

State Revenue and Other Legislation Amendment (Budget Measures) Act 2013 No 50

[2013-50]



New South Wales

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Provisions in force

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

Notes—

- **Note**

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State Revenue and Other Legislation Amendment (Budget Measures) Act 2013 No 50



New South Wales

An Act to make miscellaneous amendments to certain State revenue and other legislation in connection with the Budget for the year 2013–2014; and for other purposes.

1 Name of Act

This Act is the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2013*.

2 Commencement

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

3 Explanatory notes

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

Schedule 1 Amendment of *Duties Act 1997 No 123*

[1] Section 11 What is “dutiable property”?

Omit the note at the end of section 11 (3). Insert instead:

Note—

Part 4 of this Chapter provides for the abolition, on a date or dates to be appointed by proclamation, of duty on transfers of some of the types of dutiable property listed above.

The following types of dutiable property cease to be dutiable property on the abolition date appointed by the Governor:

- (a) shares and units referred to in subsection (1) (d) and (e),
- (b) business assets referred to in subsection (1) (g),
- (c) statutory licences or permissions referred to in subsection (1) (h),
- (d) gaming machine entitlements referred to in subsection (1) (h1).

[2] Section 26

Omit sections 26 and 26A. Insert instead:

26 Certain transactions concerning goods and other property

- (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 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 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] Section 28 Apportionment—business assets in this and other jurisdictions

Omit section 28 (6) and the note. Insert instead:

- (6) This section applies only to dutiable transactions that occur before the date appointed under section 33B as the abolition date for duty on transfers of business assets.

[4] Section 33B

Insert before section 34:

33B Appointment of date for abolition of duties

- (1) The Governor may, by proclamation, appoint a date as the abolition date for any of the following duties:
 - (a) duty on transfers of marketable securities and commercial fishery shares,
 - (b) duty on transfers of business assets,
 - (c) duty on transfers of statutory licences or permissions and gaming machine entitlements.
- (2) The same or different abolition dates may be appointed for each duty.

(3) In this Part:

business asset means a business asset referred to in section 11 (1) (g).

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

gaming machine entitlement means a gaming machine entitlement within the meaning of the [Gaming Machines Act 2001](#).

statutory licence or permission means a statutory licence or permission under a New South Wales law.

[5] Section 34 Effect of appointment of abolition date—marketable securities and commercial fishery shares

Omit “1 July 2013” wherever occurring. Insert instead “the abolition date”.

[6] Section 34 (3)

Omit the definition of **commercial fishery share**. Insert instead:

abolition date means the date appointed under section 33B as the abolition date for duty on transfers of marketable securities and commercial fishery shares.

[7] Section 35 Effect of appointment of abolition date—business assets

Omit section 35 (1). Insert instead:

(1) On and from the abolition date, a business asset is not dutiable property (despite section 11).

[8] Section 35 (2)

Omit “1 July 2013”. Insert instead “the abolition date”.

[9] Section 35 (3)

Insert after section 35 (2):

(3) In this section:

abolition date means the date appointed under section 33B as the abolition date for duty on transfers of business assets.

[10] Section 36 Effect of appointment of abolition date—licences, permissions and

entitlements

Omit section 36 (1). Insert instead:

- (1) On and from the abolition date, a statutory licence or permission, or a gaming machine entitlement, is not dutiable property (despite section 11).

[11] Section 36 (2)

Omit “1 July 2013”. Insert instead “the abolition date”.

[12] Section 36 (3)

Insert after section 36 (2):

- (3) In this section:

abolition date means the date appointed under section 33B as the abolition date for duty on transfers of statutory licences or permissions and gaming machine entitlements.

[13] Section 37

Omit the section. Insert instead:

37 Anti-avoidance measures

Section 35 or 36 does not apply in respect of a transfer or transaction that occurs on or after the abolition date referred to in that section if:

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

[14] Section 65 Exemptions from duty

Omit “1 July 2013” wherever occurring in the notes to section 65 (6) and (7).

Insert instead “a date to be appointed by proclamation under section 33B”.

[15] Section 66 Exemptions—marketable securities

Omit “1 July 2013” from the note at the end of the section.

Insert instead “a date to be appointed by proclamation under section 33B”.

[16] Section 124

Omit the section. Insert instead:

124 Abolition of duty charged by this Part

- (1) The duty charged by this Part is abolished on and from the abolition date.
- (2) The duty charged by this Part remains chargeable on a dutiable entitlement that is acquired before the abolition date.
- (3) In this section:

abolition date means the date appointed under section 33B as the abolition date for duty on transfers of marketable securities and commercial fishery shares.

