

NORFOLK



ISLAND

BUSINESS TRANSACTIONS (ADMINISTRATION) ACT 2006

[Consolidated as at 2 August 2008
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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NORFOLK



ISLAND

BUSINESS TRANSACTIONS (ADMINISTRATION) ACT 2006

An Act relating to the assessment, payment and collection of levy on certain business transactions and instruments

PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the *Business Transactions (Administration) Act 2006*.

Commencement

2. This Act shall come into operation on the day that is 30 days after the day of publication of assent in the Gazette.

Purpose and Schedule 2 Expenditures

2A. (1) This Act establishes the administrative rules, procedures and sanctions for and in connection with the raising of revenue from certain transactions upon which a levy is imposed by the *Business Transactions (Levy Imposition) Act 2006*.

(2) In accordance with subsection 47(4) of the Norfolk Island Act 1979 of the Commonwealth, revenues raised by virtue of this Act must not be issued or expended except for the purposes of a matter specified in Schedule 2 to the Norfolk Island Act 1979 of the Commonwealth.

Interpretation

3. (1) In this Act, unless the contrary intention appears –

“agreement”, in relation to a conveyance, includes –

- (a) a memorandum of agreement;
- (b) an arrangement or understanding, whether wholly or partly in writing or otherwise and whether or not between all the parties to the agreement, constituting or forming part of the agreement.

- “approved” means approved for the purposes of this Act by the Officer;
- “assessment” means an assessment under this Act by the Officer of the amount of levy payable and includes an amended assessment of levy and an assessment of levy in respect of a return;
- “business undertaking” includes all business undertakings whether or not carried on with a view to profit;
- “company” includes a corporation and a body, society, association, authority or institution, whether corporate or unincorporate, but does not include a partnership;
- “consideration”, in relation to a conveyance, means the consideration for the conveyance without any deduction or where there is no consideration the unencumbered market value of property conveyed;
- “conveyance” includes a transfer or assignment (or an agreement to transfer or assign), grant, exchange, appointment, settlement, foreclosure, acquisition of a partnership interest, declaration of trust, a statement under section 30 and a decree, judgment or order of a court, whereby leviable property is transferred or assigned to (or agreed to be transferred or assigned to) vested in or accrues to a person, but does not include the grant of a lease or a patent;
- “conveyee” means a person to whom leviable property or a marketable security is conveyed and “conveyor” has a corresponding meaning;
- “court” includes a tribunal or other similar body;
- “de facto partnership” means the domestic relationship between persons living together on a bona fide domestic basis in a marriage-like relationship although not married to each other and “de facto partner” has a corresponding meaning;
- “execute”, in relation to an instrument, means sign the instrument and, if the instrument is under seal, sign and seal the instrument, and, for the purposes of this Act, an instrument is first executed the first time that it is signed or, as the case may require, signed and sealed, by any party to it, but an agreement made by acceptance of an offer contained in an instrument is first executed when the offer is accepted in writing;
- “goods” includes all chattels personal other than money or things in action;
- “impressed stamp” means a stamp impressed by the Officer by means of an inked inking device made in pursuance of section 9;
- “instrument” includes any document;
- “judge” includes a magistrate or any other person acting judicially;

“land” means land in Norfolk Island and includes –

- (a) a lease of land; and
- (b) a fixture to land, including a fixture to land comprised in a lease;

“lease” includes a lease granted under an Act, a sub-lease, an agreement for a lease or sub-lease and a franchise arrangement to the extent that the business the subject of the arrangement is or is to be carried on in Norfolk Island, but does not include –

- (a) an attornment under a mortgage or contract of sale;
- (b) a right granted by a company to a shareholder of the company, by virtue of his or her being such a shareholder, to occupy or use land owned or held under lease by the company; or
- (c) an option to renew a lease;

“lessee” means a person to whom a lease is granted or agreed to be granted;

“leviable property” means –

- (a) land;
- (b) the goodwill of a business undertaking carried on or to be carried on in Norfolk Island, or in Norfolk Island and elsewhere, including any restraint of trade arrangement which, in the opinion of the Officer, enhances or is likely to enhance the value of the business;
- (c) a right to use in Norfolk Island a business name, trading name or trade mark that is used in connection with such a business undertaking;
- (d) a right to use in Norfolk Island a thing, system or process that is used in connection with such a business undertaking and is the subject of a patent, a registered design or copyright, or a right to use an adaptation or modification of such a thing, system or process;
- (e) a right to use in Norfolk Island information or technical knowledge connected with such a business undertaking;
- (f) a statutory licence or permission given, granted or issued under a law of the Commonwealth and used in connection with such a business undertaking, including a licence or permission surrendered or relinquished or for which an application for renewal is not made and the licence or permission, or a similar licence or permission, is given, granted or issued to another person where, in the opinion of the Officer, the giving, grant or issue amounts to or has the same effect as a transfer of the licence or permission;

- (g) a statutory licence or permission given, granted or issued under a law of Norfolk Island and used in connection with a business undertaking wherever the undertaking is carried on or to be carried on, including a licence or permission surrendered or relinquished or for which an application for renewal is not made and the licence or permission, or a similar licence or permission, is given, granted or issued to another person where, in the opinion of the Officer, the giving, grant or issue amounts to or has the same effect as a transfer of the licence or permission;
- (h) an option to purchase leviable property or an interest in leviable property;
- (i) an interest in a marketable security; and
- (j) chattels, if part of a transaction in which other leviable property is conveyed, acquired or created or the beneficial ownership is changed, other than –
 - (i) goods, wares or merchandise that are stock-in-trade;
 - (ii) materials held for use in manufacture;
 - (iii) goods under manufacture;
 - (iv) livestock;
 - (v) any motor vehicle in respect of which a motor vehicle certificate of registration is or will, in the opinion of the Officer, be issued;
 - (vi) cash or money in an account at call; or
 - (vii) negotiable instruments, and money on deposit with any person,

and includes an estate or interest (which may be a partnership interest) in leviable property;

“levy” means levy imposed by this Act;

“levy avoidance scheme” has the meaning in section 5;

“marketable security” means a marketable security not quoted on a recognised financial market and includes -

- (a) a share in the capital of a company that is not quoted on a recognised financial market;

(b) a right (whether existing or future and whether contingent or not) of a person to have issued or transferred to the person a share of a kind referred to in paragraph (a), whether on payment of money or other consideration or not; and

(c) any right or interest (whether described as a unit, sub-unit or otherwise) of a beneficiary under a unit trust scheme that is not quoted on a recognised financial market;

“non-resident” means a person who is not either the holder of a general entry permit or a permanent resident of Norfolk Island;

“the Officer” means the person appointed by the executive member to be the Officer for the purposes of this Act and includes, subject to this Act, an acting Officer and, in respect of matters as to which the Officer has delegated his or her powers and functions under this Act, that delegate;

“partnership interest” means a partnership interest within the meaning of Part 3, Division 2;

“rent” includes an amount paid or payable (whether directly or indirectly) for the grant, renewal or extension of the term of a franchise arrangement, and an amount paid or payable (whether directly or indirectly) during the term of a franchise arrangement for the franchise the subject of the franchise arrangement, to the extent that the amount is referable to the business the subject of the arrangement that is or is to be carried on in Norfolk Island;

but does not include an amount paid or payable in the nature of a penal rent or for reasonable outgoings in respect of a lease of land;

“return” means a return under section 23(5);

“trustee” includes –

- (a) a person constituted a trustee under an implied or constructive trust;
- (b) an executor of the will, or an administrator of the estate, of a deceased person;
- (c) a receiver, guardian, committee or manager of the property of a person under a legal or other disability;
- (d) a receiver or manager of the property of a company or a liquidator of a company for the purpose of its winding-up; and

“unencumbered value”, in relation to property (including an estate or interest in property), means full value without regard to –

- (a) any encumbrances;
- (b) if the property is subject to a trust – any debts or liability of the trustee; or
- (c) if the property is held by the partners of a partnership – any debts or liability of the partnership,

whether certain or contingent.

(2) For the purposes of this Act –

- (a) a person has, or persons have together, a controlling interest in a corporation if that person or those persons may exercise, control the exercise of, or substantially influence the exercise of, whether directly or indirectly, 50% or more of –
 - (i) the voting power at meetings of the corporation's directors; or
 - (ii) the voting power attached to voting shares issued by the corporation; and
- (b) a person has, or persons have together, a controlling interest in a partnership if that person or those persons –
 - (i) own or own together (whether beneficially or not) 50% or more of the capital of the partnership; or
 - (ii) is or are together entitled (whether beneficially or not) to 50% or more of the profits of the partnership.

