

STAMP DUTIES ACT 1923

Reprint No. 1—15.1.92	
Reprint No. 2—3.2.92	[New Schedules and Appendix]
Reprint No. 3—1.9.92	[New Part 3, Schedules and Appendix]
Reprint No. 4—14.12.92	[Whole Act replaced]
Reprint No. 5—1.3.93	[New Parts 1, 3, 3A and Appendix]
Reprint No. 6—1.6.94	[New Parts 1, 3, Schedules and Appendix]
Reprint No. 7—1.9.94	[Whole Act replaced]
Reprint No. 8—1.1.95	[New Parts 3, 3A, 4, 5, Schedules and Appendix]
Reprint No. 9—2.3.95	[New Schedules and Appendix]
Reprint No. 10—13.7.95	[New Part 3A, Schedules and Appendix]
Reprint No. 11—30.11.95	[New Parts 2, 3, Schedules and Appendix]
Reprint No. 12—24.4.96	[Whole Act replaced]
Reprint No. 13—1.7.96	[New Schedules and Appendix]
Reprint No. 14—4.11.96	[New Part 3 and Appendix]
Reprint No. 15—27.3.97	[New Part 3 and Appendix]

[Each Part is numbered from page 1. Subscribers to the Consolidation Service will receive complete replacement Parts incorporating amendments to this Act as they come into force.]

SOUTH AUSTRALIA

STAMP DUTIES ACT 1923

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 27 March 1997.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 1 November 1984.

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being

Stamp Duties Act 1923 No. 1569 of 1923
[Assented to 21 November 1923]

as amended by

Stamp Duties Act 1927 No. 1822 of 1927 [Assented to 21 December 1927]¹
Stamp Duties Amendment Act 1928 No. 1860 of 1928 [Assented to 17 October 1928]
Lottery and Gaming Act Amendment Act 1928 No. 1877 of 1928 [Assented to 1 November 1928]
Statute Law Revision Act 1935 No. 2246 of 1935 [Assented to 19 December 1935]
Stamp Duties Act Amendment Act 1936 No. 2312 of 1936 [Assented to 19 November 1936]
Stamp Duties Act Amendment Act 1937 No. 2359 of 1937 [Assented to 19 November 1937]
Stamp Duties Act Amendment Act 1938 No. 2387 of 1938 [Assented to 25 August 1938]²
Stamp Duties Act Amendment Act 1941 No. 48 of 1941 [Assented to 27 November 1941]
Stamp Duties Act Amendment Act 1942 No. 22 of 1942 [Assented to 12 November 1942]
Stamp Duties Act Amendment Act 1944 No. 30 of 1944 [Assented to 14 December 1944]
Stamp Duties Act Amendment Act 1945 No. 32 of 1945 [Assented to 3 January 1946]³ (as amended by Stamp
Duties Act Amendment Act 1947 No. 41 of 1947 [Assented to 11 December 1947])
Stamp Duties Act Amendment Act 1950 No. 16 of 1950 [Assented to 2 November 1950]
Stamp Duties Act Amendment Act 1952 No. 5 of 1952 [Assented to 2 October 1952]
Statute Law Revision Act 1952 No. 42 of 1952 [Assented to 4 December 1952]
Stamp Duties Act Amendment Act (No. 2) 1952 No. 55 of 1952 [Assented to 8 January 1953]⁴
Stamp Duties Act Amendment Act 1953 No. 30 of 1953 [Assented to 10 December 1953]
Stamp Duties Act Amendment Act 1954 No. 29 of 1954 [Assented to 2 December 1954]
Stamp Duties Act Amendment Act 1956 No. 8 of 1956 [Assented to 11 October 1956]⁵
Stamp Duties Act Amendment Act 1959 No. 45 of 1959 [Assented to 17 December 1959]⁶
Stamp Duties Act Amendment Act 1960 No. 7 of 1960 [Assented to 19 May 1960]⁷
Banks Statutory Obligations Amendment Act 1962 No. 32 of 1962 [Assented to 1 November 1962] (as
amended by Statute Law Revision Act 1973 No. 77 of 1973 [Assented to 6 December 1973])
Statutes Amendment (Stamp Duties and Motor Vehicles) Act 1964 No. 24 of 1964 [Assented to 9 October
1964]⁸
Stamp Duties Act Amendment Act 1965 No. 58 of 1965 [Assented to 23 December 1965]⁹ (as amended by
Stamp Duties Act Amendment Act 1966 No. 59 of 1966)¹⁰
Lottery and Gaming Act Amendment Act (No. 2) 1966 No. 46 of 1966 [Assented to 13 October 1966]¹¹
Stamp Duties Act Amendment Act 1966 No. 59 of 1966 [Assented to 10 November 1966]¹⁰
Marketable Securities Transfer Act 1967 No. 14 of 1967 [Assented to 6 April 1967]¹²
Stamp Duties Act Amendment Act 1967 No. 48 of 1967 [Assented to 19 October 1967]
Stamp Duties Act Amendment Act (No. 2) 1968, No. 26 of 1968 [Assented to 5 December 1968]¹³
Stamp Duties Act Amendment Act 1968 No. 32 of 1968 [Assented to 12 December 1968]¹⁴ (as amended by
Statute Law Revision Act 1974 No. 42 of 1974)
Stamp Duties Act Amendment Act (No. 3) 1968 No. 56 of 1968 [Assented to 19 December 1968]¹⁵
Stamp Duties Act Amendment Act 1970 No. 42 of 1970 [Assented to 3 December 1970]
Stamp Duties Act Amendment Act 1971 No. 71 of 1971 [Assented to 4 November 1971]¹⁶ (as amended by
Stamp Duties Act Amendment Act 1971 Amending Act 1971 No. 103 of 1971 [Assented to 3 December
1971]¹⁷)
Stamp Duties Act Amendment Act (No. 2) 1971 No. 80 of 1971 [Assented to 18 November 1971]¹⁸
Statute Law Revision Act 1974 No. 42 of 1974 [Assented to 11 April 1974]
Stamp Duties Act Amendment Act 1974 No. 90 of 1974 [Assented to 2 December 1974]¹⁹

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix 1.

Stamp Duties Act Amendment Act 1975 No. 63 of 1975 [Assented to 4 September 1975]²⁰
Statutes Amendment (Gift Duty and Stamp Duties) Act 1975 No. 76 of 1975 [Assented to 16 October 1975]²¹
Statutes Amendment (Gift Duty and Stamp Duties) Act 1976 No. 54 of 1976 [Assented to 28 October 1976]²²
Stamp Duties Act Amendment Act 1976 No. 101 of 1976 [Assented to 16 December 1976]²³
Racing Act 1976 No. 104 of 1976 [Assented to 16 December 1976]²⁴
Stamp Duties Act Amendment Act 1977 No. 28 of 1977 [Assented to 28 July 1977]
Stamp Duties Act Amendment Act 1978 No. 27 of 1978 [Assented to 30 March 1978]²⁵
Stamp Duties Act Amendment Act (No. 2) 1978 No. 89 of 1978 [Assented to 30 November 1978]²⁶
Stamp Duties Act Amendment Act 1979 No. 66 of 1979 [Assented to 15 November 1979]²⁷
Stamp Duties Act Amendment Act 1980 No. 111 of 1980 [Assented to 18 December 1980]²⁸
Stamp Duties Act Amendment Act 1981 No. 70 of 1981 [Assented to 30 October 1981]²⁹
Stamp Duties Act Amendment Act 1982 No. 15 of 1982 [Assented to 11 March 1982]³⁰
Stamp Duties Act Amendment Act (No. 2) 1982 No. 30 of 1982 [Assented to 8 April 1982]³¹
Stamp Duties Act Amendment Act (No. 3) 1982 No. 95 of 1982 [Assented to 23 December 1982]³²
Stamp Duties Act Amendment Act 1983 No. 65 of 1983 [Assented to 29 September 1983]³³
Stamp Duties Act Amendment Act (No. 2) 1983 No. 89 of 1983 [Assented to 1 December 1983]³⁴
Statute Law Revision Act 1984 No. 50 of 1984 [Assented to 24 May 1984]³⁵
Stamp Duties Act Amendment Act 1985 No. 81 of 1985 [Assented to 22 August 1985]³⁶
Stamp Duties Act Amendment Act 1986 No. 8 of 1986 [Assented to 13 March 1986]
Stamp Duties Act Amendment Act (No. 2) 1986 No. 100 of 1986 [Assented to 11 December 1986]³⁷
Statutes Amendment (Taxation) Act 1987 No. 2 of 1987 [Assented to 5 March 1987]
Stamp Duties Act Amendment Act 1988 No. 21 of 1988 [Assented to 14 April 1988]³⁸
Stamp Duties Act Amendment Act 1989 No. 8 of 1989 [Assented to 16 March 1989]³⁹
Stamp Duties Act Amendment Act (No. 2) 1989 No. 52 of 1989 [Assented to 14 September 1989]⁴⁰
Stamp Duties Act Amendment Act (No. 3) 1989 No. 64 of 1989 [Assented to 29 October 1989]⁴¹
Stamp Duties Act Amendment Act 1990 No. 4 of 1990 [Assented to 29 March 1990]
Stamp Duties Act Amendment Act (No. 2) 1990 No. 33 of 1990 [Assented to 26 April 1990]
Stamp Duties Act Amendment Act (No. 3) 1990 No. 36 of 1990 [Assented to 3 May 1990]⁴²
Stamp Duties Act Amendment Act (No. 4) 1990 No. 47 of 1990 [Assented to 8 November 1990]⁴³
Stamp Duties (Concessional Duty and Exemptions) Amendment Act 1991 No. 19 of 1991 [Assented to 18 April 1991]
Motor Vehicles (Historic Vehicles and Disabled Persons' Parking) Amendment Act 1991 No. 54 of 1991 [Assented to 28 November 1991]⁴⁴
Stamp Duties (Assessments and Forms) Amendment Act 1991 No. 74 of 1991 [Assented to 12 December 1991]⁴⁵
Stamp Duties (Rates) Amendment Act 1992 No. 42 of 1992 [Assented to 31 August 1992]⁴⁶
Statutes Amendment (Expiation of Offences) Act 1992 No. 71 of 1992 [Assented to 19 November 1992]⁴⁷
Stamp Duties (Penalties, Reassessments and Securities) Amendment Act 1992 No. 88 of 1992 [Assented to 10 December 1992]⁴⁸
Stamp Duties (Securities Clearing House) Amendment Act 1994 No. 14 of 1994 [Assented to 12 May 1994]⁴⁹
Stamp Duties (Concessions) Amendment Act 1994 No. 31 of 1994 [Assented to 30 May 1994]⁵⁰
Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994 No. 59 of 1994 [Assented to 27 October 1994]⁵¹
Motor Vehicles (Conditional Registration) Amendment Act 1994 No. 76 of 1994 [Assented to 8 December 1994]⁵²
Stamp Duties (Miscellaneous) Amendment Act 1994 No. 83 of 1994 [Assented to 8 December 1994]
Stamp Duties (Marketable Securities) Amendment Act 1995 No. 49 of 1995 [Assented to 13 July 1995]⁵³
Stamp Duties (Miscellaneous) Amendment Act 1995 No. 72 of 1995 [Assented to 2 November 1995]⁵⁴
Stamp Duties (Valuations—Objections and Appeals) Amendment Act 1995 No. 83 of 1995 [Assented to 30 November 1995]
Motor Vehicles (Heavy Vehicles Registration Charges) Amendment Act 1995 No. 77 of 1995 [Assented to 23 November 1995]⁵⁵
Stamp Duties (Miscellaneous) Amendment Act 1996 No. 18 of 1996 [Assented to 24 April 1996]⁵⁶
Motor Vehicles (Miscellaneous No. 2) Amendment Act 1996 No. 30 of 1996 [Assented to 2 May 1996]⁵⁷
Statutes Amendment (Community Titles) Act 1996 No. 38 of 1996 [Assented to 9 May 1996]⁵⁸
Stamp Duties (Miscellaneous) Amendment Act 1997 No. 20 of 1997 [Assented to 27 March 1997]⁵⁹

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- ¹ Came into operation 24 December 1927: *Gaz.* 22 December 1927, p. 1609.
- ² Came into operation (except s. 4(1)) on assent; s. 4(1) came into operation 16 January 1939: s. 4(2).
- ³ Came into operation (except s. 3) on assent; s. 3 came into operation 3 September 1939: s. 4(1), as amended by the Stamp Duties Act Amendment Act 1947.
- ⁴ Came into operation (except ss. 4-6) on assent; ss. 4-6 came into operation 22 January 1953: *Gaz.* 22 January 1953, p. 72.
- ⁵ Came into operation (except s. 6) on assent; s. 6 came into operation 10 September 1956: s. 6(3).
- ⁶ Came into operation 1 February 1960: *Gaz.* 7 January 1960, p. 1.
- ⁷ Came into operation 1 February 1960: s. 3(2).
- ⁸ Came into operation (except ss. 1, 2 and 9(a)) 19 October 1964: *Gaz.* 15 October 1964, p. 1203; ss. 1, 2 and 9(a) came into operation on assent: s. 2(1).
- ⁹ Came into operation (except ss. 1-4, 6, 9, 14, 15(b), (l)-(o) and 16) 14 February 1966: s. 3(2); remainder of Act came into operation on assent: s. 3(1).
- ¹⁰ Came into operation (except s. 9(1)) 21 November 1966: *Gaz.* 19 November 1966, p. 1882; s. 9(1) came into operation 14 February 1966: s. 9(2).
- ¹¹ Came into operation 8 December 1966: s. 3a as inserted by Act No. 33 of 1972, s. 4.
- ¹² Came into operation 1 July 1967: *Gaz.* 25 May 1967, p. 1657.
- ¹³ Came into operation 1 January 1969: *Gaz.* 5 December 1968, p. 2429.
- ¹⁴ Came into operation 1 February 1969: *Gaz.* 12 December 1968, p. 2558.
- ¹⁵ Came into operation 1 February 1969: *Gaz.* 19 December 1968, p. 2670.
- ¹⁶ Came into operation (except s. 13(3)) 1 December 1971: *Gaz.* 11 November 1971, p. 1928; s. 13(3) came into operation 1 January 1972: *Gaz.* 3 December 1971, p. 2298.
- ¹⁷ Came into operation 30 November 1971: s. 1(1).
- ¹⁸ Came into operation 1 January 1972: *Gaz.* 23 December 1971, p. 2627.
- ¹⁹ Came into operation (except s. 7) 16 December 1974; s. 7 came into operation 2 January 1975: *Gaz.* 2 December 1974, p. 3555.
- ²⁰ Came into operation 18 September 1975: *Gaz.* 18 September 1975, p. 1574.
- ²¹ Came into operation 14 July 1975: s. 2.
- ²² Came into operation 14 July 1976: s. 2.
- ²³ Came into operation (except s. 2) on assent; s. 2 came into operation 16 June 1977: *Gaz.* 16 June 1977, p. 1708.
- ²⁴ Came into operation (except s. 4(1) and Part 2, Division 3) 1 January 1977: *Gaz.* 16 December 1976, p. 2252; s. 4(1) and Part 2, Division 3 came into operation 1 February 1977: *Gaz.* 27 January 1977, p. 179.
- ²⁵ Came into operation (except ss. 3-6 and 9) on assent: s. 2(1); ss. 3-6 and 9 had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.
- ²⁶ Came into operation 18 January 1979: *Gaz.* 18 January 1979, p. 97.
- ²⁷ Came into operation 1 November 1979: s. 2.
- ²⁸ Came into operation 6 November 1980: s. 2.
- ²⁹ Came into operation 2 November 1981: *Gaz.* 30 October 1981, p. 1423.
- ³⁰ Came into operation 22 March 1982: *Gaz.* 18 March 1982, p. 857.
- ³¹ Came into operation (except s. 4) 24 December 1981: s. 2; s. 4 came into operation 19 August 1982: *Gaz.* 19 August 1982, p. 512.
- ³² Came into operation 23 December 1982: *Gaz.* 23 December 1982, p. 1935.
- ³³ Came into operation 1 January 1984: *Gaz.* 24 November 1983, p. 1515.
- ³⁴ Came into operation 1 January 1984: s. 2.
- ³⁵ Came into operation (except Scheds. 1, 3, 4 and 5) 1 November 1984: *Gaz.* 1 November 1984, p. 1398; Scheds. 1, 3 and 5 came into operation 1 January 1985: *Gaz.* 13 December 1984, p. 1811; Sched. 4 came into operation 6 July 1985: *Gaz.* 9 May 1985, p. 1398.
- ³⁶ Came into operation 5 August 1985: s. 2.
- ³⁷ Came into operation (except ss. 16(a), (b), (c), (d) and 18(h), (i)) 18 December 1986; remainder of Act came into operation 1 February 1987: *Gaz.* 18 December 1986, p. 1877.
- ³⁸ Came into operation (except s. 3) 7 December 1987: s. 2(1); s. 3 came into operation 14 June 1988: s. 2(2).
- ³⁹ Came into operation 1 February 1988: s. 2.
- ⁴⁰ Ss. 3 and 7 came into operation 9 August 1989: s. 2(2); ss. 4 and 5 came into operation 1 October 1989: s. 2(3); remainder of Act came into operation 21 September 1989: *Gaz.* 21 September 1989, p. 915.
- ⁴¹ Came into operation 28 March 1990: *Gaz.* 15 March 1990, p. 729.
- ⁴² Came into operation 24 May 1990: *Gaz.* 17 May 1990, p. 1359.
- ⁴³ Came into operation (except s. 5(2)) 1 July 1990: s. 2(1); s. 5(2) came into operation 1 January 1991: s. 2(2).
- ⁴⁴ Came into operation 3 February 1992: *Gaz.* 23 January 1992, p. 200.

- ⁴⁵ Came into operation 12 December 1991: *Gaz.* 12 December 1991, p. 1746.
- ⁴⁶ Came into operation 1 September 1992: s. 2.
- ⁴⁷ Came into operation 1 March 1993: *Gaz.* 18 February 1993, p. 600.
- ⁴⁸ Came into operation 14 December 1992: *Gaz.* 10 December 1992, p. 1754.
- ⁴⁹ Came into operation 1 September 1994: *Gaz.* 18 August 1994, p. 490.
- ⁵⁰ Came into operation (except ss. 5, 6 and 10) on assent: s. 2(1); ss. 5, 6 and 10 came into operation 1 June 1994: s. 2(2).
- ⁵¹ Came into operation 1 January 1995: *Gaz.* 8 December 1994, p. 1942.
- ⁵² Came into operation 2 March 1995: *Gaz.* 2 March 1995, p. 734.
- ⁵³ Came into operation 1 July 1995: s. 2.
- ⁵⁴ Came into operation 23 November 1995: *Gaz.* 23 November 1995, p. 1412.
- ⁵⁵ Came into operation 1 July 1996: *Gaz.* 30 May 1996, p. 2637.
- ⁵⁶ Came into operation 24 April 1996: *Gaz.* 24 April 1996, p. 2068.
- ⁵⁷ Came into operation 1 July 1996 by proclamation made 30 May 1996: see *Gaz.* 6 June 1996, p. 2874 under heading "Erratum" [incorrect version published 30 May 1996, p. 2637].
- ⁵⁸ Came into operation 4 November 1996: *Gaz.* 31 October 1996, p. 1460.
- ⁵⁹ **Came into operation (except s. 4) 7 January 1997: s. 2(1); s. 4 came into operation 1 February 1997: s. 2(2).**

N.B. The amendments effected to this Act by the *Statutes Amendment (Taxation Administration) Act 1996* had not been brought into operation at the date of, and have not been included in, this reprint.

Stamp Duties Act 1923

An Act to consolidate certain Acts relating to stamp duties.

The Parliament of South Australia enacts as follows:

PART 1
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Stamp Duties Act 1923.

* * * * *

* * * * *

Interpretation

4. In this Act, unless it is otherwise provided or there is something in the context repugnant thereto—

"adhesive stamp" means an adhesive stamp purchased or otherwise obtained from the Commissioner or a distributor of stamps in pursuance of this Act;

"authorised officer" means an authorised officer under section 6(4);

"business of primary production" means the business of agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, forestry or any other business consisting of the cultivation of soils, the gathering in of crops, the rearing of livestock or the propagation and harvesting of fish or other aquatic organisms;

"Commissioner" means any person appointed Commissioner of Stamps under this Act, and includes the Deputy Commissioner of Stamps and any other officer while performing any of the duties or functions of the Commissioner;

"CUFS" means an interest, issued by or on behalf of CHESS Depository Nominees Pty Ltd, that provides beneficial ownership in respect of—

- (a) shares in a corporation incorporated outside Australia; or
(b) units in a unit trust scheme,

being shares or units that are quoted on the market operated by the Australian Stock Exchange Limited;

"die" means die or other machine or implement used for impressing or imprinting stamps upon documents;

"discretionary trust" means an arrangement, however made, under which a person holds property, and the beneficial interest in all or any part of that property may be vested in a person (in this Act referred to as an "object" of the discretionary trust) on the exercise of a discretion, whether subject to any other contingency or not and whether the exercise of the discretion is obligatory or optional;

"duty" means duty (including penalty duty) chargeable under this Act;

"executed" and "execution", with reference to instruments not under seal, mean signed and signature;

"**forge**" includes counterfeit;

"**impressed stamp**" means—

- (a) a stamp impressed or imprinted by means of a die; or
- (b) a record imprinted or made by means of any machine or implement,

under the direction of the Commissioner in pursuance of this Act;

"**instrument**" includes every written document;

"**marketable security**" includes—

- (a) any stock, share or other security of any municipal or other corporation, company or society; and
- (b) any debenture, debenture stock, bond, note or other security of a government or of any municipal or other corporation, company or society, whether constituting a charge on the assets of the government, municipal or other corporation, company or society or not; and
- (ba) any interest under a deed approved for the purposes of Division 5 of Part 7.12 of the *Corporations Law*, other than an interest of a kind excluded by regulation for the purposes of this Act; and
- (c) any stock or other security of such a kind as is or can be bought or sold through the agency of a member of any stock exchange in the Commonwealth; and
- (d) a right in respect of a marketable security; and
- (da) a CUFS; and
- (e) any other security of a kind prescribed for the purposes of this Act;

"**material**" means any sort of material upon which words or figures can be expressed;

"**money**" includes all sums expressed in Australian or foreign currency;

"**records**" means records of any kind (whether in documentary or other form);

"**right in respect of a marketable security**" means a right, whether actual, prospective or contingent, of any person to have issued to him a marketable security, whether or not on payment of any money or other consideration for the marketable security;

"**savings bank**" means any of the following banks:

- (a) the Australia and New Zealand Savings Bank Limited;
- (b) the Commonwealth Savings Bank;
- (c) the National Australia Savings Bank Limited;
- (d) the State Bank of South Australia;

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(e) Westpac Savings Bank Limited;

"**stamp**" means an adhesive stamp or an impressed stamp;

"**stamped**" means bearing an impressed stamp or having an adhesive stamp affixed;

"**stock**" means any share in the stocks or funds of any State or government, or in the capital stock or funded debt of any company, corporation or society (whether incorporated in this State or elsewhere);

"**unit**" in relation to a unit trust scheme means a right or interest (however described) of a beneficiary under a unit trust scheme;

"**unit trust scheme**" means an arrangement made for the purpose, or having the effect, of providing for persons having funds available for investment facilities for the participation by them, as beneficiaries under a trust, in any profits or income arising from the acquisition, holding, management or disposal of any property subject to the trust;

"**write**", "**written**" and "**writing**" include every mode in which words or figures can be expressed upon material.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Stamp duties to be charged and to be recoverable as a debt

5. (1) Subject to the exemptions contained in schedule 2 and other provisions of this Act, there shall be charged, for the use of the Crown, the several stamp duties specified in that schedule and elsewhere in this Act upon and for the several instruments therein set forth, and also such other duties as are specified in that schedule or in any other provision of this Act.

(2) The duty chargeable upon any such instrument shall be a debt due to the Crown from every party who executes the instrument, and shall be recoverable in the name of the Commissioner on behalf of the Crown from any such party or parties in any court of competent jurisdiction.

* * * * *

(4) Where by any provision of this Act any duty is expressed to be payable by any person or by any person of a class, the duty shall be a debt due to the Crown from such person and shall be recoverable from such person in accordance with subsection (2) as if it were duty chargeable upon an instrument executed by that person.

Application of Stamp Duties Act Amendment Act 1980

5A. (1) Subject to subsection (2), this Act, as in force immediately before the commencement of the *Stamp Duties Act Amendment Act 1980*, applies in relation to instruments executed before that commencement.

(2) The amendments made to this Act by sections 9, 13 and 15(b), (f) and (g) of the *Stamp Duties Act Amendment Act 1980* apply in relation to instruments executed before or after the commencement of that Act.

(3) This Act, as amended by the *Stamp Duties Act Amendment Act 1980* applies in relation to instruments executed or brought into existence after the commencement of that Act.

Refund of tax overpaid

5AB. Where the Commissioner finds that as a consequence of amendments effected to this Act tax has been overpaid, the Commissioner may, on the Commissioner's own initiative, refund to the person who paid the tax the amount of the overpayment.

Liability to duty of instruments outside South Australia

5B. Subject to this Act, duty shall be chargeable in respect of an instrument that is outside South Australia if the instrument relates (wherever it was executed) to property situated, or any matter or thing done or to be done, in South Australia.

The Commissioner, Deputy Commissioner and staff

6. (1) There shall be—

- (a) a Commissioner of Stamps; and
- (b) a Deputy Commissioner of Stamps; and
- (c) such other staff as is necessary for the administration of this Act.

(2) The Commissioner, the Deputy Commissioner and the other staff referred to above shall be Public Service employees.

(3) The powers of the Commissioner are also exercisable by the Deputy Commissioner.

(4) The following persons are authorised officers for the purposes of this Act—

- (a) the Commissioner and the Deputy Commissioner; and
- (b) any Public Service employee appointed by the Commissioner to be an authorised officer.

Actions by or against the Commissioner

6AA. The Commissioner may sue and be sued in the name of the "Commissioner of Stamps".

Secrecy provisions

6A. A person shall not divulge or communicate information that is or was acquired by the person by reason of being, or having been, employed in, or in connection with, the administration of this Act except—

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration of this Act; or
- (c) to—
 - (i) the Commonwealth Commissioner of Taxation; or
 - (ii) an officer of this or another State, or of a Territory, employed in the administration of laws relating to taxation; or
- (d) to the Commissioner for Corporate Affairs; or
- (e) for the purposes of legal proceedings under this Act.

Penalty: \$10 000.

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Commissioner may act as State taxation officer

6B. The Commissioner may perform the functions of a State taxation officer under Part IIIA of the *Taxation Administration Act 1953* of the Commonwealth.

Distribution of stamps, commission, etc.

7. (1) The Governor may appoint any person a distributor of stamps.

(2) Any such distributor may be remunerated by a commission upon the value of stamps purchased for disposal by him, or by salary, or by any other allowance, and upon the sale of stamps to any such distributor such discount may be allowed as may be authorised by regulations made under this Act.

(3) A bank paying duty to the Treasurer in respect of cheque forms issued pursuant to section 48A may be allowed commission at the rate authorised by regulations made under this Act as if—

(a) the bank had been duly appointed a distributor of stamps;

(b) the amount of the duty so paid were money paid by the bank for the purchase of stamps.

(4) The Treasurer may, out of the General Revenue and without any further appropriation than this section, pay to any bank the commission allowed under subsection (3) in respect of all duty paid to the Treasurer by the bank in respect of cheque forms.

Stamps to be provided

8. The Treasurer shall, for denoting the several duties chargeable under this Act, provide such stamps or dies as may be required for the purposes of this Act, and may do any other act which may be necessary for effectually collecting the duties.

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**PART 2
GENERAL PROVISIONS WITH RESPECT TO STAMP DUTIES**

Payment and denotation of stamp duties

9. All duties chargeable upon any instrument shall be paid and denoted according to the provisions of this Act.

Denotation of duty

10. (1) Except where express provision is made to the contrary, all duties shall be denoted by impressed stamps only and, where it is provided that any duty may be denoted by an adhesive stamp, the duty may be denoted by an impressed stamp or by an adhesive stamp.

(2) Duty may be denoted by endorsement on the instrument on which the duty is chargeable if the endorsement is made in accordance with an authority granted by the Commissioner under this section.

(3) The Commissioner may, in his or her discretion, grant an authority to endorse instruments with stamp duty.

(4) An authority, if granted—

(a) must specify the class or classes of instruments to which it relates; and

(b) may be subject to conditions as to the manner and form in which endorsements are to be made under the authority and such other conditions as the Commissioner thinks fit; and

(c) may be varied or revoked by the Commissioner at any time.

(5) An instrument endorsed in accordance with an authority is taken to have been stamped with the amount of duty shown by the endorsement.

(6) A person who holds an authority must, at periodic intervals stated in the authority—

(a) lodge with the Commissioner a return—

(i) stating the total of the amounts endorsed under the authority during a preceding period to be determined in accordance with the authority; and

(ii) containing such other information as may be required by the conditions of the authority or by the Commissioner; and

(b) pay to the Commissioner a sum equal to the total amount endorsed under the authority during the period to which the return relates.

(7) If a person who holds an authority under this section fails to lodge a return, or to pay duty, within the time prescribed by the authority, that person is liable to penalty duty of—

(a) \$50; or

(b) 10% of the duty payable in respect of the return period for each month up to the time the obligation to lodge the return and pay the duty is fully complied with,

whichever is the greater (but the Commissioner may remit penalty duty payable under this subsection wholly or in part).

(8) A person who—

- (a) contravenes or fails to comply with a provision of this section; or
- (b) knowingly endorses an instrument with an amount of duty less than the amount with which the instrument is chargeable; or
- (c) contravenes or fails to comply with a condition on which an authority was granted under this section,

is guilty of an offence.

Penalty: \$5 000 and, if the offence results in avoidance of duty, twice the amount of duty avoided.

(9) A person who, without being authorised to endorse instruments under this section, endorses an instrument in a way that suggests or implies that the instrument is endorsed under this section is guilty of an offence.

Penalty: \$5 000 plus twice the amount of duty chargeable on the instrument.

Appropriate stamps to be used

11. (1) A stamp which, by any word or words on the face of it, is appropriated to any particular description of instrument shall not be used for any instrument of another description.

(2) An instrument falling under the particular description to which any stamp is so appropriated shall not be deemed duly stamped unless it is stamped with the stamp so appropriated.

(3) No instrument shall be deemed duly stamped with an adhesive stamp unless the words "DUTY STAMP" are printed on and form part of the stamp.

Adhesive stamps to be cancelled

12. (1) An instrument, the duty upon which is required or permitted by this Act to be denoted by an adhesive stamp, shall not be deemed duly stamped with an adhesive stamp unless—

- (a) the person required by this Act to cancel the adhesive stamp cancels it by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise effectually cancels the stamp and renders it incapable of being used for any other instrument; or
- (b) it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time.

(2) Where two or more adhesive stamps are used to denote the duty upon an instrument, each stamp shall be cancelled in the manner described above.

(3) A person who is required to cancel an adhesive stamp must not fail to do so in accordance with this Act.

Penalty: \$50.

How instruments to be stamped

13. (1) Every instrument written upon stamped material shall be written in such manner, and every instrument partly or wholly written before being stamped shall be so stamped, that the stamp may appear on the face of the instrument and cannot be used for, or applied to, any other instrument written upon the same piece of material.

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(2) If more than one instrument is written upon the same piece of material, each one of those instruments shall be separately and distinctly stamped with the duty with which it is chargeable.

Instruments to be separately charged

14. Except where express provision is made to the contrary—

- (a) any instrument containing or relating to several distinct matters shall be separately and distinctly charged with duty in respect of each of such matters as if the portion of the instrument containing or relating to each such matter were a separate instrument;
- (b) any instrument made for any consideration in respect of which it is chargeable with *ad valorem* duty, and also for any further or other valuable consideration, shall, in addition to being charged with *ad valorem* duty, be charged with duty in respect of the last mentioned consideration as if it were an instrument made only for that consideration.

Duty to be calculated on value in Australian money

15. Where any instrument is chargeable with *ad valorem* duty in respect of any money in any currency other than Australian currency, the duty shall be calculated on the value of that money in Australian currency according to the current rate of exchange at the date of the instrument.