[17] Section 137A

Omit the section. Insert instead:

137A Abolition of duty charged by this Part

- (1) The duty charged by this Part is abolished on and from the abolition date.
- (2) The duty charged by this Part remains chargeable on an allotment of shares referred to in section 138 that occurs before the abolition date.
- (3) In this section:

abolition date means the date appointed under section 33B as the abolition date for duty on transfers of marketable securities and commercial fishery shares.

[18] Section 203A Abolition of mortgage duty

Omit section 203A (1). Insert instead:

- (1) The Governor may, by proclamation, appoint a date as the abolition date for mortgage duty.

(1A) Mortgage duty is abolished on and from the abolition date (being the date appointed under subsection (1)).

[19] Section 203A (2) and (3)

Omit “1 July 2013” wherever occurring. Insert instead “the abolition date”.

[20] Section 227A Transfer of mortgages

Omit “section 281 (relating to transfers between members of the same group of corporations)” from section 227A (4) (b).

Insert instead “section 273B (relating to corporate reconstructions and consolidations)”.

[21] Section 228A

Insert after section 228:

228A Electronic mortgages

- (1) To avoid doubt, for the purposes of this Chapter (in particular, the definition of ***mortgage***), an ***instrument*** includes any document (within the meaning of the *Electronic Conveyancing National Law (NSW)*) that is in a form in which it can be lodged electronically under that Law.
- (2) An electronic mortgage is taken to be first executed when it is first digitally signed by the mortgagee (including if it is digitally signed by a subscriber signing for the mortgagee under the *Electronic Conveyancing National Law (NSW)*).
- (3) A counterpart of an electronic mortgage in respect of which mortgage duty has been paid may be stamped or upstamped for mortgage duty by the Chief Commissioner, or by another person under an arrangement referred to in section 289A, as if it were the mortgage.
- (4) In this section:

electronic mortgage means a mortgage in a form in which it can be lodged electronically under the *Electronic Conveyancing National Law (NSW)*.

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

Omit “on 1 July 2013” from the note to section 274 (2).

Insert instead “on a date to be appointed by proclamation under section 33B”.

[23] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule (with appropriate Part and clause numbering):

Part Provisions consequent on enactment of **State Revenue and Other Legislation Amendment (Budget Measures) Act 2013**

Changes to calculation of dutiable value

- (1) Section 26, as substituted by the Budget Measures Act, applies to dutiable transactions that occur on or after 1 July 2013.
- (2) Sections 26 and 26A, as in force immediately before their repeal by the Budget Measures Act, continue to apply to dutiable transactions that occurred before 1 July 2013.
- (3) In this clause:

Budget Measures Act means the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2013*.

Explanatory note

The amendments defer the abolition of certain duties (which were due to be abolished on 1 July 2013) until a date to be appointed by proclamation of the Governor. The same or different abolition dates may be appointed in relation to the duties concerned.

The duties affected are:

- (a) duty on transfers of marketable securities and commercial fishery shares, and
- (b) duty on transfers of business assets, and
- (c) duty on transfers of statutory licences or permissions and gaming machine entitlements, and
- (d) mortgage duty.

Items [4] and [18] provide for the abolition of the relevant duties on a date to be appointed by proclamation of the Governor.

Items [1], [3], [5]-[15], [19] and [22] are consequential amendments.

Items [16] and [17] provide for the abolition of duties on entitlements arising from capital reductions or rights alterations, and the duty on allotment of shares by direction, on the date appointed for the abolition of duty on transfers of marketable securities and commercial fishery shares.

Item [2] removes a redundant provision of the *Duties Act 1997*. It also ensures that the value of goods is included in the dutiable value of a transaction involving goods and other dutiable property, if the other dutiable property includes the goodwill of a business. The amendment is related to the fact that the abolition of duty on the transfer of business assets (such as the goodwill of a business) is to be deferred.

Item [21] is consequential on the fact that the abolition of mortgage duty is to be deferred. It provides for the application of the *Duties Act 1997* to electronic mortgages executed in accordance with the *Electronic Conveyancing National Law (NSW)*.

Item [20] updates a cross-reference.

Item [23] provides for savings and transitional matters.

Schedule 2 (Repealed)

Schedule 3 Amendment of [Health Insurance Levies Act 1982 No 159](#)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

base rate means \$2 or, if a base rate is declared by regulation under clause 9 of Schedule 3, the base rate as so declared.

proclaimed month means the first month to commence on or after the commencement of Schedule 3 to the [State Revenue and Other Legislation Amendment \(Budget Measures\) Act 2013](#).

[2] Section 4 (1), definition of “prescribed rate”

Omit “and for any month thereafter” from paragraph (e).

Insert instead “and for any month thereafter before the proclaimed month”.

[3] Section 4 (1), definition of “prescribed rate”

Insert at the end of paragraph (e):

, and

- (f) for the proclaimed month and for any month thereafter—the base rate, as adjusted from time to time in accordance with Schedule 2.