(3) For the purposes of this Act, a reference to the duly stamping of an instrument is a reference to the impressing on the instrument by the Officer of a stamp of the amount of the levy.

Unencumbered value: arrangements to reduce levy

4. (1) For the purposes of the definition of "unencumbered value" in section 3(1), in determining the full value of property –

- (a) an agreement or arrangement between related parties that has the effect of reducing the value of the property is to be disregarded; and
- (b) an agreement or arrangement between unrelated parties that has the effect of reducing the value of the property is to be disregarded unless the Officer is satisfied that the agreement or arrangement was not made with a purpose (collateral or otherwise) of reducing the value of the property.

(2) For the purpose of subsection (1)(a), parties to an agreement or arrangement are related if –

- (a) in relation to a corporation:
 - (i) a related corporation as defined in section 24 of the *Companies Act 1985*;
 - (ii) a related person within the meaning in paragraph (b);
 - (iii) a director or secretary of the corporation or a related corporation;
 - (iv) a person who is entitled to a shareholding in the corporation or a related corporation;
 - (v) a relative of a natural person referred to in subparagraph (ii), (iii) or (iv); and
 - (vi) a corporation in which the corporation or a person referred to in subparagraph (iii), (iv) or (v) is entitled to a shareholding;

where the following are relatives of a person for the purposes of paragraph (a)(v):

- (i) a child or remoter lineal descendant of the person or a spouse or de facto partner of the person;
 - (ii) a parent or remoter lineal ancestor of the person or a spouse or de facto partner of the person;
 - (iii) a brother or a sister of the person or a spouse or de facto partner of the person; and
 - (iv) a spouse or de facto partner of the person and a spouse or de facto partner of a person referred to in subparagraph (i), (ii) or (iii).
- (b)
 - (i) natural persons who are a spouses or de facto partners of each other or between whom the relationship is that of parent and child;
 - (ii) related corporations as defined in section 24 of the *Companies Act 1985*;
 - (iii) a trustee and another trustee if there is any beneficiary common to the trusts of which they are trustees, whether the beneficiary has a vested share or is contingently entitled or may benefit from a trust;
 - (iv) a natural person and a corporation if the natural person is a majority shareholder, director or secretary of the corporation or a related corporation;

- (v) a natural person and a trustee if the natural person is a beneficiary under the trust of which the trustee is a trustee, whether the person has a vested share or is contingently entitled or may benefit from a trust;
- (vi) a corporation and a trustee if –
 - (A) the corporation, a majority shareholder, director or secretary of the corporation is a beneficiary of the trust of which the trustee is a trustee; or
 - (B) a related corporation to the corporation is a beneficiary of the trust of which the trustee is a trustee,whether any such beneficiary has a vested share or is contingently entitled or may benefit from a discretionary trust;
- (vii) persons who acquire interests in a corporation by virtue of acquisitions that together form or arise from substantially one transaction or one series of transactions;

(3) For the purpose of subsection (1)(b), in considering whether or not an agreement or arrangement is to be disregarded, the Officer may have regard to the following:

- (a) the duration of the agreement or arrangement before the conveyance of the property or the acquisition of an interest that is a relevant acquisition being:
 - (i) an acquisition that alone constitutes a majority interest in the corporation;
 - (ii) if, when aggregated with other interests in the corporation held by the person, or the person and related persons, it constitutes a majority interest in the corporation; or
 - (iii) if, by the acquisition, a person who has a majority interest in the corporation or an interest referred to in paragraph (b) acquires a further interest in the corporation.
- (b) the nature of the relationship between –
 - (i) the transferor and transferee of the property and a party to or affected by the agreement or arrangement; or
 - (ii) persons who acquire, have acquired or will acquire an interest in a corporation and a party to or affected by the agreement or arrangement;
- (c) the reasons (commercial and otherwise) for making the agreement or arrangement other than to reduce levy;

- (d) other matters the Officer considers relevant.

Levy avoidance schemes

- 5. (1)** In this section –

“scheme” includes –

- (a) an agreement, arrangement or undertaking –
 - (i) in whatever form;
 - (ii) wherever entered into, made or given;
 - (iii) whether unilateral, bilateral or multilateral; and
 - (iv) whether enforceable or not; and
- (b) an act done or omitted to be done, or a course of conduct carried out or not or engaged in or not, by any person whomever in any place wherever.

(2) For this Act, a levy avoidance scheme is a scheme that, in the opinion of the Officer, has or is intended to have a collateral purpose of –

- (a) reducing the levy otherwise payable under this Act; or
 - (b) obtaining the benefit of an exemption or concession under this Act,
- in respect of a conveyance of leviable property.

(3) In considering whether a scheme is a levy avoidance scheme, the Officer may have regard to any matter whatever that the Officer thinks is relevant.

PART 2 – ADMINISTRATION

Officer

- 6. (1)** A public sector employee shall be appointed the Officer.

- (2)** The Officer shall have the general administration of this Act.

(3) The Officer may be assisted by such other persons as appropriate and who may be designated and assigned such duties as the Chief Executive Officer may direct.

(4) The Officer shall be appointed by the executive member in consultation with the Chief Executive Officer.

Delegation

7. (1) The Officer may, in writing, delegate to a person or persons all or any of the Officer's powers and functions under this Act, other than this power of delegation.

(2) A delegation under this section may be to a named person or to a person from time to time holding, acting in or performing the duties of an office, designation or position.

(3) A power or function delegated under this section is, when exercised or performed by the delegate, to be taken to have been exercised or performed by the Officer.

(4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Officer.

Secrecy

8. (1) Subject to this section, a person whether or not employed by the Administration shall not, either directly or indirectly, except for the purposes of this Act –

- (a) make a record of, or communicate to a person, information concerning the affairs of another person acquired by him or her under this Act by reason of that employment or otherwise; or
- (b) produce to a person or permit a person to have access to a document furnished to him or her for the purposes of this Act.

Penalty: (a) imprisonment for 2 years; or
 (b) 1000 penalty units; or
 (c) both.

(2) Subsection (1) does not apply to the communication of information or the production of a document by the Officer, or by a person authorized by him or her, to –

- (a) the Norfolk Island Government Auditor for the purposes of performing functions or exercising powers in relation to an audit of the office of the Officer imposed or conferred on the Auditor by or under the *Norfolk Island Act 1979 (Clth)* or any other Act, and nothing in this section prevents the Auditor from disclosing that information or publishing that document if the disclosure or publication does not directly or indirectly divulge information identifying the affairs of a particular person; or
- (b) a person performing, in pursuance of employment by Norfolk Island, a function under an Act administered by the Officer for the purpose of enabling that person to carry out that function.

(3) Nothing in this section prevents a person to whom it applies from disclosing information obtained under this Act where the person from whom it was obtained consents to that disclosure.

(4) A person to whom this section applies shall not be required to produce in court any document connected with the administration or execution of this Act in the person's custody in the course of his or her or her employment or to divulge or communicate to a court any matter or thing coming under the person's notice in the course of employment, unless the production, divulgence, communication or publication is made –

- (a) with the consent of the person from whom the information or document was obtained;
- (b) in connection with the administration or execution of this Act; or
- (c) for the purposes of a legal proceeding arising out of this Act or of a report of such proceedings.

Levy impression

9. For the purposes of this Act, the Officer shall cause devices for the making of impressed stamps for denoting the payment of amounts of levy, for denoting the payment of additional amounts of levy or for the purposes of section 22 to be made and used as he or she directs.

PART 3 – LIABILITY TO LEVY

Division 1 – General

When instruments lodged and levy payable

10. (1) Subject to this Act –
- (a) levy in respect of a return is due and payable by the conveyee who is the person required by this Part to furnish the return upon the last day for the due furnishing of that return;
 - (b) levy on an instrument that is required by this Act to be lodged with the Officer for assessment is due and payable by the person liable to pay it –
 - (i) at the end of the period within which the instrument is required by this Act to be lodged with the Officer for assessment; or
 - (ii) if the notice of assessment specifies a date after the end of the period referred to in subparagraph (i) on which the levy is due and payable – on that date; and
 - (c) levy on any other instrument is due and payable at the time when the instrument is required by this Act to be duly stamped.