Ascertainment of value of property subject to powers, etc.

15A. In any case in which it is necessary to ascertain the value of any property for the purpose of assessing *ad valorem* duty on any instrument executed after the passing of the *Stamp Duties Act Amendment Act 1941* the existence of any overriding power of revocation or reconveyance in that or any other instrument may be disregarded in determining the value of the property.

Duty in force when instrument produced for stamping to apply

16. The duty chargeable upon any instrument shall be calculated according to the rates in force at the time when the instrument is produced to the Commissioner for the purpose of being stamped.

Duty payable in respect of instruments conditionally executed

17. (1) Subject to subsection (2), an instrument that is executed conditionally by one or more parties is liable to duty as if it had been executed unconditionally.

(2) If—

- (a) duty is paid on or in respect of an instrument that was executed conditionally by one or more of the parties;
- (b) the Commissioner is satisfied that, by reason of non-fulfilment of the condition, or recall of the execution, the instrument will never come into force,

the Commissioner will, on application by a party who paid the duty and production of the instrument, cancel any stamp on the instrument and refund the amount of the duty paid.

Duty on other instruments

18. Where the duty with which any instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of the last mentioned duty may, on production of both the instruments, be denoted in such manner as the Commissioner thinks fit upon the first mentioned instrument.

All facts to be truly set forth

19. (1) All the facts and circumstances affecting the liability of an instrument to duty must be fully and truly stated—

- (a) in the instrument itself; or
- (b) in a statement produced to the Commissioner prior to the stamping of the document.

(2) Any facts or circumstances affecting the liability of an instrument included in a statement under subsection (1) must, if the Commissioner so requires, be verified by a statutory declaration.

(3) If—

- (a) an instrument is produced to the Commissioner for stamping; and
- (b) the instrument does not fully and truly state the facts and circumstances affecting its liability to duty; and
- (c) the instrument is not accompanied by a statement fully and truly stating the facts and circumstances affecting its liability to duty,

the parties to the instrument, and any person professionally engaged to have the instrument stamped, are each guilty of an offence.

Penalty: \$10 000.

(4) It is a defence to a charge of an offence against subsection (3)—

- (a) if the defendant is a party to the instrument - to prove that the defendant reasonably relied on some other person to ensure that the requirements of that subsection were satisfied;
- (b) if the defendant is a person who was professionally engaged to have the instrument stamped—to prove that the defendant reasonably relied on information supplied by a party to the instrument.

(5) A fact or circumstance affects the liability of an instrument to duty if it affects the amount of the duty chargeable on the instrument.

Certain copies dutiable

19A. (1) Notwithstanding any other provision of this Act, but subject to subsection (2), where an original instrument chargeable with duty under this Act has not been duly stamped or has been destroyed without being duly stamped, any copy of the instrument shall, for the purposes of this Act, be chargeable with duty and penalty duty (if applicable) as if it were the original and be deemed to have been executed by the person or persons who executed the original at the same time as the original was executed.

(2) Where an original instrument or a copy of an instrument is duly stamped under this Act, the Commissioner shall, upon application and production of that original or copy, stamp any copy or further copy or the original, as the case may be, with a particular stamp denoting that it is duly stamped.

(3) In this section—

"**copy**" includes—

- (a) a duplicate or counterpart of an original instrument; or

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

Penalty for not duly stamping

20. (1) Except where express provision is made to the contrary, an instrument may be stamped without penalty—

- (a) where it was executed in South Australia—within two months after its execution; or
- (b) where it was executed outside South Australia—within two months after its receipt in South Australia or within six months after its execution, whichever period first expires.

(1aa) If duty or further duty becomes chargeable on an instrument in consequence of an event occurring after its execution, the instrument may be stamped without penalty within 2 months after that event.

(1a) Except where express provision is made to the contrary, an instrument that is unstamped or insufficiently stamped after the expiration of the period referred to in subsection (1) or (1aa) shall, in addition to the unpaid duty, be charged with penalty duty of—

- (a) fifty dollars; or
- (b) an amount equal to 10 per centum of the amount of the unpaid duty for each month for which the instrument has remained unstamped or insufficiently stamped from the day when it was executed until the amount equals the amount of the unpaid duty,

whichever is the greater amount.

(2) The payment of any such penalty duty shall be denoted on the instrument by a particular stamp.

(3) The Commissioner may, at any time, remit any penalty duty, or part of any penalty duty, payable under this section.

(4) If an instrument that is chargeable with stamp duty is not produced to the Commissioner for stamping within the period prescribed by subsection (1) or (1a), any person who executed the instrument, or on whose behalf it was executed, is guilty of an offence.

Penalty: \$10 000.

(5) Subsection (4) does not apply in relation to—

- (a) an instrument executed, or brought into existence, before 7th December, 1987;
- (b) an instrument that has been duly stamped in some other manner authorised by this Act within the relevant period.

(6) It is a defence to a charge against subsection (4) to prove that the defendant delivered the instrument or had it delivered into the possession of some other party, or an agent for some other party, to the instrument in the reasonable expectation that the other party would have it stamped.

(7) The commission of an offence against subsection (4) does not affect the validity of the instrument in relation to which the offence was committed.

(8) Where a body corporate is guilty of an offence against subsection (4), each member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed by that subsection unless it is proved that he or she could not by the exercise of reasonable diligence have prevented the commission of the offence by the body corporate.

Admissibility of unstamped instruments in evidence

21. Upon the production of any instrument chargeable with duty as evidence in any civil proceedings in any part of South Australia, the officer whose duty it is to read the instrument shall call the attention of the presiding judge, special magistrate or justices to any omission or insufficiency of the stamp thereon.

* * * * *

Except as aforesaid no unstamped instrument to be received in evidence

22. No instrument chargeable with duty executed in any part of South Australia, or relating, wherever it was executed, to any property situated, or to any matter or thing done or to be done, in any part of South Australia, shall, except in criminal proceedings, be pleaded or given in evidence, or admitted to be good, useful or available at law or in equity, unless duly stamped.

Assessment of duty

23. (1) The Commissioner may (whether requested to do so or not) express an opinion on either or both of the following questions:

- (a) whether duty is payable in a particular case;
- (b) what amount of duty is payable in a particular case.

(1a) The Commissioner may require a person requesting an opinion to furnish such information as the Commissioner thinks necessary for the purposes of the opinion and may refuse to give the opinion until that information has been furnished.

(1b) The Commissioner shall not express an opinion in respect of an unexecuted instrument.

(2) If the Commissioner is of the opinion that an instrument is not chargeable with duty, the instrument may be stamped with a particular stamp denoting that it is not chargeable with duty.

(3) If the Commissioner is of the opinion that an instrument is chargeable with duty, he shall assess the duty with which it is, in his opinion, chargeable and, when the instrument is duly stamped in accordance with the assessment of the Commissioner, it may also be stamped with a particular stamp denoting that it is duly stamped.

(4) Every instrument stamped with the particular stamp denoting either that it is not chargeable with duty or that it is duly stamped shall be admissible in evidence and shall be available for all purposes, notwithstanding any objection relating to duty.

(5) An instrument on which duty has been assessed by the Commissioner cannot be stamped except in accordance with that assessment unless the Commissioner reassesses duty on the instrument.

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Reassessment of duty

23A. (1) Where the Commissioner is of the opinion—

- (a) that a mistake of fact has occurred in an assessment of duty under this Act; or
- (b) that incorrect, misleading or incomplete information has been provided to the Commissioner in respect of the assessment of duty under this Act; or
- (c) that a reassessment of duty is necessary in order to recover duty that has not, but should have been, paid,

the Commissioner may reassess duty payable under this Act.

(2) A reassessment may be made whether or not duty has been paid.

(3) A reassessment of duty under this section must be made within 5 years after the date of the original assessment unless the Commissioner has reason to suspect fraud or deliberate evasion of duty, in which case it may be made at any time.

(4) If the reassessment arises from some failure on the part of the person liable to pay the duty, or that person's agent, to provide information that should have been provided for the purposes of the original assessment, and further duty is payable as a result of the reassessment, penalty duty equivalent to twice the amount of that further duty also becomes payable.

(5) If duty is decreased as a result of a reassessment, the Commissioner must refund any amount of overpaid duty together with interest on that amount, from the date of payment of the duty, at the rate fixed under subsection (6).

(6) The Minister may, by notice in the *Gazette*—

- (a) fix a rate of interest for the purposes of subsection (5); or
- (b) vary a rate of interest previously fixed under this subsection.

(7) Notice of a reassessment of duty under this section must be given personally or by post to the person liable to pay the duty, or to that person's agent (but a reassessment is not invalidated by a failure to give the notice).

(8) Any duty payable by a person as a result of a reassessment under this section must be paid within two months after a notice is given under subsection (7).

(9) The Commissioner may require any person who is liable to pay duty on a reassessment under this section to produce to the Commissioner, at the time the duty is paid, any instrument (or a copy of any instrument) affected by the reassessment (and the Commissioner may, on receipt of that instrument (or copy), stamp or further stamp the instrument (or copy), or cancel any stamp).

(10) A person must not fail to comply with a requirement under subsection (9).

Penalty: \$5 000.

(11) Where, as a result of a reassessment of duty under this section, an instrument is chargeable with additional duty, the instrument will, from the date of the reassessment, be taken to be insufficiently stamped until the additional duty is paid.

(12) The Commissioner may, at any time, remit any penalty duty, or part of any penalty duty, payable under this section.

(13) A decision of the Commissioner that an instrument is not chargeable with duty will be taken to be an assessment of duty for the purposes of this section.

Objections and appeals

24. (1) Any person who is dissatisfied with the assessment of the Commissioner may, on payment of duty in accordance therewith—

- (a) within fourteen days after the date of the Commissioner's assessment, forward to the Treasurer a statement of the grounds of his objection to the assessment; or
- (b) within twenty-one days after the date of the Commissioner's assessment, appeal to the Supreme Court.

(2) The Treasurer may, on receipt of a statement of grounds of objection, confirm or modify the Commissioner's assessment and, if the assessment is reduced, any excess duty paid by the objector will be refunded together with interest on the excess, from the date of payment of the duty, at the rate fixed under subsection (10).

(3) If upon the confirmation or modification by the Treasurer of the Commissioner's assessment the person is still dissatisfied, he may, within twenty-one days after the Treasurer's decision is communicated to him, appeal to the Supreme Court.

(4) For the purpose of any appeal to the Supreme Court under this section, the appellant may require the Commissioner to state and sign a case setting forth the question upon which his opinion was required and the assessment made by him.

(5) The Commissioner shall thereupon state and sign a case accordingly and deliver it to the appellant and, upon his application, the case may be set down for hearing in the Supreme Court.

(6) Upon the hearing of such a case (at least seven days notice of which shall be given to the Commissioner), the Court shall determine the question submitted and assess the duty, if any, chargeable under this Act.

(7) If the Court finds that the appellant has paid duty that is not chargeable under this Act, or has paid duty in excess of the amount chargeable under this Act, the Court will order the Commissioner—

- (a) to refund the amount that was not properly chargeable together with interest on that amount, from the date of payment of the duty, at the rate fixed under subsection (10); and
- (b) to pay the appellant's costs of the appeal.

(8) If the assessment of the Commissioner is confirmed by the Court, the costs incurred by the Commissioner in relation to the appeal shall be ordered by the Court to be paid by the appellant to the Commissioner.

(9) For the purposes of this section, the Supreme Court may consist of one judge only.

(10) The Minister may, by notice in the *Gazette*—

- (a) fix a rate of interest in respect of refunds of duty under this section; or

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(b) vary a rate of interest previously fixed under this section.

(10a) Where duty is assessed under this Act according to the market value of property, an objection or appeal under this section may be made (wholly or in part) on the ground that there has been an incorrect determination of market value.

(10b) If an objection is made under subsection (10a), the Treasurer may—

- (a) refer any aspect of the matter for advice or report;
- (b) obtain a valuation (or a further valuation) of the relevant property;
- (c) consider any valuation or other information furnished by the objector;
- (d) take into account any other matter or representation that the Treasurer considers relevant.

(10c) If the Treasurer or the Court (as the case may be) finds that there has been an incorrect determination of the market value of property, the Treasurer or the Court may alter the assessment of duty.

(10d) However—

- (a) a person may not lodge an objection or appeal under this section on the ground that there has been an incorrect determination of the market value of property if the case involves a conveyance on sale and the consideration for the sale has been treated as the market value of the property for the purposes of the assessment of duty; and
- (b) the Court may dismiss or determine (with costs against the appellant) an appeal under this section on the ground that there has been an incorrect determination of the market value of property if it appears that the proceedings are frivolous, or that there is no significant basis upon which to dispute the determination of market value; and
- (c) a finding by the Court that there has been an incorrect determination of market value of property for the purposes of this Act does not affect any valuation of the Valuer-General for the purposes of any other Act.

(11) In this section—

"assessment" includes—

- (a) a reassessment; or
- (b) the imposition of additional or further duty under this Act.

* * * * *

Records open to inspection

26. All public officers having in their custody any rolls, books, records, papers, documents or proceedings, the inspection of which may tend to secure any duty, or to the proof or discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorised to do so by the Commissioner to inspect all such rolls, books, records, papers, documents and proceedings and to take, free of charge, such notes and extracts as the authorised person thinks necessary.

No instrument to be enrolled or registered unless stamped

27. No person whose office it is to enrol, register or enter in or upon any rolls, books or records any instrument chargeable with any duty, or the memorial of any instrument chargeable with any duty, shall enrol, register or enter any such an instrument or memorial unless the instrument is duly stamped.

Power to obtain information and evidence

27A. (1) For the purposes of determining whether duty is payable in a particular case or what amount of duty is payable or for the purposes of inquiring into any other matter relevant to the enforcement of this Act, the Commissioner may, by notice in writing, require any person—

- (a) to furnish the Commissioner, either orally or in writing, with such information as the Commissioner requires; or
- (b) to attend for examination before the Commissioner or any authorised officer; or
- (c) to produce any instrument or records in the person's custody relevant to the subject matter of the inquiry.

(2) The Commissioner may require the information or evidence to be given on oath or verified by statutory declaration.

(3) The regulations may authorise reimbursement of expenses in accordance with a prescribed scale to persons required under this section to attend for examination before the Commissioner or an authorised officer.

(4) Where an instrument or record is produced under this section, the Commissioner or authorised officer—

- (a) may take and retain possession of the instrument or record for such period as is necessary to enable it to be inspected and copies of, or extracts from, it to be made or taken by or on behalf of the Commissioner; and
- (b) shall permit a person who would be entitled to inspect the instrument or record if it were not in the possession of the Commissioner or authorised person to inspect the instrument or record at any reasonable time.

(5) Where a person has a lien on an instrument or record, nothing done under this section prejudices the lien.

(6) A person who fails, without reasonable excuse, to comply with a requirement of the Commissioner under this section is guilty of an offence.

Penalty: \$10 000.

Access to records

27B. (1) For the purposes of ascertaining whether the provisions of this Act are being or have been complied with, or for any other purpose related to the enforcement of this Act, the Commissioner or an authorised officer may at any reasonable time—

- (a) enter premises; and
- (b) require the production of any instrument or record in the premises that may be relevant to the assessment of duty, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process; and

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(c) inspect and take extracts from, or make copies of, or require the provision of copies of, any instrument or record in the premises or so produced that appears to be relevant to the assessment of duty.

(2) A person who—

(a) hinders the Commissioner or an authorised officer in the exercise of powers conferred by this section; or

(b) fails to afford such assistance to the Commissioner or authorised officer as is necessary to enable the carrying out of an inspection under this section,

is guilty of an offence.

Penalty: \$10 000.

Warrant to search and enter premises

27C. (1) If a magistrate is satisfied, on the application of the Commissioner (which must be supported by an affidavit or other sworn evidence), that there is reasonable ground for suspecting that an instrument or record relevant to the assessment of duty may be found in certain premises, the magistrate may issue a warrant authorising an authorised officer together with any other person named in the warrant—

(a) to enter those premises (using such force as is necessary for the purpose); and

(b) to search the premises and to break open and search anything in the premises in which an instrument or record may be stored or concealed; and

(c) to take possession of, on behalf of the Commissioner, any instrument or record that appears to be relevant to the assessment of duty.

(2) Where an authorised officer takes possession of an instrument or record under this section, that person or a person to whom it is subsequently delivered—

(a) may retain possession of the instrument or record for such period as is necessary to enable it to be inspected, and copies of, or extracts from, it to be made or taken by or on behalf of the Commissioner; and

(b) shall permit any other person who would be entitled to inspect the instrument or record if it were not retained under paragraph (a) to inspect the instrument or record at any reasonable time.

(3) Where a person has a lien on an instrument or record, nothing done under this section prejudices the lien.

(4) A person shall not obstruct any person acting in execution of a warrant under this section or assisting in the execution of such a warrant.

Penalty: \$10 000.

(5) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by law.

Power to retain instruments

27D. Where an instrument chargeable with duty under this Act, but unstamped or insufficiently stamped, comes into the possession of the Commissioner, the Commissioner shall retain possession of the instrument until the full amount of the duty payable in respect of the instrument is paid.

Commissioner not liable for acting *bona fide* in exercise of his powers or discharge of his duties

27E. No action shall lie against the Commissioner by reason of the exercise or discharge or the purported exercise or discharge by him in good faith of his powers or duties under this Act or in respect of any matter arising out of the exercise or discharge or the purported exercise or discharge of those powers or duties.

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PART 3
SPECIAL PROVISIONS WITH RESPECT TO CERTAIN STAMP DUTIES

Agreements

Adhesive stamp may be used for agreement not under seal

29. The duty upon an agreement not under seal may be denoted by an adhesive stamp, which shall be cancelled by one of the parties executing the agreement.

When agreement comprised of several letters

30. In any case where an agreement is constituted by two or more letters, the agreement and all the letters shall be deemed to be duly stamped if any one of the letters is duly stamped with the duty payable upon the agreement.

Certain contracts to be chargeable as conveyances on sale

31. (1) Any contract or agreement in writing for the sale of any estate or interest in any property (including goods, wares and merchandise not being goods, wares and merchandise agreed to be sold in the ordinary course of trade by a party whose business is or includes the sale of such goods, wares and merchandise) except—

- (a) property which cannot vest in the purchaser except upon registration of a conveyance; or

- (c) stock or marketable securities or shares in the stock, funds or capital of any corporation, company or society,

shall be charged with the same ad valorem duty as if it were an actual conveyance on sale of the estate or interest contracted or agreed to be sold.

(2) Where duty has been duly paid on a contract or agreement in accordance with subsection (1), any conveyance made to the purchaser in pursuance of the contract or agreement shall not be chargeable with any duty, and the Commissioner, upon application and upon the production of the contract or agreement duly stamped, shall stamp the conveyance with a particular stamp denoting that it is duly stamped.

(3) For the purposes of this section, a receipt for the payment, in pursuance of any contract or agreement, of any purchase money shall, in the absence of any further or other instrument being or evidencing the contract or agreement, be charged with ad valorem duty.

(4) If any such contract or agreement as is mentioned in subsection (1) is afterwards rescinded or annulled, or for any other reason is not substantially performed or carried into effect so as to operate as, or to be followed by, a conveyance, the person who paid the ad valorem duty upon the contract or agreement shall be deemed to be possessed of stamped material rendered useless by being inadvertently spoiled, within the meaning of section 106, and the provisions of that section shall apply accordingly.

(5) This section shall not apply to, or in respect of, any hire-purchase agreement within the meaning of this Act.

Duty on agreements for "walk in walk out" sales of land used for primary production

31A. Notwithstanding section 31, if—

- (a) a contract or agreement in writing provides for the sale as a going concern of land used wholly or mainly for the business of primary production, together with stock, implements and other chattels held or used in connection therewith; and
- (b) the contract or agreement sets out separately the consideration payable for the land and the consideration payable for stock, implements or other chattels; and
- (c) the Commissioner certifies in writing on the contract or agreement that he is of the opinion that the consideration specified as being payable for the land represents the value of that land,

then the contract or agreement in writing shall be chargeable with stamp duty as if it related solely to the land mentioned therein and not to the stock, implements and other chattels.

Rental Business

Interpretation

31B. For the purposes of the provisions of this Act falling under the heading of *Rental Business*, unless the contrary intention appears—

"**bailee**" means a person who has, or is entitled to, possession of goods under a contractual or non-contractual bailment;

"**bailment plan**" means an arrangement under which—

- (a) a financier provides financial accommodation for a business carried on by a trader; and
- (b) the financier retains or acquires title to a trading stock as security for the financial accommodation provided; and
- (c) the trader has possession of the trading stock by virtue of a contractual or non-contractual bailment;

"**bailor**" means a person who confers a right to possession of goods on another under a contractual or non-contractual bailment;

"**contractual bailment**" means a contract or agreement under which a person who owns, or is entitled to the possession of, goods confers on another a right to possession or use of the goods but does not include a contract or agreement under which a right to the possession or use of goods is conferred incidentally to a lease of, or licence to occupy, land;

"**corresponding law**" means a law of the Commonwealth or of another State or of a Territory that imposes duty of a similar nature to the duty imposed under this heading in respect of rental business or hiring arrangements;

"**goods**" includes all chattels personal and any fixture severable from the realty, but does not include money, livestock, things in action or books;

"**registered person**" means a person registered under section 31E;

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"**related corporation**", in relation to a corporation, means a corporation that is, by virtue of section 50 of the *Corporations Law*, deemed to be related to the first mentioned corporation;

"**rental business**" means—

- (a) the business of conferring rights to the possession or use of goods under a contractual bailment; or
- (b) the business of acquiring the rights of the bailor under a contractual bailment; or
- (c) the business of providing financial accommodation under a bailment plan; or
- (d) the business of guaranteeing the obligations of a bailee under a contractual bailment or a bailment plan,

but does not include business of a class exempted by regulation from the ambit of this definition.

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Persons carrying on rental business to be registered

31D. (1) Subject to subsection (3), a person shall not carry on any rental business in South Australia (whether or not he also carries on any other business), or advertise or hold himself out in any way as carrying on any such business, whether the head office or principal place of business of that person is in South Australia or elsewhere, unless he is a registered person.

Penalty: Five thousand dollars.

Expiation fee: Division 6 fee.

(2) Any person who, in the course of any business, undertakes negotiations in South Australia with the object of transacting any rental business shall be deemed to carry on rental business in South Australia, whether or not he has an established place of business in South Australia.

(3) Subsection (1) shall not apply to a person acting as an agent or employee of a registered person by reason only of the fact that he is so acting.

(4) Where a person is convicted of an offence against subsection (1), the court may, in addition to any other penalty that may be imposed, order the person to pay penalty duty equal to twice the amount of duty that would have been payable if at the material time he or she had been a registered person and lodged with the Commissioner, in relation to the business in respect of which the offence was committed, a statement as required by section 31F.

Registration

31E. (1) The Commissioner shall register any person who applies in the prescribed form for registration under this section.

(2) A registered person who is no longer required to be registered may, by notice in the prescribed form given to the Commissioner, cancel his registration under this section.

Statement to be lodged by registered person

31F. (1) Subject to this Act, and in particular to section 31I, a registered person shall—

- (a) not later than the twenty-first day of each month, lodge with the Commissioner a statement in the prescribed form setting out the total amount received during the preceding month in respect of his or her rental business (including amounts received for services incidental or related to that business); and
- (b) at the time of lodging the statement with the Commissioner, pay to the Commissioner, as duty on that statement, a sum equal to 1.8 per centum of the amount (if any) by which the amount referred to in paragraph (a) exceeds \$2 000.

(2) Where—

- (a) a registered person has been carrying on rental business; and
- (b) the total amount received by him during the last preceding period of twelve months in respect of that rental business did not exceed \$24 000,

the registered person may, instead of lodging a statement with the Commissioner under subsection (1), by notice in writing given to the Commissioner, elect to lodge with the Commissioner, not later than the thirty-first day of March in each year, a statement showing the total amount received by him in the period commencing on the first day of February in the last preceding year and ending on the thirty-first day of January in the year in which the statement is lodged in respect of his rental business (not including any amount previously included in a statement lodged with the Commissioner pursuant to subsection (1)(a)) and to pay to the Commissioner as duty on that statement an amount equal to 1.8 per centum of the amount (if any) by which the total amount exceeds \$24 000.

(3) The registered person who has given to the Commissioner a notice of election under subsection (2) shall be liable to pay and shall pay to the Commissioner at the time of lodging the statement the amount of duty on the statement in accordance with the notice of election but, where the total amount so received by the registered person in that period does not exceed \$24 000, the registered person shall not be liable to pay to the Commissioner any duty on that statement.

(4) Any election made by a registered person pursuant to subsection (2) may be cancelled with effect from and in relation to the period of twelve months commencing on the first day of February next following, by notice in writing under the hand of the registered person given to the Commissioner or by notice in writing under the hand of the Commissioner given to the registered person, if the Commissioner is satisfied that the total amount received by the registered person who has made the election was in excess of \$40 000 in any period of twelve months.

(5) The amount to be shown on the statement includes any amounts received under a contractual bailment if—

- (a) the contractual bailment was entered into in South Australia; or
- (b) any negotiations leading to the formation of the contractual bailment took place in South Australia; or
- (c) the goods were delivered in South Australia to the person who obtained the right to their possession or use under the contractual bailment.

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(6) A registered person who fails to lodge a statement as and when required by this section is guilty of an offence.

Penalty: \$5 000.

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Manner of denoting duty on statement

31H. The duty paid by a registered person on a statement lodged with the Commissioner under section 31F shall be denoted by cash register imprint on the statement or in such other manner approved by the Auditor-General as is notified by the Commissioner in the *Gazette*.

Matter not to be included in statement

31I. (1) Nothing contained in section 31F shall require a registered person to include in a statement required by that section to be lodged with the Commissioner any amount in respect of—

- (a) a transaction entered into by the person in the course of any business carried on by the person as a pawnbroker; or
- (b) the sale of any goods (other than where there is an agreement, arrangement or understanding that the person to whom the goods are sold may, at a later time, sell the goods back to the registered person); or
- (c) any business transacted by the registered person in respect of which the registered person has paid duty under a corresponding law where—
 - (i) the rate of duty under that corresponding law is not less than 1.8 per cent on amounts received in respect of any rental business or hiring arrangement (disregarding any deductions or allowances available under that corresponding law); and
 - (ii) the Commissioner is satisfied, on application made to the Commissioner by the registered person in a manner and form determined by the Commissioner, that it would be reasonable to allow the registered person to have the benefit of this subsection in respect of that business; or

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- (g) the grant, by a corporation to a related corporation, of the right to the use of goods beneficially owned by that first mentioned corporation; or
- (h) any business transacted by him outside South Australia, where—
 - (i) no negotiations leading to the transaction of the business took place in South Australia; and
 - (ii) the amounts obtained or the goods obtained by the other party to the transaction were obtained for the purpose of being wholly expended or wholly used outside South Australia.

(1a) If—

- (a) a registered person, in respect of any period for which duty is payable under this heading in respect of his or her rental business, pays duty in respect of the same business (including business that involves a hiring arrangement) under a corresponding law; and
- (b) the rate of duty under that corresponding law is less than 1.8 per cent on amounts received in respect of any rental business or hiring arrangement (disregarding any deductions or allowances available under that corresponding law); and
- (c) the Commissioner is satisfied, on application made to the Commissioner by the registered person in a manner and form determined by the Commissioner, that it would be reasonable to allow a deduction to be made under this subsection,

the registered person is entitled to a deduction from the amount of duty that would, apart from this subsection, be payable, the amount of the deduction being equal to the amount of duty paid in respect of the same business under that corresponding law for the corresponding period.

(1b) The Commissioner may, in making a decision on an application under subsection (1)(c)(ii) or (1a)(c), take into account any of the following:

- (a) the law that constitutes the proper law with respect to the business to which the application relates, or that would be the proper law had not the registered person and any other person with whom the registered person has entered into or is conducting the business expressly or by implication determined on the law of some other place as the law to govern the business;
- (b) the extent to which the business to which the application relates is connected with the place where the corresponding law applies;
- (c) the extent (if any) to which it appears to the Commissioner that the registered person has arranged or structured his or her business to avoid the payment of duty under this heading,

and may take into account such other matters (whether similar or dissimilar to those referred to above) as the Commissioner thinks fit.

(1c) Where a registered person receives in excess of \$2 000 per month for or in relation to the use of goods under a lease, bailment, licence or other agreement that provides for the registered person to be responsible for the servicing of those goods, the registered person may deduct from the excess, on account of the cost of servicing those goods—

- (a) an amount not exceeding 40 per centum of the excess or such higher proportion of the excess as is fixed by the Commissioner, on the application of the registered person, in respect of particular goods where, in the opinion of the Commissioner, the higher proportion is properly attributable to the cost of servicing the goods; or
- (b) the actual cost of servicing the goods,

whichever is the lesser.

(2) A registered person shall supply to the Commissioner such particulars of the matters referred to in this section as are prescribed or as are in any particular case required by the Commissioner.

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Registered person to keep records

31J. (1) A registered person shall keep or cause to be kept in South Australia sufficient books and records to enable all amounts required to be set out in a statement to be lodged by him with the Commissioner under section 31F to be accurately calculated.

Penalty: Five hundred dollars.

Expiation fee: Division 9 fee.

(2) A registered person shall keep the books and records referred to in subsection (1), together with all working papers used in making the calculations referred to in that subsection, available for inspection for a period of three years from the month or year, as the case may be, to which each statement in which such amounts are set out relates or for such lesser period as the Commissioner may in any particular case allow.

Penalty: Five hundred dollars.

Expiation fee: Division 9 fee.

Calculation by other methods

31K. (1) Where the Commissioner is satisfied that—

- (a) it is not reasonably practicable to calculate precisely any amount which is to be set out in the statement of any registered person required to be lodged under section 31F, he may agree to accept from that person statements in which that amount is calculated in such a manner or on such a basis as he thinks fit; or
- (b) in the circumstances of a particular case, it is not reasonable to require statements to be lodged by the registered person in each month, he may agree to accept statements at such times and relating to such periods as he thinks fit.

(2) Where, pursuant to subsection (1), the Commissioner agrees to accept from a registered person a statement—

- (a) in which an amount is calculated in a manner or on a basis different from that required under section 31F; or
- (b) at a time, or relating to a period, otherwise than in accordance with that section,

the registered person shall, at the time of lodging that statement with the Commissioner, pay to the Commissioner the amount of duty that would be payable on that statement if it were lodged by him with the Commissioner in accordance with that section.

(3) The Commissioner may, by notice in writing served personally or by post on a registered person, cancel any agreement made pursuant to subsection (1) and, upon the day specified in the notice as the day on which the agreement is cancelled, that agreement shall have no further force or effect in relation to that registered person.

Passing on of rental duty

31L. (1) Subject to this section, a registered person or any person acting on his behalf shall not add the amount of any duty or of any part of the duty payable by the registered person as such under this Act to any amount payable by any other person with whom he has entered into or is conducting any rental business, whether by agreement or otherwise, or otherwise demand or recover or seek to recover any such first mentioned amount from that other person.

Penalty: Two hundred dollars.

Expiation fee: Division 10 fee.

(2) In the event of a contravention of subsection (1)—

(a) the court by which the defendant is convicted shall, in addition to imposing a penalty for the offence, order the defendant to refund to the other person referred to in that subsection any such amount which has been paid by that other person; or

(b) the other person referred to in that subsection may recover any such amount from the registered person, or person to whom he paid it, by action in a court of competent jurisdiction as if it were a debt due to him from that person.

(3) The Governor may by proclamation—

(a) exempt a class of transactions from the application of this section; or

(b) vary or revoke any such exemption.

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Default assessments

31M. (1) Where the Commissioner has reason to believe or suspect that a person—

(a) has failed to lodge a statement as required by section 31F or by an agreement under section 31K; or

(b) has failed to pay any duty, or has paid insufficient duty, in respect of a rental business as required by this Act,

the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner's opinion, represents the duty that is payable in respect of the relevant rental business during the relevant period.

(2) Where the Commissioner makes an assessment under this section—

(a) the Commissioner must cause notice in writing of the assessment to be served on any registered person who is in default; and

(b) the person is, subject to any determination made on an objection or appeal under section 24, liable to pay any duty determined by the Commissioner under the assessment to be payable together with any further duty specified in the notice as being payable by way of penalty pursuant to subsection (4).

