessed as a single mortgage.

#### **219 Additional advances of not more than \$10,000 in 12 months**

Duty is not chargeable on additional advances secured by or under a mortgage if the total of the additional advances so secured does not exceed \$10,000 in any 12-month period,

not being the period of 12 months following the making of the initial advance.

## 220 Refinancing of loans

(1) In this section:

**land used for aquaculture** means land subject to an aquaculture permit (within the meaning of the *Fisheries Management Act 1994*).

**refinancing mortgage** means a mortgage that:

- (a) secures the amount of the balance outstanding under an earlier mortgage that is discharged or to be discharged as part of the arrangements for the new mortgage, and
  - (b) is created to secure an advance to the same borrower as under the earlier mortgage, and
  - (c) is over the same or substantially the same property or part of the property as the earlier mortgage.
- (2) For the purposes of subsection (1), mortgages are created to secure an advance to the same borrower if, either directly by the mortgages themselves or indirectly through one or more collateral arrangements, the same person obtains the advances secured by them.
- (3) A refinancing mortgage is taken to have been stamped with ad valorem duty as a mortgage in respect of the duty-free refinancing amount, except as provided by subsection (5).
- (3A) For the purposes of this section, the **duty-free refinancing amount** is the lesser of the following amounts:
- (a) the amount secured by the earlier mortgage on which duty has been paid under this Act or in relation to which an exemption from duty has been obtained,
  - (b) \$1,000,000.
- (3B) However, if the refinancing mortgage is over land used for primary production or land used for aquaculture, the **duty-free refinancing amount** is the maximum amount payable under or secured by the earlier mortgage (being an amount in relation to which mortgage duty has been paid or in relation to which an exemption from duty has been obtained).

### Note—

“Land used for primary production” is defined in the Dictionary.

- (4) If an advance is refinanced by more than one lender, so that mortgages given to the lenders together secure the balance outstanding under an earlier mortgage, the

definition of **refinancing mortgage** in subsection (1) is to be construed as though:

- (a) the reference to a mortgage securing the outstanding balance were a reference to the aggregate of such mortgages, and
  - (b) the reference to property were a reference to the property securing the aggregate of refinancing advances made by the lenders under their combined mortgages, to the intent that, if the requirements of the definition, as so construed, are satisfied, each lender is taken, for the purposes of this section, to be the holder of a refinancing mortgage.
- (5) If, as provided by subsection (4), each of a number of lenders is the holder of a refinancing mortgage, a refinancing mortgage held by each lender is taken to have been duly stamped with ad valorem duty as a mortgage in respect of an amount equal to the same proportion of the duty-free refinancing amount as the amount secured by that mortgage bears to the total amount secured by the refinancing mortgages held by all the lenders.
- (6) If each of two or more refinancing mortgages severally secures the same advance:
- (a) the provisions of subsection (3) or (5), as the case may be, apply to such one of the mortgages as the Chief Commissioner determines, and
  - (b) no duty is chargeable in respect of any of the others.
- (7) (Repealed)
- (8) Duty at the rate of \$4 per \$1,000 or remaining part of \$1,000 is payable on the amount by which the advance made under a refinancing mortgage (not being a mortgage on which, by virtue of subsection (6) (b), no duty is chargeable) exceeds:
- (a) the duty-free refinancing amount, or
  - (b) the proportion of that amount referred to in subsection (5), in the case of a refinancing to which subsection (4) applies.
- (8A) If a borrower is a related body corporate of a borrower under an earlier mortgage, the firstmentioned borrower is taken to be the same borrower or the same person for the purposes of subsection (1) or (2).
- (9) If a borrower under an earlier mortgage dies, or is a party to a marriage that has been dissolved or annulled or, in the opinion of the Chief Commissioner, has broken down irretrievably or is party to a de facto relationship that, in the opinion of the Chief Commissioner, has been terminated, the remaining borrower is, or the remaining borrowers are, taken to be the same borrower or the same person for the purposes of subsection (1) or (2).
- (10) A party to a marriage or de facto relationship may provide a statement to the Chief

Commissioner, in the form of a statutory declaration, to the effect that:

(a) in the case of a marriage:

- (i) the party intends to apply for a dissolution or an annulment of the marriage, or
- (ii) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed, or

(b) in the case of a de facto relationship, the de facto relationship has been terminated.

The Chief Commissioner is required to have regard to any such statement in exercising his or her functions under subsection (9).

(11) Subsection (10) does not limit the functions of the Chief Commissioner under section 72 of the *Taxation Administration Act 1996*.

## 221 Eligible mortgages under First Home Plus

(1) Duty is payable in accordance with the following paragraphs on an advance secured by an eligible mortgage under Division 1 of Part 8 of Chapter 2 or a mortgage in support of such an eligible mortgage, but only to the extent that the amount of the advances qualifies under section 77 (3) or (4):

(a) if the property has a private dwelling built on it:

<b>Dutiable value of dutiable property subject to the agreement or transfer</b>	<b>Discount on duty</b>
Not more than \$500,000	100%
More than \$500,000 but not more than \$535,000	75%
More than \$535,000 but not more than \$565,000	50%
More than \$565,000 but less than \$600,000	25%

(b) if the property comprises a vacant block of residential land:

<b>Dutiable value of dutiable property subject to the agreement or transfer</b>	<b>Discount on duty</b>
Not more than \$300,000	100%
More than \$300,000 but not more than \$350,000	75%
More than \$350,000 but not more than \$400,000	50%
More than \$400,000 but less than \$450,000	25%

(2) For the purpose of assessing any further advances secured by such a mortgage, duty is taken to have been paid on the amount of advances to which subsection (1) applies.

(3) This section does not prevent section 221B from applying in respect of a mortgage.

**Note—**

Section 221B extends a general mortgage duty exemption to all mortgages associated with owner occupied housing, and takes effect on and from 1 September 2007.

## **Part 3A Exemptions for mortgages associated with housing**

### **221A Definitions**

In this Part:

**alterations or additions**, in relation to a private dwelling house, includes:

- (a) any improvements to the parcel of land on which the dwelling house is constructed, and
- (b) the maintenance, repair or renovation of the dwelling house or of an improvement referred to in paragraph (a).

**APRA reporting standard** means a reporting standard determined by the Australian Prudential Regulation Authority under section 13 of the *Financial Sector (Collection of Data) Act 2001* of the Commonwealth.

**private dwelling house** includes:

- (a) a lot within the meaning of the *Strata Schemes Management Act 1996*, and
- (b) a land use entitlement that confers a right to occupy a private dwelling house.

**residential land** means a parcel of vacant land that is zoned or otherwise designated for use under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*) for residential or principally for residential purposes.

### **221B Mortgages associated with owner occupied housing**

- (1) Mortgage duty is not chargeable in respect of a mortgage if the mortgage secures an advance or advances made for the purpose of owner occupied housing and no other advances.
- (2) If a mortgage secures an advance made for the purpose of owner occupied housing and another advance that is not made for that purpose, mortgage duty is not chargeable in respect of the mortgage in relation to the amount advanced for the purpose of owner occupied housing.
- (3) This section applies in respect of a mortgage only if the borrower under the mortgage is a natural person or, if there is more than one borrower, each of them is a natural person.

- (4) An advance is made for the purpose of owner occupied housing if it is to be applied wholly or predominantly for one or more of the following purposes:
  - (a) financing the acquisition of a residence,
  - (b) financing the construction of a residence,
  - (c) financing alterations or additions to a residence,
  - (d) financing the acquisition of residential land,
  - (e) repaying another advance, if the advance to be repaid was made for the purpose of owner occupied housing (within the meaning of this section).
- (5) For the purposes of this section, a **residence** is a private dwelling house that is used and occupied or intended to be used and occupied by the borrower, or by any of the borrowers, as a place of residence.
- (6) To avoid doubt, an exemption provided for by this section is not available in respect of any advance that is to be applied wholly or predominantly for business or investment purposes (or both).
- (7) The Chief Commissioner may, by written instrument, determine the criteria that may be applied by lenders for the purpose of establishing that the exemption provided for by this section applies in respect of an advance.
- (8) Without limiting subsection (7), the Chief Commissioner may determine that an advance is taken to be made for the purpose of owner occupied housing if it meets criteria set out in any APRA reporting standard relating to housing finance that is specified by the Chief Commissioner to be applicable to the exemption under this section.
- (9) A determination made by the Chief Commissioner under this section:
  - (a) may be varied or revoked by the making of a further determination, and
  - (b) has effect according to its tenor.
- (10) The exemption provided for by this section takes effect on and from 1 September 2007.

### **221C Mortgages associated with investment housing**

- (1) Mortgage duty is not chargeable in respect of a mortgage if the mortgage secures an advance or advances made for the purpose of investment housing and no other advances.
- (2) If a mortgage secures an advance made for the purpose of investment housing and another advance that is not made for that purpose, mortgage duty is not chargeable

in respect of the mortgage in relation to the amount advanced for the purpose of investment housing.

- (3) This section applies in respect of a mortgage only if the borrower under the mortgage is a natural person or, if there is more than one borrower, each of them is a natural person.
- (4) An advance is made for the purpose of investment housing if it is to be applied wholly or predominantly for one or more of the following purposes:
  - (a) financing the acquisition of investment housing,
  - (b) financing the construction of investment housing,
  - (c) financing alterations or additions to investment housing,
  - (d) repaying another advance, if the advance to be repaid was made for the purposes of investment housing (within the meaning of this section).
- (5) For the purposes of this section, **investment housing** is any private dwelling house that is used, or is intended to be used or sold, for investment or business purposes (or both) by the borrower or by any of the borrowers.
- (6) The Chief Commissioner may, by written instrument, determine the criteria that may be applied by lenders for the purpose of establishing that the exemption provided for by this section applies in respect of an advance.
- (7) Without limiting subsection (6), the Chief Commissioner may determine that an advance is taken to be made for the purpose of investment housing if it meets criteria set out in any APRA reporting standard relating to personal or commercial finance that is specified by the Chief Commissioner to be applicable to the exemption under this section.
- (8) A determination made by the Chief Commissioner under this section:
  - (a) may be varied or revoked by the making of a further determination, and
  - (b) has effect according to its tenor.
- (9) The exemption provided for by this section takes effect on and from 1 July 2008.

## **Part 4 Other exemptions**

### **222 Exempt mortgages and supporting instruments**

- (1) This Chapter does not apply to a mortgage executed before 1 January 1975.
- (2) Other instruments that are exempt from payment of mortgage duty are:
  - (a) a mortgage created solely for the purpose of providing security in accordance with

- a condition imposed on the grant of bail in criminal proceedings, and
- (b) a mortgage taken by a non-profit organisation in conjunction with a lease in respect of which no duty is chargeable under this Act, and
  - (c) a mortgage of any ship or vessel, or of any part, interest, share or property of or in any ship or vessel, and
  - (d) a mortgage given by the Government of the Commonwealth or the Government of New South Wales or by any public statutory body constituted under a law of this State, and
  - (e) (Repealed)
  - (f) a mortgage under the *Liens on Crops and Wool and Stock Mortgages Act 1898*, and
  - (f1) an agricultural goods mortgage under the *Security Interests in Goods Act 2005*, and
  - (g) a mortgage that secures an amount advanced by an employer or a related body corporate of an employer to an employee of the employer, for the purpose of financing a purchase by the employee of shares in the employer, or a related body corporate of the employer, if the amount advanced (and the total of all advances that the mortgage secures) does not exceed \$16,000.
- (3) The exemption provided by subsection (2) (d) does not apply to a mortgage given by a public statutory body in relation to a transaction, or any one of a class of transactions, specified in a proclamation made by the Governor and published in the Gazette in respect of the public statutory body concerned.
- (4) Duty is not chargeable in respect of a mortgage made or given by:
- (a) a council or county council under the *Local Government Act 1993*, or
  - (b) the WorkCover Authority.
- (5) Duty is not chargeable on an instrument referred to in section 205 (d) if it is executed for the purposes of money market trading operations conducted or to be conducted by the person executing the instrument.
- (6) Duty is not chargeable in respect of a mortgage:
- (a) that is taken or is to be taken by the Sydney Futures Exchange Clearing House or the Options Clearing House Pty. Limited, and
  - (b) that is or will be made available to it by a clearing member of the market, and
  - (c) that does not secure an advance.



- (7) Duty under this Chapter is not chargeable on a charge over land that is created under an agreement for the sale or transfer of the land if any part of the deposit or balance of the purchase price for the land is paid to the vendor (or as the vendor directs) before completion of the sale or transfer.

### **223 Mortgages associated with certain credit contracts**

(1) If:

- (a) a mortgage secures an amount advanced under a credit contract and no other advance, and
- (b) the total amount advanced under the credit contract does not exceed \$35,000, mortgage duty is not chargeable in respect of the mortgage.

(2) If:

- (a) a mortgage secures an amount advanced under a credit contract and another advance, and
- (b) the total amount advanced under the credit contract does not exceed \$35,000, mortgage duty is not chargeable on the mortgage in relation to the amount advanced under the credit contract.

(3) If:

- (a) a mortgage secures an amount advanced under a credit contract (whether or not it also secures any other advance), and
- (b) the total amount advanced under the credit contract exceeds \$35,000, the whole of the amount advanced under the credit contract comprises or forms part of the advances secured by the mortgage.

(4) (Repealed)

(5) In this section:

**credit contract** means a credit contract within the meaning of the [National Credit Code](#) as set out in Schedule 1 to the [National Consumer Credit Protection Act 2009](#) of the Commonwealth.

### **224 Farm machinery and commercial vehicles**

- (1) Mortgage duty is not chargeable on so much of an advance to a natural person or a strata corporation for the acquisition of farm machinery or a commercial vehicle as is secured by the mortgage.

(2) In this section:

**commercial vehicle** means:

- (a) a motor vehicle or trailer within the meaning of the *Road Transport (Vehicle Registration) Act 1997* constructed or adapted principally for the carriage of goods but does not include a motor vehicle of the kind known as a utility, a station wagon or a panel van, or
- (b) a vehicle without motive power of its own and constructed or adapted principally for the carriage of goods and for being drawn by a motor vehicle within the meaning of that Act.

**farm machinery** means:

- (a) a harvester, binder, tractor, plough or other agricultural implement, or
- (b) a boat within the meaning of the *Fisheries Management Act 1994* or fishing gear within the meaning of that Act, or
- (c) any other goods of a class commonly used for the purposes of a farming undertaking that are determined by the Chief Commissioner to be farm machinery for the purposes of this section,

where the goods are acquired for the purposes of a farming undertaking.

**farming undertaking** includes:

- (a) any agricultural, apicultural, dairy farming, horticultural, orcharding, pastoral, poultry keeping, viticultural or other business involving the cultivation of the soil, the gathering of crops or the rearing of livestock, and
- (b) the business of taking fish, crustacea, oysters or any other marine, estuarine or fresh-water animal life, and
- (c) the cutting of timber for sale, and
- (d) any class of business determined by the Chief Commissioner to be a farming undertaking.

## 225 Certain debentures and related instruments

- (1) Mortgage duty is not chargeable on a mortgage solely securing the repayment of advances arising from the issue by a financial corporation or a related corporation of a debenture.
- (2) Mortgage duty is not chargeable on a mortgage in respect of advances arising from the issue by a financial corporation or a related corporation of a debenture if the mortgage secures in part the repayment of those advances.

(3) This section applies to a debenture issued, or a mortgage executed, by a related corporation only in so far as the debenture is issued, or the mortgage is executed, for the purposes of raising funds to be used for a financial corporation.

(4) In this section:

**financial corporation** means a corporation whose sole or principal business is providing finance to the public, including making loans to the public.

**related corporation**, in relation to a particular financial corporation, means a corporation that is, with respect to the financial corporation, a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

## Part 5 Miscellaneous

### 226 Payment on mortgages associated with debenture issues

(1) This section applies if:

- (a) a corporation is or will be under a liability to repay money received or to be received by it in respect of its debentures, and
- (b) the repayment is secured by a mortgage first executed before the cut-off date, and
- (c) the corporation is a party to an instrument of trust relating to the debentures.

(2) If the corporation and the trustee for the debenture holders give a written undertaking in the approved form to the Chief Commissioner:

- (a) a mortgage first executed by the corporation before the cut-off date and solely securing the repayment of money received or to be received by the corporation in respect of its debentures is not liable to mortgage duty in respect of advances made before the debenture concession closure date arising from debentures subscribed for before the cut-off date, and
- (b) a mortgage, not executed by the corporation, and first executed before the cut-off date, solely securing the repayment of such money is liable to duty of \$10 in respect of advances made before the debenture concession closure date arising from debentures subscribed for before the cut-off date, and
- (c) a mortgage, whether executed by the corporation or by another party, and first executed before the cut-off date, and securing in part the repayment of such money is not liable to mortgage duty in respect of advances made before the debenture concession closure date arising from debentures subscribed for before the cut-off date.

**Note—**

The *State Revenue Legislation Amendment Act 2003* terminated the concession provided for by this section in respect of mortgages executed, or debentures subscribed for, on or after the cut-off date.

- (3) The undertaking binds the corporation and the trustee to lodge with the Chief Commissioner, in July each year, a statutory declaration setting out, in the following categories, the total amount subscribed for in New South Wales before the cut-off date in respect of the corporation's debentures during the year ending on the previous 30 June (but not including amounts repayable at call or in less than 30 days) and binds the corporation to pay duty in the following amounts:

Money repayable at or after the expiration  
of not less than 30 days and not more than 3 months      \$2 for every \$10,000, or part

Money repayable at or after the expiration  
of not less than 3 months and not more than 6 months      \$2 for every \$1,000, or part

Other money (except money repayable at  
call or in less than 30 days)      \$4 for every \$1,000, or part

Money repayable at call after a specified period is taken to be money repayable at the expiration of that period.

- (3A) The obligation to lodge a statutory declaration in July each year ceases after July 2003.
- (3B) Section 208 (2) applies in respect of a mortgage referred to in subsection (2), or a collateral mortgage that secures the same money as is secured by a mortgage referred to in subsection (2), if an advance or further advance is made on or after the debenture concession closure date, as if the reference to the amount secured by the mortgage at the time a liability to duty last arose were a reference to the total of:
- (a) the disclosed debenture amount, and
  - (b) any advances or further advances made on or after the cut-off date in respect of which duty has been paid under this Chapter.
- (3C) (Repealed)
- (3CA) A mortgage executed before the cut-off date that is not liable to duty under subsection (2) and in respect of which no further advances have been made on or after the debenture concession closure date is taken to have been duly stamped.
- (3D) For the purposes of this section, the **disclosed debenture amount** is the total amount of debentures subscribed for in New South Wales before the cut-off date and disclosed to the Chief Commissioner in a statutory declaration referred to in subsection (3).

(4) In this section, a reference to an amount subscribed for in respect of debentures includes a reference to an amount represented by debentures issued on the conversion or renewal of an existing holding of debentures or other marketable securities.

(4A) To avoid any doubt, subsection (3B) extends to a mortgage executed on or after 1 January 1975 and before 1 January 1999.

(5) In this section:

**cut-off date** means the date of commencement of Schedule 1 to the *State Revenue Legislation Amendment Act 2003*.

**debenture concession closure date** means the date on which the Bill for the *State Revenue Legislation Further Amendment Act 2005* was introduced into the Legislative Assembly.

## **227 Unregistered mortgages protected by caveats (anti-avoidance provision)**

(1) A caveat under the *Real Property Act 1900* in which an estate or interest is claimed under an unregistered mortgage is chargeable with duty.

(2) The amount of duty is:

(a) if the mortgage is chargeable, but not stamped, with mortgage duty—the same amount as is chargeable on the mortgage, or

(b) if the mortgage is stamped, or is not chargeable, with mortgage duty—\$50.

(3) The person liable to pay the duty is the mortgagor.

(4) This section does not apply to a caveat lodged in respect of a mortgage that is exempt from mortgage duty under Part 4.

## **227A Transfer of mortgages**

(1) If a mortgage is transferred (whether or not at the request or direction of any party) to:

(a) a person who, either in connection with the transfer or at a later time, makes an advance or further advance under or secured by the mortgage, or

(b) a person who is a party to arrangements (referred to in section 215) relating to such an advance or further advance,

the transferred mortgage is taken, for the purpose of determining its liability to duty under this Act, to be a new mortgage on which no duty has been paid and is liable to duty in respect of the advance or further advance accordingly.

- (2) The date of first execution of the transferred mortgage is taken to be:
  - (a) in the case of a mortgage where the advance or further advance was made in connection with the transfer—the date of first execution of the transfer, and
  - (b) in the case of a mortgage where the advance or further advance was made at a later time—the date of the first such advance or further advance.
- (3) If an insufficient amount of duty has been paid on a mortgage to which this section applies before it is taken by this section to be a new mortgage, the Chief Commissioner is not prevented from recovering at any time the amount of duty with which, in the Chief Commissioner's opinion, the mortgage was properly chargeable from the mortgagor or person bound.
- (4) This section does not apply to the following:
  - (a) a mortgage referred to in section 220 (3B),
  - (b) a transfer of a mortgage by a corporation to another corporation if the Chief Commissioner is satisfied that, had the transfer been a dutiable transaction, it would not be chargeable with duty under section 281 (relating to transfers between members of the same group of corporations),
  - (c) a transfer of a mortgage in connection with, or in preparation for creating, issuing, marketing or securing, a mortgage-backed security,
  - (d) a transfer of a mortgage from a person who holds the mortgage as trustee for another person to a new trustee appointed in substitution for the former trustee.
- (5) This Chapter applies to a mortgage referred to in subsection (1) in the same way as it applies to any other mortgage, except as provided by subsection (6).
- (6) For the purposes of section 210, a transferred mortgage is not considered to have been duly stamped in respect of any duty paid before the transfer on advances made before the transfer.