(2) Except where other express provision is made by this Act or any other Act, a person who is liable with respect to an instrument chargeable with levy shall lodge the instrument with the Officer for assessment within 60 days after it is first executed, regardless of whether it was first executed in Norfolk Island or at a place outside Norfolk Island and regardless of when it is first received in Norfolk Island.

(3) A person who fails to comply with subsection (1) or (2) commits an offence.

Penalty: 100 penalty units.

(4) If the Officer extends the time for payment of levy for a period, the levy is not due and payable until the expiration of that period.

(5) The Officer may, in such circumstances as he or she thinks fit, permit the payment of levy to be made by instalments in such amounts and at such times as he or she determines, and each instalment of that levy is due and payable at the time so determined in relation to that instalment.

(6) If an instalment of levy is not paid on or before the time for the due payment of that instalment, the whole of the levy outstanding becomes due and payable at that time.

Unstamped instruments not to be registered

11. (1) A person whose office it is to enrol, register or enter in or upon any rolls, books, records, or registers (including a share register) an instrument chargeable with levy shall not enrol, register or enter such an instrument which is not duly stamped or give effect to a transfer of ownership of any property including the transfer of ownership of a name registered under the *Business Names Act 1976*.

(2) An instrument chargeable with levy that is registered in breach of subsection (1) is void against a subsequent purchaser with notice of the breach.

(3) The secretary or other officer of a company who gives effect to a transfer of shares in breach of subsection (1) commits an offence.

Penalty: 50 penalty units.

Liability to levy in respect of instruments outside Norfolk Island

12. Where an instrument that relates to property in Norfolk Island or to a matter or thing done or to be done in Norfolk Island is executed and held outside Norfolk Island, this Act shall extend and apply to and in relation to the instrument, notwithstanding that the instrument is not in Norfolk Island, in all respects as if the instrument were executed in Norfolk Island.

Apportionment

13. (1) Where, in the opinion of the Officer, leviable property is wholly or partly situated in Norfolk Island or is wholly or partly related to a business undertaking carried on in Norfolk Island, levy shall be assessed in respect of that proportion of the leviable property situated in Norfolk Island or related to the business undertaking carried on in Norfolk Island.

(2) Levy is payable in respect of the grant, renewal or extension of the term of a franchise arrangement that applies to a place within Norfolk Island and a place outside Norfolk Island on that proportion of the total rent payable under the franchise arrangement that relates to the business carried on in Norfolk Island.

Apportioning certain leviable property where business in Norfolk Island and elsewhere

14. (1) For the purposes of section 13(1), where a business undertaking is carried on both in and outside Norfolk Island, the proportion of leviable property situated in Norfolk Island or related to the business undertaking carried on in Norfolk Island is to be determined in accordance with this section.

(2) Where the principal place of business of the business undertaking is in Norfolk Island, the proportion of leviable property situated in Norfolk Island or related to the business undertaking carried on in Norfolk Island is calculated in accordance with the following formula:

$$V \times \frac{(TS-IS)}{TS}$$

where –

V is the greater of the consideration for or the unencumbered market value of all the property conveyed to the conveyee that would have been leviable property had that property been wholly situated in Norfolk Island or wholly related to the business undertaking carried on in Norfolk Island;

TS is the volume or gross value of goods supplied and services provided by the business undertaking to all its customers during the last 3 completed financial years (or where the business has been carried on for less period, for that period); and

IS is the volume or gross value of goods supplied and services provided by the business undertaking to its customers outside Norfolk Island during the last 3 completed financial years (or where the business has been carried on for less period, for that period).

(3) Where the principal place of business of the business undertaking is outside Norfolk Island, the proportion of leviable property situated in Norfolk Island or related to the business undertaking carried on in Norfolk Island is calculated in accordance with the following formula:

$$V \times \frac{NTS}{TS}$$

where –

V is the greater of the consideration for or the unencumbered market value of all the property conveyed to the conveyee that would have been leviable property had that property been wholly situated in Norfolk Island or wholly related to the business undertaking carried on in Norfolk Island;

NTS is the volume or gross value of goods supplied and services provided by the business undertaking to its Norfolk Island customers during the last 3 completed financial years (or where the business has been carried on for less period, for that period); and

TS is the volume or gross value of goods supplied and services provided by the business undertaking to all its customers during the last 3 completed financial years (or where the business has been carried on for less period, for that period).

(4) Despite subsections (2) and (3), the Officer may determine the proportion of leviable property on another basis if satisfied that the other basis would be more appropriate in the particular circumstances.

(5) In this section –

“leviable property” means the leviable property referred to in paragraph (b), (c), (d), (e), (f) and (g) of the definition of “leviable property” in subsection 3(1);

“customer outside Norfolk Island” means a customer who takes delivery of the goods or receives the services provided elsewhere in the world than Norfolk Island;

“principal place of business”, in relation to a business undertaking, means –

(a) the place where the head office of the business undertaking is located; or

(b) the place from which overall control or management emanates;

“Norfolk Island customer” means a customer who takes delivery of the goods or receives the services provided in Norfolk Island.

Copies of instruments

15. (1) In this section "copy", in relation to an original instrument, includes –

- (a) a duplicate, facsimile, photocopy or counterpart of the original instrument;
- (b) an instrument that acknowledges, evidences or records the existence or terms of the original instrument; and
- (c) an instrument that acknowledges, evidences or records the transaction or a part of the transaction to which the original instrument relates or related.

(2) Where an original instrument has not been duly stamped or has been destroyed without being duly stamped, or otherwise cannot be produced for stamping, a copy of the original instrument shall, for the purposes of this Act, be chargeable with levy and penalty, if applicable, as if it were the original instrument and be deemed to have been executed by the person or persons who executed the original instrument at the same time as the original instrument was executed.

(3) Where a copy of an original instrument is duly stamped under this Act, the Officer shall, on application and production of the copy, stamp any further copy of the original instrument with a particular stamp denoting that it is duly stamped.

Instruments not fully executed may be lodged for assessment

16. Subject to this Act, where an instrument is required by this Act to be lodged with the Officer for assessment, the instrument may be lodged and the levy assessed notwithstanding that the instrument is not executed by all necessary parties to it and, if it is lodged, the date of execution shall be taken to be, for all purposes, the date of first execution of the instrument.

Evasion of levy

17. (1) A person liable to levy who knowingly evades, or a person who knowingly assists a person in evading, the levy commits an offence.

- Penalty
- (a) not exceeding 1,000 penalty units; or
 - (b) 12 months imprisonment; or
 - (c) both.

(2) Where a director, servant or agent of a company being the conveyee that is liable to levy knowingly evades the levy, or being the conveyor knowingly assists the conveyee to evade the levy, the company and the director, servant or agent, as the case may be, commits an offence.

- Penalty:
- (a) a company — not exceeding 2,000 penalty units; and
 - (b) a director servant or agent —
 - (i) 1,000 penalty units; or
 - (ii) 12 months imprisonment, or
 - (iii) both.

(3) Upon the finding of guilt of a person under either subsection (1) or (2) the court may, in addition to the penalty prescribed by the subsection and without affecting the person's liability to pay the amount of levy evaded, order that person to pay to the Officer an amount not exceeding an amount equal to double the amount of the levy.

(4) A certificate of an order under subsection (3), in accordance with an approved form, may be registered in a court of competent jurisdiction.

(5) Upon registration in accordance with subsection (4), the certificate becomes a record of the court with the same force and effect as a judgment of the court, and the like proceedings (including proceedings in bankruptcy) may be taken upon the certificate as if the order had been a judgment of the court in favour of the Officer.

(6) Nothing in this section shall prejudice any other right or remedy that exists, or action that may be taken, under this or any other Act against a person in relation to the evasion of levy or levy evaded.

18. Levy denoted by impression

18. (1) Subject to this Act, payment of levy shall be denoted by impressed stamp.

(2) The Officer may superimpose or place on or near a stamp impressed in accordance with this section handwriting to indicate the amount of levy paid.

(3) Handwriting superimposed or placed in pursuance of subsection (2) shall constitute a part of the impressed stamp as though the handwriting were itself impressed.

Fraudulently removing, etc stamps

- 19. (1)** A person shall not, with intent to defraud –
- (a) deface a stamp impression;
 - (b) remove a stamp impression from an instrument liable to levy;
 - (c) impress on an instrument a stamp that is or resembles an impressed stamp.

Penalty: Imprisonment for 2 years.

(2) An instrument shall be regarded as being duly stamped notwithstanding that an impressed stamp has been defaced or removed if the Officer is satisfied that an impressed stamp denoting the levy payable had been duly affixed to the instrument.