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(3) A person liable to pay duty as a result of an assessment under this section who fails to pay the amount specified in the notice of assessment on or before the date specified in the notice is guilty of an offence.

Penalty: \$2 000 plus an amount equal to twice the amount of the Commissioner's assessment under subsection (1).

(4) Where a person is liable to pay duty by virtue of an assessment under this section, the person is in addition liable to pay penalty duty equal to twice the amount of the duty that has been so assessed.

(5) The Commissioner may, at any time, remit any penalty duty, or part of any penalty duty, payable under this section.

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Unregistered persons

31N. (1) The Commissioner may enter into an agreement with a person—

- (a) who carries on rental business; and
- (b) who is not required to be registered,

under which the Commissioner approves the person for the purposes of this section and the person undertakes to lodge statements and pay duty on those statements as if the person were required to be, and were in fact, registered.

(2) A party to an agreement under this section may, by notice in writing to the other party, terminate the agreement at any time.

(3) Where—

- (a) a person who carries on rental business is neither approved under this section nor registered; and
- (b) in the course of that business, another person (being a person domiciled or resident in the State) pays an amount to that person under an agreement that relates to the use of goods,

the other person shall within 21 days after making that payment—

- (c) furnish to the Commissioner a return, in the form approved by the Commissioner, stating the amount of that payment; and
- (d) pay as duty on that return a sum equal to 1.8 per centum of that amount.

(4) A person who fails to furnish a return as and when required by subsection (3) is guilty of an offence.

Penalty: \$1 000.

(5) A person who fails to pay duty as and when required by this section is in addition liable to pay penalty duty equal to twice the amount of duty payable.

(5a) The Commissioner may, at any time, remit any penalty duty, or part of any penalty duty, payable under this section.

(6) Subsection (3) does not apply—

(a) where the total amount that is, or will be, payable under the agreement does not exceed \$100; or

(b) where—

(i) the agreement was made with a person carrying on rental business outside the State; and

(ii) none of the negotiations leading to the agreement were carried out in the State; and

(iii) the goods were obtained for the purpose of being used exclusively outside the State.

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Annual Licences

Interpretation

32. In this Act—

"**assurance or insurance business**" means and includes—

(a) the granting or issuing of any life, personal accident, fire, fidelity, guarantee, livestock, plate glass, marine or other assurance or insurance policies; or

(b) the acceptance, either directly or indirectly, of any premium, renewal premium or consideration for, or in respect of, the granting or issuing or keeping alive or in force of any life, personal accident, fire, fidelity, guarantee, livestock, plate glass, marine or other policy; or

(c) the receiving of any letter or declaration of interest attaching to any life, personal accident, fire, marine or other policy issued in South Australia or elsewhere; or

(d) the carrying out, by means of assurance or insurance effected out of South Australia, of any written, verbal or implied contract or undertaking to effect assurance or insurance;

"**company**" includes corporation and society, whether corporate or unincorporate;

"**firm of persons**" includes any association of underwriters carrying on marine assurance or insurance business through a managing underwriter solely;

"**general insurance business**" means any assurance or insurance business not relating to life insurance policies;

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"**life insurance policy**" does not include a policy covering personal accident or workers compensation or a policy complying with Part 4 of the *Motor Vehicles Act 1959*;

"**policy**" includes any instrument in the nature of a policy, an open policy, an insurance cover or any instrument in any manner covering any assurance or insurance;

"**premium**" means any amount paid or payable in respect of any assurance or insurance, and includes—

- (a) any levy charged to a policy holder;
- (b) an instalment of premium.

Annual licence required for insurance business

33. A company, person or firm of persons must not carry on any assurance or insurance business in any year in South Australia, whether the head office or principal place of business of that company, person or firm is in South Australia or elsewhere, unless the company, person or firm has taken out an annual licence for that year in a form determined by the Commissioner.

Penalty: \$10 000.

Application for annual licence

34. (1) A company, person or firm of persons requiring an annual licence must make a written application to the Commissioner in a manner and form determined by the Commissioner and supported by such evidence as the Commissioner may require.

(2) Any information or statement contained in the application must be verified by statutory declaration made—

- (a) where the applicant is a natural person—by that person; or
- (b) where the applicant is a firm—by a member of the firm; or
- (c) where the applicant is a company—by a member of the board or committee of management of the company; or
- (d) in any case—by a person authorised by the applicant and approved by the Commissioner.

(3) A company, person or firm of persons that applies for an annual licence must, at the time of lodging the application, pay to the Commissioner the duty (if any) payable under schedule 2 on the annual licence.

(4) A company, person or firm of persons that fails to comply with any of the requirements of this section is guilty of an offence.

Penalty: \$10 000.

Issuing and term of annual licence

35. (1) The Commissioner is authorised to issue an annual licence on payment of the duty (if any) payable on the annual licence.

(2) An annual licence comes into force on the date specified in the licence (which may be a date earlier than the date of issue of the licence) and remains in force until 31 December of the year in which it is issued.

Monthly returns in respect of general insurance business

36. (1) A company, person or firm of persons that carries on general insurance business in South Australia, whether the head office or principal place of business of that company, person or firm is in South Australia or elsewhere, must lodge with the Commissioner a return in a form determined by the Commissioner, supported by such evidence as the Commissioner may require, not later than the fifteenth day of the month following each month in which the company, person or firm carries on such business.

(2) Any information or statement contained in a monthly return must be verified by statutory declaration in the same way as is required for an application for an annual licence.

(3) A company, person or firm of persons that lodges a monthly return must, at the time of lodging the monthly return, pay to the Commissioner the duty (if any) payable under schedule 2 on the monthly return.

(4) A company, person or firm of persons that fails to comply with any of the requirements of this section is guilty of an offence.

Penalty: \$10 000.

Denoting of duty

37. The duty paid on an annual licence or a monthly return must be denoted by cash register imprint on the licence or return.

Duty payable on acquisition of insurance business

38. Where a company, person or firm of persons acquires contractual rights and obligations of, or in connection with, the assurance or insurance business of some other company, person or firm, the acquiring company, person or firm is liable to pay to the Commissioner the amount of any unpaid duty in respect of premiums received or in any manner charged in account (whether directly or by agents) by the other company, person or firm after the end of the period in respect of which such duty was last paid by the other company, person or firm as if the acquiring company, person or firm had received or charged in account those premiums.

Records to be kept in respect of insurance business

39. (1) A company, person or firm of persons that is or has been required to hold an annual licence must keep or cause to be kept in South Australia sufficient books and records to enable all premiums and other amounts required for calculating duty on an annual licence or monthly return to be accurately calculated.

(2) The books and records referred to in subsection (1) together with all working papers used in calculating the duty must be kept available for inspection for a period of five years from the year or month, as the case may be, to which the books, records or papers relate or for such lesser period as the Commissioner may in any particular case allow.

(3) A company, person or firm of persons that fails to comply with any of the requirements of this section is guilty of an offence.

Penalty: \$10 000.

Default assessments

40. (1) Where the Commissioner has reason to believe or suspect that a company, person or firm of persons—

- (a) has failed to lodge an application for an annual licence, or a monthly return, as required under this Act; or

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- (b) has failed to pay any duty, or has paid insufficient duty, on an annual licence or monthly return under this Act,

the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner's opinion, represents the duty that would be payable assuming that the company, person or firm had duly taken out an annual licence, or lodged a monthly return, as required under this Act, or the duty that should have been paid on an annual licence or monthly return taken out or lodged by that company, person or firm, as the case may be.

(2) Where the Commissioner makes an assessment under this section of duty that would be payable by a company, person or firm assuming that it had duly taken out an annual licence, or lodged a monthly return, as required under this Act, the Commissioner may create an annual licence or monthly return for that purpose and any annual licence or monthly return so created has effect as if it had been taken out or lodged by the company, person or firm.

- (3) Where the Commissioner makes an assessment under this section—

- (a) the Commissioner must cause notice in writing of the assessment to be served on the company, person or firm to which the assessment relates; and
- (b) the company, person or firm is, subject to any determination made on an objection or appeal under section 24, liable to pay any duty determined by the Commissioner under the assessment to be payable together with any further duty specified in the notice as being payable by way of penalty pursuant to section 41.

Further duty by way of penalty

41. (1) Where a company, person or firm is liable to pay duty by virtue of a default assessment under section 40, the company, person or firm is in addition liable to pay penalty duty equal to twice the amount of duty that has been so assessed.

(2) Where a company, person or firm makes a late payment of duty on an annual licence or monthly return, the company, person or firm is in addition liable to pay penalty duty of an amount of—

- (a) \$50; or
- (b) an amount equal to 10 per cent of the amount of the duty on the annual licence or monthly return for each month for which the company, person or firm delayed in making the payment until the amount equals the amount of the unpaid duty,

whichever is the greater.

(3) For the purposes of subsection (2), the time for payment of duty on an annual licence or monthly return will be taken to be the time before which the company, person or firm is required to take out the annual licence or lodge the monthly return under this Act.

(4) The Commissioner may, at any time, remit any penalty duty, or any part of any penalty duty, payable under this section.

Refund of overpaid duty

42. (1) Where a company, person or firm of persons claims that it has overpaid duty on an annual licence or a monthly return, the Commissioner must, on application by that company, person or firm within three years after the day on which the overpayment was alleged to have been made, make an assessment of whether an overpayment was made and, if so, the amount overpaid.

(2) Where the Commissioner makes an assessment under this section—

- (a) the Commissioner must cause notice in writing of the assessment to be served on the company, person or firm to which the assessment relates; and
- (b) the company, person or firm is, subject to any determination made on an objection or appeal under section 24, entitled to a refund of any duty determined by the Commissioner under the assessment to have been overpaid.

Duty on policies effected outside South Australia

42AA. (1) Every company, person or firm of persons which is not required to take out an annual licence under section 33 and which obtains, effects or renews, outside South Australia, a policy of assurance or insurance wholly or partly in respect of any property in South Australia, or any risk, contingency or event occurring in South Australia, shall, within one month of obtaining, effecting or renewing that policy, lodge with the Commissioner a return in the prescribed form containing such particulars of that policy and such other information as may be prescribed or as the Commissioner may in any particular case require.

(2) The Commissioner may allow a rebate of the duty payable on that proportion of any premium which is, in his opinion, properly attributable to the assurance or insurance of any property outside South Australia or any risk, contingency or event occurring outside South Australia.

(3) The person lodging such a return shall, upon lodgment, pay to the Commissioner the duty payable thereon, which shall be denoted by cash register imprint on the receipt issued therefor.

(4) A company, person or firm that fails to lodge a return as and when required by this section is guilty of an offence.

Penalty: \$1 000.

(4a) A company, person or firm that fails to pay duty as and when required by this section is in addition liable to pay penalty duty equal to twice the amount of duty payable.

(4b) The Commissioner may, at any time, remit any penalty duty, or part of any penalty duty, payable under this section.

(5) Subsection (1) does not apply to any policy of life assurance.

Unlicensed insurers

42AB. (1) The Commissioner may enter into an agreement with an insurer who is not required to take out an annual licence under this Act under which—

- (a) the Commissioner approves the insurer for the purposes of this section; and
- (b) the insurer undertakes to pay duty as if the insurer were required to be licensed and were in fact licensed under this Act.

(2) A party to an agreement under this section may, by notice in writing to the other party, terminate the agreement at any time.

(3) Where an insurer is neither licensed under this Act nor approved under this section, a person who pays a premium to the insurer shall, within 21 days after the end of the month in which the premium was paid—

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- (a) furnish a return to the Commissioner stating the amount of premium; and
- (b) pay stamp duty on the return calculated by reference to the amount of the premium and the appropriate rate prescribed by schedule 2 in relation to annual licences.

Penalty: \$10 000.

(4) This section does not apply in relation to a levy paid under the *Workers Rehabilitation and Compensation Act 1986*.

(5) In this section—

"insurer" means a person, firm or company that carries on assurance or insurance business in the State.

Application for Motor Vehicle Registration

Interpretation

42A. In this Act—

"applicant" means a person by or on whose behalf an application to register a motor vehicle or an application to transfer the registration of a motor vehicle is made;

"application to register a motor vehicle" means an application to register a motor vehicle made under the *Motor Vehicles Act 1959* and includes an application so made to renew the registration of a motor vehicle;

"application to transfer the registration of a motor vehicle" means an application to transfer the registration of a motor vehicle made under the provisions of the *Motor Vehicles Act 1959*;

"commercial motor vehicle" has the same meaning as in the *Motor Vehicles Act 1959*;

"dealer" means a person licensed as a dealer under the *Second-hand Motor Vehicles Act 1983*;

"list price" means—

- (a) in relation to a motor vehicle, the price fixed by the manufacturer, importer or principal distributor as the retail selling price in the State of a motor vehicle of the make and model in question; or
- (b) in relation to optional equipment, the additional price so fixed if the vehicle is to be sold with the optional equipment;

"market value", in relation to a motor vehicle, means the amount for which the motor vehicle might reasonably be sold, free of encumbrances, in the open market;

"motor vehicle" and **"trailer"** have the same meanings as those expressions respectively have in the *Motor Vehicles Act 1959*;

"new motor vehicle" means a motor vehicle not previously registered in this State or elsewhere;

"optional equipment", in relation to a motor vehicle for which there is a list price, means equipment or a feature of the vehicle that is not covered by that list price, being—

- (a) a particular kind of transmission; or
- (b) power steering; or
- (c) any other prescribed equipment or feature;

"**policy of insurance**" means a policy of insurance under Part 4 of the *Motor Vehicles Act 1959*;

"**primary producer**" has the same meaning as in the *Motor Vehicles Act 1959*;

"**second-hand motor vehicle**" means a motor vehicle previously registered in this State or elsewhere.

Stamp duty on application for motor vehicle registration

42B. (1) For the purposes of this Act, the value of a motor vehicle is—

- (a) in the case of an application to register a new motor vehicle for which there is a list price—
 - (i) if the motor vehicle has no optional equipment, the list price of the vehicle; or
 - (ii) if the motor vehicle has optional equipment, the list price of the motor vehicle plus the list price or, if there is no list price, the actual price of the equipment; or
- (b) in the case of an application to transfer the registration of a second-hand motor vehicle upon sale of the vehicle, the consideration for the sale or the market value of the motor vehicle, whichever is the higher; or
- (c) in any other case, the market value of the motor vehicle.

(1aa) The applicant for registration, or transfer of registration, of a motor vehicle shall state in the application the value of the motor vehicle as at the date of the application.

(1a) The amount of stamp duty—

- (a) payable upon an application to register a motor vehicle shall be an amount calculated by the addition of—
 - (i) the amount prescribed by schedule 2 as the component payable in respect of registration; and
 - (ii) the amount prescribed by schedule 2 as the component payable in respect of a policy of insurance; or
- (b) payable upon an application to transfer the registration of a motor vehicle shall be the amount prescribed by schedule 2 as the component payable in respect of registration and, in the case of such an application, no additional component shall be payable in respect of a policy of insurance.

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(2) The amount payable upon an application in accordance with subsection (1a) shall be paid by the applicant to the Registrar of Motor Vehicles at the time of making the application.

(2a) The duty paid by any person—

(a) on an application to register a motor vehicle shall be denoted by impressed stamp or cash register imprint, or by both, on the certificate or interim certificate of registration relating to that motor vehicle issued by the Registrar or on such form or forms as may be approved by the Commissioner; and

(b) on an application to transfer the registration of a motor vehicle shall be denoted by impressed stamp or cash register imprint, or by both, on such form or forms as may be approved by the Commissioner.

(3) The Registrar of Motor Vehicles shall furnish the Commissioner, at least once in every month, with a statement showing details of amounts received by him as stamp duty on applications to register, and to transfer the registration of, motor vehicles, and showing separately the amounts so received upon applications to register motor vehicles in respect of policies of insurance, and shall pay all amounts of stamp duty received by him to the Treasurer who shall—

(a) place to the credit of the General Revenue—

(i) all amounts representing the stamp duty received by the Registrar on applications to register motor vehicles except amounts paid upon such applications in respect of policies of insurance; and

(ii) all amounts representing the stamp duty received by the Registrar upon applications to transfer the registration of motor vehicles; and

(b) place to the credit of the Hospitals Fund kept at the Treasury all amounts representing stamp duty received by the Registrar upon applications in respect of policies of insurance.

(3a) The moneys placed to the credit of the Hospitals Fund in accordance with subsection (3)(b) shall be used for the provision, maintenance, development and improvement of public hospitals within the meaning of section 16 of the *State Lotteries Act 1966* and equipment for such hospitals in such amounts as the Treasurer shall upon the recommendation of the Chief Secretary (but subject to appropriations for the purpose which Parliament may from time to time determine) approve.

(4) Where the Commissioner is not satisfied that the amount stated in an application to register a motor vehicle or to transfer the registration of a motor vehicle is the value of the motor vehicle as at the date of the application, the Commissioner may, on the basis of the Commissioner's own valuation of the motor vehicle, assess the duty payable.

(5) The applicant shall, at the request of the Commissioner, furnish such information as the Commissioner may reasonably require for the purpose of making a valuation under subsection (4).

Penalty: \$2 000.

(6) Where the Commissioner assesses duty under subsection (4), the Commissioner—

(a) may recover the amount of any additional duty payable; or

- (b) must refund, or authorise the Registrar of Motor Vehicles to refund, any amount of overpaid duty,

and the Registrar of Motor Vehicles must, at the request of the Commissioner, make an appropriate endorsement on the application for registration or transfer of registration.

(6a) Where additional duty is payable on an assessment under subsection (4), the applicant is in addition liable to pay penalty duty equal to twice the amount of the duty that has been so assessed.

(6b) The Commissioner may, at any time, remit any penalty duty, or part of any penalty duty, payable under this section.

(7) The Commissioner or the Registrar of Motor Vehicles may require an applicant who claims to be entitled to an exemption from, or reduction in, stamp duty under this Act—

- (a) to state that fact on the application; and
- (b) to provide such information as the Commissioner or Registrar may require for the purpose of determining the applicant's claim.

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Concessional rate of duty on some applications to transfer registration

42BA. (1) The amount of duty payable on an application to transfer the registration of a motor vehicle where a person who is a registered owner of the motor vehicle immediately before the registration is transferred will continue to be a registered owner of the motor vehicle immediately after the registration is transferred is calculated as follows:

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

where—

- D is the amount of duty payable
- A is the amount of duty that would be payable apart from this section
- B is the number of persons that the application seeks to add to, or remove from, the register as owners of the motor vehicle, whichever is the greater
- C is—
 - (a) the number of persons who are registered owners of the motor vehicle immediately before the registration is transferred; or
 - (b) the number of persons who will be registered owners of the motor vehicle immediately after the registration is transferred,

whichever is the greater.

(2) This section does not derogate from any other provision conferring an exemption under this Act.

(3) This section applies to applications executed after its commencement.

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Default assessments

42C. (1) Where the Commissioner has reason to believe or suspect that a person—

- (a) has failed to lodge an application for registration, or transfer of registration, of a motor vehicle as and when required by the *Motor Vehicles Act 1959*; or
- (b) has failed to pay any duty, or has paid insufficient duty, in respect of the registration, or transfer of registration, of a motor vehicle as required by this Act,

the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner's opinion, represents the duty that is payable under this Act.

(2) Where the Commissioner makes an assessment under this section—

- (a) the Commissioner must cause notice in writing of the assessment to be served on any person who is in default; and
- (b) the person is, subject to any determination made on an objection or appeal under section 24, liable to pay any duty determined by the Commissioner under the assessment to be payable together with any further duty specified in the notice as being payable by way of penalty pursuant to subsection (4).

(3) A person liable to pay duty as a result of an assessment under this section who fails to pay the amount specified in the notice of assessment on or before the date specified in the notice is guilty of an offence.

Penalty: \$2 000 plus an amount equal to twice the amount of the Commissioner's assessment under subsection (1).

(4) Where a person is liable to pay duty by virtue of an assessment under this section, the person is in addition liable to pay penalty duty equal to twice the amount of duty that has been so assessed.

(5) The Commissioner may, at any time, remit any penalty duty, or part of any penalty duty, payable under this section.

Power to refund duty overpaid

42D. (1) In any case where the Commissioner is satisfied that duty has been paid where no duty was payable, or that too much duty has been paid, upon an application to register a motor vehicle or upon an application to transfer the registration of a motor vehicle, the Commissioner may refund, or authorise the Registrar of Motor Vehicles to refund, to the applicant the duty or the excess of duty so paid, as the case may be.

(1a) Without limiting the effect of subsection (1), in any case where the Commissioner is satisfied that, before the expiration of three months after registration of a motor vehicle or of the transfer of registration of a motor vehicle that motor vehicle has been returned by the applicant to the person from whom the motor vehicle was acquired and accepted by that person, or that the registration or transfer of registration (as the case may be) was made in error, the Commissioner may refund, or authorise the Registrar of Motor Vehicles to refund, to the applicant the stamp duty paid in respect of the application in pursuance of which that motor vehicle was registered by the Registrar of Motor Vehicles or in respect of the application in pursuance of which the registration of that motor vehicle was transferred.

(2) The money required to make any refund authorised by section 42B or this section shall be paid out of the General Revenue of the State and this Act shall be sufficient authority without any other appropriation for any such payment.

Regulations

42E. In addition to any power by any other section conferred on the Governor to make regulations as to any matter, the Governor may make any regulations which may be necessary or convenient for carrying out any of the provisions of sections 42A, 42B, 42D and this section or for better effecting the objects of those sections and in particular (without limiting the effect of this section) for prescribing exemptions additional to or in substitution for or repealing or varying any of the exemptions to the item in schedule 2 commencing "APPLICATION to Register a Motor Vehicle".

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Bills of Exchange, Promissory Notes, Coupons and Interest Warrants

Interpretation

46. In this Act—

"**bill of exchange**" means and includes—

- (a) any bill of exchange, draft, order, cheque, payment order and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money therein mentioned; and
- (b) any order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available or upon any condition or contingency which may or may not be performed or happen; and
- (c) any order for the payment of any sum of money at any stated period, and also any order for the payment of any sum of money by any person at any time after the date thereof, sent or delivered by the person making the same to the person by whom the payment is to be made or to any person on his behalf;

"**payment order**" means a payment order within the meaning of Division I of Part VIII of the *Cheques and Payment Orders Act 1986* of the Commonwealth;

"**promissory note**" means and includes—

- (a) any document or writing (except a bank note) containing or importing a promise to pay any sum of money; and
- (b) any note promising the payment of any sum of money out of any particular fund which may or may not be available or upon any condition or contingency which may or may not be performed or happen.

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Duty not to be chargeable after certain date

46A. (1) Notwithstanding any other provisions of this Act, duty shall not be chargeable in respect of a bill of exchange (other than a cheque or payment order) or promissory note issued on or after the first day of January, 1984.

(2) Notwithstanding any other provisions of this Act, duty is not chargeable in respect of a cheque or payment order issued on or after a day to be fixed by proclamation.

Duty on bills, notes, etc., how denoted

47. The duty on a bill of exchange (including a draft payable on demand), promissory note, coupon or interest warrant may be denoted by an adhesive stamp and, in the case of a bill of exchange or promissory note drawn or made out of South Australia, the duty shall be denoted by an adhesive stamp only.

Stamping of bill of exchange where terms of bill are changed

47A. (1) Where a bill of exchange has been accepted as payable otherwise than as drawn, the bill shall be deemed for the purposes of this Act to be a bill of exchange drawn as accepted.

(2) Where a bill of exchange has been endorsed and the endorsement prevents the endorsee as a holder of the bill from requiring payment as drawn, the bill shall be deemed for the purposes of this Act to be a bill of exchange drawn as endorsed.

(3) Where the drawer of a bill of exchange or any other person has expressly or by implication signified that the bill may be accepted otherwise than as drawn, the bill shall be deemed for the purposes of this Act to have been drawn as so signified.

(4) Where under any agreement express or implied a bill of exchange is to be paid otherwise than as drawn or accepted, the bill shall be deemed for the purposes of this Act to have been drawn or accepted, as the case may be, in accordance with the agreement.

(5) Where a bill of exchange becomes liable to *ad valorem* duty by the operation of any of the provisions of this section and has already been stamped with any *ad valorem* duty under this Act, the amount of *ad valorem* duty to which, but for this subsection, it would be liable is reduced by the amount of the *ad valorem* duty under this Act with which it has already been stamped.

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When bills, notes, etc., to be stamped

48. (1) The adhesive stamp denoting the duty upon any bill of exchange, promissory note, coupon or interest warrant shall be cancelled by the person by whom the bill of exchange, promissory note, coupon or interest warrant is drawn, made or issued before he delivers it out of his hands, custody or power.

(2) In the case of a draft payable on demand, the stamp may be affixed and cancelled by the maker or holder thereof.

(3) If any bill of exchange for the payment of money on demand, or any coupon or interest warrant, chargeable only with duty of ten cents or less is presented for payment unstamped or insufficiently stamped, the person to whom it is so presented may affix thereto a proper adhesive stamp and may cancel it as if he had been the drawer of the bill or the issuer of the coupon or interest warrant and may, upon so doing, pay the sum mentioned in the bill, coupon or interest warrant and charge the duty or part thereof, as the case may be, in account against the person by whom the bill was drawn or the coupon or interest warrant was issued, or deduct the duty or part thereof from that sum, and the bill, coupon or interest warrant shall, so far as respects the duty, be deemed good and valid; but nothing in this subsection shall relieve any person from any penalty he may have incurred in relation to the bill, coupon or interest warrant.

(4) If any bill of exchange or promissory note, other than a bill of exchange or promissory note payable on demand, has not been stamped or has been insufficiently stamped, the holder may, within fourteen days from the date thereof, by paying the duty or the deficiency to the Commissioner, have the bill of exchange or promissory note duly stamped.

(5) Every holder of any unstamped bill of exchange, promissory note, coupon or interest warrant drawn or issued out of South Australia shall, before he presents it for payment or endorses, transfers or in any manner uses, negotiates or pays it, cause it to be duly stamped; but—

- (a) if at the time when any such bill, note, coupon or interest warrant comes into the hands of any *bona fide* holder thereof there is affixed thereto an adhesive stamp appearing to be duly cancelled, the stamp shall, so far as it relates to the holder, be deemed to be duly cancelled, although it does not appear to be so affixed or cancelled by the proper person;
- (b) if at the time when any such bill, note, coupon or interest warrant comes into the hands of any *bona fide* holder thereof there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for the holder to cancel the stamp as if he were the person by whom it was affixed and, upon his so doing, the bill, note, coupon or interest warrant shall be deemed duly stamped and shall be as valid and available as if the stamp had been cancelled by the person by whom it was affixed,

but nothing in this subsection shall relieve any person from any penalty under this Act.

Licences for duty paid cheques and payment orders

48A. (1) The Commissioner may, in his discretion, issue to a bank a licence enabling the bank to do either or both of the following;

- (a) to issue (whether within or outside South Australia) cheque forms having the words "STAMP DUTY PAID" printed on the cheque forms; or
- (b) to endorse on cheques drawn outside South Australia the words "STAMP DUTY PAID".

(2) Every such licence—

- (a) shall be in such form and contain such terms, conditions, limitations and restrictions as the Commissioner thinks fit;
- (b) in particular shall contain such conditions as the Commissioner thinks proper with respect to the payment of duty, at the rate fixed in respect of cheques by this Act, which the bank holding the licence shall make to the Commissioner in respect of cheque forms issued or cheques endorsed by the bank pursuant to the licence;

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(c) shall be revocable at any time at the will of the Commissioner.

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(4) Any money due to the Commissioner by a bank in accordance with a licence issued under this section may be recovered by the Commissioner by action brought by him in any court having jurisdiction in common law actions up to the amount claimed.

(5) The power to make regulations conferred on the Governor by section 112 shall include power to make regulations with respect to the printing and control of cheque forms for use under this section, with respect to the endorsement of cheques under this section and generally with respect to licences and the duties of persons holding licences under this section.

(5a) Notwithstanding any other provision of this Act, but subject to subsection (5b), a cheque drawn on a form—

- (a) that was issued to a customer by a bank pursuant to a licence in force under this section; or
- (b) that was issued to a customer by a bank and impressed with a stamp for the amount of duty payable in respect of cheques at the time of stamping,

shall be deemed to be duly stamped, notwithstanding that the rate of duty payable in respect of cheques increased before the time at which the cheque was drawn.

(5b) Subsection (5a) does not apply to a cheque where—

- (a) the form on which the cheque was drawn was issued by a bank before the day specified for the purposes of this paragraph in a proclamation; and
- (b) the cheque was drawn after the day specified for the purposes of this paragraph in the proclamation, being a day not earlier than the thirtieth day after the publication of the proclamation.

(5c) A proclamation may be made for the purposes of subsection (5b) in relation to a particular increase in the rate of duty payable in respect of cheques and subsequent proclamations may be made for the purposes of that subsection in relation to subsequent increases in that rate of duty.

(5d) Where a proclamation referred to in subsection (5b) is made and, by virtue of the operation of the proclamation and that subsection, subsection (5a) does not apply to a cheque, the cheque shall be deemed to have been duly stamped if—

- (a) an adhesive stamp or impressed stamp is applied to the cheque, being a stamp for the amount of the increase in duty that became payable between the time of the issue of the form on which the cheque was drawn and the time at which the cheque was drawn; or
- (b) the Commissioner signifies, in writing, that he is satisfied that proper arrangements have been made with him for payment of the additional duty referred to in paragraph (a).

(5e) Notwithstanding any other provision of this Act, a cheque drawn outside South Australia and endorsed with the words "STAMP DUTY PAID" pursuant to a licence under this section shall be deemed to be duly stamped.

(6) In this section—

"**bank**" means—

- (a) any bank carrying on the business of banking in the State, including any bank owned or carried on by the Crown in right of the Commonwealth or the State; and
- (b) any company or other corporation which holds money on current account on behalf of its customers or clients and pays such money on unconditional written orders payable on demand and addressed by the customers or clients to the company or corporation;

"**cheque**" includes any such unconditional written order as is mentioned in paragraph (b) of the definition of "**bank**" in this section.

(7) This section also applies in relation to payment orders as if—

- (a) references to a bank were references to a non-bank financial institution within the meaning of the *Cheques and Payment Orders Act 1986* of the Commonwealth; and
- (b) references to a cheque were references to a payment order; and
- (c) references to a cheque form were references to a form for a payment order.

Penalty on taking unstamped bill or promissory note

49. Any person who takes or receives from any other person any bill of exchange or promissory note not duly stamped, in payment or as a security or by purchase or otherwise, must cause it to be duly stamped.

Penalty: \$100.

Where bill or note deemed to be drawn

50. A bill of exchange or promissory note purporting to be drawn or made out of South Australia shall, for the purposes of this Act, be deemed to have been so drawn or made, although it may, in fact, have been drawn or made within South Australia.

Bills or notes issued unstamped

51. (1) A person must not issue, endorse, transfer, use, negotiate, present for payment or pay any bill of exchange, promissory note, coupon or interest warrant chargeable with duty unless it has been duly stamped.

Penalty: \$100.

(2) Any person who takes or receives from any other person any bill of exchange, promissory note, coupon or interest warrant not duly stamped, in payment, as a security, by purchase or otherwise, shall not be entitled to recover thereon, or to make it available for any purpose, until it is duly stamped.

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Bills in sets

52. When a bill of exchange is drawn in a set, according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from the duly stamped bill, be exempt from duty and, upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill.

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Conveyances and Conveyances on Sale

Interpretation

60. In this Act—

"conveyance" includes—

- (a) every conveyance, assignment, transfer or declaration of trust and every application under the *Real Property Act 1886* or the *Community Titles Act 1996*; and
- (b) every decree or order of any court, judge or commissioner; and
- (c) every other application or request of any kind; and
- (d) every other assurance or instrument of any kind,

by which or by virtue of which or by the operation of which, whether upon registration or otherwise, or by the issue of a certificate of title in pursuance of which, any real or personal property or any estate or interest in any such property is assured to, or vested in, any person, and also includes a surrender to the Crown of any lease or other interest in land, in order that the Crown may grant to a person other than the surrenderor a lease of, or other interest in, the same land or any part thereof; and "to convey" has a meaning coextensive with the meaning of "conveyance", as extended by this section;

"conveyance on sale" includes—

- (a) every conveyance, assignment, transfer or application under the *Real Property Act 1886*; and
- (b) every decree or order of any court, judge or commissioner; and
- (c) every other application or request of any kind; and
- (d) every other assurance or instrument,

by which or by virtue of which any real or personal property, upon the sale thereof, is legally or equitably transferred to, or vested in, the purchaser or any other person on his behalf or by his direction, and also includes—

- (e) every application for a foreclosure order under the *Real Property Act 1886*; and
- (f) every lease for which any consideration other than the rent reserved may be paid or agreed to be paid (but only so far as such consideration is concerned).

