



22 January 2018

NSW Stamp Duty Exemption for Small Businesses

New Revenue NSW Practice Note

The NSW Revenue Commissioner has issued [Practice Note No. CPN 001 General Insurance – Small Business Exemption](#) – Small Business Declaration which provides guidance on:

- the way a small business declaration can be made for the purposes of obtaining an exemption from duty for certain types of insurance; and
- accepted practice for intermediaries to receive and retain the small business declaration.

To claim the small business exemption for eligible insurance, a small business must provide an insurer with a small business declaration, in a manner approved by the Chief Commissioner to the effect that the person is a small business at the time the contract of insurance is effected or renewed.

The following sets out some of the key points in the Practice note. Refer to the Practice Note for full details.

Acceptable ways of making a declaration

The Chief Commissioner will accept declarations obtained by or on behalf of an insurer in any one of the following manners:

- a **written declaration**, whether in hard copy or contained in an email; or
- an **oral declaration**, as evidenced by a voice recording made ***using systems of or on behalf of an insurer***, or
- an **electronic declaration**, as evidenced by any election to claim the declaration, including a check box against a statement, made using ***electronic systems of or on behalf of an insurer (or that interface with those systems)*** in respect of any new policy application or renewal notice issued by or on behalf of an insurer.

This provides greater flexibility for industry.

No approved form of declaration has been issued so different insurers will have different forms. Ultimately, the declaration must meet the content

requirements for the declaration specified in the Act to be compliant and the wording can differ.

Importantly, the note states that an insurer may either:

- enter into arrangements with an insurance intermediary (this includes brokers) for the insurance intermediary to retain the small business declaration ***on behalf of the insurer***. While this approach is acceptable, it is expected that the insurer will have suitable procedures in place to obtain a copy of the small business declaration when requested by the Chief Commissioner; **or**
- receive confirmation of the declaration from an intermediary ***acting on behalf of a small business*** where the intermediary agrees with the insurer to provide a copy of the small business declaration when requested by the Chief Commissioner.

The second bullet point changes the previous position that the intermediary needed to act on behalf of the insurer in retaining the declaration (i.e. per the first bullet point). This occurred as a result of lobbying by NIBA and the ICA.

How long is a declaration effective?

A small business declaration that is *provided to an insurance intermediary is effective for the whole of the income year of that small business for all policies effected across **all insurers***.

Any declaration made by a small business to an insurer is effective for the whole of the income year (within the meaning of the Income Tax Assessment Act 1997 of the Commonwealth) of that small business.

However, where a small business effects policies with various insurers, a small business declaration will need to be provided to each insurer to claim the exemption.

Failures to provide a declaration

Where a small business declaration has not been provided at the time the policy is effected or renewed, the policy will be liable to duty. Should a small business declaration be received after the policy is effected or renewed, an insurer will need to approach the Chief Commissioner for a refund through the normal processes.

Alternatively, the Chief Commissioner may be prepared to approve a special tax arrangement under section 37 of the Taxation Administration Act 1996 for any insurer who would like to be able to offset refunds on these policies against any subsequent return period.

This document is designed to provide helpful general guidance on some key issues relevant to this topic. It should not be relied on as legal advice. It does not cover everything that may be relevant to you and does not take into account your particular circumstances. It is only current as at the date of release. You must ensure that you seek appropriate professional advice in relation to this topic as well as to the currency, accuracy and relevance of this material for you.