Matters subject to levy

20. (1) Where one instrument relates to several distinct matters in respect of which levy is payable, each of those matters shall, for the purposes of this Act, be treated as if it were expressed in a separate instrument.

(2) Where 2 or more instruments together but not separately relate to the same matter, the instruments shall be treated, for the purposes of this Act, as a single instrument executed at the time when the last instrument was executed.

(3) Except where otherwise provided by or under this Act, levy calculated at a rate specified in paragraph (1) of item 1 of Schedule 1 to the *Business Transactions (Levy Imposition) Act 2005* is payable on a conveyance of a marketable security –

- (a) of a company–
 - (i) if the marketable security was, immediately before the conveyance was executed, registered in a register kept in Norfolk Island by a company; or
 - (ii) where there is no register of marketable securities kept by the company in Norfolk Island – if the company carries on business in Norfolk Island and is registered in Norfolk Island as a foreign company; or
 - (b) that is a unit of a unit trust scheme where the principal register of the trust is situated in Norfolk Island.
- (4)** Levy imposed on an instrument of conveyance of a marketable security is payable by the conveyee.

Money in foreign currency to be valued

21. Where levy in respect of an instrument is imposed in respect of an amount of money expressed in the instrument otherwise than in Australian currency, the levy shall be calculated in Australian currency at the rate of exchange current at the date of the instrument.

Instrument on which no levy is payable

22. (1) Where the Officer is satisfied that an instrument liable to levy has been duly stamped, he or she may put an impressed stamp in accordance with an approved style on a counterpart or copy of that instrument.

(2) Where the Officer is satisfied that no levy is payable in respect of an instrument, he or she may put an impressed stamp in accordance with an approved style on the instrument or on a counterpart or copy of the instrument.

(3) A person shall not, without lawful authority, impress a stamp or print on or perforate an instrument in accordance with a style that resembles or purports to be an approved style under this section.

Penalty: Imprisonment for 2 years.

(4) Subject to subsection (5), an agreement for a conveyance or for the grant of a lease shall, for the purposes of this Act, be treated as the original of the conveyance or grant made subsequently to give effect to the agreement where that conveyance or lease is in conformity with the agreement, and the conveyance or lease so made or granted shall be treated as the counterpart of the agreement.

(5) A conveyance or lease shall not, for the purposes of subsection (4), be in conformity with an agreement to convey or lease where the conveyee or lessee is a person other than the conveyee or lessee named in the agreement.

(6) Notwithstanding subsection (5), a conveyance shall be in conformity with an agreement to convey leviable property or a marketable security notwithstanding that the conveyee is not the person named in the agreement, where the Officer is satisfied that the purchaser under the agreement to convey –

- (a) was, at the time the agreement was executed, acting as the agent for the conveyee in the conveyance made pursuant to the agreement and –
 - (i) the Officer endorses the agreement accordingly; and
 - (ii) the agreement to convey is duly stamped; or
- (b) entered into the agreement intending to convey the leviable property or the marketable security purchased to –
 - (i) a corporation that the purchaser intended to incorporate or acquire or was in the process of incorporating or acquiring; or

- (ii) a trust that the purchaser intended to constitute or was in the process of constituting,

and the agreement to convey is duly stamped,

and the Officer is satisfied that there has not been a sub-sale or other leviabale dealing in the property before the execution of the conveyance.

- (7) Where –

- (a) 2 or more instruments together but not separately relate to the same matter, being a matter in respect of which levy is payable;
- (b) each such instrument contains a reference to the other instrument or instruments; and
- (c) one of those instruments is duly stamped,

each such instrument shall be deemed to be duly stamped.

Division 2 – Partnerships

Interpretation: partnership property and partnership interest

23. (1) A reference in this Division to a partnership is a reference to the holding of property by the partners of a partnership for the partnership.

(2) For the purposes of this Division, a person makes a partnership acquisition if the person acquires a partnership interest, within the meaning of subsection (3), in a partnership that holds leviabale property.

- (3)** A partner's partnership interest is –

- (a) if the partner has a partnership entitlement in a partnership under which, in the ordinary course of determining the partner's entitlement to share in the profits of the partnership or obligation to contribute to the capital or losses of the partnership, the entitlement to share in the profits or obligation to contribute to capital or losses varies or may vary from time to time – the percentage that represents the proportion that the value of the partner's entitlement as a partner bears to the value of the entitlements of all the partners in the partnership;
- (b) if the partner is entitled only to share in the profits of the partnership and has given or is required to give consideration, or has made or is required to make a contribution to the capital of the partnership, for the entitlement to share in the profits – the percentage that represents the proportion that the partner's entitlement to the profits of the partnership bears to the entitlements to the profits of the partnership of all the partners in the partnership; or

- (c) if the percentage referred to in paragraph (a) or (b) does not apply, the greater of –
 - (i) the percentage of the capital of the partnership the partner has contributed or is obliged to contribute; or
 - (ii) the percentage of the losses of the partnership the partner is required to bear.

Acquiring a partnership interest

- 24. (1)** A person acquires a partnership interest if –
- (a) a partnership (of which he or she or she becomes a partner) is formed; or
 - (b) the person's partnership interest increases.
- (2)** For the purposes of subsection (1) –
- (a) a partnership may be formed by a change in the membership of a partnership or the merger of 2 or more partnerships;
 - (b) a person's partnership interest may increase –
 - (i) under the terms of a partnership agreement;
 - (ii) on the retirement of a partner from a partnership; or
 - (iii) on a change in the terms of a partnership agreement effecting a change in the interests of the partners; and
 - (c) a partner's partnership entitlement referred to in section 23(3)(a) does not increase if –
 - (i) the person's entitlement to share in the profits of the partnership or obligation to contribute to the capital or losses increases by reason only of the person's performance as a partner; and
 - (ii) there is no arrangement stating the extent of the future variation to the partner's entitlement to share in the profits of the partnership or obligation to contribute to the capital or losses or the consideration for the variation.

Value of partnership acquisition

25. (1) Subject to subsections (2) and (3), the unencumbered value of a partner's partnership acquisition is determined by applying the partner's partnership interest to the unencumbered market value of all the leviabale property held by the partnership.

(2) Subject to sections 26 and 27, in determining the unencumbered value of a partner's partnership acquisition on the formation of a partnership, the unencumbered value of any leviable property the partner contributed to the partnership on its formation is to be disregarded.

(3) In determining the unencumbered value of a partner's partnership acquisition that is an increase in the partner's partnership interest (other than an increase in the partner's partnership interest on the formation of a partnership), the acquisition is taken to be the increase in the partner's partnership interest.

Value of partnership acquisition if change in membership of partnership by admission of one or more new partners

26. Where a new partnership is formed by a change in the membership of a partnership by the admission of one or more new partners, the unencumbered value of a partner's partnership acquisition on the formation of the new partnership is determined by –

- (a) applying the partner's partnership interest to the unencumbered value of all leviable property held by the new partnership on its formation; and
- (b) deducting from that –
 - (i) if the partner was not a partner of the former partnership – the value that would be the unencumbered value of the partner's partnership acquisition in the new partnership on its formation if the leviable property of the partnership comprised only the leviable property (if any) that the partner contributed to it on its formation; or
 - (ii) if the partner was a partner in the former partnership – the lesser of the following:
 - (A) the value that would be the unencumbered value of the partner's partnership acquisition in the new partnership on its formation if the leviable property of that partnership comprised only the leviable property of the former partnership;
 - (B) the value that represents the unencumbered value of the partner's partnership interest in the former partnership before the formation of the new partnership.

Value of partnership acquisition where merger of 2 or more partnerships

27. (1) This section applies if –

- (a) a person first makes a partnership acquisition on the merger of 2 or more partnerships;
- (b) immediately before the merger, the person had a partnership interest in one of the former partnerships; and
- (c) the unencumbered value of that partnership interest included all or part of the unencumbered value of the leviable property of the former partnership which, on the merger, becomes leviable property of the merged partnership.

(2) The unencumbered value of the person's acquisition on the merger of the partnerships must be reduced by the lesser of –

- (a) the value that would be the unencumbered value of the person's partnership acquisition in the merged partnership if the leviable property of the merged partnership comprised only the leviable property of the former partnership of which the person was a partner; or
- (b) the value that represents the unencumbered value of the person's partnership interest in the former partnership that becomes the leviable property of the merged partnership.