Value of property conveyed or transferred

60A. (1) Subject to subsection (2), a reference in this Act (other than in Part 4) to the value of property conveyed or transferred is a reference to the market value of the property—

- (a) in the case of a conveyance on sale—as at the date of the sale; or
- (b) in any other case—as at the date of the conveyance,

assuming, in either case, that the property had, at that date, been free from any encumbrances.

(2) In the case of a conveyance on sale, the Commissioner may treat the consideration for the sale as being the value of the property conveyed or transferred unless it appears to the Commissioner that the consideration may be less than the value of the property as referred to in subsection (1).

(3) Where no evidence of the value of property conveyed or transferred, or comprising or forming part of the consideration for a conveyance, is furnished to the Commissioner, or the evidence so furnished is, in his opinion, unsatisfactory, the Commissioner may cause a valuation of the property to be made by some person appointed by him and may assess the duty payable by reference to that valuation.

(4) The Commissioner may, having regard to the merits of the case, charge the whole or a part of the expenses of, or incidental to, the making of a valuation pursuant to subsection (3) to the person liable to pay the duty and may recover the amount so charged from him as a debt due to the Crown.

(4a) Where an interest, agreement or arrangement (granted or made on or after 7 January 1997) in respect of property has the effect of reducing the value of the property, the Commissioner may, for the purposes of assessing the duty payable on a conveyance of the property, disregard the existence of the interest, agreement or arrangement unless a person liable to pay the duty satisfies the Commissioner that the interest, agreement or arrangement—

- (a) was granted or made for a purpose other than reducing the value of the property; and
- (b) was not granted or made in favour of the transferee or a person related to the transferee.

(4b) Where an estate or interest conveyed or transferred merges with an estate or interest already held by the transferee (the latter having been acquired by the transferee on or after 7 January 1997), the Commissioner may, for the purposes of assessing the duty payable on the conveyance, treat the value of the estate or interest conveyed or transferred as being—

- (a) where the instrument creating the estate or interest already held was charged with *ad valorem* duty as a conveyance—the value of the estate or interest produced by the merger less the value of the estate or interest already held; or
- (b) in any other case—the value of the estate or interest produced by the merger.

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(5) In subsection (1)—

"**encumbrance**" does not include a prescribed encumbrance or an encumbrance of a prescribed kind.

(6) For the purposes of subsection (4a) (but subject to subsection (7))—

(a) natural persons are related persons if—

- (i) they are members of a partnership within the meaning of the *Partnership Act 1891*; or
- (ii) one is the spouse of the other or the relationship between them is that of parent and child; and

(b) companies are related persons if they are related bodies corporate within the meaning of the *Corporations Law*; and

(c) trustees are related persons if any person is a beneficiary common to the trusts of which they are trustees; and

(d) a natural person and a company are related persons if the natural person is a majority shareholder, director or secretary in or of the company or in or of another company that is a related body corporate of the company within the meaning of the *Corporations Law*; and

(e) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust of which the trustee is a trustee; and

(f) a company and a trustee are related persons if—

- (i) the company, or a majority shareholder, director or secretary in or of the company, is a beneficiary of the trust of which the trustee is a trustee; or
- (ii) a related body corporate of the company (within the meaning of the *Corporations Law*) is a beneficiary of the trust of which the trustee is a trustee.

(7) For the purposes of subsection (4a), persons are not related persons if the Commissioner is satisfied that the persons were not acting together to achieve a common purpose.

(8) In subsection (6)—

"**majority shareholder**" means—

(a) in relation to a company within the meaning of Part 6.7 of the *Corporations Law*—a person who has a substantial shareholding in the company in accordance with section 708 of the *Corporations Law*; or

(b) in any other case—a person who would have a substantial shareholding in the company in accordance with section 708 of the *Corporations Law* if—

- (i) a reference in that section to the prescribed percentage were a reference to 50 per cent; and

- (ii) the company were a company within the meaning of Part 6.7 of the *Corporations Law*;

"spouse" of a person includes a *de facto* husband or wife of the person who has been cohabiting continuously with the person for at least five years.

Refund of duty where transaction is rescinded or annulled

60B. (1) Where a party to an instrument of a kind that is registrable under the *Real Property Act 1886* satisfies the Commissioner, upon application made to him not later than one year after execution of the instrument—

- (a) that he has paid duty upon the instrument; and
- (b) that the transaction in respect of which the instrument was executed has been frustrated or avoided or has miscarried through failure of a party to comply with a condition,

the applicant shall be deemed to be possessed of stamped material rendered useless by being inadvertently spoiled within the meaning of section 106, and the provisions of that section shall apply accordingly.

(2) This section does not apply in respect of an instrument executed before the commencement of the *Stamp Duties Act Amendment Act 1975*.

Method or estimating value of consideration where consideration consists of shares

61. Where the consideration or part of the consideration for a conveyance chargeable with *ad valorem* duty consists of shares or debentures to be issued by a company, or a contract to issue such shares or debentures, the market value of the shares or debentures shall be taken as the value of the consideration or part.

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Consideration in case of lease

64. In the case of a lease for which any consideration other than the rent reserved may be paid or agreed to be paid, the amount of the other consideration shall be deemed the consideration for the conveyance on sale.

Where consideration consists of real or personal property

65. Where the consideration or any part of the consideration for a conveyance on sale consists of any real or personal property other than money, the market value of the real or personal property at the date of the sale shall be taken as the value of the consideration or part of the consideration.

Where consideration is payable in instalments

66. Where the consideration or any part of the consideration for a conveyance on sale consists of money payable periodically for a definite period, so that the total amount to be paid can be previously ascertained, the total amount shall be taken as the consideration or part of the consideration.

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Computation of duty where instruments are interrelated

67. (1) Subject to subsection (2), this section applies to the following instruments:

- (a) a conveyance on sale; or
- (b) a conveyance operating as a voluntary disposition *inter vivos*; or
- (c) an instrument chargeable with duty as if it were a conveyance (including a statement under section 71E).

(2) This section does not apply to the following instruments:

- (a) a conveyance that relates to property that is being conveyed in separate parcels to different persons by separate conveyances where the Commissioner is satisfied that no arrangement or understanding exists between the persons under which the parcels of property conveyed are to be used otherwise than separately and independently from each other;
- (b) a conveyance of stock, implements or other chattels in a case where section 31A applies;
- (c) a conveyance on sale of any marketable security;
- (d) an instrument excluded from the operation of this section by the regulations.

(3) Where two or more instruments to which this section applies—

- (a) arise from a single contract of sale; or
- (b) together form, or arise from, substantially one transaction or one series of transactions,

the instruments are chargeable with *ad valorem* duty calculated on the sum of the amounts by reference to which *ad valorem* duty on each of the instruments would, but for this subsection, have been calculated, and that duty will be apportioned to the various instruments as determined by the Commissioner.

(4) Where by instruments that have been, or appear to have been, executed within 12 months of each other a person conveys property or interests in property to the same person (whether that person takes alone or with the same or different persons), it will be presumed, unless the Commissioner is satisfied to the contrary, that the instruments form one transaction or one series of transactions.

(5) A person who executes, or is otherwise engaged or concerned in the preparation or certification of, an instrument chargeable with duty under subsection (3) and who, upon submission of the instrument to the Commissioner for stamping, fails to disclose the total consideration (if any) given and the whole of the property included in the transaction or series of transactions in connection with which the instrument is executed, is guilty of an offence.

Penalty: \$5 000.

(6) It is a defence to a charge under subsection (5) to prove that the defendant did not know and could not reasonably have been expected to know the matters required to be disclosed by that subsection.

(7) This section does not operate to reduce the duty payable on an instrument.

(8) In this section—

"**interest**" includes a potential beneficial interest as defined in section 71(15).

Duty in certain cases

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(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance, contracts to sell it to any other person and the property is in consequence conveyed immediately to the subpurchaser, the conveyance shall be chargeable with *ad valorem* duty as a conveyance for the consideration for the sale to the original purchaser and also as a conveyance for the consideration for the sale by the original purchaser to the subpurchaser, in the same manner as if the considerations were specified in separate instruments.

(4) Where a person, having contracted for the purchase of any property but not having obtained a conveyance, contracts to sell the whole or any part or parts thereof to any other person and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel shall be chargeable with *ad valorem* duty as a conveyance for the consideration for the sale to the original purchaser and also as a conveyance for the consideration for the sale by the original purchaser to the subpurchaser, in the same manner as if the considerations were specified in separate instruments. The consideration for the sale to the original purchaser in respect of each part or parcel shall, for the purposes of this subsection, be ascertained by determining the ratio which the value of the part or parcel in question bears to the value of the whole property and shall be specified in the instrument of conveyance.

(5) Where a subpurchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty as a conveyance for the consideration moving from him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with *ad valorem* duty as a conveyance for the consideration for the sale to the original purchaser.

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Evasion of duty

70. (1) Subject to subsection (2), an instrument executed in order, either directly or indirectly, to avoid or evade the payment of the duty payable upon a conveyance on sale is void.

(2) Where a third party relying in good faith on an instrument that is void by virtue of subsection (1) purports to acquire an interest in property subject to the instrument, the instrument shall, for the purposes of that transaction, be treated as valid, provided that it is duly stamped as a conveyance on sale.

Instruments chargeable as conveyances operating as voluntary dispositions *inter vivos*

71. (1) The value for the purposes of this Act of the property conveyed by any conveyance operating as a voluntary disposition *inter vivos* shall be declared in the conveyance.

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(2) Notwithstanding anything in section 23, the Commissioner may be required to express his opinion under that section on any conveyance operating as a voluntary disposition *inter vivos*, and no such conveyance shall be deemed to be duly stamped unless the Commissioner has expressed his opinion thereon in accordance with that section.

(3) For the purposes of this Act, the following instruments shall, subject to this section, be deemed to be conveyances operating as voluntary dispositions *inter vivos*:

- (a) an instrument to which subsection (4) applies effecting or acknowledging, evidencing or recording, any of the following transactions:
 - (i) a transfer of property to a person who takes as trustee; or
 - (ii) a declaration of trust; or
 - (iii) a transfer of a beneficial interest in property subject to a trust or a potential beneficial interest in, or in relation to, property subject to a discretionary trust,

whether or not any consideration is given for the transaction; or

- (b) an instrument to which paragraph (a) does not apply, being a conveyance that is not chargeable with duty as a conveyance on sale.

(4) This subsection applies to any instrument that relates to land, a marketable security or a unit under a unit trust scheme, or an interest or potential beneficial interest in land, a marketable security or a unit under a unit trust scheme.

(4a) A reference in subsection (4) to a unit trust scheme does not include—

- (a) an arrangement made by a deed approved for the purposes of Division 5 of Part 7.12 of the *Corporations Law* or the corresponding provisions of a law in force in another State or a Territory; or
- (b) an approved deposit fund or a pooled superannuation trust within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

(5) Subject to subsection (6), an instrument effecting or acknowledging, evidencing or recording, any of the following transactions shall be deemed not to be a conveyance operating as a voluntary disposition *inter vivos*:

- (a) a transfer of property for nominal consideration for the purpose of securing the repayment of an advance or loan, not being land subject to the provisions of the *Real Property Act 1886*;
- (b) a transfer *in specie* of property of a company in liquidation made by the liquidator to a shareholder of the company;
- (c) a transfer of any marketable security issued by a public company to a person who takes as trustee, where—
 - (i) the beneficial interest in the property is, upon the transfer, vested in the transferor; and
 - (ii) the transfer is not in pursuance of a sale;

- (d) a transfer of property for the purpose of effectuating the retirement of a trustee or the appointment of a new trustee, where the Commissioner is satisfied that the transfer is not part of a scheme for conferring a benefit, in relation to the trust property, upon the new trustee or any other person, whether as a beneficiary or otherwise, to the detriment of the beneficial interest or potential beneficial interest of any person;
- (e) a transfer of property to a person who has a beneficial interest in the property by virtue of an instrument that is duly stamped, where—
 - (i) the beneficial interest arises under a trust of which the transferor is a trustee; and
 - (ii) (A) the transferor or some other trustee or trustees of the trust obtained his, her or their interest in the property under one of the other paragraphs of this subsection (except paragraph (d)); or
(B) the transferor or some other trustee or trustees of the trust obtained his, her or their interest in the property by virtue of an instrument duly stamped with *ad valorem* duty;
- (f) a transfer to a natural person who is an object of a discretionary trust of property or a beneficial interest in property subject to the discretionary trust, where—
 - (i) the discretionary trust was created by an instrument that is duly stamped; and
 - (ii) the Commissioner is satisfied that the discretionary trust was created wholly or principally for the benefit of that person or a family group of which that person is a member;
- (g) a transfer of a potential beneficial interest in property subject to a discretionary trust, where—
 - (i) the discretionary trust was created by an instrument that is duly stamped wholly or principally for the benefit of a family group; and
 - (ii) the transfer is made by one member of the family group to another member of the family group, or by a member of the family group by way of surrender or renunciation of the potential beneficial interest and another member of the family group is to continue as an object or beneficiary under the trust;
- (h) a transfer to or by a person in his capacity as the personal representative of a deceased person or the trustee of the estate of a deceased person, being a transfer made in pursuance of the provisions of the will of the deceased person or the laws of intestacy and not being a transfer in pursuance of a sale;
- (i) any variation of the terms of a trust, where the trust was created by an instrument that is duly stamped and the variation does not involve the creation or variation of any beneficial interest or potential beneficial interest in property subject to the trust;
- (j) a voluntary disposition of property that is wholly for charitable or religious purposes;
- (k) a transfer of a prescribed class.

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(6) Subsection (5) does not apply in relation to a transfer of property or a beneficial interest in property to a person who has, prior to the transfer, a beneficial interest or potential beneficial interest in the property but who takes the property or interest transferred to him as trustee under a further trust.

(7) For the purposes of subsection (5)(e), a person who is an object of a discretionary trust by virtue of an instrument that is duly stamped shall not be regarded as having a beneficial interest in the trust property by virtue of an instrument that is duly stamped unless that person has been appointed to be a beneficiary under the discretionary trust by a further instrument that is duly stamped.

(8) A conveyance operating as a voluntary disposition *inter vivos* that transfers a potential beneficial interest in, or in relation to, property subject to a discretionary trust shall, subject to this Act, be chargeable with duty as if it transferred the beneficial interest in the property that the transferee would have if the discretion under the discretionary trust were so exercised as to confer upon him the greatest benefit in relation to that property that can be conferred upon him under the discretionary trust.

(9) An instrument that acknowledges, evidences or records a transaction of a kind referred to in subsection (3)(a) (not being a copy within the meaning of section 19A that is duly stamped) shall, for the purposes of this Act, be deemed to have effected the transaction and to have been executed by the parties to the transaction at the same time as the transaction took place.

(10) For the purposes of this Act, in determining the value of property transferred by a conveyance operating as a voluntary disposition *inter vivos*, no regard shall be had to the fact that the person to whom the property is transferred takes or is to hold the property subject to a trust or has a beneficial interest in the property.

(11) Notwithstanding any other provisions of this Act but subject to subsection (11a), the rate of duty chargeable in respect of a conveyance operating as a voluntary disposition *inter vivos* of a marketable security shall, if that conveyance is made in pursuance of sale, be the rate fixed by schedule 2 in respect of a conveyance or transfer on sale of a marketable security or, as the case may require, in respect of a return lodged pursuant to section 90D.

(11a) Subsection (11) does not apply in relation to a statement under Part 4.

(12) Where an instrument of a kind referred to in subsection (3)(a) is duly stamped under this Act, the Commissioner shall, upon application and production of that instrument, stamp any other instrument of a kind referred to in subsection (3)(a) that he is satisfied relates to the same transaction with a particular stamp denoting that it is duly stamped.

(13) Without limiting the generality of subsection (12), where an instrument that is duly stamped transfers or creates, or acknowledges, evidences or records, the transfer or creation of any property or interest in property and the person to or in whom the property or interest in property is transferred or vested takes the property or interest in property as trustee, the Commissioner shall, upon application and production of that instrument, stamp any declaration of trust or other instrument that acknowledges, evidences or records the fact that the person took the property or interest in property as trustee with a particular stamp denoting that it is duly stamped.

(14) Notwithstanding any other provisions of this Act, where—

- (a) property has been transferred to a person who took as trustee; and
- (b) that property is subsequently transferred back to the transferor; and

- (c) the Commissioner is satisfied that no person other than the transferor under the first transfer has had a beneficial interest in the property during the period elapsing between the transfers,

the Commissioner shall, if *ad valorem* duty was paid in respect of the first transfer, upon application, refund to the person who paid that duty an amount equal to the difference between the amount of the duty and ten dollars.

(15) In this section—

"**family group**" means a group of persons connected by an unbroken series of relationships of consanguinity or affinity;

"**potential beneficial interest**" means the rights, expectancies or possibilities of an object of a discretionary trust in, or in relation to, property subject to the discretionary trust;

"**public company**" means a public company within the meaning of the *Corporations Law*;

"**transfer**" means—

- (a) transfer, assure or vest property (including a potential beneficial interest in, or in relation to, property) to or in any person, whether legally or equitably and whether or not subject to registration, the issue of a certificate of title or other similar requirement; or
- (b) surrender or renounce a beneficial interest or potential beneficial interest in, or in relation to, property; or
- (c) surrender to the Crown any lease or other interest in land in order that the Crown may grant to a person other than the surrenderor a lease of, or other interest in, the same land or any part of the same land;

"**trust**" includes an implied trust or a discretionary trust;

"**trustee**" includes—

- (a) a trustee under an implied trust; or
- (b) a person who holds property subject to a discretionary trust;

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Provision where trust property distributed *in specie*

71A. If any will or any instrument by which any trust is declared contains a direction to convert any property into money and to pay the proceeds to any beneficiary and, instead of converting the property into money the executor, administrator or trustee, as the case may be, conveys the property *in specie* to the beneficiary, the conveyance shall not be chargeable with duty as a conveyance on sale or as a conveyance operating as a voluntary disposition *inter vivos* if, in the case of a trust other than a trust declared by a will, the beneficiary is beneficiary by virtue of an instrument that is duly stamped.

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Partition or division of property

71B. (1) Where upon the partition or division of any property any consideration exceeding in amount or value two hundred dollars is paid or given, or agreed to be paid or given, for equality, the instrument by which the partition or division is effected shall be charged with duty as if it were a conveyance on sale and that consideration were equal to the value of the property.

(2) A person who executes, or is otherwise engaged or concerned in the preparation or certification of, an instrument effecting the partition or division of any property and who, upon submission of the instrument to the Commissioner for stamping, does not disclose the total consideration (if any) paid or given, or agreed to be paid or given, for equality shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(3) It is a defence to a charge under subsection (2) that the defendant did not know and could not reasonably be expected to have known the total consideration required to be disclosed by that subsection.

(4) This section applies only in relation to a conveyance for the partition or division of property between members of a family group.

(5) In this section—

"**family group**" has the meaning assigned to that expression by section 71(15).

Concessional rates of duty in respect of purchase of first home, etc.

71C. (1) Where upon an application made on or after 9 August, 1989, in a manner and form determined by the Commissioner and supported by such evidence as he may require the Commissioner is satisfied—

(a) that the applicant or applicants—

(i) are natural persons; and

(ii) on or after the fifteenth day of September, 1979, entered into a contract for the purchase of a relevant interest in land or for the purchase of shares in a company that confer a right to occupy land of the company; and

(iii) are the sole purchasers of the land or the shares; and

(iv) —

— have entered into a contract for the construction of a dwelling house on the land and intend to occupy the dwelling house as their principal place of residence within 12 months of completion of construction; or

— where there is presently a dwelling house on the land—were occupying that dwelling house as their principal place of residence at the date of the conveyance, or intend to so occupy the dwelling house within 12 months of the date of the conveyance; and

(ab) where the relevant contract is entered into on or after 1 September 1992—that the amount by reference to which duty would, apart from this section, be calculated does not exceed the prescribed maximum; and

- (b) that no party to the application has previously—
 - (i) occupied a dwellinghouse (except as a minor) either in the State or elsewhere in pursuance of a relevant interest of that party in the dwellinghouse (other than an interest arising under an agreement with the South Australian Housing Trust relating to the purchase of the dwelling house to which the application relates) or any interest of that party in shares conferring a right to occupy the dwellinghouse; or
 - (ii) received the benefit of this section,

this section applies to a conveyance under which the land or shares are conveyed to the purchaser or purchasers.

(1a) Subsection (1)(b)(ii) does not apply to an applicant who is the occupier of a Housing Trust home and who is purchasing the home under an agreement with the South Australian Housing Trust if the Commissioner is satisfied—

- (a) that the conveyance to which the application relates arises from that agreement; and
- (b) that the applicant previously received the benefit of this section only in relation to another conveyance arising from the same agreement.

(2) The duty payable upon a conveyance to which this section applies will be as follows:

- (a) where the amount by reference to which the duty would, apart from this section, be calculated does not exceed the prescribed amount—no duty will be payable; or
- (b) where the amount by reference to which the duty would, apart from this section, be calculated exceeds the prescribed amount—
 - (i) where the relevant contract was entered into before 1 September 1992—the duty payable will be the amount payable apart from this section less \$2 130;
 - (ii) where the relevant contract is entered into on or after 1 September 1992—the duty payable will be an amount calculated in accordance with the following formula:

$$A = B - \left(C - D \frac{(E - F)}{1\ 000} \right)$$

where

A is the amount of duty payable

B is the amount of duty payable apart from this section

C is—

where the relevant contract is entered into during the period commencing on 1 February 1997 and ending on 31 January 1998—\$2 830;

in any other case—\$2 130

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D is—

where the relevant contract is entered into during the period commencing on 1 February 1997 and ending on 31 January 1998—56;

in any other case—42

E is the amount by reference to which duty would, apart from this section, be calculated (any fractional part of \$1 000 being rounded up to the next multiple of \$1 000)

F is the prescribed amount.

(2a) Where the Commissioner is satisfied by such evidence as the Commissioner may require—

(a) that a person or persons who have paid stamp duty on a conveyance would have been entitled to the benefit of this section in respect of the conveyance if when it was submitted for stamping the requirements of subsection (1)(a)(iv) had been satisfied;

(b) that person or those persons in fact occupied a dwellinghouse on the land comprised in the conveyance, or in pursuance of rights conferred by shares comprised in the conveyance, as their principal place of residence within 12 months of the date of the conveyance,

the Commissioner shall refund to that person or those persons any duty in excess of the amount that would have been payable if the conveyance had been stamped under this section.

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(3) In this section—

"**dwelling house**" does not include residential premises that form part of industrial or commercial premises;

"**Housing Trust home**" means residential premises owned by the South Australian Housing Trust;

"**perpetual lease**" means a perpetual lease under the *Crown Lands Act 1929*;

"**prescribed amount**" means—

(a) where the relevant contract is entered into during the period commencing on 1 February 1997 and ending on 31 January 1998—\$100 000;

(b) in any other case—\$80 000;

"**prescribed maximum**" means—

(a) where the relevant contract is entered into during the period commencing on 1 February 1997 and ending on 31 January 1998—\$150 000;

(b) in any other case—\$130 000;

"**relevant contract**" means the contract relied on by an applicant under this section to satisfy the requirements of subsection (1)(a)(ii);

"**relevant interest**", in relation to land or a dwelling house, means any estate or interest conferring a right to possession, including any such estate or interest arising under a perpetual lease but not including any other leasehold estate or interest.

(4) This section applies to a conveyance first lodged with the Commissioner for stamping on or after 9 August, 1989.

Exemption from duty in respect of certain maintenance agreements, etc.

71CA. (1) In this section—

"**instrument to which this section applies**" means—

- (a) a maintenance agreement registered under Part VIII of the *Family Law Act 1975* of the Commonwealth; or
- (b) a deed or other instrument (including an application to transfer registration of a motor vehicle) for the purposes of, or consequential upon—
 - (i) a maintenance agreement registered under Part VIII of the *Family Law Act 1975* of the Commonwealth; or
 - (ii) an order under Part VIII of the *Family Law Act 1975* of the Commonwealth;

"**maintenance agreement**" means a maintenance agreement as defined in the *Family Law Act 1975* of the Commonwealth;

"**marriage**" includes a marriage that is void and thus liable to annulment, and "**married**" has a corresponding meaning.

(2) Where an instrument to which this section applies—

- (a) provides for a disposition of property between two persons who, at the time of execution of the instrument, are or have been married to each other and no other person takes or is entitled to take an interest in property in pursuance of the instrument; or
- (b) in the case of an application to transfer registration of a motor vehicle—is consequential on a disposition of property between two persons who, at the date of the application, are or have been married to each other,

the instrument is exempt from stamp duty if—

- (c) the marriage of the two persons referred to above has been dissolved or annulled; or
- (d) the Commissioner is satisfied that the marriage of the two persons has broken down irretrievably.

(3) Where an instrument to which this section applies was not exempt from stamp duty under this section by reason only that—

- (a) the marriage of the two persons had not been dissolved or annulled; and

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- (b) the Commissioner was not satisfied that the marriage of the two persons had broken down irretrievably,

a person by whom stamp duty was paid on the instrument is entitled to a refund of the duty—

- (c) if the marriage is subsequently dissolved or annulled; or
- (d) if the Commissioner is subsequently satisfied that the marriage has broken down irretrievably.

Exemption from duty in respect of certain transfers between spouses or former spouses

71CB. (1) In this section—

"**matrimonial home**" means—

- (a) in relation to spouses—their principal place of residence of which both or either of them is owner;
- (b) in relation to former spouses—their last principal place of residence of which both or either of them was owner,

but does not include premises that form part of industrial or commercial premises;

"**spouses**" includes persons who have cohabited continuously as *de facto* husband and wife for at least five years.

(2) Subject to subsection (3), an instrument of which the sole effect is to transfer—

- (a) an interest in the matrimonial home; or
- (b) registration of a motor vehicle,

between parties who are spouses or former spouses is exempt from stamp duty.

(3) An instrument described in subsection (2) between parties who are former spouses is only exempt from stamp duty if the Commissioner is satisfied that the instrument has been executed as a result of the irretrievable breakdown of the parties' marriage or *de facto* relationship.

(4) Where an instrument was not exempt from stamp duty under this section by reason only that the Commissioner was not satisfied that the instrument had been executed as a result of the irretrievable breakdown of the parties' marriage or *de facto* relationship, the party by whom stamp duty was paid on the instrument is entitled to a refund of the duty if the Commissioner is subsequently satisfied that the instrument had been executed as a result of the irretrievable breakdown of the parties' marriage or *de facto* relationship.

(5) The Commissioner may require a party to an instrument in respect of which an exemption is claimed under this section to provide such evidence (verified, if the Commissioner so requires, by statutory declaration) as the Commissioner may require for the purpose of determining whether the instrument is exempt from duty under this section.

(6) This section applies in relation to instruments executed after its commencement.

Exemption from duty in respect of conveyance of a family farm

71CC. (1) An instrument of which the sole effect is to transfer an interest in land used for the business of primary production from a natural person, or a trustee for a natural person, to a relative of the natural person, or a trustee for a relative of the natural person, is exempt from stamp duty if the Commissioner is satisfied—

- (a) that the land to which the transfer relates is used wholly or mainly for the business of primary production and is not less than 0.8 hectares in area; and
- (ab) that the sole or principal business of the natural person who, or whose trustee, is the transferor is (immediately before the instrument) the business of primary production; and
- (b) that for a period of 12 months immediately before the instrument there was a business relationship between—
 - (i) the natural person (A) who, or whose trustee, is the transferor; and
 - (ii) the natural person (B) who, or whose trustee, is the transferee, or a lineal ancestor or spouse of B,

with respect to the use of the property for the business of primary production; and

- (c) in the case of a transfer where either or both parties are trustees, that no person is a beneficiary of the trust or trusts other than—
 - (i) the natural person (A) who, or whose trustee, is transferor;
 - (ii) the natural person (B) who, or whose trustee, is transferee;
 - (iii) a relative (or relatives) of A or B; and
- (d) that the transfer does not arise from arrangements or a scheme devised for the principal purpose of taking advantage of the benefit of this section.

(2) The Commissioner may, in deciding for the purposes of subsection (1)(b) whether a business relationship existed between two persons, take into account any of the following;

- (a) a previous employment relationship between them (regardless of the amount or form of remuneration);
- (b) a share-farming arrangement;
- (c) the provision of assistance in the running of the business;
- (d) a partnership arrangement,

and may take into account such other matters (whether similar or dissimilar to those referred to above) as the Commissioner thinks fit.

(3) The Commissioner may require a party to an instrument in respect of which an exemption is claimed under this section to provide such information or evidence as the Commissioner may require for the purpose of determining whether the instrument is exempt from duty under this section.

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(4) The Commissioner may require the information or evidence to be given on oath or verified by statutory declaration.

(5) In this section—

"**natural person**" or "**person**" does not include a person who is deceased (as at the time of execution of the relevant instrument);

"**relative**", in relation to a natural person, means a person who is—

- (a) a child or remoter lineal descendant of the person or of the spouse of the person;
- (b) a parent or remoter lineal ancestor of the person or of the spouse of the person;
- (c) a brother or sister of the person or of the spouse of the person;
- (d) the spouse of the person or a spouse of any person referred to in paragraphs (a), (b) or (c);

"**spouse**" of a person includes a *de facto* husband or wife of the person who has been cohabiting continuously with the person for at least five years.

(6) This section applies in relation to instruments executed after its commencement.

Concessional duty to encourage mineral or petroleum exploration activity

71D. (1) Where upon an application made under this section the Treasurer, after consultation with the Minister of Mines and Energy, is satisfied—

- (a) that the applicants are parties to a conveyance of an exploration tenement or an interest in an exploration tenement; and
- (b) that the consideration or a part of the consideration for the conveyance consists of an undertaking on the part of the person or persons acquiring an interest in the tenement by virtue of the conveyance—
 - (i) to engage in exploratory or investigatory operations (to be carried on after the date of the undertaking) within that part of the area of the tenement to which the conveyance relates; or
 - (ii) to contribute to the cost of exploratory or investigatory operations (to be carried on after the date of the undertaking) within that part of the area of the tenement to which the conveyance relates,

this section applies to the conveyance.

(2) An application under this section must—

- (a) be made in a manner and form determined by the Treasurer; and
- (b) set out a statement of—
 - (i) the value of the interest being transferred by the conveyance; and

- (ii) the value of the undertaking referred to in subsection (1)(b); and
 - (c) be accompanied by such evidence as the Treasurer may require.
- (2a) The duty payable upon a conveyance to which this section applies will be as follows:
- (a) where the amount by reference to which the duty would, apart from this section, be calculated does not exceed the value of the undertaking referred to in subsection (1)(b)—the duty will be \$1 000;
 - (b) where the amount by reference to which the duty would, apart from this section, be calculated exceeds the value of the undertaking referred to in subsection (1)(b)—the duty will be an amount calculated in accordance with the following formula:

$$D = (A - V) + \$1\ 000$$

where

- D is the amount payable
- A is the amount of duty payable apart from this section
- V is the amount of duty payable on a conveyance of an interest in property the value of which equals the value of the undertaking referred to in subsection (1)(b).

(3) In this section—

"**exploration tenement**" means—

- (a) an exploration licence granted under the *Mining Act 1971*; or
- (b) a petroleum exploration licence granted under the *Petroleum Act 1940*; or
- (c) an exploration permit for petroleum granted under the *Petroleum (Submerged Lands) Act 1982*.

(4) A reference in this section to an exploration tenement includes a reference to a portion of an exploration tenement.

(5) For the purposes of this section, the value of the undertaking referred to in subsection (1)(b) will be taken to be equal to the costs for which the person or persons acquiring an interest in the tenement by virtue of the conveyance become liable, or for which that person or those persons are reasonably expected to become liable, by virtue of the undertaking (assessed as at the time that the undertaking was given).

