

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**DUTIES BILL 1998**

**EXPLANATORY MEMORANDUM**

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Kate Carnell, MLA

## DUTIES BILL 1998

### Summary

The Duties Bill 1998 will replace the *Stamp Duties and Taxes Act 1987* (the current Act) as the enactment which will impose stamp duty on a range of Territory related documents and transactions.

The Duties Bill differs from the current Act in that it uses more contemporary language and therefore is simpler to understand and administer. By mirroring the *NSW Duties Act 1997*, the Bill should benefit taxpayers who transact business across jurisdictions.

The layout of the Bill is designed to be user friendly. Each Chapter is self contained and includes all the provisions relating to the dutiable instruments or transactions covered by that Chapter or Part, such as what is taxed, on what value, by whom and how, together with all exemptions and concessions.

In Chapter 2, which deals with transfers of dutiable property, the Bill adopts the approach of NSW by clearly identifying both the transactions and the items of property that are subject to duty, including individual business assets (which is not the case in relation to the sale of businesses under the current Act).

The Bill contains new provisions in relation to the lodgement of instruments and the payment of duty. Under the Bill it is the transaction, rather than the instrument evidencing the transaction, that is liable for duty and that liability arises on the date the transaction occurred. A table is included in *clause 8* identifying when such liability in respect of particular transactions occur. From that date a taxpayer has 90 days to lodge either the instrument evidencing the transaction, or a statement setting out details of the transaction, and to pay the duty. The 90-day period includes any period it takes the Revenue Office to assess the transaction. The 90 days rule also applies to lease instruments liable for duty under Chapter 4.

In other Chapters, the date for payment of duty, in respect of the return based duties, will remain the same as the due date for payment under the current Act. In respect of motor vehicles (Chapter 9) liability for duty on the sale of used motor vehicles will change from the licensed motor vehicle dealer to the purchaser.

The Duties Bill is accompanied by, and should be read in conjunction with, the Duties (Consequential and Transitional Provisions) Bill 1998. A separate Explanatory Memorandum has been prepared to support that Bill.

### Financial/Cost Implications

Additional revenue from stamp duties is estimated at \$5.4m in a full year. There will be a small initial increase in administration costs, involving system changes, new forms, staff training and client education program.

Details of the Bill are attached.

## DETAILS OF THE DUTIES BILL 1998

### CHAPTER 1 - PRELIMINARY

#### Formal Clauses

*Clauses 1 and 2* are formal requirements. They refer to the short title and commencement of the Bill.

#### Incorporation of *Taxation Administration Act 1998*

*Clause 3* provides for the incorporation of the *Taxation Administration Act 1998* into this Bill.

#### Interpretation

*Clause 4* provides key definitions which are used throughout the Bill. Important new definitions, not previously contained in the *Stamp Duties and Taxes Act 1987*, include:

- “ADRs”, “CUFs”, “IR” and “instalment warrants”;
- “associated person”;
- “charitable organisation”;
- “company title dwelling”;
- “discretionary trust”;
- “foreign resident”;
- “franchise agreement”;
- “intellectual property”;
- “land use entitlement”;
- “public unit trust scheme”;
- “related person”;
- “special hiring agreement”; and
- “warrant”.

Additional definitions of words and terms which apply in specific Chapters, Parts and Divisions are found throughout the Bill.

#### Duty a debt payable to the Territory

*Clause 5* provides that a duty charged under this Bill is a debt due to the Territory when a liability to pay the duty is created.

## CHAPTER 2 - TRANSACTIONS CONCERNING DUTIABLE PROPERTY

### PART 1 - INTRODUCTION AND OVERVIEW

#### Interpretation

*Clause 6* provides specific definitions of “declaration of trust” and “transfer” when referred to in Chapter 2.

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

*Sub-clause 7(1)* provides a list of the specific transactions (referred to in *sub-clause 7(2)* as “dutiable transactions”) on which duty is to be charged. This list includes both transfers and other transactions, as set out below:

- a transfer of dutiable property;
- an agreement for sale or transfer of dutiable property;
- a declaration of trust over dutiable property;
- a grant of a Crown lease;
- a surrender of an interest in land in the Territory;
- a foreclosure of a mortgage over dutiable property; and
- a vesting of dutiable property by or as a consequence of a statute or court order.

*Sub-clause 7(3)* provides that a reference to a grant of a Crown lease in *sub-clause 7(1)* includes a grant of a new Crown lease over land that has previously been surrendered or determined.

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

*Sub-clause 8(1)* provides that the duty on each of those transactions listed in *paragraph 7(1)(b)* is to be charged as if each of the transactions were a transfer of dutiable property.

*Sub-clause 8(2)* identifies in table form, for the purpose of charging duty:

- the dutiable property transferred;
- the transferee; and
- when the transfer occurs.

in respect of each of the transactions listed in *clause 7*.

#### Form of dutiable transaction

*Clause 9* provides that it is immaterial whether or not a dutiable transaction is effected by a written instrument or by any other means. Note that where a dutiable transaction is not effected by a written instrument, *clause 14* requires a written statement to be brought into existence.

### **Dutiable property**

*Clause 10* provides a list of dutiable property which, when effected by a dutiable transaction identified in *sub-clause 7(1)*, is liable to duty.

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

*Clause 11* provides that liability for duty charged under this Chapter arises when a transfer of dutiable property occurs, except where the transfer is effected by written instrument, in which case the liability arises when the instrument is first executed.

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

*Clause 12* provides that the transferee is liable to pay the duty, unless the Chapter requires another person to pay.

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

*Clause 13* provides that for the purpose of assessing duty charged by this Chapter, joint tenants are deemed to hold a dutiable property as tenants in common in equal shares.

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

*Clause 14* stipulates that if a dutiable transaction is not effected by a written instrument, the transferee must make a written statement in a form approved by the Commissioner, within 90 days after the liability arises (refer *clause 11*).

This does not apply to an SCH regulated transfer to which Division 1 of Part IV applies or a transaction that is effected or evidenced by a written instrument. In these cases the requirement to lodge a statement and pay duty can be satisfied, respectively, by the payment of the duty under Division 1 of Part IV, or by the lodgement and payment of duty on the written document, within 90 days after the date the transaction occurs, or the written instrument was executed.

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

*Sub-clause 15(1)* requires the transferee liable to pay the duty to lodge with Commissioner, within 90 days after the liability arises (refer *clause 11*), the written instrument (or each of the written instruments as provided under *sub-clause 17(1)*) or the written statement in accordance with *clause 14*.

*Sub-clause 15(2)* provides that *clause 15* does not apply to certain marketable security transfers specifically identified.

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

*Clause 16* provides that duty must be paid within 90 days of the liability arising (refer *clause 11*), except where duty is payable on the lodgement of a return under Division 1 or 3 of Part IV.

### **No double duty**

*Sub-clause 17(1)* prevents a dutiable transaction which is effected by more than 1 instrument from being charged with *ad valorem* duty more than once. This is achieved by stamping the duty payable on the transaction on one instrument only and exempting the other instruments from duty if lodged at the same time as the first-mentioned instrument. However, duty of \$20 is chargeable on an instrument that is not lodged at the same time as the instrument stamped with the duty payable on the transaction.

*Sub-clause 17(2)* exempts from duty a transfer of dutiable property which is made in conformity with an agreement for the sale or transfer of the property, if the transfer is lodged for stamping at the same time as the agreement for sale or transfer. However, a duty of \$20 is chargeable on the transfer if it is lodged at any other time.

*Sub-clause 17(3)* charges a duty of \$20 on a transfer of dutiable property that is not made in conformity with an agreement for the sale or transfer of the dutiable property in circumstances set out in the sub-clause.

A duty of \$20 is charged respectively by *sub-clauses 17(4), 17(5), and 17(6)* on a transfer of dutiable property in the circumstances set out in each of the sub-clauses.

*Sub-clause 17(7)* deems a dutiable transaction in respect of marketable securities that confer a land use entitlement to be in respect of the land use entitlement only. The sub-clause also provides that if duty has been paid on that dutiable transaction in another Australian jurisdiction, then the duty charged by this Chapter on the transaction is to be reduced by the amount paid in the other jurisdiction.

### **Rate of duty**

*Clause 18* charged duty on the dutiable value of dutiable property in a dutiable transaction at the relevant rate under Part III of this Chapter.

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

*Clause 19* indicates which parts of this Chapter deal with concessions and exemptions from duty charged under the Chapter.

## **PART II - DUTIABLE VALUE**

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

*Clause 20* stipulates the method of determining the dutiable value of dutiable property (listed in *clause 10*). Usually it is the greater of consideration paid for the dutiable property (further explained in *clause 21*) or its unencumbered value (further explained in *clause 22*).