Reduction of leviable value of leviable property if conveyed to partner on retirement or dissolution of partnership

28. (1) This section applies if, because a person ceases to be a partner in a partnership because he or she or she retires from the partnership or the partnership is dissolved, leviable property of the partnership is conveyed or agreed to be conveyed to the person.

(2) The unencumbered value of the leviable property conveyed to the person is to be reduced by an amount determined by applying the person's partnership interest in the partnership to the unencumbered value of the leviable property of the partnership immediately before the person's retirement or the partnership's dissolution.

(3) If the unencumbered value of leviable property is reduced under subsection (2) to a value that is more than the consideration for the leviable property, the amount of levy payable on the conveyance of the leviable property is –

- (a) subject to paragraph (b) – the amount of levy determined to be payable on the reduced unencumbered value of the leviable property; or
- (b) if the amount of levy determined to be payable on the reduced unencumbered value of the leviable property is less than \$20 – \$20.

Division 3 – Transactions Otherwise than by Leviable Instruments

Application

29. (1) This Division applies to a transaction that, on or after 1 December 2005, causes or results in a change in the beneficial ownership of leviable property or causes or results in leviable property being acquired or created.

(2) In subsection (1), leviable property includes property prescribed, or of a class prescribed, for the purposes of this subsection.

(3) A reference to a change in beneficial ownership in subsection (1) does not include a reference to a change in beneficial ownership occurring as the consequence of –

- (a) the appointment of a receiver or trustee in bankruptcy;
- (b) the appointment of a liquidator;
- (c) the making of a compromise or arrangement under Part 18 of the *Companies Act 1985* that –
 - (i) has been made with the corporation's creditors or a class of them;
 - (ii) has been approved by the court; and
 - (iii) is not a levy avoidance scheme or part of a levy avoidance scheme;
- (d) the issue or redemption of units in a unit trust scheme where the issue or redemption of units is not a levy avoidance scheme or part of a levy avoidance scheme;
- (e) the surrender of a lease of land;
- (f) the transfer or conveyance of an estate or interest in property as a security, including the pledging or charging of property; or
- (g) the release or termination of an option for the purchase of property.

(4) This Division does not apply to a transaction or property which is prescribed, or is of a class prescribed, for the purposes of this subsection.

(5) Notwithstanding anything to the contrary in any other Act, a regulation made for the purposes of subsection (4) may take effect from 1 December 2005 or a later date.

Payment of levy on statements in absence of leviable instrument

30. (1) A person, being a party to a transaction to which this Division applies which is not effected or evidenced by an instrument chargeable with levy in accordance with the *Business Transaction (Levy Imposition) Act 2005*, Schedule 1 –

- (a) item 1, under the heading "*Conveyance of Leviable Property*"; or
- (b) any other heading whereby levy is charged as on a conveyance of leviable property,

shall, if the person would have been liable to pay such levy in respect of the transaction had such an instrument been executed, lodge with the Officer a statement in respect of the transaction.

(2) A statement under this section shall –

- (a) be lodged within 60 days after the change in beneficial ownership or an acquisition or creation of leviable property which is caused by or results from the transaction;
- (b) be in an approved form; and
- (c) for the purposes of this Act be deemed –
 - (i) to be an instrument effecting the transaction to which it relates; and is chargeable with the levy referred to in subsection (1) appropriate to the transaction; and
 - (ii) to have been first executed on the date on which the change in beneficial ownership or an acquisition or creation of leviable property occurs.

(3) The levy with which a statement under this section is chargeable shall be charged on –

- (a) the unencumbered value of the leviable property the subject of the transaction as at the date on which the change in beneficial ownership or an acquisition or creation of leviable property occurs; or
- (b) the amount of the consideration in respect of the transaction,

whichever is the greater, and shall be paid at the time of lodgement of the statement with the Officer by the person required to lodge the statement.

Effect of execution of leviable instruments

31. (1) An instrument executed for the purpose of effecting or evidencing, or apparently for the purpose of effecting or evidencing, a transaction to which this Division applies, being a transaction in respect of which a statement has been duly stamped in accordance with section 30, is not chargeable with levy under this Act to the extent to which levy has been paid on the statement.

(2) Where, within 60 days after a change in beneficial ownership or an acquisition or creation of leviable property occurs as the result of a transaction to which this Division applies, an instrument chargeable with levy (not being a statement under section 31) is executed for the purpose of effecting or evidencing, or apparently for the purpose of effecting or evidencing, the transaction and the instrument is duly stamped or lodged for assessment, section 31 ceases to apply to the transaction.

(3) For the purposes of section 9, an instrument referred to in subsection (2) shall be deemed to have been first executed on the date on which the change in beneficial ownership occurs.

Aiding and abetting

32. A person who –

- (a) directly or indirectly, aids, abets, counsels or procures another person to enter into a transaction to which this Division applies; or
- (b) is, in any way, by act or omission, directly or indirectly concerned in, or party to, the entry by another person into a transaction to which this Division applies,

knowing or believing that the other person does not intend to lodge a statement under section 33 and pay levy in accordance with this Division in respect of the transaction, is guilty of an offence.

- Penalty: (a) 1000 penalty units; or
(b) 12 months imprisonment; or
(c) both.

Offences relating to statements

33. (1) A person who, in respect of a transaction to which this Division applies, fails to lodge a statement under section 30 within 6 months after the date on which a change in beneficial ownership or an acquisition or creation of leviable property occurs as a result of the transaction commits an offence.

Penalty: 100 penalty units.

(2) A person who, in respect of a transaction to which this Division applies, lodges a statement under section 30 that is false or misleading in a material particular commits an offence.

Penalty: 1000 penalty units.

- (3) Proceedings for an offence against subsection (1) –
 - (a) maybe instituted at any time; and
 - (c) may be disposed of –
 - (i) before the Court of Petty Sessions; or
 - (ii) before the Supreme Court in its summary jurisdiction.

PART 4 – ASSESSMENTS

Assessment of returns

34. (1) The Officer shall, from a return and any other information in his or her possession, make an assessment of the amount of levy payable in respect of the return.

(2) A return purporting to be made and signed by or on behalf of a person shall, unless the contrary is proved, be deemed to have been made and signed by him or her or with his or her authority.

(3) A trustee of a deceased person shall furnish such returns as the deceased person, if he or she were still living, would be required by this Act to furnish.

(4) The furnishing of a return for assessment does not relieve the person liable to pay levy in respect of the return of the liability to pay the levy as provided by this Act.

(5) Where, by reason of an assessment of a return, a person has overpaid levy, the amount of levy overpaid shall be refunded.

Lodging of instruments for assessment

35. (1) A person liable to pay levy on an instrument that is not required by this Act to be lodged for assessment of levy may, within 60 days after the date of execution of the instrument by him or her, lodge the instrument with the Officer for assessment of levy.

(2) The lodging of an instrument for assessment of levy does not relieve a person liable to pay levy on the instrument of his or her liability to pay the levy in accordance with this Act and to cause the instrument to be duly stamped.

Information for the purpose of making assessment

36. (1) The Officer may, at any time, by instrument served on a person who has furnished a return or lodged an instrument for assessment, require that person to furnish, within a specified period, further information by statutory declaration or otherwise in connection with the return so furnished or instrument so lodged, which may include a sworn valuation by a qualified person as to the fair unencumbered market value of the property to which the return concerns.

(2) Where the Officer has reason to believe, for the purpose of the assessment or amendment of an assessment or enquiring into or ascertaining the liability of a person under this Act, that a person is capable of giving information or producing documents that may be used for that purpose, the Officer may, by instrument served on that person, require that person –

- (a) to furnish to him or her in writing, within the period and in the manner specified in the instrument, any such information;
- (b) to attend before him or her or a person specified in the instrument at such time and place as is specified and there to answer questions for that purpose; or
- (c) to produce to him or her or to a person specified in the instrument, in accordance with the instrument, any such document.

(3) The Officer or person before whom a person is required to attend under subsection (2) may take evidence on oath or affirmation, and, for that purpose, may administer an oath or affirmation to the person attending.

Failure to comply with requirements for further information, etc

37. (1) A person shall not –

- (a) refuse or fail to comply with a requirement in an instrument served under section 36 to the extent to which he or she is capable of complying with it;
- (b) in purported compliance with such a requirement, furnish information that is false or misleading in a material particular; or
- (c) when attending before the Officer or a person in pursuance of such a requirement –
 - (i) make a statement or produce a document that is false or misleading in a material particular; or
 - (ii) refuse or fail to be sworn or to make an affirmation.