(6) This section applies to a conveyance first lodged with the Commissioner for stamping on or after the commencement of the *Stamp Duties (Concessional Duty and Exemptions) Amendment Act 1991*.

Rates of duty in respect of certain conveyances between superannuation funds

71DA. (1) If on an application made under this section the Commissioner is satisfied—

- (a) that the applicant is a party to an instrument that constitutes—

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- (i) a conveyance of property between superannuation funds; or
 - (ii) an agreement to convey property between superannuation funds; and
- (b) that the trustees of the respective funds are of the opinion that the funds will be complying superannuation funds for the year in which the conveyance occurs; and
- (c) that the conveyance is in connection with a person ceasing to be a member of, or otherwise ceasing to be entitled to benefits in respect of, one superannuation fund and becoming a member of, or otherwise becoming entitled to benefits in respect of, the other superannuation fund,

this section applies to the instrument.

(2) The duty payable on an instrument to which this section applies will be—

- (a) the amount of *ad valorem* duty that would be payable on the instrument as a conveyance apart from this section; or
- (b) \$200,

whichever is the lesser.

(3) The Commissioner may require a party to an instrument that may be assessable under this section to provide such information or evidence as the Commissioner may require for the purpose of determining whether this section applies and, if so, the amount of duty payable on the instrument.

(4) The Commissioner may require the information or evidence to be given on oath or verified by statutory declaration.

(5) In this section—

"complying superannuation fund" means—

- (a) a fund which is a complying superannuation fund within the meaning of section 267 of the *Income Tax Assessment Act 1936* of the Commonwealth; or
- (b) a fund which is a complying ADF within the meaning of section 267 of the *Income Tax Assessment Act 1936* of the Commonwealth.

(6) This section applies to an instrument first lodged with the Commissioner for stamping on or after the commencement of this section.

Transactions effected without creating a Dutiable Instrument

Transactions otherwise than by dutiable instrument

71E. (1) Subject to subsection (2), this section applies to a transaction in the following circumstances—

- (a) the transaction results in a change in the ownership of a legal or equitable interest in—
 - (i) land; or

- (ii) —
 - (A) a business situated in the State; or
 - (B) a part of a business (being a business situated in the State), excluding goods that are stock-in-trade of a business where the transaction occurs in the ordinary course of business, where the transaction is associated with, or is for the purposes of, a change in the ownership of a legal or equitable interest in the business (including a case where a business is being divided up into separate parts and then those parts are being transferred to one or more persons as part of one transaction or one series of transactions); or
- (iii) an interest in a partnership; and
- (b) (i) the transaction is not effected, or not wholly effected, by an instrument on which *ad valorem* duty is chargeable; but
- (ii) if the transaction had been effected, or wholly effected, by an instrument, the instrument would be chargeable with duty as a conveyance or as if it were a conveyance.

(1a) For the purposes of this section (and for the calculation of the value of any property), a change in the ownership of a legal or equitable interest in a business will be taken to include a transfer of the goodwill of the business.

(2) This section does not apply to any of the following transactions—

- (a) the appointment of a receiver or trustee in bankruptcy;
- (b) the appointment of a liquidator;
- (c) a compromise or arrangement under Part 5.1 of the *Corporations Law*;
- (d) a conveyance of property (not being land subject to the provisions of the *Real Property Act 1886*) for nominal consideration for the purpose of securing the repayment of an advance or loan;
- (e) any other transaction of a prescribed class.

(3) Where a transaction to which this section applies is entered into, a statement in a form approved by the Commissioner must be lodged with the Commissioner setting out—

- (a) the nature and effect of the transaction;
- (b) a description of the property affected by the transaction;
- (c) a statement of the value of any property to which the transaction relates;
- (d) a statement of any consideration that has passed or is to pass between the parties to the transaction.

(4) Duty is payable on the statement as if it were a conveyance effecting the transaction to which it relates.

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(4a) A statement under this section will, for the purposes of this Act, be taken to be an instrument executed by the person required to lodge the statement on the date of the change in legal or equitable ownership of property effected by the transaction to which the statement relates.

(5) Where a statement is lodged with the Commissioner under this section—

- (a) any instrument that relates to the same transaction is not chargeable with duty to the extent to which duty has been paid on the statement; and
- (b) the statement will not be charged with duty to the extent that duty has been paid on any instrument that relates to the same transaction.

(6) If a statement relating to a transaction to which this section applies is not lodged with the Commissioner in accordance with this section within two months after a change in legal or equitable ownership of property is effected by the transaction—

- (a) each party to the transaction is guilty of an offence; and
- (b) the Commissioner may make an assessment, on the basis of such information as is available to the Commissioner and such estimates as the Commissioner considers reasonable, of the duty that would have been payable if the statement had been lodged (and that duty will be recoverable from the parties to the transaction).

(7) A person who aids, abets, counsels or procures another person to enter into a transaction to which this section applies knowing that none of the parties to the transaction intends to lodge a statement under this section is guilty of an offence.

(8) A person who is guilty of an offence against this section is liable to a fine not exceeding \$10 000.

(9) If a statement relating to a transaction to which this section applies is lodged with the Commissioner but it is subsequently established to the satisfaction of the Commissioner that the transaction is not to be completed, the Commissioner may refund any duty paid on the statement.

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Leases

Agreement for lease to be charged as a lease

72. An agreement for a lease or with respect to the letting of any lands shall be chargeable with the same duty as if it were an actual lease made for the term and consideration mentioned in the agreement.

Leases, how to be charged in respect of produce, etc.

73. (1) Where the consideration or any part of the consideration for which a lease is granted or agreed to be granted consists of any produce or other goods, the value of the produce or goods shall be deemed a consideration in respect of which the lease or agreement is chargeable with *ad valorem* duty.

(2) Where it is stipulated in any lease or agreement for a lease that the value of the produce or goods shall amount at least to, or shall not exceed, a given sum or where the lessee is specially charged with, or has the option of paying after, any permanent rate of conversion, the value of the produce or goods shall, for the purpose of assessing the *ad valorem* duty, be estimated at the given sum or according to the permanent rate.

(3) A lease or agreement for a lease made either wholly or partially for any such consideration, if it contains a statement of the value thereof and is stamped in accordance with the statement, shall, so far as regards the subject matter of the statement, be deemed duly stamped, unless or until it is otherwise shown that the statement is incorrect and that the lease or agreement is in fact not duly stamped.

Duty in respect of certain kinds of lease

74. (1) A lease or agreement for a lease or with respect to the letting of any lands shall not be chargeable with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease or agreement of, or relating to, the same subject matter.

(2) A lease made for any consideration in respect of which it is chargeable with *ad valorem* duty and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of, or addition to, the property demised to him, or of any covenant relating to the subject matter of the lease, shall not be chargeable with any duty in respect of the further consideration.

Consideration for lease

75. (1) In this section—

"**current market rent**" for property means the consideration (including rent and any other form of valuable consideration) that a lessee might reasonably be expected to pay under a lease of the property, if it were unoccupied and offered for renting, expressed as a rate of rent per annum;

"**lease**" includes an agreement for a lease or any written document for the tenancy or occupancy of property;

"**lessee**" means the person who has the right to occupy property under a lease and includes a prospective lessee under an agreement for a lease;

"**property**" means land or a tenement.

(2) If the rent or any other consideration payable by the lessee under a lease of property cannot be ascertained or estimated at the time that the lease is lodged with the Commissioner for stamping (whether because the consideration depends on some future contingency or for any other reason), the Commissioner may assess the duty payable based on the current market rent for the property as if the current market rent were the rate or average rate of rent per annum under the lease and there were no other consideration payable under the lease.

(3) If the consideration payable by the lessee under a lease of property can be ascertained or estimated at the time that the lease is lodged with the Commissioner for stamping but the duty that may be charged on the instrument (whether as a lease or a conveyance on sale or both) apart from this section is less than the duty that would be payable based on the current market rent for the property, the Commissioner may assess the duty payable based on the current market rent as if the current market rent were the rate or average rate of rent per annum under the lease and there were no other consideration payable under the lease.

(4) For the purposes of this section, the Commissioner may—

(a) cause a valuation to be made of any property that is the subject of a lease for the purpose of determining the current market rent for the property; and

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- (b) having regard to the merits of the case, charge the whole or a part of the expenses of, or incidental to, the making of the valuation to the person liable to pay the duty and may recover the amount charged as a debt due to the Crown.

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Mortgages

Interpretation

76. In this Act—

"**liability**" means a present, future or contingent monetary liability;

"**mortgage**" means—

- (a) an instrument creating, acknowledging, evidencing or recording a legal or equitable interest in, or charge over, real or personal property by way of security for a liability; or
- (b) an instrument creating, acknowledging, evidencing or recording a liability in respect of which an instrument of title is or is to be pledged or deposited by way of security,

(and includes an instrument that would, assuming the fulfilment of a condition to which the instrument is subject, fall into one of the above categories).

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Where mortgage consists of several instruments

77. If several instruments are necessary to make a mortgage and duty would, but for this section, be chargeable on more than one of those instruments, the duty shall be chargeable upon the principal instrument only and the other instruments shall not be liable to any duty, and the parties, with the approval of the Commissioner, may decide which is the principal instrument.

Security for stock, how to be charged

78. A security for the transfer or retransfer of any stock shall be chargeable with the same duty as a similar security for a sum of money equal in amount to the value of the stock; and a transfer or assignment of any such security shall be chargeable with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of the stock.

Mortgage securing future and contingent liabilities

79. (1) A mortgage that extends to future or contingent liabilities is, if limited to a particular amount, chargeable with duty as if it were a security for that amount.

(2) A mortgage that extends to future or contingent liabilities is, if not limited to a particular amount, chargeable with duty as follows:

- (a) the mortgage is chargeable, in the first instance, with duty on the basis of an estimate of the highest amount to be secured (to be made on the assumption that all contingencies to which the mortgage or the liability is subject will actually happen); and

- (b) if the amount of the liability secured by the mortgage subsequently exceeds the amount for which the mortgage has been previously stamped, the mortgage becomes chargeable with further duty as from the date when the liability was first exceeded and the amount of that further duty is to be calculated as follows:
- (i) a fresh estimate is to be made in accordance with this section of the highest amount to be secured; and
 - (ii) duty is then to be calculated on the basis of that estimate and in all other respects as if the mortgage were a new and separate instrument made on the date when the liability was first exceeded; and
 - (iii) the further duty is then to be calculated by subtracting the amount of duty already paid from the amount of duty calculated under subparagraph (ii),

(but this paragraph does not apply if the liability is wholly or partly denominated in a foreign currency and the amount for which the mortgage has been previously stamped is exceeded solely because of fluctuations in the rate of exchange).

(3) If a mortgage is chargeable with duty under subsection (2), the parties must, on submitting the mortgage for stamping or further stamping, make a fair estimate of the highest amount to be secured (to be made on the assumption that all contingencies to which the mortgage or the liability is subject will actually happen).

(4) The Commissioner may accept the parties' estimate of the highest amount to be secured or, if dissatisfied with that estimate, substitute the Commissioner's own estimate of that amount, for the purposes of determining the amount of duty or further duty with which the mortgage is chargeable.

(5) The Commissioner has a discretion, in the case of a mortgage securing a contingent liability, to permit the mortgage to be stamped for an amount that is less than the full amount of that liability, but, if the contingency subsequently happens, further duty becomes chargeable on the mortgage as from the date of the happening of the contingency and the amount of that further duty is to be calculated as follows:

- (a) duty is to be calculated on the mortgage on the basis of the full amount of the liability as if the mortgage were a new and separate instrument made on the date of the happening of the contingency; and
- (b) the further duty is then to be calculated by subtracting the amount of duty already paid from the amount of duty calculated under paragraph (a).

(6) If a mortgage for an unlimited amount is registered under the *Real Property Act 1886*, a discharge of the mortgage may not be registered unless the instrument of discharge is endorsed with a certificate by the mortgagee, an officer, agent or employee of the mortgagee, or some other person approved for the purposes of this subsection by the Commissioner—

- (a) stating the highest amount that was secured during the currency of the mortgage; and
- (b) stating that the mortgage has been duly stamped.

(7) If a certificate under subsection (6) is false, the mortgagee and the person by whom the certificate was signed are each guilty of an offence.

Penalty: Imprisonment for 2 years.

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(8) In this section references to an amount secured or to be secured by a mortgage are, if the mortgage secures both principal and interest or principal, interest, and rates taxes or other recurrent charges in respect of land, to be read as references to the principal only.

Security for repayment by periodical payments, how to be charged

80. A security for the payment of any rentcharge, annuity or other periodical payment, by way of repayment or in satisfaction or discharge of any loan, advance or payment intended to be so repaid, satisfied or discharged, shall be chargeable with the same duty as a similar security for the payment of the sum of money so lent, advanced or paid.

Transfers and further charges

81. (1) No transfer of a duly stamped security and no security by way of further charge for money or stock added to money or stock previously secured by a duly stamped instrument shall be chargeable with any duty by reason of containing any further or additional security for the money or stock transferred or previously secured, or the interest or dividends thereon, or any new covenant, proviso, power, stipulation or agreement in relation thereto or any further assurance of the property comprised in the transferred or previous security.

(2) However, subsection (1) does not apply if the security is over, or relates to, land that is subject to the provisions of the *Real Property Act 1886*.

Duty may be denoted in certain cases by adhesive stamps

81A. (1) Subject to subsection (2), the duty on a security by way of mortgage, bond, debenture or covenant securing the payment or repayment of an amount not exceeding \$4 000 may be denoted by an adhesive stamp affixed in accordance with the regulations.

(2) This section does not apply in respect of a security by way of mortgage for the payment or repayment of moneys that may become due on an account current unless—

- (a) where the total amount secured or to be ultimately recoverable is limited—the amount so limited does not exceed \$4 000; or
- (b) where the total amount secured or to be ultimately recoverable is not limited—the total amount actually secured or recoverable does not exceed \$4 000.

Duty chargeable proportioned to value of South Australian property

81B. (1) A security that creates a charge on property in South Australia and property outside South Australia may, subject to this section, be stamped for less than the full amount *ad valorem* duty otherwise appropriate to the amount secured.

(2) The amount for which the security is stamped must however be sufficient to satisfy the following formula:

$$\frac{A_1}{A_2} \geq \frac{V_1}{V_2}$$

Where

A_1 is the amount for which the security is stamped

A_2 is the amount on which *ad valorem* duty would, apart from this section, be chargeable

V_1 is the value of property situated in South Australia

V_2 is the total value of the property subject to the security.

(3) A security stamped under this section is available as a security on property situated in South Australia for such amount only as the *ad valorem* duty denoted on the security extends to cover.

(4) If a security does not create a charge on property in South Australia it may be stamped with a stamp indicating that no *ad valorem* duty is payable.

Duty paid upon one mortgage may be denoted as having been paid upon another mortgage

81C. (1) The Commissioner may, upon the application of a party to a mortgage upon which duty has been paid, authorise the whole or a part of the duty paid upon the mortgage to be denoted as having been paid upon some other mortgage or mortgages if he is satisfied, upon the basis of such evidence as he may require—

- (a) that the duty was paid upon the first mentioned mortgage instead of the other mortgage or mortgages as a result of an error on the part of a party to the mortgage or his agent; and
- (b) that the parties to the first mentioned mortgage are the same as the parties to the other mortgage or mortgages; and
- (c) that the first mentioned mortgage has not been acted upon or relied upon in any way as a security.

(2) An application under subsection (1) must—

- (a) be made in a form approved by the Commissioner; and
- (b) be made not later than three months after the date on which duty was paid upon the first mentioned mortgage; and
- (c) be accompanied by the prescribed charge.

(3) The Commissioner may, upon an application under subsection (1), if he thinks it just to do so, waive payment of the prescribed charge.

(4) The Commissioner may require any evidence given in support of an application under subsection (1) to be verified by statutory declaration.

(5) Duty shall not be denoted as having been paid upon the other mortgage or mortgages in pursuance of subsection (1) unless the original and every copy of the first mentioned mortgage stamped under this Act has been produced to the Commissioner and dealt with in accordance with the regulations.

(6) For the purposes of this section—

- (a) mortgagees that are related corporations shall be regarded as one and the same person; and
- (b) corporations are related if they are related for the purposes of the *Corporations Law*.

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Refinancing of rural loans

81D. (1) If the Commissioner is satisfied—

- (a) that a mortgage over land (the "new mortgage") provides for the refinancing of a loan secured by a previous mortgage (whether or not with the same mortgagee) that is being discharged; and
- (b) that both the new mortgage and the previous mortgage apply to the same, or substantially the same, land; and
- (c) that the land is used wholly or mainly for the business of primary production and is not less than 0.8 hectares in area; and
- (d) that the sole or principal business of the mortgagor is the business of primary production; and
- (e) that the mortgagor under both mortgages is the same person, and is not a public company or a subsidiary of a public company,

duty is not chargeable on so much of the amount under the new mortgage as secures the balance outstanding under the previous mortgage.

(2) The Commissioner may require a party to a mortgage in respect of which a benefit is claimed under this section to provide such information or evidence as the Commissioner may require for the purpose of determining whether the mortgage is entitled to that benefit.

(3) The Commissioner may require the information or evidence to be given on oath or verified by statutory declaration.

(4) In this section—

"**subsidiary**", in relation to a public company, means a body corporate that is a subsidiary of the public company within the meaning of the *Corporations Law*;

"**public company**" means a public company within the meaning of the *Corporations Law*.

(5) This section applies in relation to mortgages executed after its commencement.

(6) This section expires on the second anniversary of its commencement.

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Unregistered mortgages protected by caveats

82. (1) A caveat under the *Real Property Act 1886* to protect an interest arising under an unregistered mortgage is chargeable with duty.

(2) The amount of duty chargeable on a caveat to which subsection (1) applies is—

- (a) if the mortgage to which the caveat relates has been stamped—\$10;
- (b) if the mortgage to which the caveat relates has not been stamped—\$10 plus the amount of duty that would be payable on the mortgage if produced for stamping.

(3) If—

- (a) stamp duty is paid on a caveat in respect of a mortgage that has not been stamped; and
- (b) the mortgage is subsequently produced for stamping,

the mortgage is not chargeable with duty to the extent to which duty in respect of the mortgage has been paid on the caveat.

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PART 3A
SPECIAL PROVISIONS RELATING TO MARKETABLE SECURITIES

DIVISION 1—INTERPRETATION

Interpretation

90A. In this Act, unless inconsistent with the context or some other meaning is clearly intended—

"**broker**" means a person, firm or corporation who or which is a member of the Australian Stock Exchange Limited and is carrying on business in this State;

"**broker's agent**" means a person who is an agent or employee of a broker within the meaning of any corresponding Act and is carrying on business for, or on behalf of, that broker in this State;

"**corresponding Act**" means an enactment in force in a State other than this State or in a Territory of the Commonwealth that is declared by proclamation to be a corresponding Act for the purposes of this Part;

"**dealer**" means a broker or a broker's agent within the meaning of this Act or any corresponding Act;

"**error transaction**" means each of the following transfers:

- (a) an SCH-regulated transfer made to reverse an SCH-regulated transfer that was made mistakenly not more than seven days earlier;
- (b) the SCH-regulated transfer so reversed;

"**foreign company**" has the same meaning as is assigned to the term by section 9 of the *Corporation Law*;

"**identification code**", in relation to an SCH participant, means a code that, for the purposes of the SCH business rules, is the SCH participant's identification code, or one of the SCH participant's identification codes, as the case may be;

"**odd lot**" means a parcel of marketable securities that is, under the rules of the stock exchange on which the sale or purchase is effected, required to be bought or sold through an odd lot specialist;

"**odd lot specialist**" means a broker who is appointed by the Australian Stock Exchange Limited for the purposes of buying and selling odd lots;

"**proper SCH transfer**" has the same meaning as is assigned to the term by section 9 of the *Corporations Law*;

"**relevant company**" means—

- (a) a South Australian registered company; or
- (b) a foreign company with a registered office under the *Corporations Law* that is situated in this State;

"**relevant SCH participant**", in relation to an SCH-regulated transfer, means the SCH participant who is, according to Division 3, liable to pay duty chargeable in respect of the transfer, or, if no duty is chargeable, the SCH participant who would be so liable if duty were chargeable;

"**SCH**" means the securities clearing house registered by the Commissioner under Division 4;

"**SCH business rules**" has the same meaning as is assigned to the term by section 9 of the *Corporations Law*;

"**SCH participant**" has the same meaning as is assigned to the term by section 9 of the *Corporations Law*;

"**SCH-regulated transfer**" has the same meaning as is assigned to the term by section 9 of the *Corporations Law*;

"**South Australian dealer**" means a broker or a broker's agent;

"**South Australian registered company**" means a body that is registered, or taken to be registered, as a company under the *Corporations Law* of South Australia, but does not include a company registered under Division 4 of Part 2.2 of the *Corporations Law* of another jurisdiction or a foreign company;

"**transfer document**" has the same meaning as is assigned to the term by section 1097 of the *Corporations Law*;

"**transfer identifier**", in relation to an SCH-regulated transfer, means the distinctive code assigned to the transfer as required by SCH;

"**transfer value**", in relation to an SCH-regulated transfer of a marketable security, means—

- (a) in the case of a transfer on sale—the total consideration for the sale or the unencumbered market value of the security at the date of the sale, whichever is the greater; or
- (b) in any other case—the unencumbered market value of the security at the date of the transfer.

DIVISION 2—DUTY ON SALES AND PURCHASES BY BROKERS

Application of Division

90B. (1) This Division and the duty chargeable in accordance with schedule 2 on the return referred to in section 90D apply and have effect to and in relation to a sale or purchase of a marketable security only where—

- (a) the sale or purchase of the security—
 - (i) is made by or through a South Australian dealer; or
 - (ii) is made by or through a dealer in a prescribed place and the security is—
 - (A) a marketable security of a relevant company; or
 - (B) a unit of a unit trust scheme the principal register of which is situated in this State; and

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- (b) the consideration for the sale or purchase is in money or money's worth not less than the unencumbered market value of the security; and
- (c) the security is quoted on, or permission to deal therein has been granted by, a stock exchange; and
- (d) no duty is charged against the transferor or the transferee under schedule 2 in respect of the conveyance or transfer of the securities on the sale thereof.

(2) A sale or purchase of a marketable security is only made by or through a South Australian dealer or a dealer in a prescribed place—

- (a) in relation to a South Australian dealer—if the sale or purchase (wherever occurring) is made pursuant to an order to sell or an order to purchase lodged with him or her in the State; or
- (b) in relation to a dealer in a prescribed place—if the sale or purchase (wherever occurring) is made pursuant to an order to sell or an order to purchase lodged with him or her in the prescribed place; or
- (c) if the sale or purchase (wherever occurring) is made on the dealer's own account or behalf.

(3) For the purposes of subsection (2)—

- (a) a South Australian dealer or a dealer in a prescribed place who makes a purchase of a marketable security, whether on his or her own account or on behalf of another, from a person who is not a dealer will, despite the fact that no order to sell was lodged with the dealer, be taken to have also made a sale of the security pursuant to an order to sell lodged with him or her in the State or in the prescribed place (as the case may require) by the person from whom the purchase was made; and
- (b) a South Australian dealer or a dealer in a prescribed place who makes a sale of a marketable security, whether on his or her own account or on behalf of another, to a person who is not a dealer will, despite the fact that no order to purchase was lodged with the dealer, be taken to have also made a purchase of the security pursuant to an order to purchase lodged with him or her in the State or in the prescribed place (as the case may require) by the person to whom the sale was made.

Records of sales and purchases of marketable securities

90C. (1) Subject to subsections (3) and (4), a dealer shall, forthwith on a sale or purchase being made or being deemed to have been made, being a sale or purchase to or in relation to which this Division applies, make a record relating to the sale or purchase showing—

- (c) the date of the sale or purchase; and
- (d) the name of the principal (if any) for whom such sale or purchase was made; and
- (e) the name of the dealer (if any) with whom the sale or purchase was effected; and
- (f) the quantity and full description of the marketable security sold or purchased; and
- (g) the selling or purchase price of such marketable security or, if more than one, of each marketable security and the total selling or purchase price of all; and

(h) the amount of stamp duty chargeable in accordance with schedule 2 in respect of that sale or purchase on the return referred to in section 90D which relates to that sale or purchase; and

(i) such other particulars as are prescribed for the purposes of this section.

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(3) Subsection (1) does not require a dealer to make a record—

(a) in respect of a sale of a marketable security, where the sale is made pursuant to an order to sell lodged with him by, or on behalf of, another dealer; or

(b) in respect of the purchase of a marketable security, where the purchase is made pursuant to an order to purchase lodged with him by, or on behalf of, another dealer; or

(c) in respect of any sale or purchase, where the sale or, as the case may be, the purchase is of an odd lot by an odd lot specialist.

(4) Subsection (1) does not apply to the sale or purchase of a marketable security, the conveyance or transfer in respect of which would be exempt from duty.

(5) A dealer may, in any record kept by him pursuant to subsection (1), incorporate therein additional information for his own use.

(6) The record must be kept by the dealer in a legible written form, or so as to be readily convertible into such a form, for a period of not less than three years from the date of the sale or purchase.

(7) The Commissioner may require a dealer to make and keep such additional records relating to sales and purchases made by or through him of marketable securities as he considers necessary.

(8) A dealer who fails to make or keep a record as required by this section or who fails to make and keep such additional records as are required by the Commissioner under this section is guilty of an offence.

Penalty: \$2 000.

Expiation fee: Division 7 fee.

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Returns to be lodged and duty paid

90D. (a1) This section applies to—

(a) a South Australian dealer; and

(b) a dealer in a prescribed place.

(1) Every dealer to which this section applies shall, not later than 2.30 p.m. on the Thursday of each week—

(a) lodge with the Commissioner a return in the prescribed form in accordance with this section; and

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(b) if any stamp duty is payable, but not paid, in respect thereof, pay to the Commissioner the stamp duty in respect of each sale and each purchase to which the return relates as prescribed by schedule 2.

(2) The return shall contain a certificate in the prescribed form relating to all sales and purchases, records relating to which have been made by the dealer under section 90C, being sales and purchases made during the week ended on the Saturday preceding the day on which the return is lodged and the total stamp duty payable on the return in respect of those sales and purchases, and shall contain a certificate signed by the dealer that the record required by section 90C has been duly made and such other particulars as are prescribed; but where there has been no sale or purchase made during that week, the dealer shall lodge with the Commissioner a "Nil" return.

(3) A dealer who fails to lodge a return as required under this section is guilty of an offence.

Penalty: \$5 000.

(4) Where the Commissioner has reason to believe or suspect that a dealer has contravened or failed to comply with a requirement of this section, the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner's opinion, represents unpaid duty.

(5) Where the Commissioner makes an assessment under subsection (4)—

(a) the Commissioner must cause notice in writing of the assessment to be served on the dealer who is in default; and

(b) the dealer is liable to pay any duty determined by the Commissioner under the assessment to be payable together with any further duty specified in the notice as being payable by way of penalty pursuant to subsection (7).

(6) A dealer liable to pay duty as a result of an assessment under this section who fails to pay the amount specified in the notice of assessment on or before the date specified in the notice is guilty of an offence.

Penalty: \$5 000 plus an amount equal to twice the amount of the Commissioner's assessment under subsection (4).

(7) Where a dealer is liable to pay duty by virtue of an assessment under subsection (4), the dealer is in addition liable to pay penalty duty equal to twice the amount of the duty that has been so assessed.

(8) The Commissioner may, at any time, remit any penalty duty, or part of any penalty duty, payable under this section.

Endorsement of instrument of transfer as to payment of duty

90E. (1) On making the record relating to a sale or purchase in accordance with section 90C(1), or on the making of a sale or purchase to which section 90C(1) does not apply by virtue of the operation of section 90C(4), the dealer shall, if the transfer on the sale or purchase is not an SCH-regulated transfer, either endorse the instrument of transfer in respect of the sale or purchase or ensure that it is endorsed with a statement to the effect that the stamp duty (if applicable) has been or will be paid, and shall affix his stamp and insert the date of the endorsement thereunder.

(2) A dealer who affixes his or her stamp under such an endorsement without making the appropriate record under section 90C(1) is guilty of an offence.

Penalty: \$1 000.

(3) Where an instrument of transfer of marketable securities has affixed thereto, in accordance with the provisions of this section or in accordance with any corresponding Act, the respective stamps of the dealers by whom the sale and purchase of those securities were effected, the instrument shall be deemed to be duly stamped with *ad valorem* duty.

Power of dealer to recover duty paid by him

90F. Any dealer who, on lodging with the Commissioner a return pursuant to section 90D, pays any duty under this Act in respect of any sale or purchase of marketable securities to which the return relates may recover from the seller or purchaser for whom he made the sale or purchase, or is deemed to have made the sale or purchase, the amount of the duty so paid as a debt due to him and recoverable in a court of competent jurisdiction and may, in reimbursement of that amount, retain any moneys in his hands belonging to the seller or purchaser, as the case may be.

Transactions in South Australian marketable securities on the Stock Exchange of the United Kingdom and Ireland

90G. (1) In this section, unless the contrary intention appears—

"**broker**" means a person, firm or corporation who or which is a member of the U.K. and Ireland Stock Exchange;

"**corporation**" means a municipal or other corporation, company or society;

"**market maker**" means a person, firm or corporation who or which is recognised as a market maker according to the rules and practices of the U.K. and Ireland Stock Exchange;

"**marketable security**" means—

- (a) a marketable security of a corporation incorporated in the State; or
- (b) a marketable security of a corporation incorporated outside Australia that is listed on a register of the corporation in the State;

"**relevant transaction**" means a transaction effecting a transfer from one person to another of a beneficial interest in a marketable security that is held in trust by a trustee;

"**the U.K. and Ireland Stock Exchange**" means The International Stock Exchange of the United Kingdom and the Republic of Ireland;

"**trustee**" means a person declared to be a trustee under subsection (2).

(2) The Governor may, by notice published in the *Gazette*—

- (a) declare a person to be a trustee; or
- (b) vary or revoke a declaration previously made under this subsection.

(3) Where a trustee—

- (a) is notified of a disposition by a beneficiary of an interest in a marketable security that the trustee holds in trust; or

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- (b) is directed by a beneficiary to hold a marketable security on behalf of some other person,

the trustee shall be deemed to have effected a relevant transaction in relation to that marketable security.

(4) A trustee shall on or before the twenty-eighth day of each month—

- (a) furnish to the Commissioner in such manner and form as the Commissioner requires a return setting out particulars of relevant transactions effected by the trustee during the preceding month; and
- (b) if any duty is payable, in respect of any such relevant transaction, pay to the Commissioner the duty in respect of each such relevant transaction prescribed by schedule 2.

(5) A trustee who fails to furnish a return as and when required by this section is guilty of an offence.

Penalty: \$10 000.

(5a) A trustee who fails to pay duty as and when required by this section is in addition liable to pay penalty duty equal to twice the amount of duty payable.

(5b) The Commissioner may, at any time, remit any penalty duty, or part of any penalty duty, payable under this section.

(6) Subsection (4) does not apply to or in respect of a relevant transaction where the disposition to which the relevant transaction relates—

- (a) is made—
 - (i) by way of security otherwise than to secure the rights of a purchaser or intended purchaser under a contemplated sale; or
 - (ii) in consequence of such a security being no longer required; or
- (b) is, in accordance with the rules of the U.K. and Ireland Stock Exchange, a stock loan transaction; or
- (c) is made or effected by a market maker as agent to a broker who acquires a beneficial interest in the marketable securities as principal and who, within 10 clear days (not including any day on which the U.K. and Ireland Stock Exchange is closed for business) after acquisition, disposes of the beneficial interest in those securities; or
- (d) is made or effected by a broker as principal within 10 such clear days after the broker acquired a beneficial interest in those marketable securities as principal—
 - (i) to a market maker as agent; or
 - (ii) to another broker as principal who, within 10 such clear days after the acquisition, disposes of the beneficial interests in those securities; or

- (e) is made or effected by or to a person who is—
 - (i) a South Australian dealer; or
 - (ii) a dealer in a prescribed place liable to pay duty in respect of the disposition;
or
- (f) is made or effected by a market maker as agent to another market maker as agent.
- (7) Where in consequence of a relevant transaction—
 - (a) a beneficial interest in marketable securities is transferred from a broker to a market maker as agent or from a market maker as agent to a broker; or
 - (b) a beneficial interest in marketable securities is transferred from a broker to another broker who acquires the interest as principal and who, within 10 clear days after acquisition (not including any day on which the U.K. and Ireland Stock Exchange is closed for business) disposes of the beneficial interest; or
 - (c) a beneficial interest in marketable securities is transferred from a broker to another broker as principal within 10 such clear days after the acquisition of the beneficial interest by the firstmentioned broker,

the amount payable under subsection (4) in respect of that relevant transaction shall be one-half of the amount that would otherwise be payable.