The clause makes additional references to the valuing of dutiable property transferred by way of foreclosure [*sub-clause 20(2)*], apportionment of the value of a business asset [*sub-clause 20(3)*] and the dutiable value of partnership interests [*sub-clause 20(4)*].

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

*Clause 21* defines the consideration for dutiable property in the various specified circumstances set out in the clause.

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

*Clause 22* defines the unencumbered value of dutiable property in various specified circumstances set out in the clause.

*Sub-clause 22(7)* stipulates that a reference in *clause 22* to a grant of a Crown lease includes a grant of a second or subsequent Crown lease.

### **Arrangements that reduce the dutiable value**

*Clause 23* empowers the Commissioner, when assessing duty on a dutiable transaction, to disregard any arrangement entered into by a person, within 12 months before the dutiable transaction was brought about, with the intention of reducing the dutiable value of the dutiable property.

### **Aggregation of dutiable transactions**

*Sub-clause 24(1)* stipulates that dutiable transactions relating to separate items or separate parts of, or interests in, dutiable property are to be aggregated and treated as a single transaction in the circumstances set out in the sub-clause, unless, under *sub-clause 24(2)*, the Commissioner is satisfied that it would not be just and reasonable to do so.

*Sub-clause 24(3)* defines the dutiable value of aggregated dutiable property.

*Sub-clause 24(4)* stipulates that the amount of duty payable under *clause 24* is to be reduced by the amount of any *ad valorem* duty paid on a prior dutiable transaction that is aggregated under this clause.

*Sub-clause 24(5)* enables the apportionment of duty to the instruments effecting or evidencing the dutiable transactions, or the charging of duty in accordance with *sub-clause 17(1)*, as determined by the Commissioner.

*Sub-clause 24(6)* requires a transferee, at or before the time an instrument or statement relating to the dutiable transactions is lodged for stamping, to advise the Commissioner in writing of the matters set out in the sub-clause, and imposes a penalty of 50 penalty units on a natural person and 250 penalty units on a body corporate for non-compliance [under the *Interpretation Act 1967*, 1 penalty unit is equal to \$100].

*Sub-clause 24(7)* excludes marketable securities from the reference to dutiable property in *clause 24*.

#### **Value of goods in certain transactions also involving other property**

*Clause 25* empowers the Commissioner to disregard the value of certain goods when determining the dutiable value of dutiable property, in a dutiable transaction involving goods and other property, if the Commissioner is satisfied that it would not be just or reasonable to charge duty on the dutiable value of all the dutiable property in the transaction.

#### **Apportionment - dutiable property and other property**

In a situation where a dutiable transaction relates to both dutiable property and property that is not dutiable property, *sub-clause 26(1)* prevents the latter from being chargeable with duty under this Chapter.

In a situation where a dutiable transaction relates to different types of dutiable property for which different rates of duty are chargeable under this Chapter, *sub-clause 26(2)* enables the transaction to be treated as a separate dutiable transaction in respect of each of the different types of dutiable property.

#### **Apportionment - business assets in this and other jurisdictions**

*Clause 27* provides the method for determining the dutiable value of a business asset referred to in *paragraph 10(g)* and in the circumstances set out in *sub-clause 27(1)*. The formula for determining the dutiable value is given in *sub-clause 27(2)*.

*Sub-clause 27(3)* stipulates that if the dutiable property included in a dutiable transaction includes the goodwill referred to in *paragraph 27(1)(a)* and the intellectual property referred to in *paragraph 27(1)(b)*, then, under *sub-clause 27(2)*, the goodwill and the intellectual property are to be treated as a single business asset.

*Sub-clause 27(5)* sets out the circumstances in which a sale of goods or services are deemed, for the purposes of this Chapter, to have been made to a Territory customer or a non-Territory customer of a business.



### **Partnership interests**

*Clause 28* provides the method for determining the dutiable value of a partnership interest.

### **Partitions**

*Clause 29:*

- stipulates, for the purposes of the clause, when a partition of property (some or all of which is dutiable property), occurs;
- deems, for the purposes of the clause and *clauses 15* and *17*, a partition to be a single dutiable transaction;
- provides the formula for determining the dutiable value of a partition;
- sets the minimum duty chargeable on a transaction that effects a partition at \$20; and
- stipulates that the duty charged by the clause is payable by the persons making the partition or any 1 or more of them.

### **Effect of reduction in purchase price**

*Clause 30* sets out the circumstances in which the Commissioner is required to assess or reassess the liability to duty of an agreement for the transfer of dutiable property.

## **PART III - RATES OF DUTY**

### **General rate**

*Clause 31* stipulates that, unless otherwise provided by this Chapter, the duty chargeable on a dutiable transaction is at the rate determined under *section 139* of the *Taxation Administration Act 1998*.

### **Shares, units and interests (marketable securities)**

*Sub-clause 32(1)* stipulates that the duty chargeable on a dutiable transaction in respect of marketable securities (other than marketable securities quoted on the Australian Stock Exchange) is at the rate determined under *section 139* of the *Taxation Administration Act 1998*.

*Sub-clause 32(2)* stipulates that, subject to *Chapter 4*, the duty chargeable on a dutiable transaction in respect of marketable securities quoted on the Australian Stock Exchange is at the rate determined under *section 139* of the *Taxation Administration Act 1998*.

*Sub-clause 32(3)* imposes a minimum duty of \$20 on a dutiable transaction in respect of marketable securities, while *sub-clause 32(4)* provides that a rate of duty chargeable under *clause 32* is not applicable to a dutiable transaction that confers a land use entitlement.

#### **PART IV - OFF-MARKET TRANSFERS OF MARKETABLE SECURITIES**

##### ***Division 1 - SCH-regulated transfers (CHESS)***

###### **Application of Division**

*Clause 33* sets out the circumstances in which this Division is applicable to an SCH-regulated transfer of marketable securities, and excludes the application of the Division from a transfer to which Division 3 applies.

###### **SCH participant liable to pay duty**

*Sub-clause 34(1)* makes an SCH participant who is a party to a transfer to which this Division applies liable to pay the duty on the transfer, but also provides that, in situations where more than 1 SCH participant is a party to the transfer, it is the SCH participant who acts for the transferee who is liable to pay the duty.

*Sub-clause 34(2)* enables an SCH participant who is liable to pay the duty, but who is not the transferee, to recover the amount of duty from the transferee.

###### **Record of SCH-regulated transfers**

*Clause 35* requires an SCH participant, who makes an SCH-regulated transfer of marketable securities to which this Division applies, to make a record of the transfer, showing the particulars listed in *sub-clause 35(2)*.

###### **Particulars to be included by relevant SCH participant in transfer document**

*Clause 36* requires an SCH participant to include, in the transfer document for an SCH-regulated transfer to which this Division applies, the particulars required by the Commissioner under the conditions of registration of the SCH, and imposes a penalty of 50 penalty units on a natural person and 250 penalty units on a body corporate for non-compliance.

###### **Relevant SCH participant's identification code equivalent to stamping**

*Clause 37* deems a transfer document for an SCH-regulated transfer to which this Division applies to have been duly stamped [but without affecting the SCH participant's liability to pay any duty under *clause 38*] when the SCH participant's identification code is included in the transfer document.

### **Returns to be lodged and duty paid**

*Sub-clause 38(1)* stipulates the time when an SCH participant must lodge a return with the SCH [in the form, and containing the details, required by the Commissioner under the conditions of registration of the SCH], in respect of an SCH-regulated transfer of marketable securities to which this Division applies, and requires the SCH participant to pay to the SCH any duty that is payable in respect of the transfer.

*Sub-clause 38(2)* deems an SCH participant to have committed a tax default for the purposes of the *Taxation Administration Act 1998* if the SCH participant lodges the required return with, and pays the duty (and any interest) to, the SCH later than 15 days after the end of each month. In such a case, the sub-clause requires the SCH to identify the return as a late return and lodge it with the next monthly return to the Commissioner under *clause 40*.

### **Division 2 - The securities clearing house**

#### **Registration as a securities clearing house**

*Sub-clause 39(1)* requires the Commissioner to register under this Division the body approved as the securities clearing house under the *Corporations Law* when an application by that body for registration is received by the Commissioner.

*Sub-clause 39(2)* stipulates that the registration is subject to conditions determined by the Commissioner.

*Sub-clause 39(3)* empowers the Commissioner to suspend the registration for a specified period if the SCH contravenes the provisions of this Division or a condition of registration.