Penalty: 1000 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) of furnishing information, or making a statement, or producing a document, that is false or misleading in a material particular if the defendant proves that the false or misleading information, statement or document was furnished, made or produced through ignorance or inadvertence.

(3) Upon the finding of guilt of a person for an offence of refusing or failing to comply with a requirement under subsection (1), the court may order that person within a period fixed by the court, to comply with that requirement.

(4) A person to whom such an order is given shall not refuse or fail to comply with the order.

Penalty: 1000 penalty units.

(5) An order under subsection (3) may be given orally by the court to the person or may be served by sending a copy of the order by post addressed to that person at his or her last-known place of residence or business.

(6) Upon the finding of guilt of a person for an offence against subsection (1) of furnishing information, or making a statement, or producing a document, that is false or misleading in a material particular, the court may, in addition to the penalty prescribed by that subsection and without affecting the person's liability to pay the amount of levy properly payable, order that person to pay to the Officer an amount not exceeding an amount equal to double the amount of levy that would have been avoided if the information, statement or document had been accepted as correct.

False or misleading returns

38. (1) A person who is required by this Act to furnish a return to the Officer shall not furnish a return that is false or misleading in a material particular.

Penalty: 1000 penalty units.

(2) It is a defence to a prosecution for an offence against this section if the defendant proves that the false or misleading return was furnished through ignorance or inadvertence.

(3) Upon the finding of guilt of a person for an offence against this section, the court may, in addition to the penalty prescribed by this section and without affecting the person's liability to pay the amount of levy properly payable, order that person to pay to the Officer an amount not exceeding an amount equal to double the amount of levy that would have been avoided if the return had been accepted as correct.

False or misleading declarations

39. (1) Without derogating from any other provision of this Part, a person shall not furnish information to the Officer that is false or misleading in a material particular.

Penalty: 1000 penalty units.

(2) Subsection (1) applies whether or not the information –

- (a) is required by or under this Act to be furnished; or
- (b) is in the form of a declaration.

(3) It is a defence to a prosecution for an offence against this section if the defendant proves that the false or misleading information was furnished through ignorance or inadvertence.

(4) Upon the finding of guilt of a person for an offence against this section, the court may, in addition to the penalty prescribed by this section and without affecting the person's liability to pay any amount of levy properly payable, order that person to pay to the Officer an amount not exceeding an amount equal to double the amount of levy that would have been avoided if the information had been accepted as correct.

Incriminating information, etc

40. A person is not excused from furnishing information or producing a document in compliance with an instrument served on him or her under section 40 or in compliance with an order of a court under section 37(3) on the ground that the information or document might tend to incriminate him or her, but his or her answer to any question asked in the order or instrument or any information furnished by him or her in pursuance of the order or instrument is not admissible in evidence against him or her in criminal proceedings other than proceedings under this Act.

Enforcement of court orders to pay

41. (1) Where a court makes an order for the payment of an additional penalty under section 37 or 38, a certificate of the order in accordance with an approved form may be registered in a court of competent jurisdiction.

(2) Upon registration under subsection (1), the certificate becomes a record of the court with the same force and effect as a judgment of the court, and the like proceedings (including proceedings in bankruptcy) may be taken upon the certificate as if the order had been a judgment of the court in favour of the Officer.

Assessment of levy on instruments

42. (1) Where an instrument is lodged with the Officer for assessment –

- (a) if he or she adjudges that levy on the instrument is not payable – he or she may put an impressed stamp on the instrument as provided by section 18(2); or
- (b) if he or she adjudges that levy is payable – he or she shall assess the amount of the levy.

(2) The Officer shall inform the person lodging the instrument of his or her assessment under subsection (1), but is not required to give notice in writing of the assessment to that person unless so requested in writing by that person within 30 days after the lodging of the instrument.

(3) If an instrument lodged for assessment has been returned before a request for notice in writing of the assessment, the Officer may refuse to give the notice in writing unless the person requesting the notice in writing relodges the instrument with him or her.

(4) Where, by reason of an assessment of an instrument in respect of which an amount has been paid as levy, a person has overpaid levy, the amount of levy overpaid shall be refunded.

Retaining and impounding of instruments

43. (1) Where the Officer has reason to believe that an instrument liable to levy has not been duly stamped, or has not been lodged for assessment as required by this Act, a person authorized by the Officer may seize the instrument.

(2) The Officer may retain possession of an instrument lodged for assessment of levy, or seized under subsection (1), until his or her assessment and any levy assessed by him or her and any additional amount payable by way of penalty in respect of that instrument under this Act has been paid.

(3) Notwithstanding subsection (2), the Officer shall, on being required to do so by subpoena, summons or order of a court, produce the instrument or cause it to be produced to the court for as long as it is required in proceedings in the court.

(4) This Act applies to an instrument that has been seized under this section as though it had been lodged with the Officer for assessment.

Default assessments

44. (1) Where –

- (a) a person liable to furnish a return or to lodge a statement under section 30 has failed to furnish the return or lodge the statement, has furnished a return or lodged a statement that is false or misleading in a material particular or has failed to include in a return or statement particulars required by or under this Act to be included;
- (b) a person has not complied with a requirement under section 36 in respect of a return or instrument; or
- (c) the Officer has reason to believe or suspect that a person is liable to pay levy under this Act,

the Officer may make an assessment of the amount of levy that, in his or her opinion, is payable and for that purpose may create a memorandum of a return, statement, instrument or other document, which memorandum shall be deemed to be an instrument for the purposes of this Act.

Notice of default assessments

45. As soon as practicable after an assessment made in the circumstances referred to in section 44 under which levy is assessed to be payable, the Officer shall cause notice in writing of the assessment and the amount of the levy payable to be served on the person who is adjudged by him or her to be the person liable to pay it.

Penalty additional to levy on default assessments

46. (1) Where a person is liable to pay levy by virtue of an assessment made under section 48, that person is liable to pay, by way of penalty, in addition to the amount of the levy, an amount equal to double the amount of that levy.

(2) Where a person furnishes a return or lodges an instrument after the expiration of the period within which he or she is required by this Act, to furnish or lodge it, that person is liable to pay, by way of penalty, in addition to the amount of levy that he or she is liable to pay in respect of that return or instrument, 1 penalty unit or an amount calculated at the rate of 1.5% per month upon the amount of that levy, whichever is the greater.

(3) Where a person furnishes a return or lodges an instrument to which section 14 applies after the expiration of the period within which the person is required by this Act to furnish or lodge it, that person is liable to pay, by way of penalty, in addition to the amount of levy that he or she is liable to pay in respect of that return or instrument and to an amount of penalty under subsection (2), a further amount equal to double the amount of that levy.

(4) For the purposes of subsection (2), the amount calculated at the percentage specified in that subsection shall be computed for the period commencing on the last day of the period within which that person is required to furnish the return or lodge the instrument and ending on the day upon which it is furnished or lodged.

(5) Where a person fails to include in a return particulars of a matter required by this Act to be included and the amount of levy properly payable in respect of that matter is assessed to be greater than the amount of levy that would be payable on the basis of the particulars furnished by him or her, that person is liable to pay, by way of penalty, in addition to the amount of levy properly payable, an amount equal to double the amount of the difference between the amount of levy properly payable and the amount of levy that would be payable on the basis of those particulars.

(6) The Officer or the Officer shall include particulars of an amount payable by way of penalty under this section in a notice given under section 45.

(7) The Officer may, in a particular case, for such reasons as in his or her discretion he or she thinks sufficient, remit the whole or part of an amount payable by way of penalty under this section.

Amended assessment

47. (1) The Officer may, at any time within a period of 5 years after the date of an assessment by him or her of levy, amend the assessment by making such alterations or additions to it as he or she thinks necessary.

(2) Subsection (1) does not prevent the amendment of an assessment after the expiration of the period referred to in that subsection in order to give effect to a decision on an appeal under Part 5, or the amendment of an assessment after the expiration of that period by way of reduction on an objection under that Part or pending such an appeal.

(3) Where, by reason of an amendment of an assessment, a person has overpaid levy, the amount of levy overpaid shall be refunded.

(4) As soon as practicable after the amendment of an assessment under this section, the Officer shall cause notice in writing of the amended assessment and the amount of levy payable in accordance with the amended assessment, together with the amount of any levy underpaid or overpaid, to be given to the person who is adjudged by him or her to be the person liable to pay the levy.