[4] Schedule 3 Transitional provisions

Insert after Part 7:

Part 8 Provision consequent on enactment of [State Revenue and Other Legislation Amendment \(Budget Measures\) Act 2013](#)

9 Adjustment of prescribed rate (Budget 2013-2014)

- (1) The regulations may declare a base rate for the purposes of this Act.
- (2) A regulation may be made under this clause only if the proclaimed month is a month after July 2013.
- (3) A base rate declared by a regulation has effect only in relation to a month that starts on or after the commencement of the regulation.

- (4) A regulation cannot be made under this clause after the operative date (within the meaning of Schedule 2) for 2014.
- (5) The declaration of a base rate by a regulation made under this clause is, for the purposes of the *Subordinate Legislation Act 1989*, a matter of a savings or transitional nature.

Explanatory note

Items [1] and [3] provide for a base rate of \$2 (instead of the existing rate of \$1.37) to have effect as the prescribed rate under the *Health Insurance Levies Act 1982*. The prescribed rate is the rate used to calculate the monthly levy payable under that Act.

The proposed amendments also enable the base rate to be further adjusted by regulation if there is a delay in the commencement of the proposed amendments. Under **item [4]**, a regulation declaring a new base rate can be made if the proposed amendments commence after 1 July 2013. Such a regulation cannot be made after the base rate is automatically adjusted under Schedule 2 to the *Health Insurance Levies Act 1982* in 2014. The amendments also provide that a regulation declaring a base rate is of a savings and transitional nature for the purposes of the *Subordinate Legislation Act 1989*.

Item [2] is a consequential amendment.

Schedule 4 Amendment of *Payroll Tax Act 2007* No 21

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

Insert “up to and including the financial year commencing on 1 July 2012” after “subsequent financial years” in paragraph (b) of the definition of **TA** or **threshold amount** in clause 1.

[2] Schedule 1, clause 1, definition of “TA” or “threshold amount”

Insert at the end of paragraph (b):

, or

- (c) for the financial year commencing on 1 July 2013 and subsequent financial years—\$750,000.

[3] Schedule 1, clause 1A Indexation of threshold amount (financial years 2008–2012)

Insert “up to and including the financial year commencing on 1 July 2012” after “subsequent financial years” in clause 1A (1).

[4] Schedule 1, clause 1A (5)

Insert “and ending with the financial year commencing on 1 July 2012” after “1 July 2009”.

Explanatory note

Item [2] increases the threshold amount for payroll tax from \$689,000 to \$750,000. **Item [1]** is a consequential amendment.

Item [3] removes the provision for automatic indexation of the threshold amount. **Item [4]** is a consequential amendment.

Schedule 5 Amendment of Payroll Tax Rebate Scheme (Jobs Action Plan) Act 2011 No 19

[1] Section 3 Object of Act

Omit “100,000” from section 3 (2).

[2] Section 7 Eligible employment

Insert “and before 1 July 2015” after “1 July 2011” in section 7 (b).

[3] Section 8 What is a new job

Insert after section 8 (8):

(9) A claimant is not required to repay an amount paid by way of rebate for the first year of employment because of a second year failure to sustain an increase in the employer’s full time equivalent employees.

(10) There is a second year failure to sustain an increase in an employer’s full time equivalent employees if the number of full time equivalent employees of the employer on the second anniversary of the date the eligible employment is claimed to commence does not exceed the number of full time equivalent employees of the employer on that commencement date.

[4] Section 13 Closure of rebate scheme

Omit “30 June 2013” from section 13 (3) (b).

Insert instead “30 June 2015”.

[5] Section 13, note

Insert “the date appointed as referred to in subsection (3) (a) as” after “person after”.

[6] Section 15 Amount of rebate

Omit “\$2,000” from section 15 (1) (a).

Insert instead “the annual rebate amount”.

[7] Section 15 (1A)

Insert after section 15 (1):

(1A) The **annual rebate amount** is:

- (a) for eligible employment commencing before 1 July 2013—\$2,000, or
- (b) for eligible employment commencing on or after 1 July 2013:
 - (i) \$2,000 for the first year of employment, and
 - (ii) \$3,000 for the second year of employment.

[8] Section 15 (2)

Omit “\$2,000” from the formula. Insert instead “the annual rebate amount”.

[9] Section 21 Closure of registrations

Omit section 21 (1). Insert instead:

- (1) The Chief Commissioner is not to register an employer as a claimant in respect of the employment of a person:
 - (a) if the application is made after 30 September 2015, or
 - (b) if a scheme closure date for the area in which the person is employed is appointed (as referred to in section 13 (3) (a)) and the application is made after that appointed date.