However before suspending the registration, the Commissioner is required by *sub-clause 39(4)* to give the SCH 7 days written notice of the Commissioner's intention to suspend the registration, and the grounds for and proposed period of suspension.

*Sub-clause 39(5)* enables the SCH to apply to the Commissioner, within 7 days of receiving the notice of the Commissioner's intention [under *sub-clause 39(4)*] to suspend the SCH's registration, for a review of the Commissioner's proposed decision.

*Sub-clause 39(6)* prohibits the Commissioner from suspending the SCH's registration before the expiry of the 7 days notice to the SCH [under *sub-clause 39(4)*] and the SCH has had the opportunity of making submissions on the matter.

*Sub-clause 39(7)* stipulates that the registration remains in force until cancelled on the application of the body registered, or suspended under *sub-clause 39(3)*.

### **Monthly return**

*Clause 40* requires the SCH, by the fifteenth day of each month, to lodge monthly returns to the Commissioner and to pay to the Commissioner any duty (and any interest) paid to the SCH in respect of an SCH-regulated transfer made in the preceding month.

### **Returns to be kept by the SCH**

*Clause 41* requires the SCH to keep returns lodged with it under this Part by an SCH participant.

### **Disclosure to the SCH of information**

*Clause 42* empowers disclosure of information acquired in connection with the administration of this Part to the SCH.

### ***Division 3 - London Stock Exchange***

#### **Application of Division 3**

*Clause 43* stipulates the matters to which this Division applies, and defines "prescribed person" for the purposes of the Division.

#### **Payment of duty**

*Sub-clause 44(1)* prescribes the rate of duty chargeable on a transfer to which this Division applies [refer *clause 43*].

*Sub-clause 44(2)* stipulates that no duty is chargeable under this Chapter on an associated transfer [defined in *sub-clause 44(6)*].

*Sub-clause 44(3)* stipulates the time by which a prescribed person [defined in *clause 43*] must lodge monthly returns with the Commissioner and pay to the Commissioner the duty payable.

*Sub-clause 44(4)* protects persons other than the prescribed person from liability to pay any duty in the circumstances set out in the sub-clause.

*Sub-clause 44(5)* stipulates the method of payment of the duty.

*Sub-clause 44(6)* defines "associated transfer" and "intermediary".

#### ***Division 4 - Payment by periodic return***

##### **Application for approval to pay duty by periodic return**

*Clause 45* enables a person to apply, in the manner stipulated in *sub-clause 45(3)*, to the Commissioner for approval to pay duty on transactions to which this Part applies by periodic return. The type of person who may so apply is indicated in *sub-clause 45(2)*.

#### ***Division 5 - Miscellaneous***

##### **Reduction of duty - payment in non-Australian jurisdiction**

*Clause 46* provides for a reduction in the amount of duty chargeable under this Chapter on a transfer of marketable securities in the circumstances set out in *sub-clause 46(1)*, and clarifies the meaning of "transfer of marketable securities".

##### **Certain transfers not chargeable with duty**

*Clause 47* provides that no duty is chargeable on certain transfers of marketable securities in the circumstances set out in *sub-clause 47(1)* and *sub-clause 47(2)*.

### **PART V - SPECIAL PROVISIONS**

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

*Clause 48* empowers the Commissioner to make interim assessment of duty, under *subsection 11(2)* of the *Taxation Administration Act 1998*, in situations where, in the opinion of the Commissioner, the full dutiable value of the dutiable property in an agreement for sale or transfer cannot be immediately ascertained, and later to reassess the duty payable on the agreement when the full dutiable value has been ascertained.

Following reassessment, if no further duty is payable, *sub-clause 48(4)* requires the cancellation of the interim stamp and the refund of any amount paid in excess of the reassessed amount.

However, if further duty is payable, *sub-clause 48(5)* stipulates that [as an exception to the general provision on when liability for duty arises, contained in *clause 11*], liability for the further duty arises when the notice of reassessment is issued.

*Sub-clause 48(6)* prescribes the action to be taken in relation to the relevant instrument or statement when the balance of the duty (and any interest or penalty tax) has been paid.

### **Cancelled agreements**

*Clause 49* stipulates that a cancelled agreement for the sale or transfer of dutiable property is not liable to duty under this Chapter in the circumstances set out in the clause.

If duty has been paid on an agreement that is not liable to duty under this Chapter, then *sub-clause 49(2)* requires the Commissioner to reassess and refund the duty if an application for a refund is made within the time stated in the sub-clause.

### **Grant of certain Crown leases on surrender of development leases**

*Clause 50* prescribes the rates of duty on the grant of a Crown lease, following the surrender of a development lease [defined in *sub-clause 50(3)*], in the circumstances set out respectively in *sub-clause 50(1)* and *sub-clause 50(2)*.

### **Refund if Crown lease surrendered**

*Clause 51* requires the relevant amount of duty, paid on a grant of Crown lease, to be refunded, if the lease is subsequently surrendered or determined, in the circumstances set out in the clause and according to the given formula.

### **Transfers arising from mortgages of land**

*Sub-clause 52(1)* imposes joint and several liability on the mortgagor and mortgagee for the payment of the duty chargeable on a transfer by way of mortgage of dutiable property that is Territory land.

When the relevant dutiable property is re-transferred, *sub-clause 52(2)* requires the Commissioner to refund the *ad valorem* duty paid on the transfer to the mortgagee, less an amount of \$20.

## **PART VI - CONCESSIONAL RATES OF DUTY**

### ***Division 1 - Trusts***

#### **Change in trustees**

*Sub-clause 53(1)* defines "new trustee" and "responsible entity".

*Sub-clause 53(2)* prescribes a duty of \$20 on a transfer of dutiable property to a person as consequence of the retirement of a trustee or the appointment of a new trustee, given the circumstances set out in the sub-clause.

*Sub-clause 53(3)* prescribes a duty of \$20 on a transfer of dutiable property to a responsible entity [defined in *sub-clause 53(1)*], given the circumstances set out in the sub-clause.

#### **Transfer to custodian of managed investment scheme**

*Clause 54* prescribes a duty of \$20 on a transfer of dutiable property from a responsible entity [see definition in *clause 4*] of a managed investment scheme [defined in *clause 4*] or a trustee of a responsible entity to a custodian or agent of the responsible entity.

#### **Property vested in an apparent purchaser**

*Clause 55* prescribes a duty of \$20 on a declaration of trust made by an apparent purchaser in respect of identified dutiable property, or a transfer of dutiable property from an apparent purchaser to the real purchaser, in the circumstances set out in the clause.

#### **Transfers back from a nominee**

*Sub-clause 56(1)* prescribes a duty of \$20 on a transfer back of dutiable property (other than marketable securities) from a trustee, in the circumstances set out in the sub-clause.

*Sub-clause 56(2)* prescribes a duty of \$20 on the initial transfer to the trustee and requires the Commissioner to reassess the initial transfer and refund any duty paid in excess of \$20, in the circumstances set out in the sub-clause.

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

*Clause 57* prescribes a duty of \$20 on a transfer for no consideration of dutiable property to a beneficiary, in the circumstances set out in the clause.

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

*Sub-clause 58(1)* prescribes a duty of \$200 on a declaration of trust over property that is not dutiable property [note the stipulation in *sub-clause 58(3)*].

*Sub-clause 58(2)* prescribes a duty of \$200 on a declaration of trust over unidentified property, in the circumstances set out in the sub-clause [note the stipulation in *sub-clause 58(3)*].

#### **Instrument relating to a managed investment scheme**

*Clause 59* prescribes a duty of \$20 on an instrument, or a declaration of trust, relating to a managed investment scheme in the circumstances set out in the clause.

## ***Division 2 - Superannuation***

### **Instruments relating to superannuation**

*Sub-clause 60(1)* prescribes a duty of \$20 on an instrument relating to superannuation of the type listed in the sub-clause.

*Sub-clause 60(2)* stipulates when a liability for duty under *clause 60* arises, while *sub-clause 60(3)* identifies the persons liable to pay the duty, and *sub-clause 60(4)* specifically exempts from duty an instrument to which *clause 60* applies, given the circumstances set out in the sub-clause.

### **Transfer of property from one superannuation fund to another**

*Clause 61* prescribes the rate of duty on a transfer of dutiable property from one superannuation fund to another, in the circumstances set out in *sub-clause 61(1)*. The chargeable duty is subject to a maximum of \$200 [*sub-clause 61(2)*] and to a minimum of \$20 [*sub-clause 61(3)*].

*Sub-clause 61(4)* stipulates the information and documents to accompany an application for an assessment of duty under *clause 61*, while *sub-clause 61(5)* empowers the Commissioner to request further information.