**228 Stamping counterpart or collateral instrument if mortgage is lost, destroyed or cannot be produced**

A counterpart of a mortgage or a collateral security for an amount secured by a mortgage is taken to be the mortgage and may accordingly be stamped or upstamped for mortgage duty purposes if, on application by or on behalf of a person who is a party to the mortgage, the Chief Commissioner is satisfied that the mortgage has been lost or destroyed or, because of being deposited in the Land Titles Office or from other reasonable cause, cannot conveniently be produced.

## Chapter 8 Insurance

### Part 1 General insurance

#### 229 Imposition of duty

- (1) This Part charges duty on the amount of the premium paid in relation to a contract of insurance that effects general insurance (whether or not it also effects other kinds of insurance).
- (2) The amount of duty is required to be paid each time a premium is paid in relation to a contract of insurance that effects general insurance.

#### Notes—

- (1) **General insurance** is defined in section 230.
- (2) **Premium** is defined in section 231.
- (3) The time at which a premium is **paid** is determined by section 232.
- (4) Generally, the insurer to whom the premium is paid is the person liable to pay the duty. But there are circumstances in which the person insured is liable to pay the duty. These circumstances are set out in section 236.
- (5) To facilitate payment of duty, insurers must register themselves with the Chief Commissioner, submit a monthly return showing the total amount of premiums paid to them for general insurance during the preceding month and pay the appropriate amount of duty when submitting the return. The provisions that deal with this are in Part 3.

#### 230 What is “general insurance”?

- (1) **General insurance** is any kind of insurance that is applicable to:
  - (a) property in New South Wales, or
  - (b) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, New South Wales,or both.
- (2) **General insurance** does not include life insurance, a life insurance rider or insurance that is exempt from duty by Part 5.

#### 231 What is a “premium” in relation to general insurance?

- (1) **Premium**, in relation to general insurance, means the total consideration given to an insurer by or on behalf of the insured person to effect insurance without deductions for any amounts paid or payable, or allowed or allowable, by way of commission or discount to an insurance intermediary.
- (2) **Premium** includes a fire service levy and emergency service levy paid or payable in connection with insurance by an insurer or any other person.
- (3) **Premium** does not include:

- (a) an amount paid to an insurance intermediary by the insured person as a fee, provided that the amount can be clearly identified as a fee, or
  - (b) an amount of duty under this or a corresponding Act.
- (4) It is immaterial where the amount is paid or where the insurance is effected.

### **232 When is a premium “paid”?**

- (1) A premium, or an instalment of a premium, is paid for the purposes of this Chapter when the first of the following events occurs:
- (a) the premium or instalment is received by the insurer, or
  - (b) an account of the insurer is credited with the amount of the premium or instalment.
- (2) A premium or instalment of a premium (apart from the case where the premium or instalment is received directly by an insurer) is taken to have been received by an insurer if it is received by another person on the insurer’s behalf.

### **233 Types of general insurance**

- (1) For the purpose of charging duty, general insurance is divided into 3 types, Type A insurance, Type B insurance and Type C insurance.
- (2) **Type A insurance** is general insurance other than Type B insurance or Type C insurance.

#### **(2A) Type B insurance** is:

- (a) motor vehicle insurance, being insurance covering any one or more of the following:
  - (i) the loss (including the loss by theft) of a motor vehicle,
  - (ii) damage to a motor vehicle,
  - (iii) loss of or damage to property by a motor vehicle,being a motor vehicle within the meaning of the [Motor Accidents Compensation Act 1999](#), or
- (b) aviation insurance, being insurance covering any one or more of the following:
  - (i) the loss (including the loss by theft) of an aircraft,
  - (ii) damage to aircraft,
  - (iii) the death of or injury to a person by an aircraft or a thing falling from an aircraft,



- (iv) the loss of or damage to property by an aircraft or a thing falling from an aircraft, or
- (c) disability income insurance, being insurance effected by a contract of insurance under which an amount is payable in the event of disablement of the insured by accident or sickness, or
- (d) occupational indemnity insurance, being insurance covering liability arising out of the provision by a person of professional services or other services, or
- (e) hospital and ancillary health benefits insurance, being insurance covering liability incurred in respect of fees or charges for hospital treatment, or for health care ancillary to hospital treatment, if the liability is not covered by a private health insurer within the meaning of the *Private Health Insurance Act 2007* of the Commonwealth.

(3) **Type C insurance** is:

- (a) crop insurance, being insurance covering:
  - (i) loss due to the destruction of, or physical damage to, any pasturage or any crop of grain, fruit, vegetables or other plants, where the destruction or damage occurs while the pasturage or crop is being grown, or
  - (ii) loss due to the destruction of, or physical damage to, the product of any such pasturage or crop, where the destruction or damage occurs while the product of the pasturage or crop is being stored or transported,but not being insurance covering loss referred to in subparagraph (ii) unless the contract by which the insurance is effected also effects insurance covering the loss referred to in subparagraph (i), or
- (b) livestock insurance, being insurance covering:
  - (i) loss due to the death of, or physical damage to, any animal, whether domesticated or wild, or
  - (ii) loss due to the death of, or physical damage to, any genetic material of any such animal, or
  - (iii) loss due to the theft of any such animal or genetic material, or
- (c) until 31 January 2010, insurance under the Debtor Insurance Scheme of the Stock and Station Agents Association.

**234 What duty is payable?**

- (1) The amount of duty chargeable on the premium paid in relation to a contract of insurance is 9% of the amount of the premium to the extent to which the premium is

paid to effect Type A insurance.

- (2) The amount of duty chargeable on the premium paid in relation to a contract of insurance is 5% of the amount of the premium to the extent to which the premium is paid to effect Type B insurance.
- (3) The amount of duty chargeable on the premium paid in relation to a contract of insurance is 2.5% of the amount of the premium to the extent to which the premium is paid to effect Type C insurance.

### **235 Who is liable to pay the duty?**

The general insurer is liable to pay the duty, except as provided by section 236.

### **236 Circumstances in which duty is payable by the insured person**

- (1) This section applies to a person who obtains, effects, or renews any general insurance as an insured person with a person who is not a registered insurer.
- (2) A person to whom this section applies must, within 21 days after the end of the month in which the premium relating to the insurance is paid to the person who is not a registered insurer:
  - (a) lodge with the Chief Commissioner a return in the approved form containing such particulars and information as to the premium and the insurance as the Chief Commissioner may require, and
  - (b) pay to the Chief Commissioner as duty the amount calculated in accordance with section 234.
- (3) A person to whom this section applies is taken to have complied with this section if the person's duty under this section is discharged by another person acting on the person's behalf.
- (4) The payment of a periodic premium in respect of disability income insurance that is continued, but not renewed, on the payment of the premium is taken to effect the insurance for the purposes of this section.
- (5) In this section:

**premium** means any amount paid in connection with insurance to a person who is not a registered insurer that would be a premium under this Part if the person to whom it was paid was a registered insurer.

#### **Note—**

Because this section imposes liability for duty on an insured person if the insured person arranges insurance with an insurer who is not registered, it would always be prudent to check the registered status of the insurer. This may be done by inspecting the register kept under section 252 by the Chief Commissioner.

### **237 Records to be kept**

A person to whom section 236 applies must maintain records that contain information as to:

- (a) the nature and location of the property insured, and
- (b) the nature and location of each risk, contingency or event insured, and
- (c) the amount of the premiums paid in relation to each contract of insurance.

### **238 Refunds where premiums are returned**

- (1) A general insurer or a person to whom section 236 applies is entitled to a refund of duty if the general insurer refunds, or there is refunded to the person, the whole or a part of a dutiable premium in respect of the contract of insurance for which duty has been paid.
- (2) The refund is the duty paid on the amount of the premium refunded.
- (3) A general insurer to whom duty is refunded may apply the amount of the refund to offset any other payment required to be made under this Act by the general insurer.

## **Part 2 Life insurance**

### **239 Imposition of duty**

This Part charges duty on:

- (a) a policy of life insurance, and
- (b) a life insurance rider.

#### **Notes—**

(1) **Insurance** is defined in the Dictionary to include assurance.

(2) Generally, the insurer with whom the policy is effected is the person liable to pay the duty. But there are circumstances in which the person insured is liable to pay the duty. These circumstances are set out in section 245.

### **240 What is “life insurance”?**

Life insurance means insurance described in section 9 (1) (a)–(g) and 9A of the Commonwealth *Life Insurance Act 1995* in respect of:

- (a) a life or lives, or
- (b) any event or contingency relating to or depending on a life or lives,

of a person whose principal place of residence is, or persons whose principal places of residence are, in New South Wales at the time the policy that effects the insurance is

issued.

**241 What is a “life insurance rider”?**

A life insurance rider is insurance that:

- (a) is attached to a policy of life insurance, and
- (b) adds specified events and contingencies to those insured under the policy, and
- (c) is subject to the terms and conditions of the policy.

**242 Obligation to make out and execute a policy of life insurance**

A life company must, on or before the twenty-first day of each month:

- (a) make out and execute a policy of life insurance for each contract or agreement for life insurance effected by or on behalf of the life company in the preceding month, and
- (b) endorse the policy in the manner approved by the Chief Commissioner.

**243 What duty is payable?**

- (1) **Policies of life insurance, other than a temporary or term insurance policy or trauma or disability insurance** The amount of duty chargeable on a policy of life insurance, other than a temporary or term insurance policy, a trauma policy, a TPD policy or a disability income policy is:
  - (a) on the first \$2,000, or part of \$2,000, of the sum insured—\$1, and
  - (b) for every \$200, or part of \$200, in excess of the first \$2,000—20 cents.
- (2) **Temporary or term insurance policies** The amount of duty chargeable on a temporary or term insurance policy, other than a group term insurance policy, is 5% of the first year’s premium on the policy.
- (2A) **Group term insurance policies** The amount of duty chargeable on a group term insurance policy is:
  - (a) 5% of the first year’s premium on the policy, and
  - (b) 5% of the amount of the premium (if any) payable in any succeeding year in respect of each additional life covered by the insurance policy (that is, each life that was not covered during the previous year).
- (3) **Life insurance riders** The amount of duty chargeable on a life insurance rider is 5% of the first year’s premium on the life insurance rider.
- (4) **Trauma or disability insurance** The amount of duty chargeable on a trauma policy, a TPD policy or a disability income policy is 5% of the premium paid to effect the

insurance.

(5) In this section:

**disability income policy** means a policy of insurance under which an amount is payable as a replacement of income in the event of the disablement of the insured by accident or sickness.

**group term insurance policy** means a term insurance policy that applies in respect of the lives of a specified group of persons, being a group the membership of which may change during the term of the policy.

**TPD policy** means a policy of insurance under which an amount is payable in the event of the total and permanent disablement of the insured by accident or sickness.

**trauma policy** means a policy of insurance under which an amount is payable in the event of the insured being found to have a stated condition or disease.

#### **243A Meaning of “premium”**

**Premium**, in relation to a policy of life insurance or a life insurance rider, has the same meaning as it does in Part 1 in relation to general insurance.

#### **244 Who is liable to pay the duty?**

The life company or the person issuing the policy or life insurance rider is liable to pay the duty, except as provided by section 245.

#### **245 Circumstances in which duty is payable by the insured person**

- (1) This section applies to a person (not being a registered insurer) who effects a policy of life insurance or life insurance rider as an insured person with a person who is not a registered insurer.
- (2) A person to whom this section applies must, within 21 days after the end of the month in which the policy of life insurance or life insurance rider was effected:
  - (a) lodge with the Chief Commissioner a return in the approved form containing such particulars and information as the Chief Commissioner may require, and
  - (b) pay to the Chief Commissioner as duty the amount calculated in accordance with section 243.
- (3) A person to whom this section applies is taken to have complied with this section if the person's duty under this section is discharged by another person acting on the person's behalf.

#### **Note—**

Because this section imposes liability for duty on an insured person if the insured person arranges insurance with

an insurer who is not registered, it would always be prudent to check the registered status of the insurer. This may be done by inspecting the register kept under section 252 by the Chief Commissioner.

#### **246 Refund on cancellation of policy of life insurance**

If a premium is refunded to a person because the person cancels a policy of life insurance within 30 days after receiving the policy, a person who has paid duty in respect of the policy is entitled to a refund of the duty.

### **Part 3 How is duty paid by an insurer?**

#### **247 Who is an insurer?**

- (1) An insurer is a life company that writes life insurance or a general insurer.
- (2) A general insurer is a person:
  - (a) who writes general insurance, and
  - (b) who does so otherwise than as an insurance intermediary, and
  - (c) who is authorised as a general insurer under the Commonwealth [Insurance Act 1973](#).

**Note—**

**Life company** and **insurance intermediary** are defined in the Dictionary.

#### **248 Insurers must be registered**

An insurer must be registered under this Part.

Maximum penalty: 100 penalty units.

#### **249 Application for registration**

The Chief Commissioner must register an insurer who applies in the approved form for registration under this Part.

#### **250 Cancellation of registration by the Chief Commissioner**

- (1) The Chief Commissioner may, by written notice, cancel an insurer's registration under this Part:
  - (a) if the insurer's authorisation under the [Insurance Act 1973](#) of the Commonwealth is revoked, or
  - (b) if the insurer is made bankrupt or, being a company, is wound up, or
  - (c) if the insurer is convicted of an offence under an Act imposing duty, or
  - (d) if the insurer's registration was made in error or as a consequence of a false or

- misleading statement made in relation to the application for registration, or
- (e) if the Chief Commissioner is of the opinion that the insurer has ceased to write general insurance in New South Wales, or
  - (f) if the insurer ceases to be a life company, or
  - (g) for any other reason the Chief Commissioner thinks sufficient.

- (2) A cancellation of registration has effect from the date specified for the purpose by the Chief Commissioner in the notice of cancellation.

### **251 Cessation of business and cancellation of registration by the insurer**

- (1) A registered insurer who ceases to write insurance business in New South Wales must:
  - (a) give written notice of that fact to the Chief Commissioner, and
  - (b) lodge the return required to be lodged under this Part, and
  - (c) pay the duty payable in connection with the return on or before the twenty-first day of the month after which the notice is given.

Maximum penalty: 100 penalty units.

- (2) The notice cancels the insurer's registration under this Part on the day on which it is received by the Chief Commissioner.

### **252 Register of insurers**

- (1) The Chief Commissioner must keep a register of the insurers who are registered under this Part.
- (2) Anyone may inspect the register without charge at the Chief Commissioner's principal office during the hours that the office is open to the public.

### **253 Monthly returns and payment of duty**

A registered insurer must, on or before the twenty-first day of each month:

- (a) lodge with the Chief Commissioner a return in the approved form showing:
  - (i) the total amount of all premiums for Type A insurance paid to the registered insurer in the preceding month, and
  - (ii) the total amount of all premiums for Type B insurance paid to the registered insurer in the preceding month, and
  - (iii) the total amount of all premiums for Type C insurance paid to the registered insurer in the preceding month, and

- (iv) the total duty payable on policies of life insurance other than temporary or term insurance effected in the preceding month, and
  - (v) the total amount of all first year's premiums for temporary or term life insurance received by or on behalf of the registered insurer in the preceding month, and all additional premiums referred to in section 243 (2A) (b) (other than premiums for insurance that is exempt from duty by Part 5), and
  - (vi) the total amount of all first year's premiums for life insurance riders received by or on behalf of the registered insurer in the preceding month (other than premiums for insurance that is exempt from duty by Part 5), and
- (b) pay to the Chief Commissioner as duty the amounts determined in accordance with sections 234 and 243.

#### **254 Recovery of duty by registered insurer**

- (1) A registered insurer may require a person by whom a premium is payable to the insurer to pay the insurer an amount equal to the duty chargeable.
- (2) The requirement is duly made if it is contained in a written request that is given to the person and that specifies the amount of the duty.
- (3) If the amount is not paid, the insurer may recover it as a debt.

### **Part 4 Apportionment**

#### **Division 1 Apportionment of premiums and other amounts between Australian jurisdictions**

##### **255 Application of Division 1**

- (1) This Division applies to a contract of insurance:
  - (a) that insures:
    - (i) property in New South Wales as well as property in another place, or
    - (ii) a risk, contingency or event concerning an act or omission that, in the normal course of events, may occur within, or partly within, New South Wales as well as within, or partly within, another place,or both, or
  - (b) that insures:
    - (i) lives, or
    - (ii) any event or contingency relating to or depending on lives,



or both, of persons whose principal places of residence are variously in New South Wales or another place at the time the policy is issued.

(2) It is the intention of this Division:

- (a) to provide the means for apportioning premiums paid and other amounts in relation to a contract of insurance having regard to the principle in sections 230 (1) and 240, and
- (b) to avoid multiple duty as between Australian jurisdictions, and
- (c) to give Australian jurisdictions their appropriate share of duty by means of the apportionment.

### **256 Schedule of Apportionment**

- (1) The Chief Commissioner may, from time to time, adopt a Schedule of Apportionment for the purpose of apportioning premiums, or premiums paid for specific types of insurance, and other amounts in relation to insurance in accordance with this Division.
- (2) The Schedule of Apportionment may be developed in consultation with any person the Chief Commissioner considers suitable.

### **257 Apportionment in practice**

- (1) A premium or an amount is to be apportioned in accordance with the Schedule of Apportionment adopted for the time being, except as provided by this section.
- (2) An insurer or an insured person may apply in writing to the Chief Commissioner to apportion a premium or an amount on a basis other than that provided by the Schedule of Apportionment. The Chief Commissioner may apportion the premium or amount on the other basis.
- (3) In particular, if the Chief Commissioner is not satisfied that a premium paid or another amount in relation to a contract of insurance has been properly apportioned for each risk insured, the Chief Commissioner may determine the apportionment, reassess the liability to duty and charge duty accordingly.

## **Division 2 Apportionment of premiums and other amounts as between different types of insurance**

### **258 Apportionment between different types of insurance**

- (1) This section applies to apportionment between different types of insurance that are relevant to determining liability for duty, such as general insurance, life insurance and insurance that is exempt from duty. It does not apply to the apportionment of a premium or another amount between New South Wales and another place. Division 1 deals with that kind of apportionment.

- (2) This section also applies to apportionment between different types of insurance referred to in section 233.
- (3) If the Chief Commissioner is not satisfied that a premium paid or another amount in relation to a contract of insurance that effects different types of insurance has been properly apportioned, the Chief Commissioner may determine the apportionment, reassess the liability to duty and charge duty accordingly.

## **Part 5 Exempt insurance**

### **259 What insurance is exempt from duty?**

- (1) The following insurances are exempt from duty under this Chapter:
  - (a) insurance covering only property of the Crown in right of New South Wales (including a statutory body representing the Crown in right of New South Wales),
  - (b) insurance effected by a separate policy in a distinct sum against loss by fire on the tools, implements of work or labour used by any working mechanic, artificer, handcrafter or labourer,
  - (c) insurance taken out by or on behalf of a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose,
  - (d) insurance taken out by or on behalf of a society or institution for the time being approved for the purposes of this paragraph by the Chief Commissioner whose resources are, in accordance with its rules or objects, used wholly or predominantly for:
    - (i) the relief of poverty, or
    - (ii) the promotion of education, or
    - (iii) any purpose directly or indirectly connected with defence or the amelioration of the condition of past or present members of the naval, military or air forces of the Commonwealth or their dependants or any other patriotic object, or
    - (iv) such other purpose as, in the opinion of the Chief Commissioner, warrants the society or institution being taken to be a charitable society or institution,
  - (e) insurance covering mortgages or pools of mortgages acquired for the purpose of issuing mortgage-backed securities,
  - (f) medical benefits insurance, being insurance effected by a contract of insurance that is issued by a private health insurer within the meaning of the *Private Health Insurance Act 2007* of the Commonwealth and that provides hospital benefits or medical benefits (or both), whether or not other benefits are also provided,

- (g) insurance effected under the *Workers Compensation Act 1987* or the *Workplace Injury Management and Workers Compensation Act 1998*,
  - (h) insurance effected under the *Motor Accidents Act 1988* or the *Motor Accidents Compensation Act 1999*,
  - (i) insurance of:
    - (i) the hull of a floating vessel used primarily for commercial purposes, or
    - (ii) goods or merchandise, or the freight of goods or merchandise, carried by land, sea or air,or both,
  - (j) redundancy insurance in respect of a housing loan where the sum insured does not exceed \$124,000,
  - (k) reinsurance (being a contract or contracts between two parties by which one party indemnifies the other against liability or payment under a contract or contracts of insurance or reinsurance),
  - (l) an annuity:
    - (i) issued, created or sold by a life company,
    - (ii) purchased by a person from a life company,
  - (m) policies of life insurance, being group superannuation investment policies owned by the trustee of a superannuation plan for the benefit of more than one member of the superannuation plan.
- (2) For the purposes of subsection (1) (l) a contract is an **annuity** if it satisfies the following requirements:
- (a) the contract provides for the periodic payment of money to the annuitant in fee for life or for a specified term of years as an annual or more frequent entitlement,
  - (b) the periodic payment is a sum certain expressed as a dollar amount, but may be varied according to a predetermined formula,
  - (c) the periodic payments are not derived from the money paid for the contract but are derived solely from the contract and comprise income and not the repayment of capital.