(8) A trustee shall keep accurate records of the relevant transactions effected by the trustee and shall retain those records for three years after completion of the relevant transactions to which they relate.

DIVISION 3—DUTY ON CERTAIN SCH-REGULATED TRANSFERS

Application of Division

90H. This Division applies to an SCH-regulated transfer of a marketable security only where—

- (a) the transfer is a proper SCH transfer; and
- (b) the transfer is made otherwise than on a sale or purchase to which Division 2 applies;
and
- (c) the security is—
 - (i) a share, or a right or CUFS in respect of a share, of a relevant company; or
 - (ii) a unit of a unit trust scheme, or a CUFS in respect of a unit of a unit trust scheme, the principal register of which is situated in this State; or
 - (iii) a unit of a unit trust scheme, or a CUFS in respect of a unit of a unit trust scheme, in relation to which no register exists in Australia and—
 - (A) having as the manager of the scheme a relevant company or a natural person principally resident in this State; or
 - (B) not having a manager but with a trustee that is a relevant company or a natural person principally resident in this State; and

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- (d) the body approved as the securities clearing house under section 779B of the *Corporations Law* is registered by the Commissioner under Division 4.

Transfer documents treated as instruments of conveyance

90I. (1) For the purposes of this Act, the transfer document for an SCH-regulated transfer of a marketable security to which this Division applies is to be taken to be an instrument of conveyance or conveyance on sale (as the case may require) of the security and, subject to this Act, chargeable with duty accordingly.

(2) Subsection (1) applies whether or not the body approved as the securities clearing house under section 779B of the *Corporations Law* is registered by the Commissioner under Division 4.

SCH participant liable to pay duty

90J. (1) Where duty is chargeable in respect of an SCH-regulated transfer of a marketable security, the SCH participant party to the transfer, or, if there is more than one, the SCH participant who is the transferee or controls the transferee's holding, is liable to pay the duty.

(2) Where the SCH participant liable to pay duty in respect of an SCH-regulated transfer is not the transferee under the transfer, the participant may recover from the transferee the amount of the duty paid as a debt by action in a court of competent jurisdiction and may, in reimbursement of that amount, retain any money in the participant's hands belonging to the transferee.

Record of SCH-regulated transfers

90K. (1) A record must be made in accordance with this section immediately on the making of an SCH-regulated transfer of a marketable security to which this Division applies.

(2) The record must be made by the relevant SCH participant.

(3) The record must show—

- (a) the date of the transfer; and
- (b) the transfer identifier of the transfer; and
- (c) the name of the transferee and, unless another SCH participant controls the transferor's holding, the name of the transferor; and
- (d) the identification code of the participant making the record and the identification code of the other SCH participant (if any) party to the transfer; and
- (e) the quantity and full description of the marketable security transferred; and
- (f) the transfer value of the marketable security or, if more than one, of each marketable security and the total transfer value of all; and
- (g) the amount of duty chargeable in accordance with schedule 2 in respect of the transfer; and
- (h) if *ad valorem* duty is not chargeable in respect of the transfer, a statement of the grounds on which *ad valorem* duty is not chargeable; and
- (i) in the case of an error transaction to reverse an earlier transfer that was made mistakenly, the transfer identifier of that earlier transfer; and
- (j) any other particulars prescribed for the purposes of this section.

(4) An SCH participant may, in any record made in accordance with this section, incorporate additional information for the participant's own use.

(5) The record must be kept by the SCH participant in a legible written form, or so as to be readily convertible into such a form, for a period of not less than five years from the date of the transfer.

(6) An SCH participant who fails to make or keep a record as required by this section is guilty of an offence.

Penalty: \$2 000.

Expiation fee: Division 7 fee.

Particulars to be included by relevant participant in transfer document

90L. The relevant SCH participant must include in the transfer document for an SCH-regulated transfer to which this Division applies the particulars required by the Commissioner under the conditions of registration of SCH.

Penalty: \$2 000.

Relevant SCH participant's identification code equivalent to stamping

90M. When the relevant SCH participant's identification code is included in the transfer document for an SCH-regulated transfer to which this Division applies, the transfer document is to be taken to be duly stamped but without affecting the relevant SCH participant's liability to pay any duty chargeable on the transfer document.

Report to be made and duty paid

90N. (1) The relevant SCH participant must, not more than seven days after the end of a month in which the participant has been party to an SCH-regulated transfer to which this Division applies—

- (a) make a report to SCH in respect of the transfer in the form and containing the particulars required by the Commissioner under the conditions of registration of SCH; and
- (b) if duty is chargeable in respect of the transfer, pay the duty to SCH.

(2) An SCH participant who fails to make a report as required under this section is guilty of an offence.

Penalty: \$5 000.

(3) Where the Commissioner has reason to believe or suspect that an SCH participant has contravened or failed to comply with a requirement of this section, the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner's opinion, represents unpaid duty.

(4) Where the Commissioner makes an assessment under subsection (3)—

- (a) the Commissioner must cause notice in writing of the assessment to be served on the participant in default; and

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- (b) the participant is liable to pay to the Commissioner any duty determined by the Commissioner under the assessment to be payable together with any further duty specified in the notice as being payable by way of penalty pursuant to subsection (5).

(5) Where an SCH participant is liable to pay duty by virtue of an assessment under subsection (3), the participant is in addition liable to pay penalty duty equal to twice the amount of the duty that has been so assessed.

(6) The Commissioner may at any time remit any penalty duty, or part of any penalty duty, payable under this section.

(7) An SCH participant liable to pay duty as a result of an assessment under this section who fails to pay the amount specified in the notice of assessment on or before the date specified in the notice is guilty of an offence.

Penalty: \$5 000 plus an amount equal to twice the amount of the Commissioner's assessment under subsection (3).

Refund for error transaction

90O. The Commissioner must, on being satisfied that *ad valorem* duty has been paid to the Commissioner in respect of an error transaction to which this Division applies, refund the amount of the duty so paid.

DIVISION 4—THE SECURITIES CLEARING HOUSE**Registration as the securities clearing house**

90P. (1) The Commissioner must, on application (in a form approved by the Commissioner) by the body approved as the securities clearing house under section 779B of the *Corporations Law*, register the body under this Division.

(2) The registration is subject to conditions determined by the Commissioner from time to time and notified to SCH by writing.

(3) The registration continues in force—

- (a) until cancelled on the application of the body registered; and
- (b) subject to an order of suspension made by the Commissioner for a specified period for contravention of, or failure to comply with, a provision of this Division or a condition of the registration.

Monthly return

90Q. (1) SCH must, on or before the fifteenth day of each month—

- (a) lodge with the Commissioner a return in the form and containing the particulars required by the Commissioner under the conditions of registration of SCH; and
- (b) pay to the Commissioner any duty paid to SCH under this Act in respect of an SCH-regulated transfer made in the preceding month.

(2) Where the Commissioner has reason to believe or suspect that SCH has contravened or failed to comply with a requirement of this section, the Commissioner may, on the basis of estimates if necessary, make an assessment of the amount that, in the Commissioner's opinion, represents unpaid duty.

(3) Where the Commissioner makes an assessment under subsection (2)—

- (a) the Commissioner must cause notice in writing of the assessment to be served on SCH; and
- (b) SCH is liable to pay any duty determined by the Commissioner under the assessment to be payable together with any further duty specified in the notice as being payable by way of penalty pursuant to subsection (4).

(4) Where SCH is liable to pay duty by virtue of an assessment under subsection (2), SCH is in addition liable to pay penalty duty equal to the amount of the duty that has been so assessed.

(5) The Commissioner may at any time remit any penalty duty, or part of any penalty duty, payable under this section.

Particulars reported by participants to be kept by SCH

90R. The particulars reported to SCH by an SCH participant under this Division must be kept by SCH in a legible written form, or so as to be readily convertible into such a form, for a period of not less than five years from the date on which the report is made.

Disclosure to SCH of information

90S. Nothing in this Act prevents the disclosure to SCH of information acquired in, or in connection with, the administration of this Part.

DIVISION 5—DUTY ON OTHER CONVEYANCES

Application of Division

90T. This Division applies to a conveyance or conveyance on sale of a marketable security only where—

- (a) the marketable security is—
 - (i) a marketable security of a company incorporated under the *Corporations Law*; or
 - (ii) a marketable security of a foreign company; or
 - (iii) a unit of a unit trust scheme; and
- (b) the conveyance is made otherwise than on a sale or purchase to which Division 2 applies; and
- (c) the conveyance is not an SCH-regulated transfer to which Division 3 applies.

Securities liable to duty

90U. Subject to section 90V, a conveyance or conveyance on sale of a marketable security to which this Division applies is only liable to duty if the security is—

- (a) a marketable security of a relevant company; or
- (b) a unit of a unit trust scheme the principal register of which is situated in this State; or

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- (c) a unit of a unit trust scheme in relation to which no register exists in Australia and—
 - (i) having as the manager of the scheme a relevant company or a natural person principally resident in this State; or
 - (ii) not having a manager but with a trustee that is a relevant company or a natural person principally resident in this State.

Proclaimed countries

90V. (1) No duty is payable under this Act in respect of a conveyance or conveyance on sale of a marketable security that is registered on a register kept within a proclaimed country.

(2) The Governor may, by proclamation, declare any country to be a proclaimed country for the purposes of this section and may, by subsequent proclamation, vary or revoke any such proclamation.

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PART 4
ACQUISITION OF CERTAIN INTERESTS IN COMPANIES
AND UNIT TRUST SCHEMES DUTIABLE AS CONVEYANCES OF LAND

Interpretation

91. (1) In this Part, unless the contrary intention appears—

"**acquisition**", in relation to an interest or a land use entitlement in a private company or scheme, includes (without limiting the generality of the expression) any acquisition by which a person becomes entitled to an interest (or an increase in an interest) or a land use entitlement in the company or scheme by means of—

- (a) the purchase, gift, issue or allotment of a share in the company or a unit in the scheme (other than the initial allotment of shares to a subscriber to a memorandum of the company or the initial allotment of units to a beneficiary on the creation of the unit trust scheme); or
- (b) the variation, abrogation or alteration of a right attaching to a share in the company or a unit in the scheme; or
- (c) the redemption, surrender or cancellation of a share in the company or a unit in the scheme,

and "**to acquire**" has a corresponding meaning;

"**corresponding law**" means a law of another State or of a Territory that is prescribed as a corresponding law for the purposes of the provision of this Part in which the expression appears;

"**interest**" means an interest (other than a land use entitlement) in a private company or scheme which, if the company or scheme were to be wound up immediately after the acquisition of the interest, would entitle the person acquiring the interest to participate (otherwise than as a creditor or other person to whom the company or scheme was liable at the time of the acquisition) in a distribution of property of the company or scheme;

"**land use entitlement**" means an interest in a private company or scheme which gives the person acquiring the interest an entitlement to the exclusive possession of real property in South Australia;

"**majority interest**" means an interest (other than a land use entitlement) in a private company or scheme which, if the company or scheme were to be wound up—

- (a) in the case of an interest acquired by a single acquisition—immediately after that acquisition; or
- (b) in the case of an interest acquired by two or more acquisitions—immediately after the later or latest of those acquisitions,

would entitle the person who acquired the interest, or that person together with any related person, to participate (otherwise than as a creditor or other person to whom the company or scheme was liable at the time of the acquisition) in the distribution of property of the company or scheme to an extent greater than 50 per cent of the value of the property distributable to all the holders of interests in the company or scheme;

"**majority shareholder**" in relation to a private company, means a person who would have a substantial shareholding in the company in accordance with section 708 of the *Corporations Law* if—

- (a) a reference in that section to the prescribed percentage were a reference to 50 per cent; and
- (b) the private company were a company within the meaning of Part 6.7 of the *Corporations Law*;

"**mining tenement**" means a right, permit, claim, lease or licence under the *Mining Act 1971* or the *Petroleum Act 1940*;

"**prior acquisition**", in relation to a private company or scheme, means the acquisition by a person or a related person of an interest in the company or scheme at any time during the period of two years immediately preceding the date of a relevant acquisition by the person of an interest in the company or scheme;

"**prior land use entitlement**", in relation to a private company or scheme, means the acquisition by a person or a related person of a land use entitlement in the company or scheme at any time during the period of two years immediately preceding the date of the acquisition by the person of a land use entitlement in the company or scheme which requires the lodgment of a statement under section 96;

"**private company**" means a company incorporated under the *Corporations Law* none of the shares of which are listed on an authorised stock exchange under the *Corporations Law*;

"**private scheme**" or "**scheme**" means a unit trust scheme—

- (a) that is not—
 - (i) the subject of a deed approved for the purposes of Division 5 of Part 7.12 of the *Corporations Law* or the corresponding provisions of a law in force in another State or in a Territory; or
 - (ii) an approved deposit fund or a pooled superannuation trust within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwlth);
- (b) that is the subject of a deed that has been so approved but—
 - (i) no units have been issued to the public; or
 - (ii) fewer than 50 persons are beneficially entitled to units under the scheme; or
 - (iii) 20 or fewer persons are beneficially entitled to 75 per cent or more of the total issued units under the scheme;

"**real property**" includes any estate or interest in land (including a mining tenement), whether the land is situated in the State or elsewhere, but does not include the estate or interest of a mortgagee, chargee or other encumbrancee in land or an interest arising by virtue of a warrant, writ or lien;

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"**relevant acquisition**", in relation to a private company or scheme, means the acquisition by a person of an interest in the company or scheme which requires the lodgment of a statement under section 94;

"**spouse**" of a person includes a *de facto* husband or wife of the person who has been cohabiting continuously with the person for at least five years.

(2) For the purposes of this Part (but subject to subsection (3))—

- (a) natural persons are related persons if—
- (i) they are members of a partnership within the meaning of the *Partnership Act 1891*; or
 - (ii) one is the spouse of the other or the relationship between them is that of parent and child; and
- (b) private companies are related persons if they are related bodies corporate within the meaning of the *Corporations Law*; and
- (c) trustees are related persons if any person is a beneficiary common to the trusts of which they are trustees; and
- (d) a natural person and a private company are related persons if the natural person is a majority shareholder, director or secretary in or of the company or in or of another private company that is a related body corporate of the company within the meaning of the *Corporations Law*; and
- (e) a natural person and a trustee are related persons if the natural person is a beneficiary of the trust of which the trustee is a trustee; and
- (f) a private company and a trustee are related persons if—
- (i) the company, or a majority shareholder, director or secretary in or of the company, is a beneficiary of the trust of which the trustee is a trustee; or
 - (ii) a related body corporate of the company (within the meaning of the *Corporations Law*) is a beneficiary of the trust of which the trustee is a trustee.

(3) For the purposes of this Part, persons are not related persons in relation to the acquisition of an interest in a private company or scheme if the Commissioner is satisfied that the persons were not acting together to achieve a common purpose.

(4) For the purposes of this Part, if the acquisition of an interest in a private company or scheme is, or is to be, evidenced by the transfer of shares or units, the acquisition will be taken to occur on the date on which the transfer is executed.

(5) For the purposes of this Part, a person does not acquire an interest in a private company or scheme by virtue only of acquiring an option, right of pre-emption, or other right to acquire an interest in the private company or scheme.

- (6) The following will not be regarded as land use entitlements for the purposes of this Part:
- (a) an entitlement in respect of a dwelling that is part of a scheme consisting of two or more dwellings designed for separate occupation where the entitlement is conferred by ownership of a share in a private company or a unit in a private scheme;
 - (b) an entitlement that arises by virtue of participating in a retirement village scheme within the meaning of the *Retirement Villages Act 1987*;
 - (c) any other prescribed entitlement.

Preliminary matters relating to private companies and schemes

92. (1) For the purposes of this section—

- (a) a private company or scheme is a subsidiary of another private company or scheme ("the holding company or scheme"), if—
 - (i) in the case of a private company—the company is a subsidiary of the holding company within the meaning of the *Corporations Law*; or
 - (ii) in any case—the holding company or scheme would, by reason of the linking of ownerships of interests in private companies or schemes, be entitled (together with any related person) to participate in a distribution of property of the private company or scheme to an extent greater than 50 per cent of the value of property distributable to all persons who have interests in the private company or scheme in the event that the private company or scheme, and all other private companies or schemes (if any) interposed between it and the holding company or scheme in the chain of ownerships of interests, were to be wound up; and
- (b) a reference to property owned by a private company or scheme is—
 - (i) in the case of a private company—a reference to property owned by the company beneficially; and
 - (ii) in the case of a private scheme—a reference to property owned by the trustee (in the capacity of trustee) of the unit trust scheme.

(2) For the purposes of this Part, a private company or scheme is entitled to property if—

- (a) the property is owned by the company or scheme; or
- (b) the property is owned by a private company or scheme that is a subsidiary of the company or scheme; or
- (c) the property is held under a discretionary trust and the company or scheme, or a private company or scheme that is a subsidiary of the company or scheme, is an object of that trust.

(3) Subsection (2)(c) does not apply if the Commissioner is satisfied that it would be unreasonable to regard the company or scheme as being entitled to the particular property.

(4) The unencumbered value of property to which a private company or scheme is entitled at a particular date is the sum of—

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- (a) in the case of property owned by the private company or scheme—the unencumbered value of that property at that date; and
- (b) in the case of property owned by a subsidiary of the private company or scheme—the amount to which, if the subsidiary and all other private companies or schemes (if any) interposed between the subsidiary and the private company or scheme in the chain of ownerships of interests were to be wound up on that date, the private company or scheme would be entitled (without regard to any liabilities of the subsidiary or any other private company or scheme in the chain of ownerships of interests) in respect of the unencumbered value at that date of property owned by the subsidiary at that date.

(5) For the purposes of this Part, the entitlement of a person (including another private company or scheme) to participate (otherwise than as a creditor or other person to whom the private company or scheme is liable) in the distribution of the property of a private company or scheme on a winding up of the private company or scheme is an entitlement to an amount calculated—

- (a) as if the winding up were carried out in accordance with the memorandum and articles of association of the private company or the instrument constituting the scheme, and with any law relevant to the winding up of such a private company or such a scheme, respectively, as the memorandum, articles, instrument and law exist at the date of the winding up; or
- (b) as if the person had, immediately prior to the date of the winding up, exercised all powers and discretions exercisable by the person by reason of having acquired an interest in the private company or scheme—
 - (i) to effect or compel an alteration to the memorandum or articles of association of the private company or to the instrument constituting the scheme; or
 - (ii) to vary the rights conferred by shares in the private company or by units in the scheme; or
 - (iii) to effect or compel the substitution or replacement of shares in the private company or units in the scheme with other shares in the private company or other units in the scheme,

in such manner as to maximise that amount,

whichever of the amounts under paragraph (a) or (b) results in the greater amount, unless the Commissioner determines, after consideration of the circumstances of the case, and where the calculation under paragraph (b) results in the greater amount, that the amount of the entitlement should be calculated under paragraph (a).

(6) Where—

- (a) a person acquires an interest in a private company or scheme; and
- (b) the company or scheme is entitled to real property; and
- (c) the circumstances of the case are such that had the real property been conveyed by the company or scheme to the person at the time of the acquisition, the conveyance would have been exempt from *ad valorem* duty,

then—

- (d) that property will not be taken into account for the purpose of determining whether a statement must be lodged under this Part in respect of the acquisition; and
 - (e) if such a statement must be lodged, the value of that property will not be taken into account for the purpose of determining the duty chargeable under this Part.
- (7) A private company or scheme does not own property beneficially by virtue only—
- (a) of having an option to purchase the property; or
 - (b) of being a purchaser under a contract of sale (the contract not having been completed).

Acquisitions to which this Part does not apply

93. (1) This Part does not apply to or in relation to the acquisition by a person of an interest or a land use entitlement in a private company or scheme if—

- (a) the acquisition is by a person in the capacity of—
 - (i) a receiver or trustee in bankruptcy; or
 - (ii) a liquidator; or
 - (iii) an executor or administrator of the estate of a deceased person; or
- (b) the acquisition occurred solely as the result of—
 - (i) an order of the Supreme Court under section 59C of the *Trustee Act 1936*; or
 - (ii) the making of a compromise or arrangement under Part 5.1 of the *Corporations Law* which has been approved by the court; or
 - (iii) the operation of the laws of survivorship; or
 - (iv) the distribution of the estate of a deceased person, including an acquisition occurring as the result of—
 - (A) a will, codicil or an order of a court varying or modifying the application of the provisions of a will or codicil; or
 - (B) an intestacy or an order of a court varying or modifying the application, in relation to the estate of a deceased person, of the provisions of a law relating to the distribution of the assets of persons who died intestate; or
- (c) the acquisition is by a person who has been the spouse (other than a *de facto* spouse) of the person from whom the interest or land use entitled is acquired and has occurred solely as the result of the dissolution of their marriage; or
- (d) the acquisition is effected by an agreement, conveyance or transfer exempt from *ad valorem* duty under another provision of this Act, other than section 90V; or
- (e) the acquisition is effected by an instrument that is deemed not to be a conveyance operating as a voluntary disposition *inter vivos* by virtue of section 71(5); or

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- (f) the acquisition occurs as part of—
 - (i) the amalgamation of two or more bodies incorporated under an Act of the State, other than the *Corporations Law*; or
 - (ii) the transfer under or pursuant to an Act of the undertaking of a body incorporated under an Act of the State, other than the *Corporations Law*; or
- (g) the acquisition is exempt from the operation of this Part by the regulations.

(2) Where—

- (a) a trustee acquires an interest or a land use entitlement in a private company or scheme; and
- (b) the acquisition of the interest or land use entitlement is included in a statement under this Part,

this Part does not apply to or in relation to—

- (c) any resultant acquisition by a beneficiary of the trust of an interest or land use entitlement in the private company or scheme; or
- (d) any subsequent transfer of the interest or land use entitlement from the trustee to a beneficiary of the trust.

(3) This Part does not apply to or in relation to an acquisition by a person of an interest or a land use entitlement in a private company or scheme if the Commissioner is satisfied—

- (a) that the acquisition occurred before the commencement of this Part; or
- (b) that the acquisition arises out of an agreement entered into before the commencement of this Part.

Statement of acquisition of certain interests in a private company or scheme

94. (1) If—

- (a) a person—
 - (i) acquires a majority interest in a private company or scheme; or
 - (ii) acquires an interest which, together with any other interest acquired during the preceding period of two years, results in the person having a majority interest in a private company or scheme; or
 - (iii) acquires an interest which, together with any other interest acquired during the preceding period of two years, and the interest of a related person acquired during the preceding period of two years, is a majority interest in a private company or scheme; or
 - (iv) having a majority interest (including an interest which, together with the interest of a related person, is a majority interest) acquires a further interest in a private company or scheme; and

- (b) the private company or scheme is, at the time of the acquisition, entitled to real property—
 - (i) the unencumbered value of which comprises not less than 80 per cent of the unencumbered value of all property to which it is entitled, whether in South Australia or elsewhere (other than property referred to in subsection (5)); and
 - (ii) the unencumbered value of which, insofar as the real property is situated in South Australia, is not less than \$1 000 000,

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

(2) Where—

- (a) shares or units in a private company or scheme are allotted to a person who already has an interest in the private company or scheme; and
- (b) those shares or units are allotted to the person as part of an allotment of shares or units to all shareholders or unitholders in the private company or scheme in proportion to their respective interests in the company or scheme; and
- (c) the allotment does not have the effect of varying, abrogating or altering the rights of the person as against the rights of the other shareholders or unitholders,

the person is not required, by virtue of that allotment of shares or units, to lodge a statement under this section.

(3) For the purposes of subsection (1)(a), if a person acquires an interest in a private company or scheme and within two years before or after the acquisition became or becomes entitled to a right to acquire a further interest in the company or scheme, and that right is exercised, the person will be taken to have acquired that further interest within the period of two years after the first mentioned acquisition, notwithstanding that the right is exercised after the expiration of that period.

(4) Subsection (3) does not apply in relation to the creation or exercise of a right of pre-emption.

(5) The following will not be taken into account under subsection (1)(b) for the purpose of determining the value of property to which a private company or scheme is entitled:

- (a) cash, whether in Australian currency or otherwise;
- (b) money on deposit with any financial institution, and negotiable instruments;
- (c) loans which by their terms are to be repaid on demand by the lender or within two years of the date of the loan;
- (d) loans to persons who, in relation to the private company or scheme, are related persons or loans to the spouse, child, parent, brother or sister of—
 - (i) in the case of a private company—a majority shareholder, director or secretary of the company; or
 - (ii) in the case of a private scheme—a trustee of, or beneficiary under, the scheme;

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(e) any prescribed property,

other than where it is shown to the Commissioner's satisfaction that the acquisition of, or dealing with, the relevant property has not occurred for the purpose of defeating the object of this Part.

(6) A statement under this section must be lodged within two months after the interest is acquired, or within such longer period as the Commissioner may approve in writing.

(7) The statement must be in a form approved by the Commissioner and must contain the following information:

(a) in relation to the relevant acquisition of an interest—

- (i) the name or names and address or addresses of the person or persons who has or have acquired the interest;
- (ii) the date of the relevant acquisition;
- (iii) the interest acquired;
- (iv) the total interest of the person, or the person and any related person, in the private company or scheme at that date;
- (v) the unencumbered value of all real property in South Australia to which the private company or scheme was entitled at that date;
- (vi) the unencumbered value of all property to which the private company or scheme was entitled at that date;

(b) in relation to each prior acquisition of an interest—

- (i) the name or names and address or addresses of the person or persons who has or have acquired the interest;
- (ii) the date of the prior acquisition;
- (iii) the interest acquired;
- (iv) the unencumbered value of all real property in South Australia to which the private company or scheme was entitled at that date;
- (v) the unencumbered value of all property to which the private company or scheme was entitled at that date;
- (vi) the amount of duty paid in respect of the prior acquisition;

(c) such other information as may be required by the Commissioner.

(8) The information that must be supplied in relation to an interest referred to in subsection (7)(a)(iii) or (b)(iii) includes—

- (a) the maximum percentage of the property of the private company or scheme to which the person required to lodge the statement, or that person together with any related person, would be entitled on a winding up of the private company or scheme by virtue of the acquisition of that interest (and no other) immediately after the acquisition of the interest (otherwise than as a creditor or other person to whom the private company or scheme was liable at the time of the acquisition) in a distribution of the property of the private company or scheme; and
- (b) the basis and method of calculation of that percentage.

Assessment and payment of duty—private company or scheme

95. (1) This Act applies (and duty will be assessed) in relation to a statement lodged under section 94 as if the statement were a conveyance operating as a voluntary disposition *inter vivos* of property of a value equal to—

- (a) where there have been no prior acquisitions of interests in the private company or scheme—the amount calculated by multiplying the unencumbered value of all real property in South Australia to which the private company or scheme is entitled at the date of the relevant acquisition by the percentage of the interest acquired by the relevant acquisition; or
- (b) where there have been one or more prior acquisitions of interests in the private company or scheme—the aggregate of—
 - (i) in respect of the relevant acquisition—the amount calculated by multiplying the unencumbered value of all real property in South Australia to which the private company or scheme is entitled at the date of the relevant acquisition by the percentage of the interest acquired by the relevant acquisition; and
 - (ii) in respect of each prior acquisition—each amount calculated by multiplying the unencumbered value (as at the date of the prior acquisition) of all real property in South Australia to which the private company or scheme was entitled at the date of the prior acquisition by the percentage of the interest acquired by the prior acquisition.

(2) The duty chargeable under this section will be reduced by the sum of the duty, if any, paid—

- (a) under this Part in respect of a prior acquisition; and
- (b) under a corresponding law in respect of the relevant acquisition or a prior acquisition; and
- (c) on any instrument which effects, acknowledges, evidences or records the acquisition of—
 - (i) the relevant acquisition; or
 - (ii) any prior acquisition in respect of which duty under this Part has not previously been paid.

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(3) If the Commissioner is satisfied that it would not be just and reasonable in the circumstances, the Commissioner may determine that an amount calculated in accordance with subsection (1)(b)(ii) and specified in the Commissioner's determination will not be aggregated for the purposes of this section.

(4) If duty is chargeable under this section on a statement in respect of a relevant acquisition acquired by a person and any prior acquisition acquired by a related person, the person and the related person are jointly and severally liable for the payment of the duty.

Statement of acquisition of land use entitlement

96. (1) If a person acquires a land use entitlement in a private company or scheme, the person must lodge with the Commissioner a statement in respect of the acquisition.

(2) A statement under this section must be lodged within two months after the interest is acquired, or within such longer period as the Commissioner may approve in writing.

(3) The statement must be in a form approved by the Commissioner and must contain the following information:

- (a) the name and address of the person who has acquired the land use entitlement; and
- (b) the title reference of the real property to which the land use entitlement applies; and
- (c) the date of acquisition of the land use entitlement; and
- (d) the unencumbered value of the real property to which the land use entitlement applies as at the date of acquisition; and
- (e) the same information as is specified in paragraphs (a), (b), (c) and (d) in respect of each prior land use entitlement acquired in relation to the private company or scheme by the person or a related person; and
- (f) the amount of duty paid in respect of the acquisition of each such prior land use entitlement; and
- (g) such other information as may be required by the Commissioner.

Assessment and payment of duty—land use entitlement

97. (1) This Act applies (and duty will be assessed) in relation to a statement lodged under section 96 as if the statement were a conveyance operating as a voluntary disposition *inter vivos* of property of a value equal to the unencumbered value of the real property the subject of the land use entitlement as at the date of acquisition aggregated with the unencumbered value of any real property which is the subject of any prior land use entitlement as at the date of acquisition of the prior land use entitlement.

(2) The duty chargeable under this section will be reduced by the sum of the duty, if any, paid—

- (a) under this Part in respect of a prior land use entitlement; and
- (b) under a corresponding law in respect of the acquisition of the land use entitlement or any prior land use entitlement; and
- (c) on any instrument which effects, acknowledges, evidences or records the acquisition of—

- (i) the land use entitlement; or
- (ii) any prior land use entitlement in respect of which duty under this Part has not previously been paid.

(3) If the Commissioner is satisfied that it would not be just and reasonable in the circumstances, the Commissioner may determine that a value referred to in subsection (1) will not be aggregated for the purposes of this section.

(4) If duty is chargeable under this section on a statement in respect of a land use entitlement acquired by a person and any prior land use entitlement acquired by a related person, the person and the related person are jointly and severally liable for the payment of the duty.

Special allowance for certain financial arrangements

98. (1) If—

- (a) the Commissioner is informed at the time that a person lodges a statement under section 94 or 96 that the relevant acquisition or the acquisition of the land use entitlement (as the case may be) has been effected for the purpose of securing financial accommodation; and
- (b) the Commissioner is satisfied that the acquisition has been effected for that purpose,

the statement is not, insofar as it relates to that acquisition, chargeable with duty to the extent provided by subsection (2).

(2) The statement will be chargeable with duty at the expiration of the period of five years after the date of the particular acquisition (or such longer period as may be determined by the Commissioner in a particular case) unless, within that period (or such longer period)—

- (a) the interest or land use entitlement is reacquired by the person from whom it was acquired; or
- (b) in the case of an acquisition on account of a mortgagee exercising a power of sale—the interest or land use entitlement is conveyed by the mortgagee to a third person in exercise of that power of sale.

(3) Sections 94 and 96 do not apply to the reacquisition by a person of an interest in a private company or scheme, or the reacquisition of a land use entitlement.

Valuation of real property

99. (1) The Commissioner may—

- (a) require a person who is required to lodge statement under this Part to furnish a further statement in a form approved by the Commissioner concerning the unencumbered value of any real property, or such other evidence of that value as the Commissioner thinks fit; and
- (b) assess duty in accordance with that evidence of value.