### **Transfer to trustees or custodians of superannuation funds or trusts**

*Clause 62* prescribes the rate of duty on a transfer of, or an agreement to transfer, dutiable property to a trustee or custodian of the types of superannuation funds or trusts referred to in *sub-clause 62(1)*, where there is no change in the beneficial ownership of the property. If the dutiable property is not marketable securities, the chargeable duty is subject to a maximum of \$200 and to a minimum of \$20 [refer *clause 227*], but if the dutiable property is marketable securities then the duty is \$20 [*sub-clause 62(3)*].

## ***Division 3 - Miscellaneous***

### **Transfer of land to certain authorities and other bodies**

*Clause 63* prescribes a duty of \$20 on a grant of a Crown lease to an authority referred to in *sub-clause 63(1)*, or a grant or transfer of land to a body referred to in *sub-clause 63(2)*.

### **Transfer of land in accordance with section 253Y of the Industrial Relations Act**

*Clause 64* prescribes a duty of \$20 on a transfer of land made under *section 253Y* of the Commonwealth *Industrial Relations Act 1988*.



### **Conveyances to prescribed persons**

*Clause 65* prescribes a duty of \$20 on a grant or transfer of land to a person prescribed in the regulations.

### **Conversion of property to unit title**

*Clause 66* prescribes a duty of \$20 on a transfer of a unit within the meaning of the *Unit Titles Act 1970*, if the Commissioner is satisfied of the circumstances referred to in the clause.

### **Surrender and regrant of Crown lease**

*Clause 67* prescribes a duty of \$20 on a surrender and regrant of a Crown lease in the circumstances set out in the clause.

### **Deceased estates**

*Clause 68* prescribes a duty of \$20 on a transaction relating to a deceased estate in the circumstances set out in the clause.

### **Certain transfers of marketable securities**

*Clause 69* prescribes a duty of \$20 on a transfer of marketable securities of the kind and in the circumstances set out in the clause.

### **Bankruptcy or insolvency**

*Clause 70* prescribes a duty of \$20 on a dutiable transaction arising from a bankruptcy or insolvency in the circumstances set out in the clause.

### **Transfers related to certain personal relationships**

*Sub-clause 71(1)* prescribes a duty of \$20 on a transfer of dutiable property in the circumstances set out in the sub-clause.

*Sub-clause 71(2)* prescribes a duty of \$20 on a transfer by a person to his or her spouse of dutiable property that is used as their principal place of residence, in the circumstances set out in the sub-clause.

## **PART VII - EXEMPTIONS**

### **Transfers to a State, another Territory or a prescribed authority**

*Clause 72* exempts from duty a transfer of dutiable property to a State, another Territory, or to an authority of the Commonwealth, a State or another Territory prescribed in the regulations.

### **Transactions relating to mortgages**

*Clause 73* exempts from duty a dutiable transaction relating to a mortgage in the circumstances set out in the clause.

### **Marketable securities**

*Clause 74* exempts from duty a dutiable transaction in respect of marketable securities of the kind and in the circumstances set out in the clause.

## **PART VIII**

# **CHAPTER 3 - CERTAIN TRANSACTIONS TREATED AS TRANSFERS**

## **PART I - PRELIMINARY**

### **Interpretation**

*Clause 75* defines "acquisition statement" and "Chapter 3 transaction" for the purposes of this Chapter.

### **Imposition of duty**

*Clause 76* stipulates that this Chapter charges duty on certain transactions to which Chapter 2 does not apply.

## **PART II - ACQUISITION OF INTERESTS IN CERTAIN LANDHOLDERS**

### ***Division 1 - Landholding private corporations***

#### **Interpretation**

*Clause 77* defines "private corporation".

#### **When is a private corporation a landholder?**

*Clause 78* stipulates when a private corporation is deemed to be a landholder for the purposes of Part II of this Chapter.

#### **Landholdings in private corporations**

*Clause 79* elaborates on the nature of landholdings of private corporations.

### **Constructive ownership of landholdings and other property: subsidiaries**

#### *Clause 80:*

- deems a private corporation as holding an interest in land or other property that is held by its subsidiary;
- defines the value, for duty purposes, of such land or other property; and
- elaborates on the nature of a subsidiary.

### **Constructive ownership of landholdings and other property: discretionary trusts**

#### *Clause 81:*

- stipulates, for the purposes of the clause, who a beneficiary of a discretionary trust is [*sub-clause 81(1)*];
- deems such a beneficiary as owning or being otherwise entitled to the property under the trust, unless the Commissioner determines otherwise [*sub-clause 81(2)*]; and
- deems, unless the Commissioner determines otherwise, any property that is the subject of a discretionary trust to be also the subject of another discretionary trust in the circumstances set out in the clause [*sub-clause 81(3)*].

### ***Division 2 - Acquisitions of interests in private corporations***

#### **What are “interests” and “majority interests” in private corporations?**

*Clause 82* deems a person (including a private corporation) as having an interest, or a majority interest, in a private corporation, in the circumstances set out in the clause.

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

*Clause 83* stipulates how an interest in a landholding private corporation may be acquired.

### ***Division 3 Charging of duty***

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

*Clause 84* stipulates when a liability for duty charged by Part II of this Chapter arises.

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

*Clause 85* defines what a “relevant acquisition” is for the purposes of this Division.

### **Acquisition statements**

*Clause 86* requires a person who has made a relevant acquisition [as defined in *clause 85*] to prepare and lodge, with the Commissioner, an acquisition statement in a form approved by the Commissioner and containing the items of information listed in *sub-clause 86(2)*.

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

*Clause 87* stipulates the time by which duty must be paid.

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

*Clause 88* stipulates the person or persons liable to pay the duty chargeable under Part II of this Chapter.

### **How duty is charged on relevant acquisitions**

Subject to Division 4, *clause 89* stipulates the rate of duty and method of charging the duty on relevant acquisitions in the circumstances set out in the clause.

### ***Division 4 - General and supplemental***

#### **Transactions subject to prescribed duty**

*Clause 90* prescribes a duty of \$20 on a "Chapter 3 transaction" [defined in *clause 75* to mean a transaction that is treated as a transfer by virtue of this Chapter] in the circumstances set out in the clause.

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

*Clause 91* stipulates, for the purposes of Part II of this Chapter, the method of calculating the entitlement of a person to participate in a distribution of the property of a private corporation.

#### **Valuation of property**

*Clause 92* applies the provisions of this Bill relating to the ascertainment of the value of transfers chargeable with *ad valorem* duty to an acquisition statement [defined in *clause 75*] under Part II of this Chapter and the value of land holdings mentioned in the statement.

*Sub-clause 92(2)* empowers the Commissioner to disregard any arrangement intended to reduce the dutiable value of dutiable land holdings and entered into within 12 months of a relevant acquisition.

### **Agreements for sale or conveyance of land**

*Clause 93* requires the Commissioner to assess or reassess an acquisition statement [defined in *clause 75*] in the manner and circumstances set out in the clause.

### **Duty concession - acquisitions securing financial accommodation**

*Clause 94* provides a duty concession for an acquisition of an interest in a landholding private corporation in the circumstances set out in the clause.

## **PART III - ENTITLEMENTS ARISING FROM CAPITAL REDUCTIONS OR ALTERATIONS OF RIGHTS**

### **Interpretation**

*Clause 95* defines certain words and expressions used in this Part and clarify certain matters relating to the treatment of voting shares.

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

*Clause 96* specifies when a liability for duty charged under this Part arises.

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

*Clause 97* stipulates the time by which duty must be paid.

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

*Clause 98* stipulates the person or persons liable to pay the duty.

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

*Clause 99* requires a person who becomes entitled to the proportions of voting shares and in the circumstances stated in the clause to lodge statement with the Commissioner in respect of the entitlement within 90 days of the entitlement arising.

### **Form of statement**

*Clause 100* requires the statement of entitlement [under *clause 99*] to be lodged in a form approved by the Commissioner and to contain the items of information listed in the clause.

### **Assessment of duty**

*Clause 101* sets out the rates of duty chargeable on the statement of entitlement lodged under *clause 99*.

**PART IV - ACQUISITION OF LAND USE ENTITLEMENTS BY ALLOTMENT OF SHARES OR ISSUE OF UNITS**

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

*Clause 102* stipulates when a liability for duty charged by this Part arises.

**When must duty be paid?**

*Clause 103* prescribes the time by which duty under this Part must be paid.

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

*Clause 104* stipulates the person who is liable to pay duty under this Part.