## Part 6 Miscellaneous

### 260 Effect on contract of insurance of failure to comply with this Chapter

A failure to comply with this Chapter does not render a contract of insurance illegal or

invalid.

## Chapter 9 Motor vehicle registration

### Part 1 Introduction and overview

#### 261 Imposition of duty

This Chapter charges duty on an application to register a motor vehicle under the [Road Transport \(Vehicle Registration\) Act 1997](#) if:

- (a) the vehicle has not previously been registered under that Act, or
- (b) the person in whose name the vehicle is to be registered differs (or the persons in whose names the motor vehicle is to be registered differ) from the person or persons in whose name or names the vehicle was last registered.

**Note—**

**Application to register** is defined in the Dictionary.

#### 262 Lodgment of statement of dutiable value

A person who is required by law to make an application to register a motor vehicle under the [Road Transport \(Vehicle Registration\) Act 1997](#) must lodge with the application for registration a statement of the dutiable value of the vehicle, unless the application is not chargeable with duty under this Chapter.

Maximum penalty: 100 penalty units.

**Note—**

The **dutiable value** of a motor vehicle is specified in section 266.

#### 263 Who is liable to pay the duty?

Duty is payable by the applicant for registration of the motor vehicle.

#### 264 When does duty become payable?

Duty becomes payable when the motor vehicle is registered in pursuance of the relevant application.

#### 265 What is the rate of duty?

- (1) The rate of duty is \$3 per \$100, or part, of the dutiable value of the motor vehicle, except as provided by subsection (2).
- (2) The rate of duty for a passenger vehicle, being a vehicle:
  - (a) that has a dutiable value of not less than \$45,000, and

- (b) that is constructed primarily for the carriage of not more than 9 occupants, including a sedan, station wagon, coupe, convertible, four wheel drive vehicle with seats and windows, two wheel drive panel van with seats and windows, three wheel car, forward control passenger vehicle, small bus (seating not more than 9 persons, including the driver), motor home, and snow vehicle, but not including a motor cycle (with or without a side car), large bus (seating more than 9 persons, including the driver), hearse or invalid conveyance,

is \$1,350 plus \$5 per \$100, or part, of the dutiable value of the motor vehicle in excess of \$45,000.

## 266 What is the “dutiable value” of a motor vehicle?

(1) The ***dutiable value*** of a motor vehicle is:

- (a) the consideration in money or money’s worth given for the acquisition of the vehicle, or
  - (b) the market value of the vehicle at the time duty is payable,
- whichever is the greater.

(2) The ***dutiable value*** does not include:

- (a) GST if the supply of the vehicle is GST-free under Subdivision 38-P (Cars for use by disabled people) of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, or
- (b) a premium paid for extended warranty insurance.

## Part 2 Circumstances in which duty not chargeable

### 267 Exemptions

- (1) **Ownership by devolution of title** Duty under this Chapter is not chargeable on an application to register a motor vehicle made by a person who is beneficially entitled to the vehicle following the death of the person in whose name the vehicle was registered in New South Wales.
- (2) **Charities** Duty under this Chapter is not chargeable on an application to register a motor vehicle if the applicant is a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose.
- (3) **Livestock health and pest authority** Duty under this Chapter is not chargeable on an application to register a motor vehicle if the applicant is a livestock health and pest authority established under the *Rural Lands Protection Act 1998*.
- (4) **Repossessed motor vehicles** Duty under this Chapter is not chargeable on an

application to register a motor vehicle if:

- (a) the applicant is in the business of financing the purchase or use of motor vehicles, and
- (b) the vehicle was repossessed by, or voluntarily surrendered to, the applicant, and
- (c) the applicant, in the course of that business, does not dispose of any such vehicles except by public tender or public auction or through a dealer licensed under the *Motor Dealers Act 1974*.

(5) **Ambulances** Duty under this Chapter is not chargeable on an application to register:

- (a) a motor vehicle that weighs not more than 250kg when unladen and is specially constructed to be used, and while on a road is used, solely for conveying an invalid, or
- (b) a motor vehicle specially constructed for:
  - (i) the work of carrying sick and injured persons, or
  - (ii) mines rescue functions in accordance with the *Coal Industry Act 2001* and the regulations under that Act,

if the vehicle while on a road is used solely for purposes connected with that work.

(6) **Vehicles transferred by certain court orders—parties to a marriage** Duty under this Chapter is not chargeable in respect of an application to transfer the registration of a motor vehicle registered in the names of the parties to a marriage that has been dissolved or annulled, or is proved to the satisfaction of the Chief Commissioner to have broken down irretrievably, or in the name of either of them to the extent that the vehicle was, at the time the application was made, matrimonial property, if the application was made as a result of or in accordance with:

- (a) a financial agreement made under section 90B, 90C or 90D of the *Family Law Act 1975* of the Commonwealth that, under that Act, is binding on the parties to the agreement, or
- (b) an order of a court under that Act, or
- (c) an agreement that the Chief Commissioner is satisfied has been made for the purpose of dividing matrimonial property as a consequence of the dissolution, annulment or breakdown of the marriage.

(6A) **Vehicles transferred by certain court orders—parties to a de facto relationship** Duty under this Chapter is not chargeable in respect of an application to transfer the registration of a motor vehicle registered in the names of the parties to a de facto relationship that is proved to the satisfaction of the Chief Commissioner to have

broken down, or in the name of either of them to the extent that the vehicle was, at the time the application was made, the property of the parties or of either of them, if the application was made as a result of or in accordance with:

- (a) a financial agreement made under section 90UB, 90UC or 90UD of the *Family Law Act 1975* of the Commonwealth that, under that Act, is binding on the parties to the agreement, or
- (b) an order of a court under that Act.

**(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.

**(7) Vehicles transferred by certain court orders—parties to a domestic relationship** Duty under this Chapter is not chargeable in respect of an application to transfer the registration of a motor vehicle registered in the names of the parties to a domestic relationship or in the name of either of them (but to no other person) to the extent that the vehicle was, at the time the application was made, the property of the parties or of either of them, if it is proved to the satisfaction of the Chief Commissioner that:

- (a) the domestic relationship ceases, and
- (b) the application was made for the purposes of or in accordance with an order of a court under the *Property (Relationships) Act 1984*.

**(7A) Vehicles purchased by war veterans** Duty under this Chapter is not chargeable in respect of an application to register a motor vehicle in the name of a veteran who is:

- (a) eligible for 70% or more of the general rate of pension specified in section 22 (3) of the Commonwealth *Veterans' Entitlements Act 1986*, or
- (b) eligible for the rate of pension determined in accordance with section 22 (4) of that Act, or
- (c) eligible for the rate of pension determined in accordance with section 23 of that Act, or
- (d) eligible for the rate of pension under section 24 of that Act.

**Note—**

The rates of pension referred to in subsection (7A) (b), (c) and (d) are known, respectively, as the extreme disablement adjustment rate of pension, the intermediate rate of pension and the special rate of pension for total and permanent incapacity.

**(7AA)** Duty under this Chapter is not chargeable in respect of an application to register a

motor vehicle in the name of a member or former member (within the meaning of the *Military Rehabilitation and Compensation Act 2004* of the Commonwealth) who suffers from an impairment assessed under that Act to constitute at least 50 impairment points, and who is eligible for, in receipt of, or has at any time received compensation or a special rate disability pension under that Act.

- (7B) **Conditional registration** Duty under this Chapter is not chargeable in respect of an application to register a motor vehicle if the motor vehicle is to be registered conditionally under the regulations under the *Road Transport (Vehicle Registration) Act 1997*.
- (8) **Equity** Duty under this Chapter is not chargeable in respect of an application to register a motor vehicle if the Chief Commissioner considers it would not be just and reasonable to require payment of the duty.
- (9) **Evidence of exemption—break-up of relationship** A party to a marriage, de facto relationship or domestic relationship may provide a statement to the Chief Commissioner, in the form of a statutory declaration, to the effect that:
- (a) in the case of a marriage:
    - (i) the party intends to apply for a dissolution or an annulment of the marriage, or
    - (ii) the parties to the marriage have separated, and there is no reasonable likelihood of cohabitation being resumed, or
  - (b) in the case of a de facto relationship or domestic relationship, the relationship has broken down or been terminated.
- The Chief Commissioner is required to have regard to any such statement in exercising his or her functions under subsection (6) or (7).
- (10) **Power to require other evidence of exemption** Subsection (9) does not limit the functions of the Chief Commissioner under section 72 of the *Taxation Administration Act 1996*.

## **268 Avoidance of double duty—duty paid in a corresponding Australian jurisdiction**

Duty is not chargeable in respect of an application to register a motor vehicle in New South Wales if:

- (a) at the time the application was made, the motor vehicle is or was registered by the person making the application under the law of an Australian jurisdiction that corresponds to the *Road Transport (Vehicle Registration) Act 1997*, and
- (b) duty was paid in that jurisdiction in respect of the registration.



## 269 Reassessment of duty—repossession of stolen motor vehicle

- (1) Duty is not chargeable on an application for registration of a motor vehicle that has been repossessed from a person because, before the person acquired it, it had been stolen.
- (2) If requested by a person who has paid duty on an application for registration to which subsection (1) applies, the Chief Commissioner must assess or reassess the duty accordingly.

## Part 3 Miscellaneous exemptions and reductions

### 270 Exemptions for motor dealers

- (1) **Trading stock—used motor vehicles** Duty under this Chapter is not chargeable on an application by a motor dealer, being the holder of a dealer's licence or a wholesaler's licence issued under the *Motor Dealers Act 1974*, or the holder of a similar licence under the corresponding provisions of a law of another State or Territory, to register a motor vehicle that is trading stock.
- (2) **Demonstrator motor vehicles—new motor vehicles** The Chief Commissioner may approve arrangements for the issue to motor dealers of exemption authorities to be used in connection with the registration of demonstrator motor vehicles of the dealer.
- (3) Duty under this Chapter is not chargeable on an application by a motor dealer to register a motor vehicle if the motor vehicle is a demonstrator motor vehicle and, at the time the application for registration is made, the dealer produces an exemption authority that has been completed by the dealer.
- (4) A motor dealer must not produce an exemption authority in connection with the registration of a motor vehicle that is not a demonstrator motor vehicle.

Maximum penalty: 100 penalty units.

- (5) If a motor dealer produces an exemption authority in connection with the registration of a motor vehicle that is not a demonstrator motor vehicle, the Chief Commissioner may recover any duty that would have been chargeable on the application for registration, together with any interest and penalty tax payable.
- (6) **Definitions** In this section:

**demonstrator motor vehicle** means a new motor vehicle used solely or primarily for the sale of another new motor vehicle of the same class.

**exemption authority** means an exemption authority issued in accordance with arrangements approved by the Chief Commissioner.

**trading stock** means a used vehicle offered or exposed for sale by a motor dealer in

the course of a dealer's business, other than a vehicle used:

- (a) solely or principally by the dealer or a member of the dealer's staff or family, or
- (b) for the general purposes of the dealer's business.

#### **270A Reduction in dutiable value—modified vehicles for people with disabilities**

- (1) Duty on an application to register a motor vehicle is to be charged as provided for by this section if:
  - (a) the application is made by a person with a disability or the motor vehicle is used by or to transport a person with a disability, and
  - (b) modifications (***user modifications***) have been made to the vehicle to enable a person with a disability to drive the vehicle or to enable a person with a disability to be transported in the vehicle.
- (2) The duty chargeable on the application is to be charged on the lesser of the following:
  - (a) the dutiable value of the motor vehicle reduced by the value of the user modifications,
  - (b) the dutiable value of the motor vehicle determined without regard to the user modifications.
- (3) The value of the user modifications is the consideration in money or money's worth given for the user modifications.

#### **270B Exemption for caravans**

- (1) Duty under this Chapter is not chargeable on an application to register a motor vehicle if the motor vehicle is a caravan.
- (2) In this section:

**caravan** means a trailer (within the meaning of the [Road Transport \(Vehicle Registration\) Act 1997](#)), including a camper trailer, that is permanently fitted for human habitation in connection with a journey.

## **Chapter 10 Miscellaneous duties**

### **271 Duplicates or counterparts**

- (1) Duty of \$10 is chargeable on the duplicate or counterpart of an instrument that effects a dutiable transaction or an instrument chargeable with duty.
- (2) The person liable to pay the duty is the person liable to pay the duty on the original instrument.

- (3) The duplicate or counterpart referred to in subsection (1) is not to be stamped as a duplicate or counterpart unless it is proved to the Chief Commissioner's satisfaction that the proper duty has been paid on the original instrument of which it is the duplicate or counterpart.

## **272 Replicas**

- (1) Duty is chargeable on a replica:
  - (a) at \$50, or
  - (b) at the same amount as the duty with which the instrument the replica is intended to replace was stampable,whichever is the lesser.
- (2) The persons liable to pay the duty are the parties to the replica or any one or more of them.
- (3) A replica that is duly stamped is to be marked in such manner as the Chief Commissioner thinks fit to denote that it is a replica.
- (4) In this section, **replica** means an instrument that:
  - (a) is executed to replace, and
  - (b) contains the same terms as, but no other terms than, those contained in, a previously executed instrument that has been lost, spoiled or destroyed and that, in the Chief Commissioner's opinion, has been duly stamped.

## **273 Minimum amount of duty**

- (1) Despite any other provision of this Act or the regulations, if the amount of duty chargeable under this Act in respect of a transaction or an instrument would, but for this section, be less than \$10, the amount of duty chargeable is \$10.
- (2) This section does not apply to Chapter 7 (Mortgages) or Chapter 8 (Insurance).

## **Chapter 11 General exemptions from duty**

### **274 Transfer of certain business property between family members**

- (1) Duty under this Act is not chargeable in respect of a transfer or agreement for the sale or transfer of land, a lease of land, or a transfer or assignment of a lease or permit in respect of land, used for primary production together with any other property that is an integral part of the business of primary production, if the Chief Commissioner is satisfied that:
  - (a) the transferor, lessor or assignor, or the person directing the transferor, lessor or

assignor, is an ancestor of the transferee, lessee or assignee, and

- (b) the land was land used for primary production in connection with a business carried on by the transferee, lessee or assignee, or by an ancestor of the transferee, lessee or assignee, (whether alone or with others) immediately before the transaction or the date of first execution of the instrument, and
- (c) the business is to continue to be carried on by the transferee, lessee or assignee (whether alone or with others).

(2) Duty under this Act is not chargeable in respect of a transfer of shares in a share management fishery within the meaning of the *Fisheries Management Act 1994*, if the Chief Commissioner is satisfied that:

- (a) the transferor, or the person directing the transferor, is an ancestor of the transferee, and
- (b) the shares are held in connection with a fishing business carried on by the ancestor (whether alone or with others) immediately before the transaction or the date of first execution of the instrument, and
- (c) the business is to continue to be carried on by the transferee (whether alone or with others).

**Note—**

Duty on the transfer of shares in a share management fishery is abolished on 1 July 2012. This exemption is relevant only to a transfer of shares in a share management fishery that occurs before that date. See Part 4 of Chapter 2.

(3) For the purposes of this section, the ***person directing*** a transferor, lessor or assignor is:

- (a) in the case of a transferor, lessor or assignor who is acting in the capacity of executor of a deceased estate—the deceased person, or
- (b) in the case of a transferor, lessor or assignor which is a proprietary limited company—a shareholder or shareholders in the company who:
  - (i) are beneficially entitled to those shares, and
  - (ii) are entitled to vote at meetings of the company, and
  - (iii) are entitled as shareholders to not less than 25% of the assets of the company on winding up, being an entitlement that existed for at least 3 years prior to the date of the transfer, lease or assignment or that existed from the date of incorporation of the company, or
- (c) in the case of a transferor, lessor or assignor acting in the capacity of trustee of a

bare trust—a person who is a named beneficiary of the trust, or

- (d) in the case of a transferor, lessor or assignor acting in the capacity of trustee of a discretionary trust—a person or persons who are entitled (as takers in default of appointment) to not less than a 25% interest in the capital of the trust, being an entitlement that existed for at least 3 years prior to the date of the transfer, lease or assignment, or that existed from the date of establishment of the trust, or
- (e) in the case of a transferor, lessor or assignor acting in the capacity of trustee of a private unit trust scheme—a unit holder or unit holders in the unit trust scheme who:
  - (i) hold the units beneficially, and
  - (ii) are entitled (as unit holders) to not less than 25% of the assets of the unit trust scheme on winding up, being an entitlement that existed for at least 3 years prior to the date of the transfer, lease or assignment, or from the date of establishment of the trust.

(4) In the case of a transfer, lease or assignment by a proprietary limited company or unit trust scheme (a **subsidiary entity**) that is owned by another proprietary limited company or unit trust scheme (**the parent entity**), a person is taken to be a person directing the subsidiary entity if the Chief Commissioner is satisfied that, had the parent entity been the transferor, lessor or assignor, the person would be the person directing the parent entity under subsection (3).

(5) Except as provided by subsections (3) and (4), there are no other cases in which a person is considered to be a person directing a transferor, lessor or assignor.

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

(6) In this section:

**ancestor** of a transferee, lessee or assignee means:

- (a) a parent, step-parent, grand-parent, brother, sister, uncle or aunt of the transferee, lessee or assignee, or of the spouse or de facto partner of the transferee, lessee or assignee, or
- (b) a spouse, former spouse, de facto partner or former de facto partner of a person referred to in paragraph (a).

**Note—**

**Land used for primary production** is defined in the Dictionary.

## 275 Charitable and benevolent bodies

(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.

(1A) Duty under section 58 (Establishment of a trust relating to unidentified property and non-dutiable property) is not chargeable on an instrument that declares a trust over property held or to be held on trust for an exempt charitable or benevolent body.

(2) (Repealed)

(2A) Landholder duty is not chargeable on the acquisition of an interest in a landholder by an exempt charitable or benevolent body.

(3) In this section:

***exempt charitable or benevolent body*** means:

- (a) any body corporate, society, institution or other organisation for the time being approved by the Chief Commissioner for the purposes of this paragraph whose resources are, in accordance with its rules or objects, used wholly or predominantly for:
  - (i) the relief of poverty in Australia, or
  - (ii) the promotion of education in Australia, or
- (b) any body corporate, society, institution or other organisation that, in the opinion of the Chief Commissioner, is of a charitable or benevolent nature, or has as its primary object the promotion of the interests of Aborigines and if:
  - (i) (in the application of this definition for the purposes of subsection (1) or (1A)) the dutiable transaction or instrument is for such purposes as the Chief Commissioner may approve in accordance with guidelines approved by the Treasurer, or

(ii) (Repealed)

(iii) (in the application of this definition for the purposes of subsection (2A)) the land holdings of the landholder are being used or are to be used for such purposes as the Chief Commissioner may approve in accordance with guidelines approved by the Treasurer, or

(c) any person acting in the person's capacity as trustee for a body corporate, society, institution or other organisation referred to in paragraph (a) or (b).

**landholder duty** means the duty chargeable under Chapter 4.

#### **275A Partial exemption for certain transactions by charitable and benevolent bodies**

(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.

(2), (3) (Repealed)

(4) If the Chief Commissioner is satisfied, in relation to a mortgage given by or on behalf of a charitable or benevolent body, that the land the subject of the mortgage is used or to be used partly for an exempt purpose, the amount secured by the mortgage is, for the purpose of charging duty under Chapter 7, to be reduced by the proportion of the amount secured that is referable to the portion of the land used or to be used for an exempt purpose.

(5) If the Chief Commissioner is satisfied, in relation to an acquisition of an interest in a landholder by a charitable or benevolent body, that any of the land holdings of the landholder are used or to be used for an exempt purpose, the unencumbered value of that land holding is to be disregarded when calculating the duty chargeable on the acquisition under Chapter 4.

(6) This section does not limit section 275.

(7) In this section:

**charitable or benevolent body** means any body corporate, society, institution or other organisation that, in the opinion of the Chief Commissioner, is of a charitable or benevolent nature, or has as its primary object the promotion of the interests of Aborigines.

**exempt purpose** means a purpose approved by the Chief Commissioner under section 275.

## **276 Public hospitals**

Duty under this Act is not chargeable on:

- (a) a dutiable transaction in respect of dutiable property, if a public hospital would be the person liable to pay the duty, or
- (b) an instrument executed by or on behalf of a public hospital, if the public hospital would be the person liable to pay the duty.