(2) If the Commissioner is not satisfied with the evidence of value furnished under subsection (1), the Commissioner may assess the duty chargeable on the basis of a valuation made at the request of the Commissioner by a person appointed by the Commissioner.

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Enforcement of Part

100. (1) A statement required to be lodged under section 94 or 96 will, for the purposes of this Act, be taken to be an instrument executed by the person required to lodge the statement on—

- (a) in the case of a statement under section 94—the date of the relevant acquisition;
- (b) in the case of a statement under section 96—the date of the acquisition of the land use entitlement.

(2) If a person who is required to lodge a statement under section 94 or 96 fails or refuses to lodge the statement within the time allowed by this Part—

- (a) the Commissioner may make an assessment, on the basis of such information as is available to the Commissioner and such estimates as the Commissioner considers reasonable, of the duty that would have been chargeable if the statement had been lodged (and the duty will be recoverable from the person who is required to lodge the statement); and
- (b) the person is guilty of an offence.

Penalty: \$10 000.

(3) It is a defence to a charge against subsection (2) for failing to lodge a statement under this Part within the time allowed by this Part to prove that the defendant did not know, and could not reasonably be expected to have known, of the existence of circumstances that required him or her to lodge the statement.

(4) Where a person is liable to pay duty by virtue of an assessment under subsection (2), the person is in addition liable to pay penalty duty equal to twice the amount of duty that has been so assessed.

(5) The Commissioner may, at any time, remit any penalty duty, or part of any penalty duty, payable under this section.

Notice may be registered on title

101. (1) If, in relation to the acquisition of an interest or a land use entitlement in a private company or scheme—

- (a) a statement has been lodged with the Commissioner under this Part, or should have been so lodged; and
- (b) the Commissioner has made an assessment of the duty chargeable under this Part in respect of the acquisition; and
- (c) the assessment has not been paid or has not been paid in full,

the Commissioner may, in relation to all or any of the real property to which the private company or scheme is entitled in South Australia, deliver to the Registrar-General a notice, in a form determined by the Registrar-General, setting out the amount of the assessment, and any penalty duty that may be payable under this Act.

(2) On receipt of a notice under subsection (1), the Registrar-General will, in relation to any real property referred to in the notice, enter in the Register Book—

- (a) the amount of the assessment; and

(b) the amount of any penalty duty.

(3) While an entry referred to in subsection (2) is in the Register Book, the Registrar-General must not register an instrument affecting the real property to which the entry relates unless—

(a) the instrument—

(i) was executed before the entry was made; or

(ii) has been executed under or pursuant to an agreement entered into before the entry was made; or

(iii) relates to an instrument registered before the entry was made;

(b) the instrument is an instrument of a prescribed class;

(c) the Commissioner consents to the registration in writing;

(d) the instrument is expressed to be subject to the operation of the notice under this section;

(e) the instrument is a duly stamped conveyance—

(i) that results from a sale of the real property under section 103; or

(ii) that results from the exercise of a power of sale under a mortgage, charge or encumbrance in existence before the entry was made.

(4) An instrument registered under subsection (3)(a), (b) or (c) has effect, in relation to the entry, as if it had been registered before the entry was made.

(5) If an instrument is registered under subsection (3)(e), the entry will be taken to be cancelled by the registration of the instrument and the Registrar-General must make the appropriate entries to give effect to the cancellation.

(6) If the duty in respect of which an entry has been made in the Register Book is paid, the Commissioner must deliver to the Registrar-General a notice to that effect.

(7) The Commissioner may, notwithstanding that the duty in respect of which an entry has been made in the Register Book has not been paid, discharge or vary a notice given under subsection (1) (although the Commissioner may only vary a notice by releasing real property from the operation of the notice).

(8) On receipt of a notice under subsection (6) or (7), the Registrar-General will, according to the terms of the notice, cancel or vary any relevant entry in the Register Book (and the real property to which that notice relates then ceases to be subject to the operation of this section).

(9) Where the Commissioner delivers a notice to the Registrar-General under this section, the Commissioner must send a copy of the notice to the registered proprietor of the real property to which the notice relates with a direction that the registered proprietor must immediately send a copy of the notice to each person that the registered proprietor believes may be affected by the operation of this section.

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(10) The registered proprietor must not fail to comply with a direction in a notice under subsection (9).

Penalty: \$1 000.

(11) Nothing in this section affects a person's ability to lodge with the Registrar-General a caveat relating to any real property referred to in a notice under this section.

Charge on real property

102. If an entry is made in the Register Book under section 101 in relation to the certificate of title of any real property, the duty to which the relevant notice relates is a charge on the real property and the charge continues in force until the duty is paid, or the entry is cancelled (whichever first occurs).

Power of sale

103. (1) If—

- (a) any duty is not paid at the expiration of six months from the date of an assessment under this Part; and
- (b) an entry has been made under section 101 in relation to the certificate of title of real property,

the Commissioner may publish in the *Gazette* a notice in which the Commissioner—

- (c) sets out a brief description of the real property and the amount of duty payable; and
- (d) states that if the duty is not paid within three months from the publication of the notice, the Commissioner will apply to the Supreme Court for an order for the sale of the real property.

(2) A copy of a notice under subsection (1) must be sent to the registered proprietor of the real property to which the notice relates, and to any other person with a registered interest in the property.

(3) The Commissioner may, if the duty is not paid in full within the three month period referred to in subsection (1), apply to the Supreme Court for an order for the sale of the real property to which the notice under that subsection relates.

(4) The Supreme Court may, on an application under subsection (3), make an order for the sale of the real property.

(5) Any money received in respect of the sale of real property under subsection (4) will be applied as follows:

- (a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section; and
- (b) secondly—in discharging any liabilities secured by any instrument registered before the entry was made under section 101(2), or that is taken to have such effect by virtue of section 101(4); and
- (c) thirdly—in payment of the duty assessed under this Act; and
- (d) fourthly—in discharging any other liabilities secured by registered instrument; and

- (e) fifthly—in discharging any other liabilities secured by unregistered instrument of which the Commissioner has notice; and
- (f) sixthly—in discharging any liability to the Crown for rates or taxes, or any other prescribed liability to the Crown in respect of the land; and
- (g) seventhly—in payment to the registered proprietor of the real property at the time of the sale.

(6) Where real property is sold in pursuance of this section, a conveyance executed by an officer of the Supreme Court nominated by the Court will, on registration or enrolment, operate to vest title to the real property in the purchaser.

(7) The title vested in the purchaser will be free of—

- (a) any charge under this Part; and
- (b) all other liabilities discharged under subsection (5); and
- (c) any other liability that may exist on account of any mortgage, charge or encumbrance.

(8) The Registrar-General must, on production of a conveyance executed under subsection (6), register the conveyance and, notwithstanding *The Real Property Act 1886* production of the duplicate certificate of title will not be required (but, if the duplicate certificate of title is not produced, the Registrar-General will cancel the existing certificate of title and issue a new certificate in the name of the transferee).

Substituted service

104. If the Commissioner cannot, after making reasonable inquiries, ascertain the address of a person to whom a notice is to be sent under section 101 or 103, the Commissioner may effect service of the notice by—

- (a) placing a copy of the notice in a newspaper circulating generally in the State; and
- (b) causing a copy of the notice to be left in a conspicuous place on the real property to which the notice relates.

Reassessment of duty in certain cases

105. (1) If a person, under or by virtue of an agreement, acquires an interest or a land use entitlement in a private company or scheme, and the agreement is subsequently rescinded, annulled or otherwise terminated (except by completion)—

- (a) any obligation to lodge a statement under this Part on account of the acquisition, or to include the acquisition in a statement under this Part, ceases; and
- (b) if the acquisition has been included in a statement under this Part, the Commissioner may, on his or her own initiative or on application to the Commissioner in a form approved by the Commissioner, assess or reassess the liability to duty under this Part as if the interest or land use entitlement had never existed.

(2) If a private company or scheme, by virtue of an agreement, is entitled to property, and the agreement is subsequently rescinded, annulled or otherwise terminated (except by completion)—

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- (a) any obligation to lodge a statement under this Part on account of the ownership of that property by the company or scheme, or to include that property in a statement under this Part, ceases; and
 - (b) if the property has been included in a statement under this Part, the Commissioner may, on his or her own initiative or on application to the Commissioner in a form approved by the Commissioner, assess or reassess the liability to duty under this Part as if the private company or scheme had never been entitled to the property.
- (3) If, on a reassessment of duty under this section, the initial assessment of duty is altered—
- (a) any amount overpaid must be immediately refunded to the person who paid the duty; and
 - (b) any amount found to be owing must be paid by the person who lodged the relevant statement within two months after the person receives written notification of the amount payable (or within such longer period as the Commissioner may approve in writing).

Company to lodge a statement

105A. (1) Where—

- (a) by a relevant acquisition, a person acquires a majority interest in a private company; or
- (b) a person requires a land use entitlement in a private company,

the company must lodge a statement under this section with the Commissioner.

(2) A statement under this section—

- (a) must be lodged within two months after the majority interest or land use entitlement is acquired (or within such longer period as the Commissioner may approve in writing); and
- (b) must be in a form approved by the Commissioner.

(3) If a company that is required to lodge a statement under this section fails or refuses to lodge the statement within the time allowed under this section, the company is guilty of an offence.

Penalty: \$5 000.

(4) It is a defence to a charge against subsection (3) for failing to lodge a statement under this section within the time allowed under this section to prove that the defendant did not know, and could not reasonably be expected to have known, of the existence of circumstances that required the company to lodge the statement.

General ability to recover duty

105B. Nothing in this Part prevents a person who pays duty from recovering the amount of the payment from another person.

Specific ability of private company or scheme to pay duty

105C. (1) A private company or scheme may pay the duty chargeable under this Part on account of the acquisition by a person of an interest or land use entitlement in the company or scheme.

- (2) If a private company or scheme makes a payment under subsection (1)—
- (a) the payment will be taken to be made on behalf of the person who acquired the interest or land use entitlement; and
 - (b) without derogating from the right of that person to lodge an objection or appeal, the company or scheme is also entitled to object or appeal against the Commissioner's assessment of duty; and
 - (c) the amount paid may be deducted by the company or scheme from any money payable by the company or scheme to the person, or may be recovered by the company or scheme as a debt due to the company or scheme in a court of competent jurisdiction (although if an objection or appeal is lodged and as a result the amount of duty chargeable is reduced, the amount that may be deducted or recovered under this provision is adjusted accordingly).
- (3) Notwithstanding any time limit that may apply under section 24, an objection or appeal under subsection (2)(b) may be lodged within 21 days after the private company or scheme makes a payment under subsection (1).

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**PART 5
MISCELLANEOUS PROVISIONS**

Spoiled or unused stamps

106. Subject to any regulations made under this Act, the Commissioner may, on the application of any person in possession of stamps or stamped material unused or rendered useless by being inadvertently spoiled, give to that person, in lieu of the stamps or stamped material so spoiled or unused, other stamps (of the same or another denomination) of the same value or, at his discretion, money of the same value, deducting the proper allowance on purchase of stamps of the same description; but the Commissioner may, if he thinks it just to do so, refrain from making any such deduction.

Transfers of marketable securities not to be registered unless duly stamped

106A. (1) A transfer of a marketable security to which Division 5 of Part 3A applies must not be registered by the corporation, company or society by which the security was issued—

- (a) unless a proper instrument of transfer has been delivered to the corporation, company or society in which, in the case of a transfer by way of sale, the consideration therefor is expressed in terms of money and the actual date of sale and the date or dates of execution by the transferor and transferee are set out; and
- (b) unless the instrument is duly stamped under this Act or is, under subsection (1b), deemed to have been duly stamped.

(1a) Notwithstanding any other provision of this Act, where marketable securities are transferred pursuant to a takeover scheme, the Commissioner may, if he thinks it expedient to do so, upon payment of the duty payable in respect of the instruments of transfer, denote payment of the duty on a statement in the prescribed form.

(1b) Where payment of duty is denoted on a statement pursuant to subsection (1a), each instrument of transfer to which the statement relates shall be deemed to have been duly stamped.

(2) A transfer of a marketable security (other than an SCH-regulated transfer) on a sale or purchase to which Division 2 of Part 3A applies must not be registered by the corporation, company or society by which the security was issued—

- (a) unless a proper instrument of transfer has been delivered to the corporation, company or society; and
- (b) unless the transfer is, under section 90E(3), deemed to have been duly stamped.

(3) After a transfer of any marketable security has been registered by the corporation, company or society in this State, the instrument of transfer shall be retained in this State by the corporation, company or society for a period of not less than three years.

(4) If a corporation, company or society contravenes or fails to comply with any of the provisions of this section, that corporation, company or society is guilty of an offence.

Penalty: \$2 000.

(5) The right or title of any transferee or subsequent holder of any marketable security shall not be invalidated by reason only that the transfer of the security was registered by a corporation, company or society in contravention of the provisions of this section.

Penalty for false or misleading information

107. A person who in providing or recording any information as required under this Act makes a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) is guilty of an offence.

Penalty: If the person acted with intent to evade the payment of duty—\$10 000 plus an amount equal to twice the amount of duty sought to be evaded or imprisonment for 2 years.

In any other case—\$2 000.

Expiation fee: Division 7 fee.

Penalties for certain offences

108. (1) Any person who—

- (a) forges any die or stamp;
- (b) impresses any material with a forged die;
- (c) cuts, tears or in any way removes from any material any stamp with intent to make fraudulent use of the stamp or of any part thereof;
- (d) mutilates any stamp with intent to make fraudulent use of any part thereof;
- (e) fraudulently fixes or places upon any material, or upon any stamp, any stamp or part of a stamp which has been cut, torn or in any way removed from any other material or out of or from any other stamp;
- (f) erases or otherwise removes from any stamped material any name, sum, date or other matter or thing therein written with the intent that any fraudulent use should be made of the stamp upon the material;
- (g) knowingly sells or exposes for sale, or utters or uses, any forged stamp;
- (h) knowingly and without lawful excuse (the proof of which lawful excuse shall lie on the person accused) has in his possession any forged die or stamp, or any stamp or part of a stamp which has been fraudulently cut, torn or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date or other matter or thing has been fraudulently erased or otherwise removed,

shall be guilty of an offence and liable to imprisonment, with or without hard labour, for a term of not less than one year and not more than seven years.

(2) Any person who causes to be done, or knowingly assists in doing, any of the acts mentioned in subsection (1)(a) to (h) shall be deemed to be guilty of the principal offence and shall be punishable accordingly.

Penalty for fraud

109. Any person who—

- (a) fraudulently removes or causes to be removed from any instrument any adhesive stamp, or fraudulently affixes to any instrument any adhesive stamp which has been removed from any other instrument, with intent that the stamp may be used again; or

Stamp Duties Act 1923

- (b) knowingly sells, offers for sale or utters any adhesive stamp which has been removed from any instrument, or utters any instrument having thereon any adhesive stamp which to his knowledge has been so removed; or
- (c) practises or is concerned in any fraudulent act, contrivance or device with intent to evade any duty under this Act,

is guilty of an offence.

Penalty: \$10 000 plus an amount equal to twice the amount of any duty sought to be evaded.

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Offences

110A. (1) An offence against this Act or any provision thereof may be prosecuted either summarily or upon information in the Supreme Court, but a person shall not be liable to be punished more than once in respect of the same offence.

(2) A summary prosecution for an offence against this Act may be commenced—

- (a) within five years from the date of the alleged offence; or
- (b) if the Treasurer authorises the prosecution, after the expiration of five years from that date.

Remedy for misappropriation

111. (1) The Supreme Court may, upon application by, or on behalf of, the Commissioner, grant a rule requiring any person who has received money payable by way of duty or penalty under this Act, or the executor or administrator of any such person, to show cause why he should not deliver to the Commissioner an account upon affidavit of any duty or sum of money received by that person, executor or administrator and why it should not be forthwith paid to the Commissioner.

(2) The Court may make absolute such a rule and enforce by attachment or otherwise the payment of any such duty or sum of money as appears to be due, together with costs.

Regulations

112. (1) The Governor may make such regulations and may authorise such forms as may be necessary from time to time for carrying this Act into effect and may, by any such regulation, impose a penalty not exceeding \$2 000 for any breach thereof.

(2) Every such regulation and form, when published in the *Gazette*, shall have the force of law.

(3) Every such regulation shall be laid before both Houses of Parliament forthwith if Parliament is sitting and, if not, then within thirty days after the commencement of the next session.

(4) Regulations made under this section may prescribe any matters necessary or convenient to be prescribed or which are required or, expressly or by implication, authorised or permitted to be prescribed for the purposes of this Act.

(5) Without limiting the generality of subsection (4), the regulations may—

- (a) be of general or limited application; and

- (b) require the use of forms approved by the Commissioner for documents required or authorised to be used for the purposes of this Act or the regulations; and
- (c) leave any other matter to be determined, varied or regulated according to the discretion of the Commissioner; and
- (d) make different prescriptions according to prescribed circumstances.

* * * * *

Exemption from stamp duty

114. (1) The Governor may, by proclamation, exempt any body or authority established by statute from the payment of duty under this Act.

(2) The Governor may, by subsequent proclamation, vary or revoke a proclamation under this section.

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SCHEDULES

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SCHEDULE 2

Nature of Instrument

Amount of Duty
\$

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ANNUAL LICENCE or MONTHLY RETURN to be taken out or lodged by any company, person or firm of persons, whether corporate or unincorporate, which carries on or proposes to carry on in South Australia any life, personal accident, fire, fidelity, guarantee, livestock, plate glass, marine or other assurance or insurance business and whether the head office or principal place of business of that company, person or firm is in South Australia or elsewhere—

- (a) in the case of an annual licence where the company, person or firm has received or in any manner charged in account (whether directly or by agents) premiums relating to life insurance within the period of 12 months preceding the year for which the licence is to be taken out—for every \$100 or fractional part of \$100 of those premiums 1.50
(ab) in the case of a monthly return where the company, person or firm has received or in any manner charged in account (whether directly or by agents) premiums relating to policies of any kind (other than life insurance policies) within the month preceding the month in which the return is required to be lodged—for every \$100 or fractional part of \$100 of those premiums 8.00
(b) Where the company, person or firm has not, prior to applying for an annual licence, transacted any assurance or insurance business—
(i) if the annual licence is required for the full period of twelve months 100.00
(ii) if the annual licence is required for a shorter period than twelve months, a proportionate part of 100.00

For the purposes of this item, subject to the exemptions mentioned hereunder—

* * * * *

- (2) the premiums referred to in paragraph (a) are net premiums and shall be counted so as to exclude any amount in respect of stamp duty on the annual licence received or charged on or after 1 January, 1986, any commission or discount and any portion of those premiums actually paid by way of reinsurance effected in South Australia with any other such company, person or firm; and
(2a) in the case of an annual licence to be taken out for the year commencing on 1 January, 1987, or a subsequent year, the amount of any premiums refunded during the period of 12 months preceding the year for which the annual licence is to be taken out (whether those premiums were received during that preceding period or earlier) shall be deducted from the amount of the premiums referred to in paragraph (a); and
(2b) the premiums referred to in paragraph (ab) must be counted so as to exclude any amount in respect of stamp duty received or charged on or after 1 January 1986, and any portion of those premiums actually paid by way of reinsurance effected in South Australia with any other such company, person or firm; and

- (2c) in the case of a monthly return, there must be deducted from the amount of the premiums referred to in paragraph (ab) the amount of any refunds in respect of premiums (whenever received) made after the end of the month in respect of which duty was last paid under this item by the company, person or firm and before the commencement of the month in which the return is required to be lodged; and
- (3) no premiums received by any such company, person or firm for insurance risks outside South Australia, except life and personal accident insurance risks outside South Australia, shall be counted; and
- (3a) in the case of a life insurance policy, any amount that is paid on or after 1 January, 1986, from an account established for investment to an account established for insurance of a risk shall be deemed to be a premium received under that policy for insurance of that risk; and
- (4) the duty in respect of any one licence under paragraph (a) shall not in any case be less than \$100.

Exemptions—

- 1. Premiums received or charged under any private guarantee fidelity insurance scheme promoted amongst and sustained solely for the benefit of the officers and servants of any particular public department, company, person or firm and not extended, either directly or indirectly, beyond such officers and servants.
- 2. Premiums received or charged under any scheme referred to in exemption 1 promoted amongst and sustained solely for the benefit of the officers and members of any registered friendly society or branch thereof and not extended, either directly or indirectly, beyond such officers and members.
- 3. Any premium or portion of a premium received or charged on or after 1 January, 1986, under a life insurance policy in respect of investment and not in respect of any risk insured by the policy.
- 4. Any premium received or charged under a policy in respect of a life or personal accident insurance risk where the principal place of residence of the policy owner is in the Northern Territory and the policy is registered in a registry kept in the Northern Territory pursuant to the *Life Insurance Act 1945* of the Commonwealth.
- 5. Any premium or portion of a premium received or charged on or after the first day of January, 1985, under a policy of workers compensation insurance where the premium or portion is referable to insurance against liability to pay workers compensation in respect of workers under the age of 25 years.
- 6. Any premium or portion of a premium received or charged on or after the first day of January, 1985, under a policy of insurance by a registered medical benefits organisation within the meaning of the *National Health Act 1953* of the Commonwealth where the premium or portion is referable to insurance against medical, dental or hospital expenses.
- 7. Any premium or portion of a premium received or charged on or after 1 January, 1986, under any life insurance policy, being a policy for the payment of an annuity to the person insured.
- 8. Any premium or portion of a premium received or charged on or after 1 November, 1986, in respect of the insurance of the hull of a marine craft used primarily for commercial purposes or in respect of the insurance of goods carried by railway, road, air or sea or of the freight on such goods.

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APPLICATION to Register a Motor Vehicle or APPLICATION to Transfer the Registration of a Motor Vehicle—

(A) *Component payable in respect of Registration*

Where the value of the motor vehicle (not being a commercial motor vehicle or a trailer)—

(a) does not exceed \$1 000—for every \$100 or fractional part of \$100 of that value	1.00
(b) exceeds \$1 000, but does not exceed \$2 000	\$10.00 plus \$2.00 for every \$100 or fractional part of \$100 of the excess over \$1 000 of that value
(c) exceeds \$2 000, but does not exceed \$3 000	\$30.00 plus \$3.00 for every \$100 or fractional part of \$100 of the excess over \$2 000 of that value
(ca) exceeds \$3 000	\$60.00 plus \$4.00 for every \$100 or fractional part of \$100 of the excess over \$3 000 of that value

Where the value of the motor vehicle (being a commercial motor vehicle or a trailer)—

(d) does not exceed \$1 000—for every \$100 or fractional part of \$100 of that value	1.00
(e) exceeds \$1 000, but does not exceed \$2 000	\$10.00 plus \$2.00 for every \$100 or fractional part of \$100 of the excess over \$1 000 of that value
(f) exceeds \$2 000	\$30.00 plus \$3.00 for every \$100 or fractional part of \$100 of the excess over \$2 000 of that value

The duty on an application by a person beneficially entitled under the will or on the intestacy of a deceased person to the motor vehicle to which the application relates shall, irrespective of the value of the motor vehicle, be \$4, but in any other case the duty in respect of any one application shall not be less than \$5.

Exemptions from payment of this component—

1. Any application to register a motor vehicle made by a person who carries on the business of selling motor vehicles if the application is made by that person for the purpose of selling the motor vehicle to which the application relates to another person in the ordinary course of that business or for the purpose of demonstrating such motor vehicle to prospective purchasers thereof and such motor vehicle has not been previously registered (whether in this State or elsewhere in the Commonwealth).
2. Any application to register a motor vehicle that has been previously registered (whether in this State or elsewhere in Australia) or any application to transfer the registration of a motor vehicle that has been previously registered (whether in this State or elsewhere in Australia) to a dealer if the application is being made by that dealer for the purpose of the resale by him to another person of the motor vehicle to which the application relates and the resale is in the ordinary course of the business of the dealer.
3. Any application to register a motor vehicle or to transfer the registration of a motor vehicle made by a person or body who or which is entitled to registration, without fee, of the vehicle to which the application relates.
4. Any application to register or to transfer the registration of a trailer that is not a heavy vehicle.
5. Any application to register a motor vehicle or to transfer the registration of a motor vehicle made by the Crown or by any statutory body or authority which holds its assets for and on account of the Crown or by any person on behalf of the Crown or of any such body or authority.
- 5A. Any application to register a motor vehicle or to transfer the registration of a motor vehicle made under the scheme established for the registration of motor vehicles used for or in connection with Government or Government sponsored services and known as "the Continuous Government Registration Scheme".
6. Any application to register a motor vehicle or to transfer the registration of a motor vehicle to the extent that *ad valorem* stamp duty has already been paid on another instrument by which or by virtue of which the property in the motor vehicle was legally or equitably transferred to, or vested in, the applicant.
7. Any application to register or to transfer the registration of a motor vehicle made by an executor or administrator of, or by any person administering the estate of, a deceased person if the application is made only for the purpose of the transfer of the motor vehicle to a person beneficially entitled thereto or for the purpose of the sale of the motor vehicle in the course of winding up the estate.
8. Any application to transfer the registration of a motor vehicle made by an owner who has repossessed that motor vehicle pursuant to a hire-purchase agreement or made by an owner in pursuance of the return of the motor vehicle to that owner by the hirer voluntarily where the vehicle is the subject of a hire-purchase agreement or upon the termination of a hiring agreement (not being a hire-purchase agreement).
9. Any application to register or to transfer the registration of a motor vehicle in which seating for not less than twelve adult passengers is provided and which is to be used solely or predominantly for the carriage of passengers for hire or reward.
10. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle to, the name of a council as defined in the *Local Government Act 1934* or a controlling authority as defined in Part 13 of that Act.

Stamp Duties Act 1923

10A. Any application to register a motor vehicle where the vehicle is to be conditionally registered under section 25 of the *Motor Vehicles Act 1959* and the application is of a class declared by regulation under that Act to be exempt from stamp duty.

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11. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle to, the name of a person entitled under section 38 of the *Motor Vehicles Act 1959* to have that motor vehicle registered at a reduced registration fee.

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12. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle to, the name of a person who satisfies the Registrar of Motor Vehicles—

- (a) that he is licensed under the law of another State or Territory of the Commonwealth to carry on the business of buying, selling or exchanging second-hand or used motor vehicles; and
- (b) that the application is being made by that person for the purpose of the resale by him to another person of the motor vehicle to which the application relates; and
- (c) that such resale is in the ordinary course of the business of that person.

13. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle to, the name of a person who satisfies the Registrar of Motor Vehicles—

- (a) that he is the owner of the motor vehicle; and
- (b) that, in consequence of the loss by him of the use of one or both of his legs, he is permanently unable to use public transport; and
- (c) that the motor vehicle will be wholly or mainly used for transporting himself; and
- (d) that he is not enjoying the benefit of this exemption in respect of any other motor vehicle currently owned by him.

14. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle to, the name of a person who satisfies the Registrar of Motor Vehicles—

- (a) that the motor vehicle is the subject of a hire-purchase agreement; and
- (b) that he is a person to whom the hirer's rights under the agreement have passed by assignment,

but, if *ad valorem* stamp duty has already been paid in respect of the assignment of such rights on the instrument by which, or by virtue of which, such rights were assigned, this exemption shall apply only to the extent of the amount of such duty so paid.

- 15. Any application to register a motor vehicle where—
 - (a) immediately before the date on which the application is made, the motor vehicle was registered in the name of the applicant (and not in the name of any other person) under the law of this State; or
 - (ab) the applicant satisfies the Registrar of Motor Vehicles that, immediately before the date on which the application is made, the motor vehicle was registered in the name of the applicant (and not in the name of any other person) under the law of the Commonwealth; or
 - (b) the applicant satisfies the Registrar of Motor Vehicles that, immediately before the date on which the application is made—
 - (i) the motor vehicle was registered in the name of the applicant (and not in the name of any other person) under the law of another State or a Territory of the Commonwealth; and
 - (ii) the applicant—
 - (A) was a resident of that State or Territory; or
 - (B) carried on a business in that State or Territory.

16. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle into, the name of the East Torrens County Board of Health constituted under the *Health Act 1935*.

- 17. Any application to transfer the registration of a motor vehicle made by a mortgagee—
 - (a) who has, in accordance with the *Consumer Transactions Act 1972*, taken possession of the motor vehicle in pursuance of a consumer mortgage; or
 - (b) to whom the motor vehicle has been voluntarily returned by the mortgagor in pursuance of the *Consumer Transactions Act 1972*.

18. Any application to register or to transfer the registration of a tractor or item of farm machinery owned by a primary producer.

(B) *Component payable in respect of a Policy of Insurance*

Where the application is for registration of the vehicle for a period of—

(a) less than 12 months (for each 3 months or part of each 3 months in the period of registration)	4.00
(b) for 12 months	15.00

Exemptions from payment of this component—

- 1. Policy of insurance where the application for registration is made by a person or body who or which is entitled to registration of the motor vehicle to which the application relates without fee.
- 2. Policy of insurance where the application is for registration of a trailer that is not a heavy vehicle.
- 3. Policy of insurance where the application for registration is made by the Crown or by any statutory body or authority which holds its assets for and on account of the Crown or by any person on behalf of the Crown or of any such body or authority.

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- 3A. Policy of insurance where the motor vehicle is or is to be registered under the scheme established for the registration of motor vehicles used for or in connection with Government or Government sponsored services and known as "the Continuous Government Registration Scheme".
- 4. Policy of insurance where the application is for registration of a motor vehicle in which seating for not less than twelve adult passengers if provided and which is used solely or predominantly for the carriage of passengers for hire or reward.
- 5. Policy of insurance where the application for registration is made by a council as defined in the *Local Government Act 1934* or a controlling authority as defined in Part 13 of that Act.
- 5A. Policy of insurance where the motor vehicle is to be conditionally registered under section 25 of the *Motor Vehicles Act 1959* and the application for registration is of a class declared by regulation under that Act to be exempt from stamp duty.

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- 6. Policy of insurance where the application for registration is made by a person entitled under section 38 of the *Motor Vehicles Act 1959* to have the motor vehicle in respect of which the application is made registered at a reduced fee.

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- 7. Policy of insurance where the application for registration is made by a person who satisfies the Registrar of Motor Vehicles—

- (a) that he is the owner of the motor vehicle; and
- (b) that, in consequence of the loss by him of the use of one or both of his legs, he is permanently unable to use public transport; and
- (c) that the motor vehicle will be wholly or mainly used for transporting himself; and
- (d) that he is not enjoying the benefit of this exemption in respect of any other motor vehicle currently owned by him.

- 8. Policy of insurance where the application for registration is made by a person who satisfies the Registrar of Motor Vehicles—

- (a) that he is the owner of the motor vehicle;
- (b) that he is entitled as the holder of—
 - (i) a State concession card issued by the Department of Community Welfare; or
 - (ii) a pensioner entitlement card issued under any Act or law of the Commonwealth,

to travel on public transport in this State at reduced fares.

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BILL OF EXCHANGE payable on demand other than a cheque or payment order to which either of the following two paragraphs applies

BILL OF EXCHANGE, being a cheque drawn on a registered financial institution within the meaning of the *Financial Institutions Duty Act 1983* on the Reserve Bank of Australia or on a bank that does not carry on business in South Australia 0.10

BILL OF EXCHANGE, being a payment order 0.10

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BILL OF EXCHANGE and PROMISSORY NOTE drawn or made out of South Australia and duly stamped with *ad valorem* duty under the law of another State of the Commonwealth of Australia 0.10

BILL OF EXCHANGE and PROMISSORY NOTE (not being a bill or note referred to in the paragraph immediately preceding this paragraph) which is expressed to be payable at a fixed period of not more than one hundred and twenty days after date or sight—

In respect of each ten days and also of any fractional part of ten days of that period (a period expressed by reference to a month being reckoned on the basis of thirty days for a month), for every \$100 and also for any fractional part of \$100 of the amount or value of the money for which the bill or note is drawn or made 0.01

BILL OF EXCHANGE and PROMISSORY NOTE of any other kind (except a bank note)—

For every \$100 and also for any fractional part of \$100 of the amount or value of the money for which the bill or note is drawn or made 0.12

Exemptions—

1. Bill, note, bond, debenture, coupon or interest warrant issued by, or on behalf of, or guaranteed by, the Government of South Australia.
2. Draft or order for the payment of money issued by any duly authorised officer of the Government on account of the Public Service.
3. Post office order or postal note.
4. Any cheque—
 - (a) drawn by the customer of a bank against an account kept with the bank; or
 - (b) drawn on behalf of a customer by a building society or credit union that is a society for the purposes of the *Financial Institutions (South Australia) Code*,

where the customer is a body established for a charitable, educational, benevolent, religious, sporting, community or philanthropic purpose.
- 4A. Any payment order given by a body established for a charitable, educational, benevolent, religious, sporting, community or philanthropic purpose.
5. Draft or order drawn by any bank in South Australia upon any other bank in South Australia, not payable to bearer or to order and used solely for the purpose of settling or clearing any account between such banks.
6. Letter written by any bank in South Australia to any other bank in South Australia directing the payment of any sum of money, the same not being payable to bearer or to order and such letter not being sent or delivered to the person to whom payment is to be made or to any person on his behalf.
7. Letter of credit granted in South Australia authorising drafts to be drawn out of South Australia.