**Acquisition of land use entitlement**

*Clause 105* requires the person who acquires a land use entitlement to lodge with the Commissioner a statement of the entitlement within the time stipulated in the clause.

**Form of statement**

*Clause 106* prescribes the form of the statement of entitlement under *clause 104* and the items of information to be provided in the statement.

**Assessment of duty**

*Clause 107* prescribes the rate of duty chargeable on the share allotment or unit issue by which a person acquires a land use entitlement.

**PART V - ALLOTMENT OF SHARES BY DIRECTION**

**Application of Part**

*Clause 108* stipulates the matter to which this Part applies.

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

*Clause 109* stipulates when a liability for duty charged by this Part arises.

**When must duty be paid?**

*Clause 110* prescribes the time by which duty under this Part must be paid.

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

*Clause 111* stipulates the person who is liable to pay duty under this Part.

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

*Clause 112* requires the person to whom any shares are allotted in an allotment to which this Part applies to lodge with the Commissioner a statement in respect of the allotment within the time stipulated in the clause.

### **Allotment statement**

*Clause 113* prescribes the form of the statement of allotment under *clause 111* and the items of information to be provided in the statement.

### **Assessment of duty**

*Clause 114* prescribes the rate of duty on an allotment to which this Part applies.

## **CHAPTER 4 - ON-MARKET TRANSFERS OF MARKETABLE SECURITIES**

### **PART I - PRELIMINARY**

#### **Interpretation**

*Clause 115* defines "broker", "exempt transaction", and "marketable securities" for the purposes of this Chapter.

#### **Presumptions regarding broking**

*Clause 116* stipulates certain presumptions in relation to broking.

### **PART II - LIABILITY FOR DUTY**

#### **Imposition of duty**

*Clause 117:*

- imposes liability for duty on the transactions listed in the clause;
- elaborates on what is covered by the expressions "an order for a sale or purchase is received in the Territory", "a sale or purchase on a broker's own account is effected in the Territory", and "a sale or purchase of marketable securities"; and
- defines a number of other expressions used in the clause.

#### **Exemptions**

*Clause 118* exempts from duty certain sales or purchases of marketable securities as listed in the clause.

## **PART III - RATES OF DUTY**

### **Three rates**

*Clause 119* prescribes 3 rates of duty ["the general rate", "the concessional rate" and "the differential rate"] for the purposes of this Chapter as if those rates have been determined by the Minister, at the commencement of the clause, under the relevant provision of the *Taxation Administration Act 1998*, and provides the means for subsequent revocation or variation of those rates under the *Taxation Administration Act 1998*.

### **Duty at general rate**

*Clause 120* prescribes the general rate of duty on a broker transaction that is dutiable under this Chapter, unless otherwise provided.

### **Marketable securities held on broker's own account**

*Clause 121* prescribes the concessional rate of duty on the kind of broker transactions listed in the clause.

### **Marketable securities held on account of options traders and futures brokers**

*Clause 122* prescribes the concessional rate of duty on the kind of broker transactions listed in the clause.

### **Marketable securities held on account of warrant-issuers**

*Clause 123* prescribes the concessional rate of duty on the kind of broker transactions listed in the clause.

### **Additional duty on marketable securities held otherwise than for short terms**

*Clause 124* prescribes the differential rate of duty on the kind of broker, registered independent options trader or futures broker transactions listed in the clause, which is payable in addition to the duty payable under *clauses 120, 121 and 122*.

### **Low exercise price options**

*Clause 125* stipulates the base on which the rate of duty chargeable under this Chapter is to be calculated in cases of a sale or purchase of marketable securities that is made as a result of the exercise of an option.



## **PART IV - RECORDS OF TRANSFERS**

### **Records of sales, purchases and transactions - generally**

*Clause 126* requires a broker to make a record of a transaction of the kind mentioned in the clause, and showing the items of information there listed, immediately after the transaction, and imposes a penalty of 20 penalty units on a natural person and 100 penalty units on a body corporate for non-compliance.

### **Records of sales, purchases and transactions - options traders, futures brokers and warrant-issuers**

*Clause 127* requires a broker to make a record of a transaction of the kind mentioned in the clause, and showing the items of information there listed, immediately after the transaction, and imposes a penalty of 20 penalty units on a natural person and 100 penalty units on a body corporate for non-compliance.

## **PART V - PERIODIC RETURNS AND PAYMENT OF DUTY**

### **Lodgment of returns and payment of duty by brokers**

*Clause 128* stipulates the time by which a broker must lodge with the Commissioner a monthly return, in the approved form, in respect of:

- the transactions required to be recorded under *clause 126*, and to pay the Commissioner the appropriate amount of duty payable on those transactions; and
- the transactions for which the broker is liable to pay duty under *clause 124*, and to pay the Commissioner the appropriate amount of duty payable.

### **Lodging of returns - registered independent options traders, futures brokers and warrant-issuers**

*Clause 129* stipulates the time by which a registered independent options trader, futures broker or warrant issuer must lodge a monthly return, in the approved form, with the Commissioner and pay the Commissioner the appropriate amount of duty payable.

## **PART VI - MISCELLANEOUS**

### **Endorsement of transfer as to payment of duty**

*Clause 130* stipulates certain actions which a broker must take immediately after the broker makes a record under *clause 126*. However, the clause prohibits the broker from taking any of those actions before a record under *sub-clause 126(1)* has been made, and imposes a penalty of 20 penalty units on a natural person and 100 penalty units on a body corporate for non-compliance.

*Sub-clause 130(6)* prohibits a person, other than a broker, from taking the actions listed in the sub-clause, and imposes a penalty of 100 penalty units or imprisonment for 12 months or both on a natural person and 500 penalty units on a body corporate for non-compliance.

#### **Recovery of duty by broker from vendor or purchaser**

*Clause 131* enables a broker to recover any duty paid under this Chapter from the broker's client.

## **CHAPTER 5 - LEASE INSTRUMENTS**

### **PART I - PRELIMINARY**

#### **Interpretation**

*Clause 132* defines "lease", "lease instrument", "lessee" and "lessor" for the purposes of this Chapter.

### **PART II - LIABILITY FOR DUTY**

#### **Imposition of duty**

*Clause 133* imposes duty on a lease instrument [defined in *clause 132*].

#### **How duty is charged on a lease instrument**

*Clause 134* imposes duty, at the rate prescribed in this Chapter, on a lease instrument in the circumstances set out in the clause.

#### **What is the "cost" of a lease?**

*Clause 135* defines, for the purposes of this Chapter, the cost of a lease (other than a franchise arrangement) and the cost of a franchise arrangement.

#### **Splitting or redirection of cost of franchise agreement**

*Clause 136* empowers the Commissioner, in determining the cost of a franchise arrangement, to include as part of such cost any payment related to the franchise which has the effect of minimising the duty payable.

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

*Clause 137* stipulates the person liable to pay duty.

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

*Clause 138* prescribes the time by which a lease instrument becomes liable to duty, and by which the duty must be paid to the Commissioner.

## **PART III - RATES OF DUTY**

### **General rate**

*Clause 139* imposes duty on a lease at the rate determined under *section 139* of the *Taxation Administration Act 1998*.

### **Rates of duty on certain long-term leases**

*Clause 140* imposes duty on a long term lease [that is, either a lease granted for a term exceeding 30 years, or one whose initial term and option(s) for renewal aggregate to more 30 years] at the rate determined under *section 139* of the *Taxation Administration Act 1998*.

### **Exemption from duty and nominal duty**

*Clause 141* exempts from duty or imposes a duty of \$20 on a lease instrument or an instrument which varies a lease in the circumstances set out in the clause.

## **PART IV - UNASCERTAINABLE LEASE COSTS**

### **Operation of Part**

*Clause 142* prescribes the method for determining, for duty assessment purposes, the cost of a lease in situations where the cost includes partly or wholly unascertainable components, and for the quantification of the value of lessees' improvements.

### **Estimate and subsequent adjustment**

*Clause 143:*

- details the method for determining as a definite sum any partly unascertainable cost components of a lease and the duty payable on the initial estimate of the total cost of the lease, unless the Commissioner and the lessor agree that the method detailed in *clause 144* should apply instead;
- provides for periodic estimates of cost components, and consequential adjustments and refunds of duty;
- requires the lessor to produce to the Commissioner, within 1 month of each periodic estimate date, a duly stamped part of the lease instrument together with a statutory declaration on the matters set out in the sub-clause; and

- imposes a penalty of 50 penalty units on a natural person and 250 penalty units on a body corporate for non-compliance.