[10] Schedule 1 Savings, transitional and other provisions

Insert before clause 1:

Part 1 **Preliminary**

[11] Schedule 1, clause 1

Insert at the end of clause 1 (1):

any Act that amends this Act

[12] Schedule 1, Part 2

Insert after clause 1:

Part 2 State Revenue and Other Legislation Amendment (Budget Measures) Act 2013

2 Refunds

- (1) A claimant who, before the commencement of the amendments to section 8 made by the *State Revenue and Other Legislation Amendment (Budget*

Measures) Act 2013, was required to repay an amount paid by way of rebate is entitled to a refund of the amount repaid (if any) if, had the amendments been in effect at the time the requirement was made, repayment of the amount could not have been required.

- (2) Sections 25, 26, 58 (1) and 60 apply to the payment of a refund payable under this clause in the same way as they apply to the payment of a rebate.

3 Waiver of maximum rebate

- (1) Sections 15 (5) and 16 do not apply to a claim for a rebate if:
- (a) the eligible employment commenced before 1 July 2013, and
 - (b) the financial year in which the claim for a rebate in respect of that eligible employment is made is the financial year commencing on 1 July 2013 or a subsequent financial year, and
 - (c) the employer had a payroll tax liability exceeding nil for the financial year that commenced on 1 July 2012.
- (2) In this clause, an employer's **payroll tax liability** for a financial year is the correct amount of payroll tax payable by the employer (within the meaning of Part 6 of the *Payroll Tax Act 2007*).

Explanatory note

Items [2] and [4] provide for a final closure of the Jobs Action Plan scheme on 30 June 2015. A rebate can be claimed under the scheme for the employment of a person only if the employment commences on or before that date. The amendments retain the power of the Minister to appoint an earlier scheme closure date for a particular area. **Item [5]** is a consequential amendment.

Item [1] removes a target on the number of jobs to be created with assistance of the scheme.

Items [6] and [7] increase the rebate from \$2,000 to \$3,000 in the second year of employment. The increase will apply only to eligible employment that commences on or after 1 July 2013. **Item [8]** is a consequential amendment.

Item [3] removes a requirement that a claimant repay a rebate paid for a first year of eligible employment because of a failure to sustain an increase in the number of full time equivalent employees of the employer at the end of the second year of eligible employment.

Item [9] requires employers to be registered under the scheme on or before 30 September 2015 (and before any earlier scheme closure date for the area in which the person is employed that is appointed by the Minister).

Item [11] enables savings and transitional regulations to be made whenever the Act is amended.

Item [12] provides for specific transitional matters, including by providing for the waiver of the maximum rebate payable for certain employment that commences before 1 July 2013. **Item [10]** is a consequential amendment.

Schedule 6 Amendment of *Protection of the Environment*

Administration Act 1991 No 60

Section 34A

Insert after section 34:

34A Environment Protection Authority Fund

- (1) There is established in the Special Deposits Account an account called the Environment Protection Authority Fund (***the Fund***).
- (2) Money in the Fund is under the control of the Authority and can be expended by the Authority only for the purposes authorised by this section.
- (3) There is to be paid into the Fund:
 - (a) any of the following money payable to the Authority under the *Protection of the Environment Operations Act 1997*:
 - (i) any fees with respect to environment protection licences, including fees for applications made for or with respect to those licences and annual licence fees (other than load-based fees),
 - (ii) any interest on outstanding amounts of any such fees (other than load-based fees),
 - (iii) any amounts required to be paid as a penalty for default under section 57 of that Act (other than with respect to load-based fees),
 - (iv) any fees with respect to clean-up notices, prevention notices or noise control notices,
 - (v) amounts specified in any compliance cost notices given under Chapter 4 or section 267B of that Act,
 - (vi) amounts specified in any notices given under section 107 or 295ZD of that Act, and
 - (b) any fees payable to the Authority under the *Environmental Planning and Assessment Act 1979*, and
 - (c) the proceeds of the investment of money in the Fund, and
 - (d) any other money appropriated by Parliament for the purposes of the Fund or required or authorised by law to be paid into the Fund.
- (4) There may be paid out of the Fund:
 - (a) any money required by the Authority for the purposes of carrying out any of

its functions, and

- (b) any money required to meet administrative expenses incurred in relation to the Fund (including any administrative expenses incurred in relation to the collection and recovery of amounts payable into the Fund), and
- (c) any money required or authorised by law to be paid from the Fund.

(5) The money in the Fund may be invested:

- (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Authority to invest the money, in any other manner approved by the Treasurer.

Explanatory note

The object of the proposed amendment is to establish an Environment Protection Authority Fund in the Special Deposits Account for regulatory and enforcement fees and charges payable to the EPA (the fees and charges are currently payable into the Consolidated Fund). Money in the Fund will be under the control of the EPA and may be used (without further appropriation) for the purposes of enabling the EPA to carry out its functions.