Assessments in relation to deceased persons

48. The Officer has the same powers of assessment of levy in relation to a trustee of a deceased person as he or she would have had in relation to that person if he or she were still living.

Validity of assessments

49. The validity of an assessment is not affected by reason that a provision of this Act has not been complied with.

PART 5 – APPEALS

Objections to assessments

50. (1) A person who is aggrieved by an assessment made in relation to him or her under this Act may, within 30 days after the date on which he or she is informed of the assessment, post to, or lodge with, the Officer an objection in writing to the assessment.

(2) An objector shall, in an objection to an assessment, state fully and in detail the grounds on which he or she relies.

(3) The Officer shall consider the objection, and may either disallow it, or allow it, either wholly or in part.

(4) The Officer shall cause notice in writing of his or her decision on an objection to be served on the objector.

(5) The objector has no further right of objection in relation to an amended assessment than he or she would have had if the amendment had not been made, except to the extent to which a fresh liability is imposed upon him or her or an existing liability is increased by reason of the amendment.

(6) If the Officer is satisfied that a person has a reasonable excuse for not lodging an objection within the 30-day period, the Officer may extend the time for lodging the objection.

Appeal to Administrative Review Tribunal

51. (1) An objector who is dissatisfied with a decision of the Officer on his or her objection may, within 30 days after service on him or her of notice of that decision or within such further time as the Officer may allow, appeal to the Administrative Review Tribunal.

(2) On appeal –

- (a) the appeal shall be limited to the grounds stated in the objection; and
- (b) the burden of proving that any assessment objected to is excessive lies on the objector.

(3) If a person's liability or assessment has been reduced on an objection, the reduced liability or assessment shall be the liability or assessment appealed against.

Appeal pending not to affect liability or assessment

52. (1) The fact that an appeal is pending with respect to any liability or assessment shall not in the meantime interfere with or affect the liability or assessment the subject of that appeal, and the levy may be recovered as if no appeal were pending.

(2) If the liability or assessment is altered on appeal, a due adjustment shall be made, for which purpose amounts in excess shall be refunded and amounts short paid shall be recoverable as arrears.

Adjustments of levy after appeal

53. (1) If a matter is remitted to the Officer by the Tribunal for reassessment, the Officer shall forthwith reassess the matter.

(2) If an assessment is varied on an appeal or by the Officer as the result of an appeal, the Officer shall –

- (a) cause all necessary adjustments to be made; and
- (b) cause notice in writing of the varied assessment to be given to the appellant.

(3) If an assessment is varied on an appeal or by the Officer as the result of an appeal –

- (a) an amount of levy not paid or underpaid is recoverable from the person liable under the assessment as varied to pay the levy; and
- (b) an amount of levy overpaid shall be refunded.

Interest payable on refunded levy

54. (1) If, as a result of –

- (a) a decision by the Officer on an objection under section 50, being an objection lodged after the commencement of this section; or
- (b) a decision of the Tribunal on an appeal under section 51 against a decision of the Officer on an objection, being an objection lodged after the commencement of this section,

a person has overpaid levy (including additional or further levy), in addition to a refund of the amount of the overpayment, the person is entitled to be paid interest on that amount in accordance with subsection (2).

(2) Interest under subsection (1) is payable –

- (a) at the prescribed rate; and
- (b) for the period commencing on the date on which the overpaid levy was paid and ending on the date on which the refund is paid.

(3) In subsection (2) –

“prescribed rate” means –

- (a) a rate prescribed by regulation; or
- (b) if a rate is not prescribed under paragraph (a) – 13% per annum.

PART 6 – RECOVERY OF LEVY**Recovery of levy**

55. Levy is, upon becoming due and payable under this Act, a debt due to the Administration and recoverable in a court of competent jurisdiction.

Additional penalty for failure to pay levy on time

56. (1) Where a person liable to levy fails to pay the levy on or before the day on which it becomes due and payable under this Act, that person is liable to pay, by way of penalty, in addition to the amount of the levy that he or she has failed to pay or any other amount payable by way of penalty under this Act, 1 penalty unit or an amount calculated at the rate of 1.5% per month upon the amount of that levy, whichever is the greater.

(2) For the purposes of subsection (1), the amount calculated at the percentage specified in that subsection shall be computed for the period commencing on the day, or the last day of the period within which, the person is required to pay the levy and ending on the day upon which it is paid.

(3) The Officer may, in a particular case, for such reasons as in his or her discretion he or she thinks sufficient, remit the whole or a part of an additional amount payable by way of penalty under this section.

Recovery of additional penalty

57. (1) An additional amount payable by way of penalty under section 49 or 61 is a debt due to the Administration and is recoverable in the same way as levy.

(2) Where a person is liable to pay such an additional amount and a prosecution for an offence against this Act is instituted in respect of the same subject matter, the additional amount is not payable unless the prosecution is withdrawn.

Instrument not to be stamped until penalty paid

58. No unstamped instrument in respect of the execution or making of which a penalty has been imposed upon a person shall be stamped until the amount of the penalty and costs (if any awarded) has been paid by or on behalf of the person liable to the penalty.

Recovery of levy from trustees of deceased persons

59. (1) The Officer has the same powers and remedies for the recovery of levy from a trustee of a deceased person as he or she would have had against that person if he or she were still living.

(2) A trustee of a deceased person is subject to any additional amount payable under this Act to the same extent as the deceased person would be if he or she were still living.

Collection of levy from person indebted to person liable to levy

60. (1) A person indebted, either alone or jointly with another person, to a person liable to levy shall, when required by the Officer by instrument served on the person indebted, pay to the Officer the amount of the debt owing or accruing to the person so liable or so much of it as is sufficient to pay that levy.

(2) Upon the service of an instrument under this section, the amount of the debt owing or accruing to the person is liable to levy, or so much of it as is sufficient to pay the levy, becomes a debt due to the Administration and recoverable in a court of competent jurisdiction.

(3) The Officer shall, in an instrument under subsection (1), specify the time within which the debt owing or accruing shall be paid, not being a time before the debt becomes due.

(4) The Officer may, in an instrument under subsection (1), specify an amount to be paid out of each payment of the debt as it becomes due from time to time to the person liable to levy until the amount of levy is paid.

(5) The Officer shall cause an instrument under this section to be served on the person indebted and a copy of the instrument to be served on the person liable to pay the levy.

(6) A payment in pursuance of an instrument served under this section shall be deemed to have been made with the authority of the person liable to levy and of all other persons served with the instrument or copy of the instrument.

(7) In this section –

“debt”, in relation to a person liable to levy, means –

- (a) money that is due or accruing, or that may become due, to that person;
- (b) money that is held or is subsequently held for or on account of that person, or for or on account of another person for payment to that person; or
- (c) money authorized by another person to be paid to that person;

“levy” includes an additional amount payable by way of penalty under this Act, a judgment debt or costs in respect of levy or of such an additional amount, and a fine or costs imposed by a court in respect of an offence against this Act;

“person indebted”, in relation to a person liable to levy, means a person, or a statutory corporation by whom or which a debt is owing or accruing to the person liable to levy.

Person in receipt, etc, of money for non-resident

61. (1) A person resident in Norfolk Island who has authority to receive, control or dispose of money belonging to a non-resident who is liable to levy shall, when required to do so by the Officer by instrument served on the person resident in Norfolk Island, pay that levy.

(2) When so required by the Officer, the person resident in Norfolk Island is, by force of this section –

- (a) authorised and required to retain from time to time any money that comes to him or her on behalf of the non-resident or so much of it as is sufficient to pay the levy payable by the non-resident;
- (b) made personally liable for that levy after it becomes due and payable to the extent of any amount that he or she is required to retain under paragraph (a); and
- (c) indemnified for all payments that he or she makes in pursuance of this Act.

(3) For the purposes of this section, a person who is liable to pay money to a non-resident shall be deemed to be a person who has control of money belonging to the non-resident, and all moneys due by him or her to the non-resident shall be deemed to be money that comes to him or her on behalf of the non-resident.

Evidence

62. (1) In proceedings for the recovery of levy –

- (a) the production of an instrument under the hand of the Officer purporting to be a copy or record of a notice of assessment is evidence of the due making of the assessment and that the amount and particulars of the assessment are correct;
- (b) the production of an instrument under his or her hand purporting to be a copy or record of an instrument issued or given by him or her under this Act is evidence that the instrument was so issued or given; and
- (c) the production of a document certified by instrument under his or her hand as a copy of, extract from or record of a return or notice of assessment is evidence of the matter set out in the document to the same extent as the original return or notice would be if it were produced.