#### **CPI method**

*Clause 144* details the method, based on movements in the ACT consumer price index, for determining as a definite sum any partly unascertainable cost components of a lease and the duty payable, as an alternative to the method set out in *clause 143*.

#### **Qualification of lessee's improvements**

*Clause 145* sets out the method for determining the value of lessees' improvements.

### **PART V - MISCELLANEOUS**

#### **Interim stamping of lease instrument**

*Clause 146* provides for the interim stamping of a lease instrument assessed for duty under *clause 143*, or of a lease instrument, upon payment of a duty of \$20, in cases where no part of the duty under this Chapter is immediately ascertainable.

#### **Reassessment of duty - early termination**

*Clause 147* enables a lessor to apply to the Commissioner, within the time stated, for a reassessment [and consequential refund] of duty paid on a lease instrument in cases where the lease is terminated before the expiry of the term; and requires the Commissioner to make a refund of duty as set out in *sub-clause 147(4)*.

#### **Reassessment of duty - reduction of cost**

*Clause 148* enables a lessor to apply to the Commissioner, within the time stated, for a reassessment [and consequential refund] of duty paid on a lease instrument in cases where the lease is subsequently varied so as to reduce its total cost; and requires the Commissioner to make a refund of duty as set out in *sub-clause 148(3)*.

#### **Exemptions**

*Clause 149* exempts from duty chargeable under this Chapter a lease instrument of the kind listed in the clause.

## **CHAPTER 6 - HIRE OF GOODS**

### **PART I - PRELIMINARY**

#### **Interpretation**

*Clause 150* defines "equipment financing arrangement" and "goods" for the purposes of this Chapter.

### **What is a “hire of goods”?**

*Clause 151* defines “hire of goods” for the purposes of this Chapter.

### **Exclusions from the definition of “hire of goods”**

*Clause 152* excludes from the definition of “hire of goods” the kind of arrangements and transactions listed in the clause, and exempts from duty chargeable under this Chapter a hire of goods in the circumstances stated in *sub-clause 152(2)*.

### **What form may a hire of goods take?**

*Clause 153* stipulates the form that a hire of goods may take.

### **What are “hiring charges”?**

*Clause 154* defines “hiring charges” for the purposes of this Chapter.

### **Payments exempted from “hiring charges”**

*Clause 155* excludes the payments listed in the clause from the definition of “hiring charges”, and exempts from duty chargeable under this Chapter a payment by a hirer in the circumstances stated in *sub-clause 155(2)*.

### **Hire of goods to which this Chapter applies - jurisdictional nexus**

*Clause 156* stipulates the kind of hire of goods to which this Chapter applies.

## **PART II - IMPOSITION AND RATES OF DUTY**

### **Imposition of duty**

*Clause 157* imposes duty on the hire of goods.

### **Rates of duty**

*Clause 158* prescribes the rate of duty determined under *section 139* of the *Taxation Administration Act 1998* on the total amount of the hiring charges of an equipment financing arrangement [defined in *clause 150*] or of an ordinary hire of goods [defined in *clause 151*], and a maximum amount of duty of \$10,000 on a special hiring agreement [defined in *clause 4*].

### **Credit for duty paid in another Australian jurisdiction**

*Clause 159* requires the duty chargeable under this Chapter to be reduced by the amount of duty paid on the hire under a corresponding Act [defined in *clause 4*], but the duty cannot be reduced below \$6,000 in the case of a special hiring agreement that is chargeable with the maximum amount of duty.

### **Splitting or redirection of hiring charges**

*Clause 160* empowers the Commissioner to include as part of the amount received as hiring charges any payment related to the hire of goods which has the effect of minimising the duty payable.

### **Ascertainment and disclosure of place of use of goods**

*Clause 161:*

- enables a person who hires out goods, when determining the person's liability to duty, to rely on a statement by the hirer as to the place of use of the goods, in the circumstances stated, unless the person knows that the statement is false;
- empowers the Commissioner to assess or reassess the duty payable according to the actual place of use of the goods if that is different from that given in the hirer's statement;
- absolves a person who hires out goods, who fails to pay duty in due reliance on the hirer's statement as to the place of use of the goods, from default under the *Taxation Administration Act 1998* in the circumstances stated; and
- imposes on a hirer a penalty of 50 penalty units or imprisonment for 6 months or both, in the case of a natural person, and 250 penalty units, in the case of a body corporate, in the circumstances stated in *sub-clause 161(5)*.

## **PART III - ARRANGEMENTS APPLICABLE TO PERSONS ENGAGED IN THE BUSINESS OF HIRING OUT GOODS**

### **Interpretation**

*Clause 162* defines "commercial hire business" for the purposes of this Part.

### **Application of Part**

*Clause 163* stipulates the persons to whom this Part applies.

### **Commercial hire businesses to be registered**

*Clause 164* requires a commercial hire business [defined in *clause 162*] to be registered under this Part, in the circumstances stated in *sub-clause 164(1)*, and by the time given in *sub-clause 164(2)*, and imposes a penalty of 50 penalty units on a natural person and 250 penalty units on a body corporate for non-compliance.

### **Registration of commercial hire businesses**

*Clause 165* requires the Commissioner to register under this Part a commercial hire business that applies for registration in the approved form; empowers the Commissioner to register a commercial hire business even if it has not applied for

registration; and requires the Commissioner to give written notice of registration to the commercial hire business.

#### **Cancellation of registration of commercial hire businesses**

##### *Clause 166:*

- requires a registered commercial hire business that ceases to hire out goods as a business to take the actions set out in *sub-clause 166(1)*, and imposes a penalty of 50 penalty units on a natural person and 250 penalty units on a body corporate for non-compliance;
- requires or empowers the Commissioner to cancel, or prohibits the Commissioner from cancelling, the registration of a commercial hire business in the circumstances set out respectively in *sub-clauses 166(2), 166(3) and 166(4)*; and
- stipulates the date from which the cancellation of registration takes effect.

#### **Duty base**

##### *Clause 167:*

- stipulates the base on which duty under this Part is to be assessed;
- empowers the Commissioner to approve a different basis of calculating the hiring charges, and subsequently to revoke that approval; and
- enables a registered commercial hire business to change, with the consent of the Commissioner, the basis of calculating the hiring charges from month to month, and the Commissioner to make appropriate assessment or reassessment of duty.

#### **Lodgment of returns and payment of duty**

##### *Clause 168:*

- requires a commercial hire business to lodge a monthly return, in the approved form, with the Commissioner and to pay the Commissioner the appropriate amount of duty payable, within the time and in the circumstances stated [*sub-clauses 168(1), (2) and (3)*];
- empowers the Commissioner to approve lodgment of returns by a commercial hire business in respect of a period of more than 1 month in the circumstances stated [*sub-clause 168(4)*];
- enables a commercial hire business to elect to pay the duty payable on a special hiring agreement by lodging a statement under *clause 171* [*sub-clause 168(5)*]; and

- enables a commercial hire business, in relation to a special hiring agreement, to request a reassessment of duty in the circumstances stated [*sub-clause 168(6)*].

#### **Returns of related bodies corporate**

*Clause 169* enables the lodgment of a single return for 2 or more commercial hire businesses that are related bodies corporate, and stipulates how the duty-free amount of hire charges provided under *sub-clause 168(2)* is to be applied in such cases.

### **PART IV - ARRANGEMENTS APPLICABLE TO PERSONS OTHER THAN THOSE ENGAGED IN THE BUSINESS OF HIRING OUT GOODS**

#### **Statement of transaction**

If a person, who is not otherwise normally engaged in the business of hiring goods, hires out goods, the person is required by *clause 170* to prepare a written statement on the hire if the total amount of the hiring charges paid or payable is not less than \$1,000. The statement must contain the items of information stipulated in *sub-clause 170(1)* and be prepared within the time given in *sub-clause 170(2)*, unless the hire is already evidenced by another document that otherwise complies with the requirements of the *clause*.

#### **Lodgment of statement and payment of duty**

##### *Clause 171:*

- specifies the time by which the person referred to in *clause 170* is required to lodge the required statement of the hire with the Commissioner and pay the duty payable within time specified in *sub-clause 171(1)*;
- empowers the Commissioner to issue a notice of assessment of duty under the *Taxation Administration Act 1998* after the person hiring out the goods has failed to comply with the lodgment time stated in *sub-clause 171(1)*;
- imposes a joint and several liability on the person hiring out the goods and the hirer to pay duty payable under this *clause*; and
- enables the hirer to make out and lodge the statement and pay the duty under this *clause*.