## **277 Councils and county councils**

- (1) Duty under this Act is not chargeable in the case of a body, being a council or county council under the *Local Government Act 1993*, on the following:
  - (a) a dutiable transaction in respect of dutiable property if the body is the person described in this Act as the person liable to pay the duty,
  - (b) an instrument executed by or on behalf of any such body if the body is the person described in this Act as the person liable to pay the duty,
  - (c) an application by any such body to register a motor vehicle,
  - (d) any insurance taken out by or on behalf of any such body.
- (2) However, this section does not exempt dutiable transactions, instruments or insurance issued, given, taken out, or executed by, to or on behalf of any such body in connection with or arising from the establishment, acquisition and operation of any trading undertaking, being:
  - (a) the supply of electricity, gas, liquefied petroleum gas or hydraulic power and the supply and installation of associated fittings and appliances, or
  - (b) the operation of a coal mine and the supply and distribution of coal, or
  - (c) the operation of a public transport service, or
  - (d) the supply of building materials.

## **278 Department of Housing and Aboriginal Housing Office tenants**

- (1) Duty under this Act is not chargeable on an agreement for the sale or transfer, or a transfer, of land, or a mortgage executed to finance or assist the purchase of that land (but only to the extent to which the amount secured by the mortgage is to finance or assist that purchase), or a mortgage in support of that mortgage, if the purchaser or borrower, or at least one of the purchasers or borrowers:
  - (a) is, at the date of the transaction or the date of the first execution of the instrument, an eligible tenant, and



- (b) will obtain not less than 25% of the beneficial ownership of the land, and
  - (c) intends to occupy the land as his or her principal place of residence.
- (2) For the purposes of this section, a person is an **eligible tenant** if the person:
- (a) is a tenant of the Department of Housing, or
  - (b) is a tenant under the Community Tenancy Scheme administered within that Department, or
  - (c) is a tenant of the Aboriginal Housing Office.
- (3) This section applies in respect of an agreement for sale or transfer, or a transfer, of land in respect of which an eligible tenant obtains less than 100% of the beneficial ownership of the land only if:
- (a) the other purchasers are natural persons, and
  - (b) the Chief Commissioner is satisfied that each of those other purchasers is a member of the eligible tenant's family or a person who is genuinely assisting the eligible tenant to acquire the land as his or her principal place of residence.
- (4) For the purpose of subsection (3), the New South Wales Land and Housing Corporation is not considered to be a purchaser.
- (5) The exemption conferred by this section is conditional on the eligible tenant occupying the land concerned as his or her principal place of residence for a continuous period of at least 6 months, with that occupation starting within 12 months (or such longer period as the Chief Commissioner may approve) after completion of the agreement for sale or transfer, or transfer, of the land. This requirement is referred to as **the residence requirement**.
- (6) The Chief Commissioner may, if satisfied that there are good reasons to do so in a particular case:
- (a) modify the residence requirement by approving a shorter period of occupation by an eligible tenant, or
  - (b) exempt an eligible tenant from compliance with the residence requirement.
- (7) If an eligible tenant fails to comply with the residence requirement, the eligible tenant must, within 14 days after the end of the period for compliance:
- (a) give written notice of that fact to the Chief Commissioner, and
  - (b) pay to the Chief Commissioner the duty that would have been payable on the transactions or instruments concerned if they had not been exempt from duty under this section.

(8) A person who fails to comply with subsection (7) is guilty of an offence.

Maximum penalty: 50 penalty units.

(9) For the purposes of this section, a person is a member of an eligible tenant's **family** if:

(a) one is the spouse or de facto partner of the other, or

(b) the relationship between them is that of parent and child, brothers, sisters, or brother and sister.

(10) This section does not prevent section 221B from applying in respect of a mortgage.

**Note—**

Section 221B extends a general mortgage duty exemption to all mortgages associated with owner occupied housing, and takes effect on and from 1 September 2007.

### **279 Specialised agencies**

Duty under this Act is not chargeable on any instrument executed by or on behalf of a Specialised Agency within the meaning of the *Convention on the Privileges and Immunities of the Specialised Agencies* that was approved by the General Assembly of the United Nations on 21 November 1947 in respect of which instrument the Specialised Agency is the person described in this Act as the person liable to pay the duty.

### **280 Aboriginal land councils**

Duty under this Act is not chargeable, in the case of an organisation that is the New South Wales Aboriginal Land Council, a Regional Aboriginal Land Council, or a Local Aboriginal Land Council, within the meaning of the *Aboriginal Land Rights Act 1983*, on the following:

- (a) a dutiable transaction in respect of dutiable property if the organisation is the person described in this Act as the person liable to pay the duty,
- (b) an instrument executed by or on behalf of the organisation if the organisation is the person described in this Act as the person liable to pay the duty,
- (c) an application by the organisation to register a motor vehicle,
- (d) any insurance taken out by or on behalf of the organisation.

### **281 Corporate reconstructions**

- (1) Duty under this Act is not chargeable on a corporate reconstruction transaction approved by the Chief Commissioner in accordance with guidelines approved by the Treasurer.
- (2) For the purposes of this section, a **corporate reconstruction transaction** means:
  - (a) a transfer, or agreement for sale or transfer, of dutiable property between

corporations that are members of the same group, or

- (b) a surrender of an interest in land by a corporation to a corporation who is a member of the same group, or
  - (c) a vesting of dutiable property if the dutiable property was held, immediately before the vesting, and continues to be held, immediately after the vesting, by corporations who are members of the same group, or
  - (d) an acquisition of an interest in a landholder (within the meaning of Chapter 4) by a corporation if the interest is acquired from another corporation who is a member of the same group, or
  - (e) an application to register a motor vehicle as a result of a transfer of the vehicle between corporations who are members of the same group.
- (3) The approval of the Chief Commissioner may be given to such extent as may be determined by the Chief Commissioner and in accordance with such conditions as may be so determined.
- (4) In this section, **corporation** includes a unit trust scheme.

## **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.

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

Duty under this Act is not chargeable on an instrument that, in the opinion of the Chief Commissioner, was executed for the purpose of creating, issuing or marketing mortgage-backed securities to the extent that it was executed for that purpose.

**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.

**284A Joint government enterprise—water savings projects**

Duty under this Act is not chargeable, in the case of a joint government enterprise that has the function of allocating funds for water savings projects, on the following:

- (a) a dutiable transaction in respect of dutiable property if the enterprise is the person described in this Act as the person liable to pay the duty,
- (b) an instrument executed by or on behalf of the enterprise if the enterprise is the person described in this Act as the person liable to pay the duty,
- (c) an application by the enterprise to register a motor vehicle,
- (d) any insurance taken out by or on behalf of the enterprise.

#### **284B Restructuring of unit trust for land tax purposes**

- (1) Duty under this Act is not chargeable in respect of an instrument executed on or after 6 June 2006 and before 1 January 2008 that effects a variation to a trust deed for a unit trust (within the meaning of Schedule 1AA to the [Land Tax Management Act 1956](#)) if:
  - (a) before the instrument is executed, unit holders in the unit trust have fixed entitlements under the trust, and
  - (b) the purpose of the variation is to enable the unit trust to satisfy the relevant criteria (within the meaning of section 3A of the [Land Tax Management Act 1956](#)) and, accordingly, to be treated as a fixed trust under that section, and
  - (c) the variation does not directly or indirectly result in a change in the proportion of any income or capital to which a unit holder is entitled under the trust.
- (2) Unit holders in a unit trust have **fixed entitlements** under the trust if:
  - (a) the unit holders are entitled to a fixed proportion of the income or capital distributions of the trust (if any are made) based on the number or class of units owned by them, and
  - (b) the entitlements referred to in paragraph (a) cannot be removed, restricted or otherwise affected by the exercise of a discretion, or by a failure to exercise a discretion, conferred on any person under the trust.

## **Chapter 11A Tax avoidance schemes**

### **284C Object of Chapter**

The object of this Chapter is to deter artificial, blatant or contrived schemes to reduce or avoid liability for duty.

### **284D Payment of duty avoided as a result of tax avoidance scheme**

- (1) A person is liable to pay the amount of duty avoided by the person as a result of a tax avoidance scheme that is of an artificial, blatant or contrived nature.

- (2) For the purposes of this Chapter, the **amount of duty avoided** by a person as a result of the tax avoidance scheme is the amount of duty, or the amount of additional duty, that would have been payable by the person, or that it is reasonable to expect would have been payable by the person, if the tax avoidance scheme had not been entered into or made.
- (3) The Chief Commissioner may make an assessment, or reassessment, of a liability for duty on the basis of the person's liability under this Chapter to pay an amount of duty avoided by the person.

#### **284E What is a tax avoidance scheme?**

- (1) For the purposes of this Chapter, a **tax avoidance scheme** is any scheme that a person, whether alone or with others, enters into, makes or carries out for the sole or dominant purpose of enabling liability for duty to be avoided or reduced.
- (2) It does not matter that the scheme is entered into, made or carried out wholly or partly outside New South Wales.
- (3) In determining the sole or dominant purpose for which a scheme is entered into, made or carried out, any purpose related to avoiding, reducing or postponing a liability for foreign tax is to be disregarded.

- (4) In this section:

**foreign tax** means a duty, tax or other impost imposed under a law of another State, a Territory, the Commonwealth or a jurisdiction outside Australia.

#### **284F Matters relevant to whether scheme is tax avoidance scheme**

The following matters are to be taken into account in determining whether a scheme is a tax avoidance scheme, and whether it is of an artificial, blatant or contrived nature:

- (a) the way in which the scheme was entered into, made or carried out,
- (b) the form and substance of the scheme, including:
  - (i) the legal rights and obligations involved in the scheme, and
  - (ii) the economic and commercial substance of the scheme,
- (c) when the scheme was entered into or made and the length of the period during which the scheme was carried out,
- (d) the purpose of this Act or any provision of this Act, whether or not that purpose is expressly stated,
- (e) the effect that this Act would have in relation to the scheme apart from this Chapter,

- (f) any change in any person's financial position, or other circumstances, that has resulted, will result, or may reasonably be expected to result, from the scheme,
- (g) the nature of any connection, whether of a business, family or other nature, between the person whose liability for duty is avoided or reduced as a result of the scheme and any other person whose financial position or other circumstances have changed, will change, or may reasonably be expected to change, as a result of the scheme,
- (h) the circumstances surrounding the scheme.

**284G When does a liability to pay avoided duty arise?**

- (1) A liability to pay an amount of duty avoided by a person as a result of a tax avoidance scheme is taken to arise on the date the amount of duty avoided would have been payable if the tax avoidance scheme had not been entered into or made.
- (2) Accordingly, a tax default is taken to have occurred, for the purposes of the [Taxation Administration Act 1996](#), on the date the amount of duty avoided would have been payable if the tax avoidance scheme had not been entered into or made.

**Note—**

This means that interest and penalty tax may be charged in addition to the amount of duty avoided.

- (3) This section applies only if the Chief Commissioner issues a notice of assessment, or reassessment, of liability for duty on the basis that a scheme is a tax avoidance scheme of an artificial, blatant or contrived nature.

**284H Reasons for decision to be given**

A notice of assessment, or reassessment, of liability for duty that is issued by the Chief Commissioner on the basis that a scheme is a tax avoidance scheme of an artificial, blatant or contrived nature is to be accompanied by a statement of the Chief Commissioner's reasons for making the assessment or reassessment.

**284I Innocent participants**

- (1) A person is liable under this Chapter to pay an amount of duty avoided by the person as a result of a tax avoidance scheme whether or not the person entered into, made or carried out the relevant tax avoidance scheme.
- (2) However, a person is not liable to pay an amount of duty avoided by the person as a result of a tax avoidance scheme if the Chief Commissioner is satisfied that the person did not know that the scheme was a tax avoidance scheme.

**284J Meaning of "scheme"**

- (1) In this Chapter, a **scheme** means:
  - (a) a trust, contract, agreement, arrangement, understanding, promise or undertaking

(including all steps and transactions by which it is carried into effect):

(i) whether entered into or made orally or in writing, and

(ii) whether express or implied, and

(iii) whether or not it is, or is intended to be, enforceable by legal proceedings, or

(b) a scheme, plan, proposal, action, course of action or course of conduct.

(2) A scheme may be a unilateral scheme.

(3) This Chapter applies in relation to a part of a scheme in the same way as it applies to a scheme. For that purpose, a reference in this Chapter to a scheme includes a reference to a part of a scheme.

## **Chapter 12 Miscellaneous**

### **Part 1 Stamping instruments**

#### **285 Provision of stamps**

The Chief Commissioner may provide stamps or such other equipment as may be required for:

(a) stamping instruments, or

(b) otherwise denoting the payment of duty,

in accordance with the provisions of this Act.

#### **286 Limitation on use of designated stamps**

(1) A stamp that by its terms is limited to an instrument of a specified kind must not be used for an instrument of a different kind.

Maximum penalty: 100 penalty units.

(2) An instrument of a specified kind for which a particular stamp is specified is taken not to be duly stamped unless it is stamped with the stamp so specified.

#### **287 Form of stamps to be used**

(1) An instrument that is required to be stamped by this Act is to be stamped by means of an impressed stamp.

(2) However, another form of stamping may be used if its use is authorised by this Act or the Chief Commissioner.

(3) Without limiting subsection (2), the Chief Commissioner may approve arrangements



for the stamping of an instrument by means of the endorsement on the instrument of a number, or other information, issued by the Chief Commissioner in respect of the instrument (as referred to in section 289A).

## **288 Stamping of instruments**

The Chief Commissioner must stamp an instrument in respect of which duty is chargeable under this Act, or that effects or evidences a dutiable transaction, and that has been lodged for stamping with the Chief Commissioner if the duty, and any interest or penalty tax under Part 5 of the *Taxation Administration Act 1996*, is paid in full.

### **288A (Repealed)**

## **289 When is an instrument duly stamped?**

An instrument is duly stamped if it is stamped in accordance with this Act.

### **289A Stamping by means of endorsement**

- (1) An instrument is duly stamped if it is endorsed in accordance with an arrangement, approved by the Chief Commissioner under Division 2 of Part 6 of the *Taxation Administration Act 1996*, under which:
  - (a) information concerning an instrument (rather than the instrument itself) is lodged with the Chief Commissioner, and
  - (b) the information is used by the Chief Commissioner to assess the duty payable on the instrument, and
  - (c) a number, or other information, is issued by the Chief Commissioner, in respect of the instrument, for endorsement on the instrument.
- (2) Section 297 applies in respect of an instrument endorsed in accordance with an arrangement referred to in this section as if the instrument had been stamped by the Chief Commissioner, and section 42 (3) of the *Taxation Administration Act 1996* does not apply.
- (3) However, the endorsement of an instrument in accordance with an arrangement referred to in this section does not affect any liability for payment of the duty in relation to the instrument under this Act.
- (4) A notice of assessment or statement of confirmation issued by the Chief Commissioner in relation to the assessment of an instrument as referred to in this section may include any of the information provided to the Chief Commissioner on which the assessment of the instrument was based.

### **290-292 (Repealed)**

### **293 Reassessments—failed instruments**

- (1) An instrument that fails in its intended operation and becomes useless is not chargeable with duty under this Act.
- (2) The Chief Commissioner must make a reassessment of duty in respect of such an instrument if an application for a reassessment is made within:
  - (a) 5 years after the initial assessment, or
  - (b) 12 months after the instrument has failed,whichever is the later.
- (3) The instrument in respect of which the application is made must be produced to the Chief Commissioner unless the Chief Commissioner dispenses with its production.
- (4) This section does not apply in respect of an instrument that effects a transfer of dutiable property.

**Note—**

See Part 5 of Chapter 2 for refunds of duty under Chapter 2 on failed instruments.

### **294 Instruments to be separately charged with duty in certain cases**

An instrument that contains or relates to several distinct matters for which different duties are chargeable under this Act is to be separately and distinctly charged with duty in respect of each such matter, as if each matter were expressed in a separate instrument.

### **295 Execution of instruments**

- (1) For the purposes of this Act, an instrument is taken to be first executed the first time that it is signed and sealed, or signed (as the case may be) by any party to it.
- (2) However, a contract made by acceptance of an offer contained in an instrument is taken to be first executed when the offer is accepted.
- (3) If an instrument is ineffective by reason of a failure of the necessary parties to execute it, a refund may be made of any money paid for stamping.

### **296 Stamping of instruments after execution**

- (1) Except where otherwise expressly provided by this or another Act, a person liable with respect to any instrument chargeable with duty or any dutiable transaction must cause the instrument, or an instrument that effects or evidences the transaction, to be duly stamped or, in accordance with the provisions of this Act marked “interim stamp only” within 6 months after it was first executed.

Maximum penalty: 100 penalty units.

- (2) For the purposes of this section, a written statement that is required to be stamped is taken to be first executed when the transaction to which the statement relates occurs.

### **297 Stamping taken to constitute assessment**

- (1) For the purposes of the *Taxation Administration Act 1996*, the stamping of an instrument by the Chief Commissioner is taken to constitute an assessment of the duty payable under this Act in respect of the instrument or the dutiable transaction effected or evidenced by that instrument.
- (2) If the Chief Commissioner does not issue a notice of assessment at the time that the instrument is stamped, the stamped instrument is taken, for the purposes of the *Taxation Administration Act 1996*, to be a notice of assessment.

#### **Note—**

The *Taxation Administration Act 1996* provides that an objection to an assessment must be lodged within 60 days of service of the notice of assessment (unless late lodgment is permitted by the Chief Commissioner).

### **298 Deferred payments for certain stamped instruments**

- (1) The Minister may:
- (a) in circumstances in which (in the course of an industrial dispute involving persons engaged in the administration of this Act) an instrument liable to duty is not stamped by reason of the refusal of those persons to exercise functions relating to the administration of this Act or of any other law, and
  - (b) in such other circumstances as the regulations may prescribe,
- authorise the stamping of instruments on which duty is payable, even though the duty has not yet been paid, if an undertaking, in an approved form, has been given by a prescribed person, or a person belonging to a prescribed class of persons, as to the payment of duty in respect of the instrument.
- (2) The Minister's authorisation must provide for the manner in which, and the time within which, unpaid duty is to be paid in respect of instruments stamped under the authorisation.
- (3) An instrument that has been stamped under the Minister's authorisation is, except for the purposes of the recovery of any unpaid duty (including any interest or penalty with which the instrument is charged under the *Taxation Administration Act 1996*) in respect of the instrument, taken to be duly stamped.
- (4) If the duty payable in respect of an instrument that has been stamped under the Minister's authorisation is not paid in accordance with the terms of the authorisation, the *Taxation Administration Act 1996* applies to the payment of that duty in the same manner as if the instrument had not been so stamped.

- (5) For the purposes of subsection (1), the following persons are **prescribed persons**:
- (a) a person who is liable to pay duty in respect of an instrument,
  - (b) a person who is authorised (whether by a person who is liable to pay duty in respect of an instrument or by another person) to arrange for the stamping of the instrument on behalf of a person who is liable.

### 299 Copies of instruments

- (1) A copy of an original instrument is chargeable with duty as if it had been executed in the same way as the original instrument and had been first executed at the same time as the original instrument unless the Chief Commissioner is satisfied:
- (a) that the original instrument has been duly stamped, or
  - (b) that a copy of the original instrument has been duly stamped in accordance with this section.
- (2) If a copy of an original instrument is duly stamped in accordance with this section, the original instrument is taken to be duly stamped.
- (3) In this section:

**copy of an original instrument** means an unexecuted instrument in which, in the Chief Commissioner's opinion, the matter contained in the original instrument is wholly or substantially reproduced, whether or not the matter reproduced has the same appearance as the matter contained in the original instrument, but does not include a replica within the meaning of section 272.

**original instrument** means an instrument that is chargeable with duty otherwise than under this section.

### 300 Calculation of time

- (1) This section applies to the calculation of a period of time for the purpose of determining when the payment of duty is due under this Act.
- (2) A month is taken to be a period commencing at the beginning of a day of one of the 12 named months (within the meaning of the [Interpretation Act 1987](#)) and ending:
- (a) at the end of the corresponding day of the next named month, or
  - (b) if there is no such corresponding day, at the end of the next named month.
- (3) A period of 2 or more months is taken to be a period commencing at the beginning of a day of one of the 12 named months (within the meaning of the [Interpretation Act 1987](#)) and ending:
- (a) at the end of the corresponding day of the last named month within the period, or

(b) if there is no such corresponding day, at the end of that named month.

(4) Section 36 (except subsection (1)) of the *Interpretation Act 1987* applies to the calculation of a period of time to which this section applies.

## **Part 2 Enforcement**

### **301 Registration of transactions and instruments**

(1) A person must not register in a register of legal or beneficial interests in dutiable property a dutiable transaction, an instrument that effects a dutiable transaction or an instrument chargeable with duty unless:

(a) it is duly stamped, or

(b) it is stamped by the Chief Commissioner or in a manner approved by the Chief Commissioner, or

(c) it bears an endorsement, or is otherwise effected, in accordance with an approval under section 37 of the *Taxation Administration Act 1996*.

Maximum penalty: 100 penalty units.

(2) (Repealed)

### **302, 303 (Repealed)**

### **304 Receipt of instruments in evidence**

(1) An instrument that effects a dutiable transaction or is chargeable with duty under this Act is not available for use in law or equity for any purpose and may not be presented in evidence in a court or tribunal exercising civil jurisdiction unless:

(a) it is duly stamped, or

(b) it is stamped by the Chief Commissioner or in a manner approved by the Chief Commissioner.