(2) In subsection (1) –

“record” means any thing or process –

- (a) on or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed in visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning.

PART 7 – PROSECUTIONS

Time of bringing prosecutions

63. (1) A prosecution in respect of an offence against section 17 shall not be instituted later than 3 years after the commission of the offence.

(2) A prosecution in respect of any other offence against this Act may be instituted at any time.

Protection of witnesses

64. A witness appearing on behalf of the Administration in a prosecution under this Act shall not be compelled to disclose the fact that he or she received any information, the nature of the information or the name of the person who gave the information, and a person who is or has been employed by the Administration appearing as a witness shall not be compelled to produce a report made or received by him or her in his or her official capacity and containing confidential information.

Averment of prosecutor

65. (1) In a prosecution under this Act, an averment of the prosecutor contained in the information, complaint, declaration or claim is evidence of the matter averred.

(2) Where the matter averred is a mixed question of law and fact, the averment is evidence of the fact only.

(3) This section does not apply to –

- (a) an averment of the intent of the defendant; or
- (b) a prosecution for an indictable offence.

Certain prosecutions by the Officer or an appointed person

66. A prosecution for an offence against this Act punishable on a summary finding of guilt shall not be instituted except by the Officer or by a person appointed by him or her in that behalf.

PART 8 – MISCELLANEOUS**Extensions of time, etc**

67. Where a person is required by or under this Act to do an act or thing in respect of a specified period or within a specified time, the Officer may, by instrument served on that person –

- (a) allow a further period or extend the time for the doing of the act or thing, notwithstanding that the specified period has expired; or
- (b) vary the specified period in respect of which or the time within which that person is required to do that act or thing,

and that person shall do that act or thing accordingly.

Refunds and remissions of levy

68. A refund or remission shall not be made of an amount of levy under this Act to a person who has recovered it from another person and has not since repaid it to that other person.

Terms on which unstamped or insufficiently stamped instruments may be received in evidence

69. (1) Upon the production of an instrument on which levy is payable as evidence in any court of civil judicature, notice shall be taken by the judge of any omission or insufficiency of the levy thereon and, if the instrument is one which may legally be stamped after execution, it may, on payment to an officer of the court of the amount of the unpaid levy and the fine payable by law, be received in evidence, saving all just exceptions on other grounds.

(2) Where subsection (1) applies, the officer shall detain and immediately transmit to the Officer the instrument, together with the levy and fine so paid thereon, and the payment shall be denoted on the instrument accordingly.

Secondary evidence of documents

70. In proceedings in court, secondary evidence of a document may, saving all just exceptions on other grounds, be admitted notwithstanding that the document is subject to levy and has not been duly stamped, if the amount of the levy or the amount of the deficiency of the levy and any fine imposed by this Act are paid to an officer of the court and if the document is one which may legally be stamped after execution.

Instruments not duly stamped inadmissible

71. Subject to sections 69 and 70, an instrument –

- (a) executed in Norfolk Island; or
- (b) relating (wheresoever executed) to property situated or to a matter or thing done or to be done in Norfolk Island,

and which is liable to levy in Norfolk Island shall not, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful, or available in law or equity for any purpose whatsoever, unless it is duly stamped.

Rules as to instruments executed out of Norfolk Island

72. (1) An instrument executed out of Norfolk Island, and which, by the law of the country in which it was executed, is inadmissible in evidence in that country by reason of its not having been stamped shall not be for that reason inadmissible in evidence in Norfolk Island, unless it is proved that the instrument is, by the statute law of that country, expressly made void if made or executed without being stamped.

(2) Nothing in this section renders valid an instrument executed out of Norfolk Island that is void by the law of the place in which it was executed for a reason other than that it was not duly stamped.

Continuing offences

73. (1) If, in committing an offence against a provision of this Act or the Regulations, a person fails to do an act within the time for doing the act specified in the provision, in addition to the offence for failure to do the act within the time the person commits an additional offence on each day after the expiry of the time during which the act continues not to be done.

(2) On being found guilty of an offence referred to in subsection (1), a person is, in addition to the penalty for failure to do the act within the time, liable to a penalty not exceeding 5 penalty units for each day after the expiry of the time during which the offence continues.

Service of documents

74. (1) A notice or other instrument that is required by this Act to be given or served on a person other than a company shall be given or served –

- (a) by delivering the notice or instrument to that person personally;
- (b) by prepaying and posting the notice or instrument as a letter addressed to that person at –
 - (i) the person's last-known place of residence or last-known residential post office box;
 - (ii) the person's last-known place of business or last-known business post office box; or
 - (iii) if the person is carrying on business at 2 or more places or has 2 or more business post office boxes, at one of those places or boxes;
- (c) by leaving the notice or instrument at the last-known place of residence of that person with some person apparently an inmate of that place and apparently not less than 16 years of age; or
- (d) by leaving the notice or instrument at the last-known place of business of that person or, if he or she is carrying on business at 2 or more places, at one of those places with some person apparently in the service of that person and apparently not less than 16 years of age.

(2) A notice or other instrument that is required by this Act to be given or served on a person, being a company, shall be given or served –

- (a) by prepaying and posting the notice or instrument as a letter to the company at –
 - (i) the company's last-known place of business or last-known post office box; or

- (ii) if the company is carrying on business at 2 or more places or has 2 or more post office boxes, at one of those places or boxes; or
- (b) by leaving it at that place or at one of those places with some person apparently in the service of the company and apparently not less than 16 years of age.

Judicial notice

75. For the purposes of this Act, all courts and tribunals and all judges and persons acting judicially or authorized by law to hear, receive and examine evidence shall take judicial notice of the signature of a person who holds or has held the office of Officer or acting Officer.

Entry on land, etc

76. (1) For the purposes of this Act, an officer authorized by the Officer to exercise powers under this section –

- (a) may, at all reasonable times, enter upon any land;
- (b) shall have full and free access at all reasonable times to all books, documents and other papers; and
- (c) may, for those purposes, take extracts from and make copies of any books, documents or papers.

(2) An officer who enters upon land in pursuance of this section is not authorised to remain on the land if, on request by the occupier of the land, he or she does not produce a certificate in writing under the hand of the Officer certifying that he or she is an officer authorized to exercise the powers under this section.

(3) A person shall not, without reasonable excuse, obstruct or hinder an officer in the exercise of his or her powers under this Act.

Penalty: Imprisonment for 2 years.

Appearances by Officer

77. (1) In an action, prosecution or other proceeding under this Act in a court, the Officer may appear either personally or by a barrister or solicitor, or by an officer appointed by him or her.

(2) The appearance of an officer appointed under subsection (1), and his or her statement that he or she appears by authority of the Officer, are sufficient evidence of that authority.

Annual Report

78. The Officer shall by 31 August in each year give to the executive member an annual report of his or her activities under this Act and the *Business Transactions (Levy Imposition) Bill 2005* and shall comment in particular upon any aspect of the legislation that has proven to be difficult of administration, of aspects which might be improved and of the costs of administering the legislation compared with the benefits received by way of revenue and shall generally comply with the requirements of the *Annual Reports Act 2004* but must not make reference to any person who might be identified except where successful legal proceedings have been taken and completed.

Regulations

79. The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular –

- (a) providing for the payment of fees and expenses to witnesses required under this Act to attend and give evidence before the Officer or another person;
- (b) prescribing the fees or other payments to be charged in respect of registration, proceedings under this Act or otherwise for the purposes of this Act, and prescribing the manner in which those fees or payments shall be paid;
- (c) providing for the inspection of a register kept under this Act;
- (d) prescribing penalties, not exceeding a fine of 50 penalty units, for offences against the regulations;
- (e) prescribing forms for use under this Act.

Transitional

80. (1) This Act applies to an instrument entered into after its commencement.

(2) A person who attempts to avoid this Act by claiming that an instrument entered into after the commencement of this Act was entered into before that date commits an offence under section 17.

NOTES

The *Business Transactions (Administration) Act 2006* as shown in this consolidation comprises Act No. 13 of 2006 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Business Transactions (Administration) Act 2006</i>	13, 2006	26.6.2006	
<i>Business Transactions (Administration) (Amendment) Act 2008</i>	15, 2008	1.8.2008 (retrospective 26.6.2006)	

Table of Amendments

ad = added or am = amended rep = repealed rs = repealed and
inserted substituted

Provisions affected	How affected
14(5)	am 15, 2008

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