#### **Method of calculating total hiring charges if they are not readily ascertainable**

*Clause 172* empowers the Commissioner to require the person hiring out the goods to provide further written statements and pay the appropriate duty in the circumstances and within the time stated in the *clause*.



## **CHAPTER 7 - MORTGAGES**

### **Liability for duty**

*Clause 173* imposes duty on a mortgage instrument only if the instrument is liable to duty under another Chapter.

## **CHAPTER 8 - INSURANCE**

### **PART I - PRELIMINARY**

#### **Interpretation**

For the purposes of this Chapter, *clause 174* defines a number of words and expressions used in the Chapter.

#### **When is a premium "paid"?**

*Clause 175* deems a premium, or an instalment of a premium, to be paid, or to have been received by an insurer, in the circumstances stated in the clause.

### **PART II - GENERAL INSURANCE**

#### **Imposition of duty**

*Clause 176* imposes duty on the amount of the premium paid for a general insurance, and requires the amount of duty to be paid each time such a premium is paid.

#### **Rate of duty**

*Clause 177* prescribes duty at the rate determined under *section 139* of the *Taxation Administration Act 1998*.

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

*Clause 178* stipulates the general insurer [defined in *clause 174*] as the person liable to pay the duty, except in the circumstances stated in *clause 179*.

#### **Circumstances in which duty is payable by the insured person**

*Clause 179* specifies the circumstances in which the insured person, or another person acting on the insured person's behalf, is liable to pay the duty.

#### **Records to be kept**

*Clause 180* requires a person to whom *clause 179* applies [that is, an insured person who obtains, effects, or renews any general insurance with a person who is not a

registered insurer, or a person acting on the insured person's behalf] to maintain records, containing the items of information listed in the clause.

#### **Refunds where premiums are returned**

*Clause 181* entitles a general insurer, or a person to whom *clause 179* applies, to a refund of duty in the circumstances stated, and enables a general insurer to whom duty is refunded to apply the amount of the refund to offset any other payment required to be made under this Bill by the general insurer.

### **PART III - LIFE INSURANCE**

#### **Imposition of duty**

*Clause 182* provides for this Part to impose duty on a policy of life insurance and a life insurance rider [both defined in *clause 174*].

#### **Obligation to make out and execute a policy of life insurance**

*Clause 183* specifies the actions which, and time by which those actions, must be taken by a life company [defined in *clause 4*] in relation to a policy of life insurance.

#### **Rates of duty**

*Clause 184* prescribes duty, at the rate determined under *section 139* of the *Taxation Administration Act 1998*, on a policy of life insurance, a temporary or term insurance policy, a life insurance rider, and a policy of disability income insurance, in the manner stated.

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

*Clause 185* stipulates the life company or the person issuing the policy of life insurance rider is liable to pay the duty, except in the circumstances stated in *clause 186*.

#### **Circumstances in which duty is payable by the insured person**

*Clause 186* specifies the circumstances in which an insured person, or another person acting on the insured person's behalf, is liable to pay the duty, and requires such person to lodge with the Commissioner a return in the approved form, containing such information as the Commissioner may require, and to pay the Commissioner the appropriate amount of duty, within the time specified in the clause.

#### **Refund on cancellation of policy of life insurance**

*Clause 187* provides for a refund of duty to the person who paid the duty in the circumstances stated.

## **PART IV - PAYMENT OF DUTY BY INSURERS**

### **Insurers to be registered**

*Clause 188* requires an insurer to be registered under this Part.

### **Application for registration**

*Clause 189* requires the Commissioner to register an insurer who applies for registration in the approved form.

### **Cancellation of registration by the Commissioner**

*Clause 190* empowers the Commissioner to cancel an insurer's registration in the circumstances set out in the clause.

### **Cessation of business and cancellation of registration by an insurer**

*Clause 191:*

- requires a registered insurer who ceases to write insurance business in the Territory to take the actions specified in the clause;
- imposes a penalty of 250 penalty units for non-compliance; and
- stipulates that the insurer's notice of cessation of business cancels the insurer's registration on the day it is received by the Commissioner.

### **Register of Insurers**

*Clause 192* requires the Commissioner to keep a register of insurers, and enables inspection of the register without charge.

### **Monthly returns and payment of duty**

*Clause 193* requires a registered insurer to lodge with the Commissioner a monthly return, in the approved form and showing the specified items of information, and to pay the Commissioner the appropriate amount of duty, within the time stated in the clause.

### **Recovery of duty by registered insurer**

*Clause 194* enables a registered insurer to require an insured person to pay the insurer an amount equal to the duty chargeable, and, if the amount is not paid, to recover it as a debt.

## **PART V - APPORTIONMENT**

### ***Division 1 - Apportionment of premiums and other amounts between Australian jurisdictions***

#### **Application of Division**

*Clause 195* specifies the kind of contract of insurance to which this Division applies.

#### **Object of Division**

*Clause 196* stipulates the object of this Division.

#### **Schedule of Apportionment**

*Clause 197* empowers the Commissioner to adopt, from time to time, a Schedule of Apportionment, in consultation with any person the Commissioner considers suitable, for the purpose stated in the clause.

#### **Apportionment in practice**

*Clause 198* outlines the method by which an apportionment of a premium may be carried out in practice, and empowers the Commissioner to determine the apportionment, to reassess the liability to duty and charge duty accordingly, in the circumstances specified.

### ***Division 2 - Apportionment of premiums and other amounts as between different types of insurance***

#### **Apportionment between different types of insurance**

*Clause 199* specifies the kind of apportionment to which the clause applies, and empowers the Commissioner to determine the apportionment, to reassess the liability to duty and charge duty accordingly, in the circumstances specified.

## **PART VI - EXEMPT INSURANCE**

#### **Insurance that is exempt from duty**

*Clause 200* exempts from duty under this Chapter the kind of insurances specified in the clause.

## **PART VII - MISCELLANEOUS**

#### **Effect on contract of insurance of failure to comply with this Chapter**

*Clause 201* protects a contract of insurance from illegality or invalidity arising from a failure to comply with the provisions of this Chapter.

## **CHAPTER 9 - MOTOR VEHICLE REGISTRATION**

### **PART I - IMPOSITION AND RATES OF DUTY**

#### **Interpretation**

*Clause 202* defines "dutiabale value" for the purposes of this Part.

#### **Imposition of duty**

*Clause 203* imposes duty on an application to register a motor vehicle under the *Motor Traffic Act 1936* in the circumstances stated.

#### **Lodgment of statement of dutiable value**

*Clause 204* requires a person who makes an application to register a motor vehicle under the *Motor Traffic Act 1936* to 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.

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

*Clause 205* stipulates the applicant for registration as the person liable to pay the duty.

#### **When does duty become payable?**

*Clause 206* specifies the time when the duty becomes payable.

#### **Rate of duty**

*Clause 207* prescribes duty at 2 levels of dutiable value [below \$45,000 and \$45,000 and over] at the respective rate determined under *section 139* of the *Taxation Administration Act 1998*

### **PART II - EXEMPTIONS**

#### **Government Vehicles**

*Clause 208* exempts from duty under this Chapter an application for registration if the applicant is the Territory, Commonwealth, a State or another Territory, or an authority of the Territory, Commonwealth, a State or another Territory.

#### **Hospitals, schools and charitable organisations**

*Clause 209* exempts from duty under this Chapter an application for registration if the applicant is a hospital, school or charitable organisation, or a person who is to hold the vehicle on behalf of, or as a trustee for, such a body.

#### **Certain disabled persons**

*Clause 210* exempts from duty under this Chapter an application for registration if the applicant is a disabled person in the circumstances specified in the clause.

#### **Successors of deceased persons**

*Clause 211* exempts from duty under this Chapter an application for registration if the applicant is a successor in title of a deceased person as specified in the clause.

#### **Vehicles transferred pursuant to certain court orders and agreements**

*Clause 212* exempts from duty under this Chapter an application for transfer of registration pursuant to certain court orders and agreements as listed in the clause.

#### **Motor dealers - demonstrator vehicles and trading stock**

*Clause 213* exempts from duty under this Chapter an application for registration by a licensed vehicle dealer [as defined in the clause] of a demonstrator vehicle [as defined] or trading stock [as defined], on condition that the vehicle so registered is disposed of within 12 months of its registration.

#### **Organisations registered under Industrial Relations Act**

*Clause 214* exempts from duty under this Chapter an application for registration by an organisation registered under the Commonwealth *Industrial Relations Act 1988*.

#### **Hire purchase agreements and lease agreements**

*Clause 215* exempts from duty under this Chapter an application for registration of a motor vehicle that is or was under a hire-purchase agreement or a lease, in the circumstances stated in the clause.