(2) A court or tribunal may admit in evidence an instrument that effects a dutiable transaction, or is chargeable with duty in accordance with the provisions of this Act, and that does not comply with subsection (1):

(a) if the instrument is after its admission transmitted to the Chief Commissioner in accordance with arrangements approved by the court or tribunal, or

(b) if (where the person who produces the instrument is not the person liable to pay the duty) the name and address of the person so liable is forwarded, together with the instrument, to the Chief Commissioner in accordance with arrangements approved by the court or tribunal.

- (3) A court or tribunal may admit in evidence an unexecuted copy of an instrument that effects a dutiable transaction, or is chargeable with duty in accordance with the provisions of this Act, if the court or tribunal is satisfied that:
- (a) the instrument of which it is a copy is duly stamped, or is stamped in a manner approved by the Chief Commissioner, or
  - (b) the copy is duly stamped under section 299.

### **305 Valuation of property**

- (1) The Chief Commissioner may, for the purpose of determining whether a person is liable for duty or determining a person's liability for duty:
- (a) require the person, by notice in writing given to the person, to provide a valuation of property prepared by a registered valuer or to provide such other evidence of the value of property as the Chief Commissioner considers appropriate, or
  - (b) obtain a valuation of property, or
  - (c) rely on a valuation of property prepared for any purpose (whether or not for the purpose of determining liability for duty) by a registered valuer or other person the Chief Commissioner is satisfied is properly qualified to provide evidence of the value of property.
- (2) The Chief Commissioner may assess duty on the basis of a valuation or evidence referred to in subsection (1).
- (3) If a person is liable to pay duty under this Act that is chargeable by reference to the value of property, the Chief Commissioner may recover from the person the cost of obtaining a valuation of the property under this section.
- (4) In this section:

**registered valuer** has the meaning given by the [Valuers Act 2003](#).

### **306 Ascertainment of value of certain interests**

If it is necessary for the purpose of assessing duty under this Act to ascertain the value of:

- (a) any estate or annuity or interest for the life of any person, or
- (b) any estate or annuity or interest determinable on or subject to any contingency or the happening of any event, or
- (c) any estate or annuity or interest in remainder expectant on the death of any person or expectant on or subject to any contingency or the happening of any event,

regard may be had in ascertaining the value of any such property to the death of the person having the life estate or annuity or interest or the happening of the contingency or

event at any time before the assessment of duty is actually made.

### **307 Impounding of instruments**

- (1) The Chief Commissioner may impound any instrument that ought to be but is not stamped or is insufficiently stamped.
- (2) The Chief Commissioner may retain any impounded instrument until the duty or any interest or penalty tax, or all such amounts, have been paid.

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

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Legislature of New South Wales permits, the Crown in all its other capacities.
- (2) However, the Crown in right of New South Wales is not liable to pay duty unless this Act or any other Act expressly imposes a liability on the Crown in that capacity to pay duty.
- (3) A person or body listed in Schedule 2 is liable to pay duty under this Act, even if the person or body represents the Crown. This section does not operate to exempt any such person or body from liability to pay duty under this Act.
- (4) (Repealed)
- (5) This section does not exempt any person or body from any liability to pay duty chargeable under Chapter 8.

**Note—**

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

- (6) For avoidance of doubt, in this section, the **Crown** includes any statutory body representing the Crown.
- (7) The Governor may, by proclamation published on the NSW legislation website, amend Schedule 2 to insert, omit or substitute the name of any person or body.

## **Part 3 The Public Equity Partnership and the Rent/Buy Scheme**

### **309 Liability to duty in respect of certain housing schemes**

- (1) In this section:

**eligible land** means:

- (a) land owned by N.S.W. Housing No. 1 Pty Limited that the Chief Commissioner is satisfied is the subject of an arrangement known as the Public Equity Partnership Arrangement in which the New South Wales Land and Housing Corporation is a

participant, and

- (b) land of which the trustee of the FANMAC Pooled Superannuation Trust No. 1 is an owner and which the Chief Commissioner is satisfied is the subject of a scheme known as the Rent/Buy Scheme in which the New South Wales Land and Housing Corporation is a participant.

**eligible owner** means N.S.W. Housing No. 1 Pty Limited or the trustee of the FANMAC Pooled Superannuation Trust No 1.

- (2) The New South Wales Land and Housing Corporation is to pay the duty that would otherwise be payable by an eligible owner on an instrument executed in relation to eligible land for the purposes of:
  - (a) the arrangement known as the Public Equity Partnership Arrangement, or
  - (b) the scheme known as the Rent/Buy Scheme.
- (3) The New South Wales Land and Housing Corporation is to pay the duty payable on any sovereign risk insurance policy or any correlation insurance policy issued in relation to the arrangement known as the Public Equity Partnership Arrangement.
- (4) A payment made under this section is to be regarded as an expense of the New South Wales Land and Housing Corporation.

## **Part 4 Hardship Review Board**

### **310 Waiver, deferral and writing off of duty in hardship cases**

The Hardship Review Board constituted under Division 5 of Part 10 of the [Taxation Administration Act 1996](#) may exercise its functions in relation to duty payable under this Act.

### **311 Notation by Chief Commissioner in cases of waiver**

If the Hardship Review Board waives the payment of duty, the Chief Commissioner must make such notation on the instrument in respect of which the duty is waived as the Chief Commissioner thinks fit and the instrument, on the making of the notation, is taken to have been duly stamped.

### **312 (Repealed)**

## **Part 5 Miscellaneous**

### **313 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.



- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

### **314 Savings, transitional and other provisions**

Schedule 1 has effect.

### **315 (Repealed)**

### **316 Repeal of [Educational Institutions \(Stamp Duties Exemption\) Act 1961 No 37](#)**

The [Educational Institutions \(Stamp Duties Exemption\) Act 1961](#) is repealed.

### **317 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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

(Section 314)

### **Part 1 General**

#### **1 Regulations**

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

[State Revenue Legislation Amendment Act 1998](#)

[State Revenue Legislation Further Amendment Act 1998](#)

[State Revenue Legislation \(Miscellaneous Amendments\) Act 1998](#)

[Property \(Relationships\) Legislation Amendment Act 1999](#)

[State Revenue Legislation Amendment Act 1999](#)

[State Revenue Legislation Further Amendment Act 1999](#)

[Intergovernmental Agreement Implementation \(GST\) Act 2000](#)

[State Revenue Legislation Amendment Act 2000](#)

*State Revenue Legislation Further Amendment Act 2000*

*State Revenue Legislation Amendment Act 2001*

*State Revenue Legislation Further Amendment (No 2) Act 2001* (to the extent that it amends this Act)

*State Revenue Legislation Amendment (Budget) Act 2002*

*State Revenue Legislation Amendment Act 2002*

*State Revenue Legislation Amendment Act 2003*

*Duties Amendment (Land Rich) Act 2003*

*State Revenue Legislation Further Amendment Act 2003* (to the extent that it amends this Act)

*State Revenue Legislation Amendment Act 2004*

*State Revenue Legislation Further Amendment Act 2004*

*Duties Amendment (Land Rich) Act 2004*

*State Revenue Legislation Amendment (Budget Measures) Act 2005*

*State Revenue Legislation Amendment Act 2005*

*Duties Amendment (Abolition of Vendor Duty) Act 2005*

*State Revenue Legislation Further Amendment Act 2005*

*Duties Amendment (Abolition of State Taxes) Act 2006*

*State Revenue Legislation Amendment Act 2006*

*State Revenue Legislation Amendment (Tax Concessions) Act 2006*

*State Revenue and Other Legislation Amendment (Budget) Act 2007*

*Duties Amendment (First Home Plus One) Act 2007*

*State Revenue and Other Legislation Amendment (Budget) Act 2008*

*State Revenue Legislation Amendment Act 2008*

*State Revenue and Other Legislation Amendment (Budget Measures) Act 2008*

*State Revenue Legislation Amendment Act 2009*

*State Revenue Legislation Further Amendment Act 2009*

*State Revenue Legislation Amendment (Defence Force Concessions) Act 2009*

*State Revenue Legislation Further Amendment Act (No 2) 2009*

*State Revenue Legislation Amendment Act 2010*

*State Revenue Legislation Further Amendment Act 2010*

*State Revenue Legislation Amendment Act 2011*

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

## **2 Application of sec 30 of [Interpretation Act 1987](#)**

Except to the extent otherwise provided by this Schedule, nothing in this Schedule affects the application of section 30 of the [Interpretation Act 1987](#).

## **Part 2 Provisions consequent on enactment of this Act**

### **3 Instruments**

This Act applies to instruments first executed on or after 1 July 1998, except as provided by this Schedule.

### **4 Provisions relating to Chapter 2 (Transactions concerning dutiable property)**

- (1) **Dutiable transactions** The duty charged by Chapter 2 is charged on dutiable transactions that occur on or after 1 July 1998, except as provided by this clause.
- (2) **Aggregation of dutiable transactions—sec 25** Section 25 extends to dutiable transactions at least one of which occurred before 1 July 1998 and at least one of which occurred on or after 1 July 1998 if they occurred within 12 months and the other provisions of section 25 are satisfied.
- (3) However, subclause (2) does not apply so as to aggregate transactions that occurred before 1 July 1998 and that would not have been aggregated under the law in force immediately before that date.

(4) **Transfers back from a nominee—sec 56** Section 56 extends to:

- (a) a transfer of dutiable property to a trustee, and
- (b) the payment of duty on that transfer,

before 1 July 1998 if the transfer back to the transferor occurs on or after 1 July 1998.

(5) **Property passing to beneficiaries—sec 57** Without limiting clause 13, the reference in section 57 (2) (a) (i) to duty charged by this Act includes a reference to duty charged by the *Stamp Duties Act 1920*.

(6) **Cancelled contracts—sec 50** Section 50 extends to an agreement that was entered into before 1 July 1998 and that was rescinded or annulled on or after that date.

(7) **Break-up of marriages and de facto relationships—sec 68** Section 68 (4) extends to a payment of ad valorem duty made before 1 July 1998 under the *Stamp Duties Act 1920*.

**5 Provisions relating to Chapter 3 (Certain transactions treated as transfers)**

(1) **Acquisitions** The duty that is charged by Chapter 3 is charged on an acquisition that occurs on or after 1 July 1998, except as provided by this clause.

(2) **How duty is charged on relevant acquisitions—sec 118** In section 118:

- (a) a reference to a period of 3 years is a reference to any such period ending on or after 1 July 1998, and
- (b) a reference to duty paid under this Act includes a reference to duty paid under the *Stamp Duties Act 1920*, and
- (c) a reference to duty paid under that section includes a reference to duty paid under Division 30 of Part 3 of that Act.

(3) However, subclause (2) does not apply so as to aggregate interests that were acquired before 1 July 1998 and that would not have been aggregated under the law in force immediately before that date.

**6 Provisions relating to Chapter 4 (Marketable securities—on-market transfers (Broker provisions))**

(1) **Imposition of duty** The duty charged by Chapter 4 is charged on sales and transfers of marketable securities, and on associated transactions as referred to in section 145 (1) (d), that take place on or after 5 July 1998, except as provided by this clause.

(2) **Additional duty on marketable securities held otherwise than for short terms—sec 155** Section 155 extends to purchases and sales made before 5 July 1998 if the liability to pay duty under that section arises on or after that date.

## 7 Provisions relating to Chapter 5 (Lease instruments)

- (1) **Lease instruments** The duty charged by Chapter 5 is charged on a lease instrument that is first executed on or after 1 July 1998, except as provided by this clause.
- (2) **Variations of lease instruments** The duty charged by Chapter 5 extends to a lease instrument that is first executed before 1 July 1998 and a variation of which on or after that date increases the cost of the lease.
- (3) **Reassessment of duty—early termination—sec 177** Section 177 extends to a lease instrument that is terminated on or after 1 July 1998 if duty in respect of the lease instrument was paid before 1 July 1998.
- (4) **Reassessment of duty—reduction of cost—sec 178** Section 178 extends to a lease instrument that is varied on or after 1 July 1998 so as to reduce the total cost of the lease if duty in respect of the lease instrument was paid before 1 July 1998.

## 8 Provisions relating to Chapter 6 (Hire of goods)

- (1) **Imposition of duty** The duty charged by Chapter 6 is charged on a hire of goods that is entered into on or after 1 July 1998.
- (2) **Approved persons** A person who, immediately before 1 July 1998, is an approved person under section 74F of the *Stamp Duties Act 1920* is taken to be registered under Part 2 of Chapter 6.

## 9 Provision relating to Chapter 7 (Mortgages)

The duty charged by Chapter 7 is charged on a mortgage that is first executed on or after 1 July 1998.

**Note—**

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

## 10 Provisions relating to Chapter 8 (Insurance)

- (1) **Imposition of duty** The duty charged by Chapter 8 is charged on:
  - (a) the amount of a premium paid in relation to a contract that effects general insurance, or
  - (b) a policy of life insurance or a life insurance rider,if the contract, policy or life insurance rider is effected or renewed on or after 1 July 1998.
- (2) **Registered persons** A person who, immediately before 1 July 1998, is a registered person under section 88A of the *Stamp Duties Act 1920* is taken to be registered under Part 3 of Chapter 8.

- (3) **Undertakings given by certain persons** A person in respect of whom an undertaking has effect under section 88E of the *Stamp Duties Act 1920* immediately before 1 July 1998 is taken to have an approval under Division 2 of Part 6 of the *Taxation Administration Act 1996*.

#### **11 Provision relating to Chapter 9 (Motor vehicle registration)**

The duty charged by Chapter 9 is charged on:

- (a) an application to register a motor vehicle made on or after 1 July 1998, and
- (b) an application to register a motor vehicle made before 1 July 1998 in respect of which a certificate of registration is issued on or after that date.

#### **12 Provision relating to Chapter 12 (Miscellaneous)**

Section 293 extends to an application for a refund of duty that was paid under the *Stamp Duties Act 1920* before 1 July 1998.

#### **13 Duty paid under the *Stamp Duties Act 1920***

If an assessment or reassessment of duty under this Act is required to take into consideration another amount of duty paid, a reference in this Act to duty includes a reference to duty within the meaning of the *Stamp Duties Act 1920* that has been paid in accordance with the provisions of that Act.

#### **14 Stamping under the *Stamp Duties Act 1920***

An instrument is duly stamped for the purposes of this Act if, immediately before 1 July 1998, it was duly stamped for the purposes of the *Stamp Duties Act 1920*.

#### **15 Exemptions from duty under the *Stamp Duties Act 1920***

If, by a provision of an Act other than the *Stamp Duties Act 1920*, a transaction or instrument was not chargeable with stamp duty under the *Stamp Duties Act 1920* immediately before 1 July 1998, the transaction or instrument is not chargeable with duty under this Act, unless the contrary intention appears.

### **Part 3 Provisions consequent on enactment of *Property (Relationships) Legislation Amendment Act 1999***

#### **16 Saving of certain transactions and acquisitions**

An amendment made to this Act by the *Property (Relationships) Legislation Amendment Act 1999* does not apply to or in respect of a transaction entered into, or an interest acquired, before the amendment took effect.

### **Part 4 Provisions consequent on enactment of *State Revenue***

## Legislation Amendment Act 1999

### 17 Managed investment schemes—novation of contracts

- (1) This clause applies to a transaction entered into or an instrument executed by a responsible entity to replace a transaction entered into or an instrument executed by a body holding the office of trustee or representative and management company who has retired from that office to enable an undertaking to become a managed investment scheme.
- (2) This clause applies only to transactions that occur and instruments that are executed in relation to a managed investment scheme after the commencement of Chapter 5C of the *Corporations Law* and:
  - (a) within the period of 2 years starting on that commencement, or
  - (b) before the date on which the scheme became a registered scheme within the meaning of Division 11 of Part 11.2 of the *Corporations Law* (as continued in effect by section 1408 of the *Corporations Act 2001* of the Commonwealth),whichever first occurs.
- (3) Despite the other provisions of this Act, a transaction or instrument to which this clause applies is chargeable with duty in accordance with this clause.
- (4) The amount of duty chargeable in respect of the transaction or instrument is:
  - (a) the amount of duty that would be chargeable in respect of the transaction or instrument but for this clause, less the amount of duty paid (under this Act or the *Stamp Duties Act 1920*) in relation to the transaction or instrument that is being replaced, or
  - (b) \$10,whichever is the greater.

### 18 Managed investment schemes—transactions entered into by custodians

- (1) This clause applies to a transaction entered into or an instrument executed by a custodian of a responsible entity, or by a custodian of a responsible entity and the responsible entity, to replace a transaction entered into or an instrument executed by a body holding the office of trustee or representative and management company who has retired from that office to enable an undertaking to become a managed investment scheme.
- (2) This clause applies only to transactions that occur and instruments that are executed in relation to a managed investment scheme on or after 1 July 1999 and before:
  - (a) 1 July 2000, or

(b) the date on which the scheme became a registered scheme within the meaning of Division 11 of Part 11.2 of the *Corporations Law* (as continued in effect by section 1408 of the *Corporations Act 2001* of the Commonwealth),

whichever first occurs.

(3) Despite the other provisions of this Act, a transaction or instrument to which this clause applies is chargeable with duty in accordance with this clause.

(4) The amount of duty chargeable in respect of the transaction or instrument is:

(a) the amount of duty that would be chargeable in respect of the transaction or instrument but for this clause, less the amount of duty paid (under this Act or the *Stamp Duties Act 1920*) in relation to the transaction or instrument that is being replaced, or

(b) \$10,

whichever is the greater.

## **Part 5 Provisions consequent on enactment of *State Revenue Legislation Further Amendment Act 1999***

### **19 “Off the plan” purchases**

(1) Section 49A, as in force immediately before 1 January 2000, continues to apply in respect of any off the plan purchase agreement that was stamped “interim stamp only” under that section before that date.

(2) Section 49A, as substituted by the *State Revenue Legislation Further Amendment Act 1999*, extends to any off the plan purchase agreement executed before 1 January 2000 in respect of which no duty had been paid by that date.

## **Part 6 Provisions consequent on enactment of *Intergovernmental Agreement Implementation (GST) Act 2000***

### **20 Application of Act to transfers and agreements before 1 July 2001**

(1) This Act, as in force immediately before 1 July 2001, continues to apply in respect of a transaction involving marketable securities that occurred before 1 July 2001 as if this Act had not been amended by the *Intergovernmental Agreement Implementation (GST) Act 2000*.

(2) In particular:

(a) until 1 July 2001, a marketable security that is quoted on the Australian Stock Exchange or a recognised stock exchange continues to be dutiable property and Chapter 2 of this Act, as in force immediately before 1 July 2001, continues to



apply to a dutiable transaction involving such a marketable security that occurred before 1 July 2001, and

(b) Chapter 4 of this Act, as in force immediately before 1 July 2001, continues to apply to a sale or purchase of marketable securities, or an associated transaction with a broker in New South Wales, that was effected before 1 July 2001 in the same way as it applied before the repeal of that Chapter by the *Intergovernmental Agreement Implementation (GST) Act 2000*.

(3) However, section 48 (1), as in force immediately before its repeal by the *Intergovernmental Agreement Implementation (GST) Act 2000*, does not apply in respect of an instrument of transfer, or an agreement for the transfer of marketable securities, that is not completed by an SCH-regulated transfer before 1 July 2001.

## **Part 7 Provisions consequent on enactment of [State Revenue Legislation Amendment Act 2000](#)**

### **21 Insurance duty**

The amendments made to section 234 (1) by the *State Revenue Legislation Amendment Act 2000* have effect only in relation to premiums paid on or after 23 May 2000 for contracts of insurance and renewals of contracts of insurance that take effect after 1 October 2000.

## **Part 8 Provisions consequent on enactment of [State Revenue Legislation Amendment Act 2001](#)**

### **22 Transfers between trustees and custodians of superannuation funds or trusts**

The amendments made to section 62 by the *State Revenue Legislation Amendment Act 2001* apply to transactions that occur on or after the date of commencement of those amendments.

### **23 Changes to “First Home Plus” scheme**

The amendments made to Part 8 by the *State Revenue Legislation Amendment Act 2001* apply to transactions that occur and instruments that are executed on or after the date of commencement of those amendments.

## **Part 9 Provisions consequent on enactment of [State Revenue Legislation Further Amendment \(No 2\) Act 2001](#)**

### **24 Financial agreements**

A reference in section 65 (11), 68 (1) (b) (i), 119 (1) (e) (i) or 267 (6) (a) to a financial agreement made under section 90B, 90C or 90D of the *Family Law Act 1975* of the Commonwealth extends to a financial agreement made under any of those provisions of

the *Family Law Act 1975* of the Commonwealth before the date of assent to the *State Revenue Legislation Further Amendment (No 2) Act 2001*.