#### **Veteran, vintage and historic vehicles**

*Clause 216* exempts from duty under this Chapter an application for registration of a "veteran", "vintage" or "historic" vehicle [as defined in the *Motor Traffic Act 1936*], in the circumstances stated in *sub-clause 216(1)*.

However, *sub-clause 216(2)* stipulates that an amount of tax is payable on a further application for registration of such a vehicle, made within 3 years of the duty-exempted registration and in the further circumstances stated in the sub-clause.

#### **Avoidance of double duty - duty paid in a corresponding Australian jurisdiction**

*Clause 217* exempts from duty under this Chapter an application for registration in the Territory of a motor vehicle that is registered under the corresponding law of another

Australian jurisdiction in the name of the applicant and for which duty has been paid in that jurisdiction.

#### **Reassessment of duty - repossession of stolen motor vehicle**

*Clause 218* exempts from duty under this Chapter an application for registration of a repossessed stolen motor vehicle.

### **PART III - MISCELLANEOUS**

#### **Interpretation**

*Clause 219* defines "licensed vehicle dealer" and "Registrar" for the purposes of this Part.

#### **Prerequisite for registration**

*Clause 220* prohibits the Registrar from registering a motor vehicle unless the conditions stipulated in the clause are met.

#### **Certificates of exemption**

*Clause 221* empowers the Commissioner to issue certificates of exemption from duty.

#### **Registrar's returns**

*Clause 222* requires the Registrar to provide the Commissioner with monthly returns on the matters stated.

#### **Rectification of errors in registration**

*Clause 223* imposes a duty of \$20 on an application to rectify an error or omission in registration.

#### **Refund of duty on cancellation of sale**

*Clause 224* provides for a refund of duty paid on an application for registration of a motor vehicle, the sale of which is subsequently cancelled.

#### **Certificates as evidence**

*Clause 225* stipulates that the Registrar's certificate is evidence of the matters and facts so certified.

## CHAPTER 10 - MISCELLANEOUS DUTIES

### Duplicates and counterparts

#### *Clause 226:*

- exempts from duty a duplicate or counterpart of an instrument if the duplicate or counterpart is lodged for stamping at the same time as the original instrument;
- imposes a duty of \$20 on a duplicate or counterpart of an instrument that is not lodged for stamping at the same time as the original instrument;
- stipulates that the person who is liable to pay the duty on the original instrument is also liable to pay the duty of \$20 on the duplicate or counterpart; and
- prohibits the Commissioner from stamping the duplicate or counterpart as such, unless the Commissioner is satisfied that the proper duty has been paid on the original instrument.

### Replicas

*Clause 227* imposes a duty of \$20 on a replica [as defined in the clause].

### Minimum amount of duty

*Clause 228* is a general provision which imposes a minimum duty of \$20 on all transactions or instruments except those listed in *sub-clause 227(2)*.

## CHAPTER 11 - GENERAL EXEMPTIONS FROM DUTY

### Intergenerational rural transfers

#### *Clause 229:*

- exempts from duty under this Bill 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, in the circumstances stated in *sub-clause 229(1)*; and
- empowers the Minister to provide, by instrument, relevant guidelines.

### Specialised agencies

*Clause 230* exempts from duty under this Bill an instrument executed by a "specialised agency" as defined in the clause.



### **Members of a group of corporations**

*Clause 231* exempts from duty under this Bill a transfer of, or an agreement to transfer, dutiable property; or an application for registration of a motor vehicle, between members of a group of corporations and in the circumstances stated in the clause; and empowers the Minister to provide, by instrument, relevant guidelines.

## **CHAPTER 12 - MISCELLANEOUS**

### **PART I - STAMPING INSTRUMENTS**

#### **Impressed stamps**

*Clause 232* requires the Commissioner to arrange for the making and use of impressed stamps.

#### **Stamping of instruments**

*Clause 233* requires the Commissioner to stamp an instrument in the circumstances stated.

#### **Duly stamped instruments**

*Clause 234* stipulates when an instrument is taken to have been duly stamped.

#### **Stamping duplicates or counterparts of instruments**

*Clause 235* requires the Commissioner to put an impress stamp on a duplicate or counterpart of an instrument in the circumstances stated.

#### **Stamping instruments if no duty chargeable**

*Clause 236* empowers the Commissioner to put an appropriate impress stamp on a non-dutiable instrument.

#### **Stamps defaced and removed**

*Clause 237* provides for the continuing validity of the stamping of an instrument even though the stamp has been defaced or removed from the instrument.

#### **Fraudulent use of stamps**

*Clause 238* prohibits fraudulent use of stamps, and imposes a penalty of 100 penalty units or imprisonment for 12 months or both on a natural person and 500 penalty units on a body corporate for non-compliance.

### **Possession of counterfeiting equipment**

#### *Clause 239:*

- prohibits a person, without lawful authority, from making, selling, using or possessing a die or other device for making impressed stamps;
- imposes a penalty of 100 penalty units or imprisonment for 12 months or both on a natural person and 500 penalty units on a body corporate for non-compliance; and
- stipulates the forfeiture to the Territory of a stamp, die, plate or devise made, sold, used or had in possession in contravention of *sub-clause 239(1)*.

### **Illegal stamping**

*Clause 240* prohibits illegal stamping, and imposes a penalty of 100 penalty units or imprisonment for 12 months or both on a natural person and 500 penalty units on a body corporate for non-compliance.

### **Instruments to be separately charged with duty in certain cases**

Where an instrument relates to several distinct dutiable matters, *clause 241* requires each of those matters to be treated as if each were dealt with in a separate instrument.

### **Execution of instruments**

*Clause 242* stipulates the time of execution, for the purposes of this Bill, of an instrument, or a contract made by acceptance of an offer contained in an instrument; and provides for a refund of money paid for stamping on an instrument rendered ineffective by non-execution.

### **Stamping of instruments after execution**

*Clause 243* requires an executed instrument that is dutiable to be stamped within 6 months of first execution [as defined], and imposes a penalty of 50 penalty units on a natural person and 250 penalty units on a body corporate for non-compliance.

### **Stamping taken to constitute an assessment**

*Clause 244* stipulates that the stamping of an instrument (excluding a return) by the Commissioner is evidence of an assessment of the duty payable under this Bill on the instrument.

### **Deferred payments for certain stamped instruments**

*Clause 245* empowers the Minister to authorise the stamping of instruments even though the duty payable has not yet been paid, in the circumstances stated in the clause.

## **PART II - ENFORCEMENT**

### **Registration of instruments**

*Clause 246* prohibits a person from registering in a register of legal or beneficial interests in dutiable property a dutiable instrument, unless the instrument has been stamped; and imposes a penalty of 50 penalty units on a natural person and 250 penalty units on a body corporate for non-compliance.

### **Registration of transfers of shares**

*Clause 247* prohibits a corporation, company or society from entering in its records a dutiable transfer of shares or a dutiable transfer arising from a sale or purchase of shares, unless the transfer has been stamped; and imposes a penalty of 250 penalty units for non-compliance.

### **Registration of transfers of units**

*Clause 248* prohibits the trustee or manager of a unit trust scheme from entering in its records a dutiable transfer of units or a dutiable transfer arising from a sale or purchase of units, unless the transfer has been stamped; and imposes a penalty of 50 penalty units on a natural person and 250 penalty units on a body corporate for non-compliance.

### **Receipt of instruments in evidence**

*Clause 249:*

- prohibits a dutiable instrument from use in law or equity for any purpose, and from being presented in evidence in a court or tribunal exercising civil jurisdiction, unless the instrument has been stamped; but
- empowers a court or tribunal to admit in evidence:
  - ◊ an unstamped dutiable instrument, in the circumstances stated in *sub-clause 249(2)*; or
  - ◊ an unexecuted copy of a dutiable instrument, in the circumstances stated in *sub-clause 249(3)*.

### **Valuation of property**

*Clause 250* empowers the Commissioner to:

- require a person who is liable to pay duty based on the value of the dutiable property to provide a professional valuation of the property, and to assess duty based on that valuation; or

- arrange for further valuation of the property if not satisfied with the value stated in the valuation provided by the person liable to pay duty, and to recover the cost of obtaining the further valuation.

### **PART III - MISCELLANEOUS**

#### **Review of decisions**

*Clause 251* enables a taxpayer to:

- object to a decision of the Commissioner, as listed in *subclause 251(1)*; and
- apply to the Administrative Appeals Tribunal for a review of a determination by the Commissioner of such an objection.

#### **Regulations**

*Clause 252* authorises the making of regulations for the purposes of this Bill.