## **25 Transfers to index trusts**

- (1) For the purposes of section 66 (9) of this Act, as in force immediately before its repeal by the *Intergovernmental Agreement Implementation (GST) Act 2000* on 1 July 2001, the definition of **index trust**, as set out in the Dictionary to this Act immediately before 1 July 2001, is taken to have included the following bodies, on and from the date specified below in relation to the body concerned:
  - (a) Index Shares Fund—2 March 2001,
  - (b) streetTRACKS50 exchange traded fund—1 April 2001,
  - (c) Barclays Australian Listed Property Index Fund—3 May 2001.
- (2) Accordingly, the exemption formerly provided for by section 66 (9) is taken to have extended to those bodies on and from the date specified in relation to the body concerned in subclause (1).

### **Note—**

The exemption related to transfers of marketable securities to an index trust in exchange for units in the trust. The exemption was repealed as a consequence of the abolition of duty on transfers of quoted marketable securities.

- (3) Anything done by or on behalf of the Chief Commissioner before the commencement of this clause, that would have been validly done had this clause been in force at the time that it was done, is validated.

## **26 Abolition of use of adhesive stamps**

- (1) A licence issued under section 291, before its repeal by the *State Revenue Legislation Further Amendment (No 2) Act 2001*, is taken to be cancelled on the repeal of that section, unless sooner cancelled by the Chief Commissioner.
- (2) A person must not sell or deal in adhesive stamps issued by or on behalf of the Chief Commissioner for use under section 290.

Maximum penalty: 100 penalty units.

- (3) Subclause (2) takes effect on 1 January 2002.

## **Part 10 Provisions consequent on enactment of State Revenue Legislation Amendment (Budget) Act 2002**

### **27 Insurance duty**

- (1) Sections 233 and 234 as substituted by the *State Revenue Legislation Amendment*

*(Budget) Act 2002* have effect only in relation to premiums paid on or after 4 June 2002 for contracts of insurance and renewals of contracts of insurance that take effect on or after 1 August 2002.

- (2) Despite section 253, the Chief Commissioner may, having regard to the substitution of sections 233 and 234 by the *State Revenue Legislation Amendment (Budget) Act 2002*, determine the categories of premiums to be shown in the form of a return required to be lodged under that section on or before 21 June 2002 or a subsequent month.

## **Part 11 Provisions consequent on enactment of *State Revenue Legislation Amendment Act 2002***

### **28 Definitions**

In this Part:

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

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

### **29 Application of section 50A**

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

### **30 Application of mortgage duty amendments**

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

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

- (1) Despite clause 9, the duty charged by Chapter 7 is also charged on a security by way of a mortgage or charge first executed on or after 1 January 1975 and before 1 July 1998 that, if it had been first executed on or after the amendment date, would be a mortgage (within the meaning of section 205), but only as provided for by this clause.

- (2) A mortgage or charge referred to in subclause (1) becomes liable to duty under Chapter 7 on the making of an advance or further advance as referred to in section 210, if the advance or further advance is made on or after the amendment date.

**Note—**

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

- (3) The amount of duty chargeable in respect of any such advance is to be determined as if references in that Chapter to duty, in relation to the mortgage or charge, include references to duty charged under the *Stamp Duties Act 1920*.
- (4) Nothing in this clause makes duty chargeable in respect of:
- (a) a mortgage referred to in section 225 (2) or 226 (2) (c), or
  - (b) an advance of a kind referred to in section 206 (b), that is secured by a mortgage or charge first executed before 23 November 1994, or
  - (c) a contingent liability of a kind referred to in section 215 secured by a mortgage or charge first executed before 1 January 1991.

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

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

## **Part 12 Provisions consequent on enactment of *State Revenue Legislation Amendment Act 2003***

### **33 Changes to section 226**

The imposition, payment and recovery of duty under this Act before the date of assent to the *State Revenue Legislation Amendment Act 2003* is taken to have been validly done to the extent that it would have been validly done had that Act been in force at the time that it was done.

## **Part 13 Provisions consequent on enactment of *Duties Amendment (Land Rich) Act 2003***

### **34 Meaning of “commencement date”**

In this Part, **commencement date** means the date on which Part 2 of Chapter 3, as substituted by the *Duties Amendment (Land Rich) Act 2003*, commenced.

### **35 Acquisition of interests in private unit trust schemes**

- (1) This clause applies only to landholders that are private unit trust schemes.

(2) Words and expressions used in this clause have the same meanings as in Part 2 of Chapter 3.

(3) If:

- (a) a person who made an acquisition in a landholder before the commencement date makes a relevant acquisition in the landholder after the commencement date, and
- (b) the aggregation of the relevant interests would entitle the person, in the event of the distribution of all the property of the landholder immediately after the later or latest acquisition was made, to 20% or more of the property distributed but less than 50% of that property,

duty is chargeable under section 118 only in respect of the relevant acquisition that occurred after the commencement date.

### **36 Exempt acquisitions**

An acquisition by a person before the commencement date of an interest in:

- (a) a private unit trust scheme, or
- (b) a wholesale unit trust scheme,

that was a public unit trust scheme immediately before the commencement date is an exempt acquisition.

## **Part 14 Provisions consequent on enactment of [State Revenue Legislation Further Amendment Act 2003](#)**

### **37 Collateral mortgages**

Section 218B, as amended by the [State Revenue Legislation Further Amendment Act 2003](#), extends to a mortgage on which minimum duty of \$10 was paid before the commencement of the amendments if an advance or a further advance is made after that commencement as referred to in section 218B (1A).

## **Part 15 [State Revenue Legislation Amendment Act 2004](#)—provisions consequent on changes to First Home Plus**

### **38 Application of changes to scheme**

- (1) Division 1 of Part 8 of Chapter 2, and section 221, as in force immediately before 4 April 2004, continue to apply in respect of the following transactions or instruments:
  - (a) agreements for sale or transfer entered into on or after 1 July 2000 but before 4 April 2004,
  - (b) transfers that occur on or after 1 July 2000 but before 4 April 2004,

- (c) transfers that occur on or after 4 April 2004 that are made in conformity with an agreement for sale or transfer referred to in paragraph (a),
  - (d) mortgages over land the subject of those agreements or transfers.
- (2) Sections 71, 73 and 76, as in force immediately before 4 April 2004, continue to apply in respect of the following transactions or instruments:
- (a) agreements for sale or transfer entered into on or after 4 April 2004 but before 1 July 2004,
  - (b) transfers that occur on or after 4 April 2004 but before 1 July 2004,
  - (c) transfers that occur on or after 4 April 2004 that are made in conformity with an agreement for sale or transfer referred to in paragraph (a),
  - (d) mortgages over land the subject of those agreements or transfers.
- (3) Section 76A, as inserted by the *State Revenue Legislation Amendment Act 2004*, does not apply in respect of a transaction or instrument referred to in subclause (2).

## **Part 16 State Revenue Legislation Amendment Act 2004—provisions consequent on amendments relating to premium property duty**

### **39 Application of amendments**

- (1) Sections 32A–32C, as inserted by the *State Revenue Legislation Amendment Act 2004*, apply in respect of any liability for duty charged by Chapter 2 that arises on or after the commencement of Schedule 3 to that Act.

**Note—**

See section 12. Liability for duty on a transfer of dutiable property effected by a written instrument arises when the instrument is first executed.

- (2) The amendments made to sections 96, 97 and 98 by Schedule 3 to the *State Revenue Legislation Amendment Act 2004* do not apply in respect of the year ending on 31 December 2004.
- (3) Sections 32A–32C do not apply in respect of a dutiable transaction that results from the exercise of an option for the sale or purchase of dutiable property, if the option was granted before 7 May 2004.
- (4) The imposition, payment and recovery of duty under this Act before the commencement of subclause (3) is taken to have been validly done to the extent that it would have been validly done had subclause (3) been in force at the time that it was done.

## **Part 17 State Revenue Legislation Amendment Act 2004—provisions**

## consequent on introduction of vendor duty

### 40 Application of vendor duty

- (1) The duty charged by Chapter 4, as inserted by the *State Revenue Legislation Amendment Act 2004*, is charged on vendor duty transactions that occur on or after the commencement of Schedule 4 to that Act, except as provided by this Part.
- (2) It does not matter that the vendor acquired an equitable or legal interest in the land-related property the subject of the vendor duty transaction before that commencement.
- (3) Vendor duty is not chargeable in respect of a transfer of land-related property made in conformity with an agreement for sale or transfer of the land-related property first executed before the commencement of Schedule 4 to the *State Revenue Legislation Amendment Act 2004*.
- (4) Vendor duty is not chargeable in respect of a vendor duty transaction that results from the exercise of an option for the sale or purchase of land-related property, if the option was granted before the date the Bill for the *State Revenue Legislation Amendment Act 2004* was introduced in the Legislative Assembly.
- (5) Section 25, insofar as it allows the aggregation of vendor duty transactions for the purpose of Chapter 4, does not apply to a vendor duty transaction that occurred before the commencement of Schedule 4 to the *State Revenue Legislation Amendment Act 2004*.

**Note—**

See Part 2 of Chapter 4, which allows vendor duty transactions to be aggregated under that Chapter in the same manner as they can be aggregated under Chapter 2.

### 41 Application of exemptions from vendor duty

- (1) A reference in Chapter 4 and Schedule 2 to the use or occupation of a building or land extends to any use or occupation occurring before the commencement of that Chapter (as inserted by the *State Revenue Legislation Amendment Act 2004*).
- (2) A reference in Chapter 4 to any works carried out by or on behalf of the vendor in respect of a vendor duty transaction extends to works carried out by or on behalf of the vendor before the commencement of that Chapter (as inserted by the *State Revenue Legislation Amendment Act 2004*).
- (3) A reference in Division 4 of Part 5 of Chapter 4 to the completion of construction of a new building or a substantially new building is, if construction was completed within 12 months before the commencement of Chapter 4, taken to be a reference to the date of commencement of Chapter 4 (as inserted by the *State Revenue Legislation Amendment Act 2004*).

- (4) A reference in clause 6 of Schedule 2, as inserted by the *State Revenue Legislation Amendment Act 2004*, to the date of the death of a deceased person is, if the person died before the commencement of that Schedule, taken to be a reference to the date of commencement of that Schedule.
- (5) The occupation by a vendor of land to which a vendor duty transaction applies as his or her principal place of residence that ceased not more than 6 months before 1 June 2004 is, for the purposes of the application of clause 4 of Schedule 2 in respect of the transaction, to be treated as having ceased immediately before 1 June 2004.
- (6) If the vendor in respect of a vendor duty transaction is the legal personal representative of a deceased person, or a beneficiary under a will of a deceased person or on the intestacy of a deceased person, and the grant of probate or letters of administration occurred before 1 June 2004, clause 6 of Schedule 2 applies in respect of the transaction as if the grant of probate or letters of administration had occurred on 1 June 2004.

## **Part 18 Provisions consequent on miscellaneous amendments made by *State Revenue Legislation Amendment Act 2004***

### **42 Exemption for lease instruments**

- (1) Section 179 (5), as inserted by the *State Revenue Legislation Amendment Act 2004*, is taken to have effect as if it had commenced on 1 January 2004.
- (2) A lease instrument first executed on or after 1 January 2004 and before the date of assent to the *State Revenue Legislation Amendment Act 2004* in respect of which duty is chargeable because of section 179 (5) is taken (if the duty has not already been paid) to become liable to such duty on the date of assent to that Act (despite section 169 (1)).
- (3) The imposition, payment and recovery of duty under this Act before the date of assent to the *State Revenue Legislation Amendment Act 2004* is taken to have been validly done to the extent that it would have been validly done had section 179 (5) been in force at the time that it was done.

## **Part 19 Provisions consequent on enactment of *State Revenue Legislation Further Amendment Act 2004***

### **43 Amendments operate from 1 June 2004**

- (1) An amendment to this Act made by the *State Revenue Legislation Further Amendment Act 2004*, except an amendment referred to in section 2 (2) of that Act, is taken to have effect as if it had commenced on 1 June 2004.
- (2) A vendor duty transaction that occurred on or after 1 June 2004 in respect of which



vendor duty is chargeable because of the amendments made to this Act by the *State Revenue Legislation Further Amendment Act 2004* is taken (if the vendor duty has not already been paid) to become chargeable with that duty on the date of assent to that Act.

- (3) The imposition, payment and recovery of duty under this Act before the date of assent to the *State Revenue Legislation Further Amendment Act 2004* is taken to have been validly done to the extent that it would have been validly done had the amendments made by that Act been in force at the time it was done.

## **Part 20 Provisions consequent on enactment of Duties Amendment (Land Rich) Act 2004**

### **44 Definition**

In this Part:

**amending Act** means the *Duties Amendment (Land Rich) Act 2004*.

### **45 Application of land rich acquisition and disposal provisions**

- (1) The duty charged by Chapter 4A, as inserted by the amending Act, is charged on an acquisition or disposal of an interest in a landholder (within the meaning of that Chapter) if the acquisition or disposal is made on or after the commencement of Schedule 1 to that Act, subject to this clause.
- (2) Duty under Part 3 of Chapter 4A is not chargeable on a disposal of an interest in a landholder if the disposal is made pursuant to an agreement entered into before 7 May 2004.
- (3) Despite Part 3 of Chapter 4A, a liability for duty in respect of a relevant disposal made on or after the commencement of Schedule 1 to the amending Act but before the date of assent to that Act arises on the date of assent to the amending Act. Accordingly, the 3-month period referred to in section 163Q starts on the date of assent to the amending Act.
- (4) The period of 3 years referred to in sections 163N (2) and 163P (2) (d) is taken to exclude any part of that period that occurred before the commencement of Schedule 1 to the amending Act.

### **46 Continuation of obligations under Part 2 of Chapter 3**

- (1) Part 2 of Chapter 3, as in force immediately before the commencement of Schedule 1 to the amending Act, continues to apply in respect of any acquisition of an interest in a landholder made before that commencement, as if the amending Act had not been enacted.
- (2) In relation to acquisitions made on or after the commencement of Schedule 1 to the

amending Act, clause 35 applies as if a reference to Part 2 of Chapter 3 or section 118 included a reference to Chapter 4A or section 163K respectively.

#### **47 Wholesale unit trust schemes**

- (1) A unit trust scheme that is a wholesale unit trust scheme, within the meaning of the former wholesale unit trust scheme definition, is taken to be wholesale unit trust scheme for the purposes of Chapter 4A.
- (2) Subclause (1) ceases to apply in respect of a unit trust scheme:
  - (a) at the end of the transitional period, or
  - (b) on the actual registration of the unit trust scheme as a wholesale unit trust scheme under Chapter 4A, or
  - (c) on the unit trust scheme becoming a listed trust or widely held trust,whichever happens first.
- (3) For the purposes of this clause, the **transitional period** means the period commencing on the commencement of Schedule 1 to the amending Act and ending at the end of:
  - (a) 30 June 2005, or
  - (b) such later date as may be fixed by the Chief Commissioner, by order published in the Gazette.
- (4) In this clause:

**former wholesale unit trust scheme definition** means paragraph (a) of the definition of **wholesale unit trust scheme** as in force under this Act immediately before the commencement of Schedule 1 to the amending Act.

#### **48 Imminent public unit trust schemes and imminent wholesale unit trust schemes**

- (1) A unit trust scheme that, immediately before the commencement of Schedule 1 to the amending Act, was a public unit trust scheme or a wholesale unit trust scheme as a consequence of the Chief Commissioner giving notice under the former concessionary provisions, is taken to be registered as an imminent public unit trust scheme, or an imminent wholesale unit trust scheme, respectively, under Chapter 4A.
- (2) Subclause (1) ceases to apply in respect of a unit trust scheme:
  - (a) at the end of the period of 12 months after the commencement of this clause, or
  - (b) on the occurrence of a disqualifying circumstance (within the meaning of section 124, as in force before the commencement of Schedule 1 to the amending Act) in respect of the unit trust scheme, or

(c) on the actual registration of the unit trust scheme as an imminent public unit trust scheme, wholesale unit trust scheme or an imminent wholesale unit trust scheme under Chapter 4A, or

(d) on the unit trust scheme becoming a listed trust or widely held trust,

whichever happens first.

(3) Section 124, as in force before the commencement of Schedule 1 to the amending Act, continues to apply in respect of a unit trust scheme that, immediately before the commencement of Schedule 1 to the amending Act, was a public unit trust scheme or a wholesale unit trust scheme as a consequence of the Chief Commissioner giving notice under the former concessionary provisions.

(4) In this clause:

**former concessionary provisions** means the provisions of paragraph (c) of the definition of **public unit trust scheme**, and paragraph (b) of the definition of **wholesale unit trust scheme**, as in force immediately before the commencement of Schedule 1 to the amending Act.

## Part 21 Provisions consequent on enactment of **State Revenue Legislation Amendment (Budget Measures) Act 2005**

### 49 Changes to vendor duty and land rich disposal concessions

- (1) The amendments made by the *State Revenue Legislation Amendment (Budget Measures) Act 2005* to sections 162M and 163ZL are taken to have effect as if they had commenced on the date on which the Bill for the *State Revenue Legislation Amendment (Budget Measures) Act 2005* was introduced in the Legislative Assembly (the **effective date**).
- (2) Accordingly, section 162M (6) applies in respect of any vendor duty transaction that occurs on or after the effective date and section 163ZL (3) and (4) apply in respect of any relevant disposal that is made on or after the effective date.
- (3) If a vendor duty transaction or relevant disposal that occurred or was made before the date of assent to the *State Revenue Legislation Amendment (Budget Measures) Act 2005* becomes chargeable with duty or additional duty as a result of the amendments made by that Act to sections 162M and 163ZL, the vendor duty transaction or relevant disposal is taken (if the duty or additional duty has not already been paid) to become chargeable with that duty or additional duty on the date of assent to that Act.
- (4) In section 162M, as amended by the *State Revenue Legislation Amendment (Budget Measures) Act 2005*:
  - (a) a reference to an ad valorem duty transaction includes an ad valorem duty

transaction that occurred before the effective date, and

- (b) a reference to Chapter 2 of this Act includes a reference to any corresponding provisions of the *Stamp Duties Act 1920* that have been repealed.

#### **50 Mortgage duty—refinancing**

- (1) The amendments made to section 220 by the *State Revenue Legislation Amendment (Budget Measures) Act 2005* apply to any refinancing mortgage (within the meaning of section 220) that is first executed on or after 1 August 2005, regardless of when the earlier mortgage that is discharged or to be discharged as part of the arrangements relating to the refinancing mortgage was first executed.
- (2) Section 227A, as inserted by the *State Revenue Legislation Amendment (Budget Measures) Act 2005*, applies to any mortgage transferred on or after 1 August 2005, regardless of when it was first executed.

#### **51 Insurance duty**

- (1) The amendments made to Chapter 8 by the *State Revenue Legislation Amendment (Budget Measures) Act 2005* have effect only in relation to premiums paid on or after the date of assent to that Act for contracts of insurance and renewals of contracts of insurance that take effect on or after 1 September 2005.
- (2) Despite section 253, the Chief Commissioner may, having regard to the amendments made to Chapter 8 by the *State Revenue Legislation Amendment (Budget Measures) Act 2005*, determine the categories of premiums to be shown in a form of a return required to be lodged under that section on or before 21 August 2005 or a subsequent month.

### **Part 22 Provisions consequent on enactment of *State Revenue Legislation Amendment Act 2005***

#### **52 Amendment to section 100 to have effect from 31 December 2004**

- (1) The amendment made to section 100 of this Act by the *State Revenue Legislation Amendment Act 2005* has effect as if it had commenced on 31 December 2004.
- (2) Anything done or omitted to be done on or after 31 December 2004 and before the date of assent to the *State Revenue Legislation Amendment Act 2005*, that would have been validly done or omitted if that amendment had been in force at the time that it was done or omitted, is taken to have been validly done or omitted.

#### **53 Changes to vendor duty concession**

- (1) The amendments made by the *State Revenue Legislation Amendment Act 2005* to section 162M are taken to have effect as if they had commenced on the date on which the Bill for the *State Revenue Legislation Amendment Act 2005* was introduced in the

Legislative Assembly (the **effective date**).

- (2) Accordingly, section 162M (6A) applies in respect of any vendor duty transaction that occurs on or after the effective date.
- (3) If a vendor duty transaction that occurred before the relevant date of assent becomes chargeable with duty or additional duty as a result of the amendments made by that Act to section 162M, the vendor duty transaction is taken (if the duty or additional duty has not already been paid) to become chargeable with that duty or additional duty on the relevant date of assent.
- (4) For the purposes of this clause, the **relevant date of assent** is the following:
  - (a) the date of assent to the [State Revenue Legislation Amendment Act 2005](#), unless paragraph (b) applies,
  - (b) if the [State Revenue Legislation Amendment \(Budget Measures\) Act 2005](#) is assented to after the date of assent to the [State Revenue Legislation Amendment Act 2005](#), the date of assent to the [State Revenue Legislation Amendment \(Budget Measures\) Act 2005](#).
- (5) In section 162M, as amended by the [State Revenue Legislation Amendment Act 2005](#):
  - (a) a reference to an ad valorem duty transaction includes an ad valorem duty transaction that occurred before the effective date, and
  - (b) a reference to Chapter 2 of this Act includes a reference to any corresponding provisions of the [Stamp Duties Act 1920](#) that have been repealed.

## **Part 23 Provisions consequent on enactment of [State Revenue Legislation Further Amendment Act 2005](#)**

### **54 Definition**

In this Part:

**amending Act** means the [State Revenue Legislation Further Amendment Act 2005](#).

### **55 Changes to eligibility for First Home Plus**

The amendment to section 73 made by the amending Act applies to applications under the First Home Plus scheme that are made on or after the commencement of the amendment.

### **56 Stamping before advance: section 218**

- (1) The amendment to section 218 made by the amending Act applies to any mortgage stamped on or after the introduction date, regardless of when the mortgage was first executed.

- (2) If a mortgage is stamped on or after the introduction date, and before the date of assent to the amending Act, for an amount exceeding the amount for which it may be stamped under section 218, as amended by the amending Act, it is taken to be duly stamped, but only for an amount of an advance secured by the mortgage that does not exceed the value of the property affected by the mortgage at the date of the referable point.
- (3) If a mortgage stamped before the date of assent to the amending Act becomes chargeable with duty, or additional duty, under Chapter 7 as a consequence of the amendment made to section 218 by the amending Act or this clause, the liability to pay the duty is taken, for the purposes of section 209, to arise on the date of assent to that Act.

- (4) In this clause:

**introduction date** means the date the Bill for the amending Act was introduced into the Legislative Assembly.

#### **57 Closure of debenture concession**

- (1) Section 226 (3B), as in force immediately before its substitution by the amending Act, continues to apply in respect of an advance or further advance referred to in that subsection that was made before the debenture concession closure date. Accordingly, section 226, as in force immediately before the debenture concession closure date, continues to have effect in relation to those advances or further advances.
- (2) Any liability to pay duty, or additional duty, under Chapter 7 that arises under section 226 (as amended by the amending Act) because of the making of an advance or further advance on or after the debenture concession closure date but before the date of assent to the amending Act, being a liability that would not arise but for the amendments made to that section by that Act, is taken, for the purposes of section 209, to arise on the date of assent to that Act.

- (3) In this clause:

**debenture concession closure date** means the date the Bill for the amending Act was introduced into the Legislative Assembly.

### **Part 24 Provisions consequent on the enactment of the [Duties Amendment \(Abolition of State Taxes\) Act 2006](#)**

#### **58 Abolition of duty on leases**

- (1) The abolition of duty on lease instruments (effective 1 January 2008) does not affect any obligation to pay duty under Chapter 5 in respect of a lease instrument executed before 1 January 2008 and that Chapter continues to apply in respect of such an instrument.

- (2) Sections 169 (2) and 178 do not apply to or in respect of a variation of a lease instrument referred to in subclause (1) if the variation is made on or after 1 January 2008.
- (3) If any lease executed before 1 January 2008 has any unascertainable cost components for which there is an estimate date on or after 1 January 2008:
  - (a) the Chief Commissioner must, on the first of those estimate dates to occur on or after 1 January 2008 (the **final estimate date**), make a final estimate of the cost of the lease, and
  - (b) the lease instrument is chargeable with duty under this Act as if that final estimate were the full cost of the lease, and
  - (c) no further estimates of the cost of the lease are to be made (despite section 173 (5)).
- (4) Section 173 (6) applies only to the final estimate date or an estimate date that occurs before the final estimate date.
- (5) Section 173 (7) and (8) do not apply in respect of any period after the final estimate date.
- (6) For the purposes of this clause, **estimate date** means any of the estimate dates for a lease determined under section 173 (5).

## 59 Duty on lease premiums

- (1) The amendments to sections 8 and 9 made by the [Duties Amendment \(Abolition of State Taxes\) Act 2006](#) (relating to leases) apply only in respect of leases that are first executed on or after 1 July 2006.
- (2) Sections 170 (2) and 179 (5), as in force immediately before their repeal by the [Duties Amendment \(Abolition of State Taxes\) Act 2006](#), continue to apply in respect of lease instruments executed before the repeal of those provisions.

## 60 Changes to mortgage duty provisions

- (1) The mortgage duty amendments do not apply to a mortgage or instrument of security first executed before 1 July 2006 unless an advance or further advance is made in respect of the mortgage or instrument on or after that date (and in such a case apply in respect of the advance or further advance).
- (2) If the amount secured by a mortgage executed before 1 July 2006 is a definite and limited sum, but the amount of advances actually secured by the mortgage immediately before 1 July 2006 was less than the definite and limited sum, section 214, as inserted by the mortgage duty amendments, and not section 213, applies in respect of any advance or further advance made after 1 July 2006 which does not

result in the total amount of advances actually secured by the mortgage exceeding that definite and limited sum. This subclause extends to a mortgage to which section 226 applies.

- (3) A reference in section 213 or 214, as inserted by the mortgage duty amendments, to an amount on which duty has been paid under section 213 or 214 extends to an amount on which duty has been paid under Chapter 7 as in force immediately before 1 July 2006.
- (4) Section 213 (3), as inserted by the mortgage duty amendments, extends to a variation to a mortgage made on or after 1 July 2006 in respect of a mortgage first executed before that date.
- (5) For the purposes of this clause, **the mortgage duty amendments** means Schedule 1 [26], [27] and [31]-[41] to the *Duties Amendment (Abolition of State Taxes) Act 2006*.

#### **61 Abolition of duty on hire of goods—commercial hire businesses**

- (1) The repeal of Chapter 6 (effective 1 July 2007) by the *Duties Amendment (Abolition of State Taxes) Act 2006* does not affect any obligation to pay duty under Part 2 of that Chapter in respect of hiring charges received in any month before July 2007 and, for that purpose, that Part is taken to continue to apply in respect of such hiring charges.
- (2) In particular, section 199, as in force immediately before its repeal by the *Duties Amendment (Abolition of State Taxes) Act 2006*, is taken to continue to apply to a commercial hire business, so that, after the repeal of that section:
  - (a) a commercial hire business continues to be required to lodge a return in accordance with that section (but only in respect of the months before July 2007), and
  - (b) a commercial hire business may request a reassessment of duty under section 199 (6).

#### **62 Abolition of duty on hire of goods—other persons**

- (1) The repeal of Chapter 6 (effective 1 July 2007) by the *Duties Amendment (Abolition of State Taxes) Act 2006* does not affect any obligation to pay duty under Part 3 of that Chapter in respect of a hire of goods entered into before 1 July 2007.
- (2) For that purpose, Part 3 of that Chapter is taken to continue to apply to a hire of goods entered into before 1 July 2007, but only if the first, or only, payment of hiring charges is paid, or becomes payable, before that date. Accordingly, if the first payment of hiring charges is paid, or become payable, before 1 July 2007, no refund of duty is payable in respect of any part of the hiring charges that is paid or becomes payable on or after 1 July 2007.



- (3) Subclause (2) does not prevent a reassessment of duty being made under section 199 (6) (as in force immediately before its repeal).

## **Part 25 Provisions consequent on enactment of [State Revenue Legislation Amendment \(Tax Concessions\) Act 2006](#)**

### **63 Transactions involving put and call options**

The amendments made to Part 2 of Chapter 3 by the [State Revenue Legislation Amendment \(Tax Concessions\) Act 2006](#) do not operate to impose duty on a call option assignment (within the meaning of that Part) that would not, immediately before the commencement of those amendments, have been chargeable with duty if the call option or put option to which the assignment relates was granted before the commencement of those amendments.

## **Part 26 Provisions consequent on enactment of [Duties Amendment \(First Home Plus One\) Act 2007](#)**

### **64 Application of shared equity concession**

- (1) The First Home Plus amendments apply in respect of the following:
- (a) agreements for sale or transfer entered into on or after 1 May 2007,
  - (b) transfers that occur on or after 1 May 2007 (except where made in conformity with an agreement for sale or transfer entered into before 1 May 2007),
  - (c) mortgages over land the subject of those agreements or transfers.
- (2) Accordingly, a shared equity concession under Subdivision 1 of Division 1 of Part 8 of Chapter 2 applies only in respect of the agreements, transfers and mortgages referred to in subclause (1), despite section 70.
- (3) Anything done or omitted to be done on or after 1 May 2007 and before the date of assent to the [Duties Amendment \(First Home Plus One\) Act 2007](#) that would have been validly done or omitted if the First Home Plus amendments had been in force at the time that it was done or omitted is taken to have been validly done or omitted.
- (4) For the purposes of this clause, the **First Home Plus amendments** means the amendments made to Subdivision 1 of Division 1 of Part 8 of Chapter 2 by the [Duties Amendment \(First Home Plus One\) Act 2007](#).

## **Part 27 Provisions consequent on enactment of [State Revenue and Other Legislation Amendment \(Budget\) Act 2007](#)**

### **65 Changes to mortgage duty provisions**

- (1) An exemption provision does not apply to a mortgage or instrument of security first

executed before the effective date of the exemption provision unless an advance or further advance is made in respect of the mortgage or instrument on or after that effective date (and in such a case the exemption provision applies only in respect of the advance or further advance).

(2) For the purposes of this clause:

**effective date** of an exemption provision means the date on and from which the exemption provided for by the exemption provision takes effect, as set out in the exemption provision.

**exemption provision** means section 221B or 221C, as inserted by the *State Revenue and Other Legislation Amendment (Budget) Act 2007*.

## Part 28 Provisions consequent on enactment of *State Revenue Legislation Amendment Act 2008*

### 66 Repeal of vendor duty and other obsolete provisions

An amendment made to this Act by the *State Revenue Legislation Amendment Act 2008* does not affect any liability for duty under this Act that arose before the commencement of that amendment, and this Act, as in force before that amendment, continues to have effect in respect of any such liability.

### 67 Repeal of *Stamp Duties Act 1920*

- (1) The repeal of the *Stamp Duties Act 1920* by the *State Revenue Legislation Amendment Act 2008* does not affect any liability for duty that arose before that repeal, and that Act, as in force immediately before that repeal, continues to have effect in respect of any such liability, subject to this clause.
- (2) If, immediately before the repeal of the *Stamp Duties Act 1920*, a lease to which section 78D of that Act applies has one or more redetermination dates that have not yet occurred:
  - (a) the Chief Commissioner must, on the first redetermination date to occur on or after the repeal of the *Stamp Duties Act 1920* (the **final redetermination date**), make a final estimate of the total rent payable for the term of the lease, and
  - (b) the lease is chargeable with duty under that Act as if that final estimate were the total rent payable for the term of the lease, and
  - (c) section 78D (2) (e) of the *Stamp Duties Act 1920* applies in respect of that redetermination, and
  - (d) no further redetermination of the duty payable in respect of the lease is to be made.

- (3) For the purposes of this clause, a **redetermination date** means a date on which the Chief Commissioner is required under section 78D of the *Stamp Duties Act 1920*, as in force immediately before its repeal, to make a redetermination of the duty payable in respect of a lease (or would have been required to do so if that Act had not been repealed).
- (4) Section 78D (2) (c) of the *Stamp Duties Act 1920*, as in force immediately before its repeal, continues to apply only to the final redetermination date and to any redetermination date that occurred before the final redetermination date.
- (5) A reference in any Act or in any instrument made under any Act to the *Stamp Duties Act 1920* is to be read as including a reference to the *Duties Act 1997*.
- (6) A reference in any other instrument to the *Stamp Duties Act 1920* is to be read as including a reference to the *Duties Act 1997* unless a contrary intention appears.

#### **68 Changes to concessions**

- (1) The amendment to section 30 made by the *State Revenue Legislation Amendment Act 2008* does not apply in respect of a transfer or agreement to transfer dutiable property first executed before the commencement of the amendment.
- (2) The amendments to section 63 made by the *State Revenue Legislation Amendment Act 2008* do not apply in respect of a transfer of dutiable property made before the commencement of those amendments.

### **Part 29 Provisions consequent on enactment of State Revenue and Other Legislation Amendment (Budget) Act 2008**

#### **69 Application of “top hatting” exemptions**

- (1) The amendment made to section 66 by the *State Revenue and Other Legislation Amendment (Budget) Act 2008* applies in respect of the following:
  - (a) an agreement for the sale or transfer of marketable securities first executed on or after 1 July 2008,
  - (b) a transfer of marketable securities that occurs on or after 1 July 2008 (except where made in conformity with an agreement for sale or transfer entered into before 1 July 2008),
  - (c) the vesting of marketable securities by or as a consequence of an order of a court, if the order is made on or after 1 July 2008.
- (2) Section 163ZEA, as inserted by the *State Revenue and Other Legislation Amendment (Budget) Act 2008*, applies in respect of an acquisition made on or after 1 July 2008.

### **Part 30 Provisions consequent on enactment of State Revenue and**

## Other Legislation Amendment (Budget Measures) Act 2008

### 70 Changes to nominal duties

An amendment made to this Act by Schedule 1.2 to the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2008* applies in respect of any liability for duty that arises on or after 1 January 2009.

### 71 Exemption for termination of strata and similar schemes

The amendments made to section 65 by the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2008* extend to a vesting of an estate or interest in land as referred to in those amendments that occurred before the date of assent to that Act if the vesting occurred on or after the day the Bill for the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2008* was introduced into the Legislative Assembly.

## Part 31 Provisions consequent on enactment of State Revenue Legislation Further Amendment Act 2009

### 72 Changes to assessment of transfers of business assets

The amendments to sections 11 and 28 made by the *State Revenue Legislation Further Amendment Act 2009* do not apply in respect of a dutiable transaction that occurred before 1 July 2009.

### 73 Changes to amount of duty chargeable

The amendments to sections 33, 54A and 63 made by the *State Revenue Legislation Further Amendment Act 2009* apply in respect of any liability for duty that arises on or after 1 July 2009.

### 74 Amendments relating to de facto relationships

The amendments to sections 68 and 267 made by the *State Revenue Legislation Further Amendment Act 2009*, and the new definition of **de facto relationship** inserted in the Dictionary by that Act, are taken to have effect on and from 1 March 2009.

### 75 Changes to duty on acquisitions in landholders

- (1) The duty chargeable under new Chapter 4 is chargeable on any relevant acquisition in a private landholder made as a consequence of a person acquiring an interest in a private landholder on or after 1 July 2009.
- (2) If a person acquires an interest in a private landholder on or after 1 July 2009, acquisitions made before 1 July 2009 are to be counted for the purpose of determining whether the person has made a relevant acquisition in the private landholder under new Chapter 4.

- (2A) However, in calculating the duty payable in respect of any acquisition made before 1 July 2009, the unencumbered value of the goods of the landholder in New South Wales is to be disregarded.
- (2B) Similarly, in applying section 155 (5) to an acquisition made before 1 July 2009, the value of "A" is to be determined disregarding the unencumbered value of the goods in New South Wales of the landholder.
- (3) Former Chapter 4A continues to apply in respect of any relevant acquisition in a land rich landholder (within the meaning of that Chapter) made as a consequence of a person acquiring an interest in the land rich landholder before 1 July 2009.
- (4) An interest that is acquired in a private company or private unit trust scheme on or after 1 July 2009 as a result of an agreement entered into, or option executed, before 11 November 2008 is to be treated, for the purposes of this clause, as if it were acquired before 1 July 2009. Accordingly, former Chapter 4A applies to a relevant acquisition made as a result of such an acquisition, but the acquisition may still be counted for the purposes of determining whether a relevant acquisition is made under new Chapter 4.
- (5) The duty chargeable under new Chapter 4 is chargeable on any relevant acquisition in a public landholder made as a consequence of a person acquiring an interest in the public landholder on or after 1 October 2009.
- (6) If a person acquires an interest in a public landholder on or after 1 October 2009, acquisitions made before 1 October 2009 (including any made before 1 July 2009) are to be counted for the purpose of determining whether the person has made a relevant acquisition in the public landholder under new Chapter 4.

**Note—**

However, acquisitions made in public landholders before 1 July 2009 are exempt acquisitions for duty purposes.

- (7) Duty is not chargeable under new Chapter 4 on a relevant acquisition made by a person in a public landholder if the person's intention to make the acquisition was announced to the market before the date on which the Bill for the [State Revenue Legislation Further Amendment Act 2009](#) was introduced into the Legislative Assembly.

- (8) In this clause:

**former Chapter 4A** means Chapter 4A, as in force immediately before its repeal by the [State Revenue Legislation Further Amendment Act 2009](#).

**new Chapter 4** means Chapter 4, as inserted by the [State Revenue Legislation Further Amendment Act 2009](#).

## 76 Application of changes to mortgage duty provisions

- (1) The amendments made to Chapter 7 by the *State Revenue Legislation Further Amendment Act 2009* apply to the assessment of duty in respect of the following:
  - (a) a mortgage first executed on or after 1 July 2009 or that first becomes liable to duty as a mortgage on or after 1 July 2009,
  - (b) an instrument of security that first affects property in New South Wales on or after 1 July 2009 (whether or not the instrument of security was first executed before that date).
- (2) The amendments made to Chapter 7 by the *State Revenue Legislation Further Amendment Act 2009* extend to the assessment of duty in respect of a mortgage first executed before 1 July 2009 or that first became liable to duty as a mortgage before 1 July 2009 if an advance or further advance is made on or after 1 July 2009 that is secured by the mortgage.
- (3) Any increase in the amount of advances recoverable under a mortgage first executed before 1 July 2009 is taken to be a further advance for the amount of the increase.
- (4) A mortgage with a liability date occurring on or after 1 July 2009 may be assessed as part of the same mortgage package as other mortgages or instruments of security, in accordance with the amendments to Chapter 7, even if one or more of the other mortgages or instruments of security were first executed before 1 July 2009.
- (5) The amendments do not affect the assessment of duty in respect of a liability date occurring before 1 July 2009.

## 77 Mortgages for definite and limited sum first executed before 1 July 2009

- (1) If the amount of advances recoverable under a mortgage first executed before 1 July 2009 is a definite and limited sum, the **amount secured by the mortgage** is taken, for the purpose of determining whether the mortgage becomes liable to additional duty on the making of an advance or further advance on or after 1 July 2009, and determining the amount of duty chargeable, to be the total of the following:
  - (a) the definite and limited sum,
  - (b) the amount of any advance or further advance made on or after 1 July 2009 in excess of that definite and limited sum.
- (2) The amount secured by any such mortgage **at the time a liability to duty last arose under this Act** is taken to be the total of the following:
  - (a) the definite and limited sum,
  - (b) the amount of any advance or further advance in excess of that definite and

limited sum in respect of which duty has already been paid under this Act.

### **78 Tax avoidance schemes**

- (1) Chapter 11A applies in respect of a scheme if the scheme, or any part of the scheme:
  - (a) is entered into or made on or after 1 July 2009, or
  - (b) is carried out on or after 1 July 2009 (regardless of when it was first entered into or made).
- (2) However, Chapter 11A does not apply to any amount of duty avoided by a person as a result of a tax avoidance scheme if, apart from the scheme, liability for the duty concerned would have arisen before 1 July 2009.

### **79 Application of Act to Crown bodies**

Any order made under section 308 (3), as in force before its substitution by the *State Revenue Legislation Further Amendment Act 2009*, is, on that substitution, repealed.

## **Part 32 Provisions consequent on enactment of *State Revenue Legislation Further Amendment Act (No 2) 2009***

### **80 Application of landholder duty amendments**

- (1) The amendments made to Chapter 4 by the *State Revenue Legislation Further Amendment Act (No 2) 2009* apply in respect of an interest in a landholder that is acquired on or after the commencement of Schedule 1 to that Act.
- (2) However, section 163A, as in force immediately before its amendment by the *State Revenue Legislation Further Amendment Act (No 2) 2009*, continues to apply in respect of an interest acquired by a person in a landholder if the person's intention to make the acquisition was announced to the market before the date on which the Bill for the *State Revenue Legislation Further Amendment Act (No 2) 2009* was introduced into the Legislative Assembly.
- (3) The amendments to section 161 made by the *State Revenue Legislation Further Amendment Act (No 2) 2009* apply to agreements first executed on or after the commencement of Schedule 1 to that Act.

### **81 Liability of beneficial owners for landholder duty**

- (1) The landholder liability amendments apply to an interest in a landholder that is acquired on or after the commencement of the amendments.
- (2) If the ultimate beneficial owner of an interest in a landholder acquires an interest in a landholder on or after the commencement of the amendments, an acquisition of an interest in a landholder made before that commencement (a **pre-commencement**



**acquisition**) that would have been treated as an acquisition made by the ultimate beneficial owner of the interest or an associated person if the landholder liability amendments had been in force at the time that the acquisition was made is to be counted for the purpose of determining whether a relevant acquisition has been made.

- (3) For that purpose, such a pre-commencement acquisition is treated as an acquisition made by the ultimate beneficial owner of the interest or an associated person (as the case requires) and must be disclosed in an acquisition statement by the ultimate beneficial owner of the interest.
- (4) However, a pre-commencement acquisition disclosed in an acquisition statement by the ultimate beneficial owner of an interest in a landholder is an exempt acquisition if, but for subclause (3), the acquisition would not have to be disclosed in that statement.
- (5) Expressions used in this clause have the same meanings as they have in the landholder liability amendments.
- (6) In this clause, the **landholder liability amendments** means the provisions of Part 2A of Chapter 4, as inserted by the *State Revenue Legislation Further Amendment Act (No 2) 2009*.

## **82 Meaning of “interest in land”**

Clause 4 of the Dictionary, as inserted by the *State Revenue Legislation Further Amendment Act (No 2) 2009*, applies in respect of:

- (a) a transfer of dutiable property that occurs on or after the commencement of Schedule 1 to that Act (except where made in conformity with an agreement for sale or transfer entered into before that commencement), and
- (b) an acquisition of an interest in a landholder under Chapter 4 that is made on or after the commencement of Schedule 1 to that Act.

## **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.

### **Part 34 Provisions consequent on enactment of [State Revenue Legislation Further Amendment Act 2010](#)**

#### **88 Application of amendments**

An amendment made to this Act by the [State Revenue Legislation Further Amendment Act 2010](#) does not apply in respect of a dutiable transaction for which liability for duty arose before the commencement of the amendment.

#### **89 Changes to landholder duty provisions**

The amendments made to section 150 of this Act by the [State Revenue Legislation Further Amendment Act 2010](#) have effect as if they had been made by Schedule 1 to the [State Revenue Legislation Further Amendment Act \(No 2\) 2009](#) and had commenced on the date of commencement of that Schedule.

**Note—**

See clause 80. Schedule 1 to the [State Revenue Legislation Further Amendment Act \(No 2\) 2009](#) commenced on

1 December 2009.

## **Part 36 Provisions consequent on enactment of [State Revenue Legislation Amendment Act 2011](#)**

### **92 Amendment relating to transfers in connection with persons changing superannuation funds**

The amendment made to section 61 by the [State Revenue Legislation Amendment Act 2011](#) is taken to apply in respect of dutiable transactions occurring on or after 1 July 2010.

### **93 Amendment relating to acquisitions in connection with persons changing superannuation funds**

The amendment made to Chapter 4 by the [State Revenue Legislation Amendment Act 2011](#) applies only in respect of a relevant acquisition made on or after the commencement of that Act.

### **94 Amendment relating to special disability trusts**

The amendment made to the Dictionary by the [State Revenue Legislation Amendment Act 2011](#) applies only in respect of dutiable transactions occurring on or after the commencement of that Act.

## **Schedule 2 Crown bodies that are subject to this Act**

(Section 308)

Forests NSW

State Transit Authority of New South Wales

Sydney Harbour Foreshore Authority

## **Dictionary**

### **1 Definitions**

In this Act:

***Act imposing duty*** means:

- (a) a corresponding Act, or
- (b) an Act to which the [Taxation Administration Act 1996](#) applies.

***ADR*** means a negotiable certificated receipt issued by a depositary resident outside Australia acknowledging the interest of the registered holder of the receipt in shares in a NSW company held by the depositary, or deposited with a depositary to hold, as trustee for the holder.

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

**application to register a motor vehicle** means:

- (a) an application under the [Road Transport \(Vehicle Registration\) Act 1997](#) to register a motor vehicle, and
- (b) an application under the [Road Transport \(Vehicle Registration\) Act 1997](#) to transfer the registration of a motor vehicle.

**approved form** means a form approved under section 34 of the [Taxation Administration Act 1996](#).

**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.

**associated person**—see clause 2.

**Australian citizen** has the same meaning as it has in the [Australian Citizenship Act 2007](#) of the Commonwealth.

**Australian register** has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

**Australian Stock Exchange** means the Australian Stock Exchange Limited.

**bank** means a bank within the meaning of the Commonwealth [Banking Act 1959](#).

**bankrupt** includes applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounding with creditors or making an assignment of remuneration

for their benefit.

**business asset** has the meaning given by section 11 (g).

**charge** includes impose.

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

**company title dwelling** means a separate dwelling in a building containing more than one separate dwelling situated on land in New South Wales owned or leased by a company in which shares issued by the company are owned by persons who, by virtue of the ownership of their shares, have an exclusive right to occupy a part of the building.

**complying approved deposit fund** means an entity that is a complying approved deposit fund in accordance with section 43 of the Commonwealth [Superannuation Industry \(Supervision\) Act 1993](#).

**complying superannuation fund** means an entity that is a complying superannuation fund in accordance with section 42 or section 42A of the Commonwealth [Superannuation Industry \(Supervision\) Act 1993](#) and an exempt public sector superannuation scheme.

**corporation** means a body corporate, whether incorporated in this jurisdiction or elsewhere.

**corresponding Act** means an Act of another Australian jurisdiction that corresponds to this Act.

**de facto partner** means a person who has been a party to a de facto relationship for a period of not less than 2 years, and includes a person who was for such a period a party to such a relationship that has ceased, whether the cessation took place in Australia or elsewhere.

**de facto relationship** has the same meaning as in the [Family Law Act 1975](#) of the Commonwealth.

**disabled person** means a person who is 16 years of age or older and who is:

- (a) permanently blind, or
- (b) permanently incapacitated for work.

**discretionary trust** means a trust under which the vesting of the whole or any part of the capital of the trust estate, or the whole or any part of the income from that capital, or both:

- (a) is required to be determined by a person either in respect of the identity of the beneficiaries, or the quantum of interest to be taken, or both, or

- (b) will occur if a discretion conferred under the trust is not exercised, or
- (c) has occurred but under which the whole or any part of that capital or the whole or any part of that income, or both, will be divested from the person or persons in whom it is vested if a discretion conferred under the trust is exercised.

**domestic relationship** has the same meaning as in the [Property \(Relationships\) Act 1984](#).

**dutiable property** has the meaning given by section 11.

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

**dutiable transaction** has the meaning given by section 8 (2).

**dutiable value** of a motor vehicle has the meaning given by section 266.

**dutiable value** of dutiable property has the meaning given by section 21.

**eligible rollover fund** means an entity that is an eligible rollover fund in accordance with section 242 of the Commonwealth [Superannuation Industry \(Supervision\) Act 1993](#) and includes an entity the trustee of which is satisfied will be an eligible rollover fund within 12 months after the date on which a liability to duty arises (or would otherwise arise).

**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.

**foreign resident** means a person who at the relevant time:

- (a) in the case of a person, other than a person referred to in paragraph (b) or (c), is not resident or domiciled in Australia, or

- (b) in the case of a body corporate, is not incorporated under a law of an Australian jurisdiction and:
  - (i) does not have its central management and control in Australia, and
  - (ii) does not have its voting power controlled by shareholders who are residents of Australia, or
- (c) in the case of a partnership or other unincorporated association or body of persons, does not have a member who is resident in Australia, or
- (d) in the case of a trust estate:
  - (i) does not have a trustee who is resident in Australia, and
  - (ii) does not have its central management and control in Australia.

**general insurance** has the meaning given by section 230.

**government body** means:

- (a) the Commonwealth, or
- (b) the Government or Administration of a State or Territory of the Commonwealth, or
- (c) a council, county council, other local governing body or public authority constituted by or under a law of the Commonwealth or a State or Territory of the Commonwealth, or
- (d) a corporation the principal business of which is the supply and distribution by a system of reticulation, in this jurisdiction or in any other Australian jurisdiction, of water, gas or electricity.

**GST** has the same meaning as in the [A New Tax System \(Goods and Services Tax\) Act 1999](#) of the Commonwealth except that it includes notional GST of the kind for which payments may be made under section 5 of the [Intergovernmental Agreement Implementation \(GST\) Act 2000](#) by a person who is a State entity within the meaning of that Act.

**home** means a private dwelling and includes a private dwelling which is a company title dwelling and a farming property on which a private dwelling is erected.

**instrument** includes a written document and a written statement.

**insurance** includes assurance.

**insurance intermediary** means:

- (a) a person who arranges contracts of insurance in New South Wales:
  - (i) for reward, or

- (ii) as an agent for a person carrying on a business of insurance, or
- (b) a financial services licensee (as defined in section 761A of the [Corporations Act 2001](#) of the Commonwealth) whose licence covers arranging contracts of insurance as an agent for a person carrying on a business of insurance, or
- (c) a regulated principal (as defined in section 1430 of the [Corporations Act 2001](#) of the Commonwealth) when carrying on business as an insurance broker as authorised by Subdivision D of Division 1 of Part 10.2 of that Act.

**insurer** has the meaning given by section 247.

**intellectual property** means:

- (a) a business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
- (b) a right, whether or not under a franchise arrangement, to use or exploit:
  - (i) a business name, trading name, domain name, trade mark or industrial design, or
  - (ii) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process).

**interest** includes an estate or proprietary right.

**land** includes a stratum.

**land use entitlement** means an entitlement to occupy land within New South Wales conferred through an ownership of shares in a company or an ownership of units in a unit trust scheme, or a combination of a shareholding or ownership of units together with a lease or licence.

**land used for primary production** means land that is exempt from land tax under section 10AA (Exemption for land used for primary production) of the [Land Tax Management Act 1956](#).

**lease of a moveable dwelling site** means an agreement under which a person has the right to occupy for a term (or a term together with any option period) not exceeding 5 years:

- (a) any land used, or intended to be used, as the site of a moveable dwelling within the meaning of the [Local Government Act 1993](#), or
- (b) any such moveable dwelling on that site, or
- (c) both the land and any such moveable dwelling.

**liability date**, in relation to a mortgage, means the date the mortgage becomes liable for

mortgage duty under section 208.

**life company** has the same meaning as in the *Life Insurance Act 1995* of the Commonwealth.

**life insurance** has the meaning given by section 240.

**linked entity** of a unit trust scheme or company has the meaning given by section 158.

**listed company** means a company any of the shares of which are quoted on the Australian Stock Exchange or any exchange of the World Federation of Exchanges.

**listed trust** means a unit trust scheme any of the units in which are quoted on the Australian Stock Exchange or any exchange of the World Federation of Exchanges.

**majority shareholder** in a private company means:

- (a) in the case of a company the voting shares in which are not divided into classes—a person entitled to not less than 50% of those shares, and
- (b) in the case of a company the voting shares in which are divided into classes—a person entitled to not less than 50% of the shares in one of those classes.

**managed investment scheme** means a managed investment scheme within the meaning of Chapter 5C of the *Corporations Act 2001* of the Commonwealth, and includes a public unit trust scheme.

**market value** of a motor vehicle means the amount for which the motor vehicle might reasonably be sold, free of encumbrances, on the open market.

**marketable securities** means the following:

- (a) shares referred to in section 11 (1) (d),
- (b) units referred to in section 11 (1) (e),
- (c) an interest in shares or units referred to in paragraph (a) or (b).

**mortgage-backed security** means:

- (a) an interest in a trust that entitles the holder of or beneficial owner under the interest:
  - (i) to the whole or any part of the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a mortgage or any money payable by the mortgagor under the mortgage (whether the money is payable to the holder of or beneficial owner under the interest on the same terms and conditions as under the mortgage or not), or
  - (ii) to the whole or any part of the rights or entitlements of a mortgagee and any other rights or entitlements in respect of a pool of mortgages or any money



payable by mortgagors under those mortgages (whether the money is payable to the holder of or beneficial owner under the interest on the same terms and conditions as under the mortgages or not), or

(iii) to payments that are derived substantially or, if the regulations prescribe the extent, to the prescribed extent, from the income or receipts of a pool of mortgages,

and that may, in addition, entitle the holder or beneficial owner to a transfer or assignment of the mortgage or mortgages, or

(b) a debt security (whether or not in writing) the payments under which by the person who issues or makes the debt security are derived substantially or, if the regulations prescribe the extent, to the prescribed extent, from the income or receipts of a pool of mortgages, or

(c) any of the following:

(i) an interest in a trust 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 any profit or income in which the beneficiaries participate arises from the acquisition, holding, management or disposal of prescribed property, or any instrument that evidences such a right or interest,

(ii) a security (whether or not in writing) the payments under which by the person who issues or makes the security are derived substantially from the income or receipts of prescribed property,

(iii) an interest in a trust, a debt security (whether or not in writing), an instrument or property that creates an interest in or charge over an interest in a trust, a debt security (whether or not in writing) or other instrument or property, to which paragraph (a) or (b) or subparagraph (i) or (ii) of this paragraph applies,

but does not include an instrument or property comprising:

(d) a mortgage, or

(e) the transfer of a mortgage, or

(f) a declaration of trust, or

(g) an instrument of a class or description of instruments, or property of a class or description of property, prescribed not to be a mortgage-backed security for the purposes of this definition.

**mortgage package** has the meaning given by section 214.

**motor vehicle** means, except in Chapter 8:

- (a) a motor vehicle or trailer within the meaning of the *Road Transport (Vehicle Registration) Act 1997*, or
- (b) a caravan.

**new motor vehicle** means a motor vehicle that has not previously been registered under the *Road Transport (Vehicle Registration) Act 1997* or the law of another Australian jurisdiction.

**NSW company** means:

- (a) a company incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth that is taken to be registered in New South Wales for the purposes of that Act, or
- (b) any other body corporate that is incorporated under an Act of New South Wales.

**partnership interest** has the meaning given by section 11 (i).

**permanent building society** means a continuing building society within the meaning of the *Financial Institutions (NSW) Code*.

**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.

**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.

**pool of mortgages** means a pool or collection of assets:

- (a) that is comprised solely of mortgages, or
- (b) that is comprised substantially or, if the regulations prescribe the extent, to the prescribed extent, of mortgages or of money paid pursuant to mortgages (whether or not that money has been invested in prescribed property) or of money (whether or not that money has been invested in prescribed property) if the primary investment policy is to invest in mortgages, but that may also contain either or both of the following:
  - (i) prescribed property,
  - (ii) any other property that forms part of the pool or collection of assets for the purpose of issuing or making a mortgage-backed security in relation to the pool of mortgages.

**pooled superannuation trust** means an entity that is a pooled superannuation trust in accordance with section 44 of the Commonwealth [Superannuation Industry \(Supervision\) Act 1993](#).

**prescribed property** means any of the following:

- (a) cash,
- (b) bonds, debentures, stock or Treasury Bills of the Commonwealth or the Government of New South Wales or the Government or Administration of another State or Territory,
- (c) debentures or stock of any public statutory body constituted under the law of the Commonwealth or New South Wales or another State or Territory,
- (d) notes or other securities of the Commonwealth or the Government of New South Wales or the Government or Administration of another State or Territory,
- (e) deposits with, or the acquisition of certificates of deposits or any other security issued by, a bank or building society (whether expressed in Australian currency or otherwise),
- (f) bills of exchange, promissory notes or other negotiable instruments accepted, drawn or endorsed by a bank (whether expressed in Australian currency or otherwise),
- (g) a guaranteed investment contract (expressed in Australian currency) of a type approved by the Chief Commissioner,
- (h) mortgage-backed securities, mortgage-backed certificates within the meaning of Part 1B of the *Trustee Act 1958* of Victoria or marketable securities that are secondary

mortgage market securities under section 29 (1) of the *Mortgages (Secondary Market) Act 1984* of Queensland.

**private company** means a company that is not limited by shares, or whose shares are not quoted on the Australian Stock Exchange or any exchange of the World Federation of Exchanges.

**private unit trust scheme** means a unit trust scheme that is not a public unit trust scheme.

**public hospital** means a public health organisation within the meaning of the *Health Services Act 1997*.

**public unit trust scheme** means a listed trust or a widely held trust.

**quoted**, in relation to any shares, units in a unit trust scheme or interests in such shares or units, includes:

- (a) shares, units or interests that have stopped being quoted on a stock exchange merely because they belong to a class of shares, units or interests the quotation of which has been suspended, unless the body that issued the shares, units or interests has ceased to be included in the official list of the stock exchange, and
- (b) shares, units or interests that comprise a stapled security that is quoted on a stock exchange.

**recognised stock exchange** means:

- (a) a stock exchange that is a member of the World Federation of Exchanges, or
- (b) the National Stock Exchange, or
- (c) a stock exchange that is declared to be a recognised stock exchange by an order of the Minister, published in the Gazette, that is in force.

**Editorial note—**

For orders under this definition see Gazette No 61 of 5.5.2006, p 2696.

**registered insurer** means an insurer registered under Part 3 of Chapter 8.

**related body corporate** has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

**related person** means a person who is related to another person in accordance with any of the following provisions:

- (a) natural persons are related persons if:
  - (i) one is the spouse or de facto partner of the other, or

- (ii) the relationship between them is that of parent and child, brothers, sisters, or brother and sister,
- (b) companies are related persons if they are related bodies corporate,
- (c) a natural person and a private company are related persons if the natural person is a majority shareholder or director of the company or of another private company that is a related body corporate,
- (d) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee,
- (e) a private company and a trustee are related persons if the company, or a majority shareholder or director of the company, is a beneficiary of the trust (not being a public unit trust scheme) of which the trustee is a trustee.

**replica** has the meaning given by section 272.

**residential lease** means an agreement under which a person has the right to occupy for a term (or for a term together with any option period) not exceeding 5 years any premises or part of premises used or intended to be used, whether or not exclusively, as a place of residence.

**responsible entity** of a managed investment scheme has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

**retired person** means a person who is 55 years of age or older or who has retired from full-time employment and includes a person who is or was the spouse or the de facto partner of such a person.

**right** to shares or units means any right (whether actual, prospective or contingent) of a person to have shares or units issued by a company or trust to the person, whether or not on payment of money or for other consideration, but does not include a convertible note.

**RIOT** has the same meaning as a registered independent options trader has in the Business Rules of the Australian Stock Exchange.

**road** means a road or road related area within the meaning of the [Road Transport \(Vehicle Registration\) Act 1997](#) (other than a road or road related area that is the subject of a declaration made under section 15 (1) (b) of the [Road Transport \(General\) Act 2005](#) relating to all of the provisions of that Act).

**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.

**shares** includes rights to shares.

**special disability trust** means a special disability trust within the meaning of the *Social Security Act 1991* of the Commonwealth or the *Veterans' Entitlements Act 1986* of the Commonwealth.

**strata lot** means a lot as defined in section 5 (1) of the *Strata Schemes (Freehold Development) Act 1973* or section 4 (1) of the *Strata Schemes (Leasehold Development) Act 1986*.

**transfer** includes an assignment and an exchange.

**transferable floor space** has the meaning given by section 11 (b).

**unencumbered value** has the meaning given by section 23.

**unit** in a unit trust scheme means:

- (a) a right or interest (whether described as a unit or a sub-unit or otherwise) of a beneficiary under the scheme, or
- (b) a right to any such right or interest.

**unit trust scheme** means any arrangements made for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in any profits, income or distribution of assets arising from the acquisition, holding, management or disposal of any property whatever pursuant to the trust.

**widely held trust**—see clause 3.

## 2 Meaning of “associated person”

- (1) For the purposes of this Act, an **associated person** means a person who is associated with another person in accordance with the following provisions:
  - (a) persons are associated persons if they are related persons,
  - (b) natural persons are associated persons if they are partners in a partnership to which the *Partnership Act 1892* applies,
  - (c) companies are associated persons if the same person has a majority shareholding in each company,
  - (d) trustees are associated persons if any person is a beneficiary common to the trusts of which they are trustees,
  - (e) a company and a trustee are associated persons if a related body corporate of the company is a beneficiary of the trust (not including a public unit trust scheme) of which the trustee is a trustee,

- (f) a company and the trustee of a unit trust scheme are associated persons if the shares in the company and the units in the unit trust scheme are “stapled”, so that they cannot be traded except as a single security,
  - (g) trustees of unit trust schemes are associated persons if the units in the unit trust schemes are “stapled”, so that they cannot be traded except as a single security.
- (2) However, the responsible entity for a managed investment scheme and the responsible entity for another managed investment scheme are considered to be associated persons only if:
- (a) a person who holds a significant interest in one scheme also holds a significant interest in the other scheme, or
  - (b) a person holds a significant interest in one scheme and a related person to that person holds a significant interest in the other scheme.
- (3) A person holds a **significant interest** in a managed investment scheme if the person is a member of the scheme and has an interest in the scheme that (either alone or when aggregated with the interests in the scheme held by related persons who are members of the scheme) is an interest of more than 20%.

### 3 Meaning of “widely held trust”

- (1) For the purposes of this Act, a **widely held trust** means a unit trust scheme which has not less than 300 unit holders none of whom, individually or together with any associated person, is entitled to more than 20% of the units in the trust.
- (2) If a registered unit holder in a unit trust scheme holds units as a trustee for 2 or more trusts the unit holder is to be treated as a separate registered unit holder in relation to each of those trusts and the units held under each trust are to be treated as a separate unit holding.
- (3) However, a trustee is not to be treated as a separate registered unit holder in relation to 2 or more trusts if, as separate registered unit holders in relation to those trusts, they would be associated persons.

### 4 Interests in land

- (1) For the purposes of this Act, a mining lease or mineral claim granted under the [Mining Act 1992](#) is taken to give the holder an interest in the land to which it relates.
- (2) For the purposes of this Act, the following do not give rise to an interest in land:
- (a) an assessment lease, exploration licence or opal prospecting licence under the [Mining Act 1992](#),
  - (b) a carbon sequestration right within the meaning of Division 4 of Part 6 of the

*Conveyancing Act 1919,*

- (c) a petroleum title within the meaning of the *Petroleum (Onshore) Act 1991,*
- (d) a licence, permit, lease, access authority or special prospecting authority under the *Petroleum (Offshore) Act 1982.*