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8. Cheque drawn by any registered friendly society or by, or on behalf of, any community or subsidised hospital approved by the Chief Secretary.

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CONVEYANCE or TRANSFER on sale of any property (not otherwise charged), including contract or agreement for sale—

(a) In the case of the sale of any stock or marketable security (where no return lodged with the Commissioner under section 90D or furnished under section 90G relates to the sale)—

- (i) if the stock or marketable security is listed on the Australian Stock Exchange—for every \$100 and any fractional part of \$100 of the value of the stock or marketable security 0.30
(ii) if the stock or marketable security is not listed on the Australian Stock Exchange—for every \$100 and any fractional part of \$100 of the value of the stock or marketable security 0.60

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(b) In any other case (not being a conveyance or transfer on sale of any stock or marketable security)—

Where the value of the property conveyed—

Table with 2 columns: Description of value ranges and corresponding stamp duty rates. Includes rows for values up to \$12,000, \$30,000, \$50,000, and \$100,000.

Exceeds \$100 000 but does not exceed \$1 000 000	\$2 830 plus \$4.00 for every \$100 or fractional part of \$100 of the excess over \$100 000 of that value
Exceeds \$1 000 000	\$38 830 plus \$4.50 for every \$100 or fractional part of \$100 of the excess over \$1 000 000 of that value

Exemption—

1. Conveyance or transfer of a mortgage or an interest in a mortgage.
2. Conveyance or transfer of any debenture, debenture stock, bond, note or other security of a government or of any municipal or other corporation, company or society (whether constituting a charge on the assets of the government, or of the municipal or other corporation, company or society or not).
3. Conveyance or transfer of a marketable security to or by a person who is a trustee under section 90G.
4. In the case of an amalgamation under the *Industrial and Employee Relations Act 1994* any conveyance or transfer of property by an amalgamating association to the association formed by the amalgamation.
5. In the case of an amalgamation under Part IX of the *Industrial Relations Act 1988* of the Commonwealth, any conveyance or transfer of property to an amalgamated organisation from a de-registered organisation.

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CONVEYANCE operating as a voluntary disposition *inter vivos* of any property (including a statement under Part 4)—

- (a) In the case of an SCH-regulated transfer of a marketable security to which Division 3 of Part 3A applies—

For every \$100 and any fractional part of \$100 of the value of the marketable security	0.30
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- (b) In any other case—

Where the value of the property conveyed—

Does not exceed \$12 000—for every \$100 or fractional part of \$100 of the value	1.00
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Exceeds \$12 000 but does not exceed \$30 000	\$120 plus \$2.00 for every \$100 or fractional part of \$100 of the excess over \$12 000 of that value
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Exceeds \$30 000 but does not exceed \$50 000	\$480 plus \$3.00 for every \$100 or fractional part of \$100 of the excess over \$30 000 of that value
Exceeds \$50 000 but does not exceed \$100 000	\$1 080 plus \$3.50 for every \$100 or fractional part of \$100 of the excess over \$50 000 of that value
Exceeds \$100 000 but does not exceed \$1 000 000	\$2 830 plus \$4.00 for every \$100 or fractional part of \$100 of the excess over \$100 000 of that value
Exceeds \$1 000 000	\$38 830 plus \$4.50 for every \$100 or fractional part of \$100 of the excess over \$1 000 000 of that value

Exemption—

Conveyance operating as a voluntary disposition *inter vivos* by an employer of any property for the purpose of providing individual personal benefits, pensions or retiring allowances for his employees.

2. Conveyance or transfer of a mortgage.
3. Conveyance or transfer of a marketable security to or by a person who is a trustee under section 90G.
4. In the case of an amalgamation under the *Industrial and Employee Relations Act 1994* any conveyance or transfer of property by an amalgamating association to the association formed by the amalgamation.
5. In the case of an amalgamation under Part IX of the *Industrial Relations Act 1988* of the Commonwealth, any conveyance or transfer of property to an amalgamated organisation from a de-registered organisation.

CONVEYANCE for the partition or division of any property, being a conveyance of the kind referred to in section 71B(4), where the consideration for equality does not exceed \$200 or where there is no consideration for equality	10.00
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CONVEYANCE for effectuating the appointment of a new trustee or the retirement of a trustee, not being a conveyance operating as a voluntary disposition <i>inter vivos</i> ...	10.00
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CONVEYANCE of any other kind not before charged	10.00
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DEED or transfer of any kind not otherwise specified in this schedule	10.00
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INSTRUMENT of discharge or partial discharge of a mortgage or charge over land or an interest in land which duty may be denoted by an adhesive stamp 10.00

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LEASE or AGREEMENT FOR a LEASE or any other document for the tenancy or occupancy of land or a tenement—

(a) In the case of a lease made by way of an extension of an existing lease where—

(i) the term of the extension is a period not exceeding one day; and

(ii) the sole purpose of the extension is to vary a covenant (other than a covenant specifying the rent payable) contained in the existing lease,

. 10.00

(b) In the case of a lease made subsequently to and in conformity with a duly stamped agreement for a lease 0.50

(c) In any other case—

For every \$100 or fractional part of \$100 of one years rent calculated at the rate of rent per annum or, if an average rate of rent per annum can be ascertained or estimated, at that average rate 1.00

Note—

Under section 75 the rate or average rate of rent per annum used as a basis for calculating duty may be—

(a) the actual or estimated rate of rent charged; or

(b) if the consideration payable by the lessee cannot be ascertained or estimated or would result in a lower duty being payable—the current market rent.

Exemptions—

1. Lease or agreement for a lease, or any written document for the tenancy or occupancy of land or a tenement, for a term not exceeding one year, where the rent reserved does not exceed the rate of \$52 per annum.

2. Lease or agreement for a lease of residential premises that are or are to be occupied by the lessee or prospective lessee as a place of residence.

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MORTGAGE, BOND, DEBENTURE, COVENANT or WARRANT OF ATTORNEY to confess and enter up judgment—

- (a) subject to paragraphs (b) and (c), the rate of duty is—
 - (i) if the secured liability does not exceed \$4 000—\$10.00;
 - (ii) if the secured liability exceeds \$4 000 but does not exceed \$10 000—\$10.00 plus \$0.25 for every \$100 or fractional part of \$100 over \$4 000;
 - (iii) if the secured liability exceeds \$10 000—\$25.00 plus \$0.35 for every \$100 or fractional part of \$100 over \$10 000,

(but any amount representing the premium on an insurance policy over property subject to the security is to be excluded);
- (b) if a mortgage is a mortgage of an existing mortgage over land used or to be used solely as the site of a residential building, the duty is \$10.00;
- (c) a bond, debenture, or covenant securing a contingent liability is liable to *ad valorem* duty based on the amount presently secured at the time of stamping if the Commissioner is satisfied of the genuineness of the contingency.

Exemptions—

1. Every collateral or auxiliary or additional or substituted security, or security by way of further assurance for the above-mentioned purpose, where the principal or primary security is chargeable with duty as a mortgage, bond, debenture, covenant or warrant of attorney to confess and enter up judgment and is duly stamped as such.
2. Every mortgage, bond, debenture or covenant securing the payment or repayment of an amount not exceeding four hundred dollars.
3. A deed of cross guarantee entered into between a company and its subsidiaries in pursuance of a class order under section 313(6) of the *Corporations Law* or a mortgage, bond, debenture or covenant securing a liability under such a deed of cross guarantee.
4. Charge over property imposed by order made under section 8(1) of the *Enforcement of Judgments Act 1991*.

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RETURN lodged with the Commissioner by a company, person or firm of persons under section 42AA—

There shall be paid by the person lodging the return a duty at such rate per centum of the amount of the premiums paid or payable in respect of each class of assurance or insurance to which the return relates as would have been payable if the assurance or insurance had been effected under a policy issued in this State.

RETURN lodged with the Commissioner by a dealer pursuant to section 90D—

Duty is payable on each sale and each purchase of marketable securities to which the return relates as follows:

For every \$100 and any fractional part of \$100 of the consideration for each sale or purchase	0.15
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Exemptions—

1. Any sale of marketable securities to which the return relates, which sale was made by a broker on his own account or behalf, where the marketable securities concerned were purchased by him on, or within 10 clear days (not including any day on which the Stock Exchange of which he is a member is closed) of, the day of the sale.
2. Any purchase of marketable securities to which the return relates, which purchase was made by a broker on his own account or behalf, where the marketable securities concerned were sold by him on, or within 10 clear days (not including any day on which the Stock Exchange of which he is a member is closed) of, the day of the purchase.

RETURN under section 90G—

Duty is payable in respect of each relevant transaction as follows:

For every \$100 and any fractional part of \$100 of the value of the marketable security comprised in the disposition	0.30
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GENERAL EXEMPTIONS FROM ALL STAMP DUTIES

1. Wills, testamentary instruments and letters of administration and any instrument acknowledging, evidencing or recording any such instrument.
- 1A. Agreement or memorandum of agreement made on or after 1 September 1992, not under seal, and not otherwise specifically charged with duty.
2. Certificates of title issued from the Lands Titles Office.
3. Customs bonds.
4. Administration bonds.
5. Bonds to the Crown.
6. Conveyances of bills, bonds, debentures or other securities issued by a public statutory body constituted under a law of the Commonwealth or of this or any other State or of any Territory of the Commonwealth, not being a prescribed statutory body or a statutory body of a prescribed class.
7. Bond on appointment of a special bailiff.
8. Memorandum of association, articles of association and rules and regulations of any incorporated company, association or society.
9. Marriage settlements.
10. Mortgage bonds guaranteed by the Government of South Australia.

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- 11. Articles or indentures of apprenticeship and assignments of articles or indentures of apprenticeship.
- 12. Leases to the Crown and to any person on behalf of the Crown.
- 13. A power of attorney (or any other instrument in the nature of a power of attorney).
- 13A. Grant of land from the Crown.
- 13B. Conveyance, whether on sale or otherwise, to the Crown or to any person on behalf of the Crown (not being a surrender to the Crown, or any such person, of a lease or other interest in land in order that the Crown may grant to a person other than the surrenderor a lease of, or other interest in, the same land or any part thereof).
- 13C. Acquisition by a municipal or district council of land for the purposes of providing a public park, being an acquisition enabled or assisted by an advance under the *Public Parks Act 1943*.
- 14. Conveyance on sale of any goods, wares, merchandise, horses, cattle, sheep or other movable chattels when the value does not exceed \$40.

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- 15. Any transfer of any fire, personal accident, fidelity, guarantee, livestock, plate glass or marine insurance or assurance policy.
- 16. Any cemetery leases.

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- 18. Bills, bonds, inscribed stock, debentures, deposit receipts and other securities issued by the Government of the State, and coupons or interest warrants issued in connection with any such bills, bonds, stock, debentures, deposit receipts or other securities, and any transfer of, or document relating to, the purchase or sale of any such bills, bonds, stock, debentures, deposit receipts or other securities.
- 19. Conveyance or transfer of a marketable security by the personal representative of a deceased person to another person entitled under the will of the deceased person, or on intestacy, to have the marketable security conveyed or transferred to him or her.
- 20. Conveyance or transfer of a marketable security if the conveyance or transfer is made for the purpose of effectuating the appointment of a new trustee or the retirement of a trustee and all duty chargeable on any instrument for the appointment of the new trustee or the retirement of the trustee, as the case may be, has been duly paid.
- 21. Conveyance or transfer of a marketable security if the conveyance or transfer is made in pursuance of any deed of settlement or deed of gift and all duty chargeable on the deed of settlement or deed of gift, as the case may be, has been duly paid.
- 22. Conveyance or transfer of American Depositary Shares or of American Depositary Receipts that relate to American Depositary Shares, that causes or results in a change in the beneficial ownership of an estate or interest in marketable securities of a South Australian registered company (not being a CUFS).
- 23. Any conveyance, transfer or mortgage to which a prescribed person is a party and which is executed or entered into in connection with the purchase or gift of any land on which the prescribed person resides or intends to reside shall be exempt from stamp duty on so much of the amount on which the duty is chargeable as does not exceed two thousand four hundred dollars, but a conveyance, transfer or mortgage shall not be exempt under this paragraph unless the Commissioner is satisfied by such evidence as he requires—

(a) that the purchase or gift is made for the purpose of enabling the prescribed person to become the owner, or lessee from the Crown, of a dwelling house in which he resides or intends to reside;

- (b) that a conveyance, transfer or mortgage to which the prescribed person was a party and which was executed or entered into in connection with any other purchase or gift of land on which the prescribed person resided or intended to reside has not previously been exempt from stamp duty pursuant to this paragraph or any enactment relating to advances for homes.

In this paragraph—

"prescribed person" means—

- (a) a person who, during any war in which the Commonwealth is or was engaged, has served as a member of a naval, military or air force of the Commonwealth or of the United Kingdom or of any part of Her Majesty's dominions, whether or not he is still so serving at the time when he claims exemption under this paragraph;
- (b) a person who, during any such war, was employed in seagoing service on a ship registered in any territory under the dominion of Her Majesty the Queen, whether or not he is still so employed at the time when he claims exemption under this paragraph;
- (c) a person who has been on active service in the Korean war as a member of a naval, military or air force of the Commonwealth or of the United Kingdom or of any other part of Her Majesty's dominions, whether or not he is still on such service at the time when he claims exemption under this paragraph.

The expression "**Korean war**" in this paragraph means the war in Korea which commenced on the twenty-fifth day of June, 1950. For the purposes of this paragraph that war shall be deemed to end on the day on which a proclamation is issued by the Governor declaring that the Korean war has ceased;

- (d) a person who has been on active service as a member of a naval, military or air force of the Commonwealth or of the United Kingdom or of any other part of Her Majesty's dominions operating for the suppression of unlawful violence in Malaya, whether or not he is still on such service at the time when he claims exemption under this paragraph;
- (d1) a person who (whether before or after the commencement of the *Stamp Duties Act Amendment Act 1965*) has been on active service as a member of a naval, military or air force of the Commonwealth or of the United Kingdom or of any other part of Her Majesty's dominions in any area outside Australia or in any naval, military or air force operation that is proclaimed to be an area or (as the case may be) a naval, military or air force operation for the purposes of this paragraph, whether or not he is still on such service at the time when he claims exemption under this paragraph;
- (e) the widow of any deceased person who during his lifetime served or was employed as mentioned in paragraph (a), (b), (c), (d) or (d1);

For the purposes of paragraphs (a) and (b), a war shall be deemed to continue from the commencement thereof until the day declared by the Governor by proclamation to be the day on which the war shall be deemed to cease. Notwithstanding the provisions of this paragraph, or of any proclamation made in pursuance thereof, the war which commenced on the third day of September, 1939, shall, for the purposes of any conveyance, transfer or mortgage executed or entered into after the commencement of the *Stamp Duties Act Amendment Act 1965* be deemed to have ceased on the thirty-first day of December, 1945;

"land" includes the fee simple of any land and the estate and interest of a lessee of land held under a Crown lease, and of a purchaser of land held under an agreement for sale and purchase granted by the Crown.

24. A conveyance or transfer of a marketable security to or from a nominee company established by a dealer or an SCH participant solely for the purpose of facilitating settlement of transactions relating to marketable securities entered into in the ordinary course of business.

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- 24AA. A conveyance or transfer of a marketable security to or from CHESSE Depository Nominees Pty Ltd solely for the purpose of facilitating settlement of transactions relating to a CUFS entered into in the ordinary course of business.
- 24A. An error transaction in respect of a marketable security to which Division 3 of Part 3A applies.
- 24B. A conveyance or transfer of a marketable security made solely for the purpose of a security lending transaction of a kind that would qualify for relief under section 26BC(3) of the *Income Tax Assessment Act 1936* of the Commonwealth, as amended from time to time.
- 24C. An SCH-regulated transfer of a marketable security that—
 - (a) does not result in a change in beneficial ownership; and
 - (b) is not chargeable with duty as a conveyance operating as a voluntary disposition *inter vivos*.
- 25. A declaration of trust by the Public Trustee for the benefit of a child under the age of 18 years who has received a payment under the *Criminal Injuries Compensation Act 1978*.

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APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Stamp Duties Act Amendment Act 1988, s. 9)

9. Section 71E of the principal Act applies in relation to transactions entered into on or after 7th December, 1987, but no offence arises under subsection (6)(a) of that section in relation to a transaction entered into before the date of assent to this Act if the required statement is lodged with the Commissioner within two months after assent.

(Transitional provision from Stamp Duties Act Amendment Act 1989, s. 4)

4. The amendments effected by this Act apply to conveyances lodged with the Commissioner of Stamps for stamping on or after 1 February, 1988.

(Transitional provision from Stamp Duties Act Amendment Act (No. 4) 1990, s. 7)

7. Where a company, person or firm of persons carried on general insurance business before the enactment of this Act, the company, person or firm—

- (a) is required to lodge monthly returns only in relation to general insurance business carried on by it on or after 1 July, 1990; and
- (b) will be taken to have complied with the requirements of section 36(1) of the principal Act, as amended by this Act, in relation to the period from 1 July, 1990, until the enactment of this Act if the monthly returns required in relation to that period are lodged with the Commissioner not later than the fifteenth day of the month commencing after the enactment of this Act.

(Transitional provision from Stamp Duties (Rates) Amendment Act 1992, s. 7)

7. The amendments made by sections 5 and 6 of this Act apply to instruments executed on or after the commencement of this Act (with the effect that instruments executed before that commencement will be chargeable with duty as if those provisions had not been enacted).

(Transitional provision from Stamp Duties (Penalties, Reassessments and Securities) Amendment Act 1992, s. 45)

45. (1) Subject to this section, the amendments made by this Act do not affect the amount of duty chargeable on an instrument executed, or a transaction completed, before the commencement of this Act.

(2) If—

- (a) a mortgage executed before the commencement of this Act is extended or renewed after the commencement of this Act; or
- (b) a liability that is secured by a mortgage executed before the commencement of this Act is incurred after the commencement of this Act (except a liability that accrues in respect of a liability that was incurred before the commencement of this Act, or a liability that takes effect in substitution for an earlier liability and does not—when incurred—exceed the amount of the earlier liability); or
- (c) after the commencement of this Act the time for payment or repayment of a liability secured by a mortgage executed before the commencement of this Act is extended or deferred,

duty is chargeable under the principal Act as amended by this Act as if the mortgage were a new and separate instrument executed on the date of the extension or renewal, the date when the fresh liability was incurred, or the date when the time for payment or repayment of the liability was extended or deferred (as the case requires), but allowance must be made for duty paid on the mortgage before that date.

(Transitional provision from Stamp Duties (Concessions) Amendment Act 1994, s. 10)

10. The amendments made by sections 5 and 6 of this Act apply in relation to rental business transacted on or after 1 June 1994.

(Transitional provision from Stamp Duties (Miscellaneous) Amendment Act 1996, s. 11)

11. The amendments made by this Act do not affect the amount of duty chargeable on an instrument executed before the commencement of this Act.

Legislative History

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 10 of The Public General Acts of South Australia 1837-1975 at page 369.
- Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 1 November 1984. A schedule of these alterations was laid before Parliament on 13 November 1984.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Section 2:	deleted in pursuance of the <i>Acts Republication Act 1967</i>
Section 3:	deleted in pursuance of the <i>Acts Republication Act 1967</i> as its function is now exhausted
Section 4:	definition of "adhesive stamp" inserted by 8, 1986, s. 2(a) definition of "authorised officer" inserted by 100, 1986, s. 3(a) definition of "business of primary production" inserted by 31, 1994, s. 3 definition of "CUFS" inserted by 18, 1996, s. 3(a) definition of "die" substituted by 8, 1986, s. 2(b) definition of "discretionary trust" inserted by 36, 1990, s. 3(a) definition of "duty" substituted by 88, 1992, s. 3(a) definition of "fixed interest security" inserted by 111, 1980, s. 3(a); repealed by 81, 1985, s. 3 definition of "impressed stamp" inserted by 8, 1986, s. 2(c) definition of "marketable security" amended by 111, 1980, s. 3(b); 50, 1984, s. 3(1) (Sched. 6); 88, 1992, s. 3(b); 18, 1996, s. 3(b) definition of "money" substituted by 50, 1984, s. 3(1) (Sched. 6) definition of "records" inserted by 100, 1986, s. 3(b) definition of "savings bank" substituted by 50, 1984, s. 3(1) (Sched. 6) definition of "stamp" substituted by 8, 1986, s. 2(d) definition of "stamped" substituted by 8, 1986, s. 2(d) definition of "stock" amended by 50, 1984, s. 3(1) (Sched. 6) definition of "unit" inserted by 36, 1990, s. 3(b) definition of "unit trust scheme" inserted by 36, 1990, s. 3(b)
Section 5(1) and (2):	amended by 50, 1984, s. 3(1) (Sched. 6)
Section 5(3):	repealed by 50, 1984, s. 3(1) (Sched. 6)
Section 5(4):	amended by 50, 1984, s. 3(1) (Sched. 6)
Section 5A:	inserted by 111, 1980, s. 4
Section 5AB:	inserted by 81, 1985, s. 4; substituted by 52, 1989, s. 3
Section 5B:	inserted by 111, 1980, s. 4; amended by 50, 1984, s. 3(1) (Sched. 6)

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Section 6:	amended by 50, 1984, s. 3(1) (Sched. 6); substituted by 100, 1986, s. 4
Section 6AA:	inserted by 100, 1986, s. 4
Section 6A:	inserted by 8, 1986, s. 3; amended by 2, 1987, s. 6(a)
Section 6B:	inserted by 2, 1987, s. 6(b)
Section 7(4):	amended by 50, 1984, s. 3(1) (Sched. 6)
Section 10:	redesignated as s. 10(1) by 88, 1992, s. 4
Section 10(2) - (9):	inserted by 88, 1992, s. 4
Section 12(3):	substituted by 88, 1992, s. 5
Section 17:	repealed by 111, 1980, s. 5; inserted by 4, 1990, s. 2
Section 19:	amended by 50, 1984, s. 3(1) (Sched. 6); substituted by 88, 1992, s. 6
Section 19A:	inserted by 111, 1980, s. 6
Section 19A(1):	amended by 88, 1992, s. 7
Section 20(1):	substituted by 111, 1980, s. 7(a)
Section 20(1aa):	inserted by 88, 1992, s. 8(a)
Section 20(1a):	inserted by 111, 1980, s. 7(a); amended by 88, 1992, s. 8(b), (c)
Section 20(2):	amended by 111, 1980, s. 7(b); 88, 1992, s. 8(d)
Section 20(3):	substituted by 88, 1992, s. 8(e)
Section 20(4):	inserted by 21, 1988, s. 3; amended by 88, 1992, s. 8(f)
Section 20(5) - (8):	inserted by 21, 1988, s. 3
Section 21(1):	redesignated as s. 21 in pursuance of the <i>Acts Republication Act 1967</i>
Section 21(2) - (4):	repealed by 50, 1984, s. 3(1) (Sched. 6)
Section 22:	amended by 50, 1984, s. 3(1) (Sched. 6)
Section 23(1):	substituted by 100, 1986, s. 5(a)
Section 23(1a) and (1b):	inserted by 100, 1986, s. 5(a)
Section 23(2):	amended by 100, 1986, s. 5(b)
Section 23(3):	amended by 100, 1986, s. 5(c)
Section 23(5):	substituted by 88, 1992, s. 9
Section 23A:	inserted by 88, 1992, s. 10
Section 24(2):	substituted by 21, 1988, s. 4(a)
Section 24(7):	substituted by 21, 1988, s. 4(b)
Section 24(10):	inserted by 21, 1988, s. 4(c)
Section 24(10a) - (10d):	inserted by 83, 1995, s. 2
Section 24(11):	inserted by 88, 1992, s. 11
Section 25:	amended by 50, 1984, s. 3(1) (Sched. 6); repealed by 100, 1986, s. 6
Section 26:	amended by 50, 1984, s. 3(1) (Sched. 6)
Sections 27A and 27B:	substituted by 100, 1986, s. 7
Section 27B(1):	amended by 14, 1994, s. 3
Section 27C:	amended by 50, 1984, s. 3(1) (Sched. 6); substituted by 100, 1986, s. 7
Section 27D:	substituted by 100, 1986, s. 7; amended by 88, 1992, s. 12
Section 28 and heading:	repealed by 81, 1985, s. 5
Section 31(2) - (4):	amended by 50, 1984, s. 3(1) (Sched. 6)
Section 31A:	amended by 31, 1994, s. 4
Heading preceding section 31B:	amended by 50, 1984, s. 3(1) (Sched. 6)
Section 31B(1):	amended by 50, 1984, s. 3(1) (Sched. 6); redesignated as s. 31B in pursuance of the <i>Acts Republication Act 1967</i> definition of "bailee" inserted by 88, 1992, s. 13(a) definition of "bailment plant" inserted by 88, 1992, s. 13(a) definition of "bailor" inserted by 88, 1992, s. 13(a) definition of "bank" repealed by 50, 1984, s. 3(1) (Sched. 6) definition of "contractual bailment" inserted by 88, 1992, s. 13(a) definition of "corresponding law" inserted by 31, 1994, s. 5 definition of "credit arrangement" repealed by 50, 1984, s. 3(1) (Sched. 6) definition of "credit business" repealed by 50, 1984, s. 3(1) (Sched. 6)

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	definition of "discount transaction" repealed by 50, 1984, s. 3(1) (Sched. 6)
	definition of "goods" amended by 88, 1992, s. 13(b)
	definition of "guarantee" repealed by 50, 1984, s. 3(1) (Sched. 6)
	definition of "guarantor" repealed by 50, 1984, s. 3(1) (Sched. 6)
	definition of "interest" repealed by 50, 1984, s. 3(1) (Sched. 6)
	definition of "loan" amended by 101, 1976, s. 2(1)(a); repealed by 50, 1984, s. 3(1) (Sched. 6)
	definition of "prescribed rate" substituted by 95, 1982, s. 3(a); repealed by 50, 1984, s. 3(1) (Sched. 6)
	definition of "principal" repealed by 50, 1984, s. 3(1) (Sched. 6)
	definition of "rate of interest" repealed by 50, 1984, s. 3(1) (Sched. 6)
	definition of "registered credit union" substituted by 101, 1976, s. 2(1)(b); repealed by 50, 1984, s. 3(1) (Sched. 6)
	definition of "related corporation" amended by 50, 1984, s. 3(1) (Sched. 6); 88, 1992, s. 13(c)
	definition of "rental business" substituted by 88, 1992, s. 13(d)
Section 31B(1a):	substituted by 95, 1982, s. 3(b); repealed by 50, 1984, s. 3(1) (Sched. 6)
Section 31B(2) - (10):	repealed by 50, 1984, s. 3(1) (Sched. 6)
Section 31C:	substituted by 89, 1983, s. 3; repealed by 50, 1984, s. 3(1) (Sched. 6)
Section 31D(1):	amended by 89, 1983, s. 4(a); 71, 1992, s. 3(1) (Sched.)
Section 31D(2):	substituted by 89, 1983, s. 4(b)
Section 31D(4):	substituted by 88, 1992, s. 14
Section 31E(2):	substituted by 89, 1983, s. 5
Section 31F(1):	amended by 101, 1976, s. 3; 50, 1984, s. 3(1) (Sched. 6); 81, 1985, s. 6(a); 52, 1989, s. 4(a); 74, 1991, s. 3; 88, 1992, s. 15(a)
Section 31F(2):	amended by 89, 1983, s. 6; 81, 1985, s. 6(b), (c); 100, 1986, s. 8; 52, 1989, s. 4(b)
Section 31F(3):	amended by 81, 1985, s. 6(d); 52, 1989, s. 4(c)
Section 31F(4):	amended by 81, 1985, s. 6(e); 52, 1989, s. 4(d)
Section 31F(4a) - (4c):	repealed by 50, 1984, s. 3(1) (Sched. 6)
Section 31F(5):	repealed by 50, 1984, s. 3(1) (Sched. 6); inserted by 88, 1992, s. 15(b)
Section 31F(6):	inserted by 88, 1992, s. 15(b)
Section 31G:	amended by 50, 1984, s. 3(1) (Sched. 6); 74, 1991, s. 4; repealed by 88, 1992, s. 16
Section 31I(1):	amended by 50, 1984, s. 3(1) (Sched. 6); 74, 1991, s. 5; 31, 1994, s. 6(a); 83, 1994, s. 12 (Sched.)
Section 31I(1)(d) and (e):	repealed by 50, 1984, s. 3(1) (Sched. 6)
Section 31I(1)(f):	repealed by 81, 1985, s. 7(a)
Section 31I(1a) and (1b):	inserted by 31, 1994, s. 6(b)
Section 31I(1a):	inserted by 81, 1985, s. 7(b); amended by 52, 1989, s. 5; redesignated as s. 31I(1c) by 31, 1994, s. 6(b)
Section 31J:	amended by 71, 1992, s. 3(1) (Sched.)
Section 31L:	repealed by 70, 1981, s. 3; inserted by 15, 1982, s. 3
Section 31L(1):	amended by 50, 1984, s. 3(1) (Sched. 6); 100, 1986, s. 9(1)(a); 71, 1992, s. 3(1) (Sched.)
Section 31L(3):	repealed by 50, 1984, s. 3(1) (Sched. 6); inserted by 100, 1986, s. 9(1)(b)
Section 31L(4) and (5):	repealed by 50, 1984, s. 3(1) (Sched. 6)
Heading preceding section 31M:	repealed by 50, 1984, s. 3(1) (Sched. 6)
Section 31M:	repealed by 50, 1984, s. 3(1) (Sched. 6); inserted by 100, 1986, s. 10; substituted by 74, 1991, s. 6
Section 31M(4) and (5):	substituted by 88, 1992, s. 17
Section 31MA:	inserted by 89, 1983, s. 7; repealed by 50, 1984, s. 3(1) (Sched. 6)

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Section 31N:	amended by 89, 1983, s. 8; repealed by 50, 1984, s. 3(1) (Sched. 6); inserted by 100, 1986, s. 10
Section 31N(3):	amended by 74, 1991, s. 7(a)
Section 31N(4) and (5):	substituted by 88, 1992, s. 18
Section 31N(5a):	inserted by 88, 1992, s. 18
Section 31N(6):	amended by 74, 1991, s. 7(b)
Section 31O:	repealed by 50, 1984, s. 3(1) (Sched. 6)
Section 31P:	repealed by 70, 1981, s. 4; inserted by 15, 1982, s. 4; repealed by 50, 1984, s. 3(1) (Sched. 6)
Sections 31Q - 31T:	repealed by 50, 1984, s. 3(1) (Sched. 6)
Section 32:	definition of "assurance or insurance business" amended by 50, 1984, s. 3(1) (Sched. 6) definition of "general insurance business" inserted by 47, 1990, s. 3 definition of "life insurance policy" inserted by 47, 1990, s. 3 definition of "policy" amended by 50, 1984, s. 3(1) (Sched. 6) definition of "premium" inserted by 74, 1991, s. 8
Section 33:	substituted by 47, 1990, s. 4
Section 34:	amended by 50, 1984, s. 3(1) (Sched. 6); substituted by 47, 1990, s. 4
Section 34A:	repealed by 47, 1990, s. 4
Section 35:	amended by 111, 1980, s. 8; 50, 1984, s. 3(1) (Sched. 6); substituted by 47, 1990, s. 4
Section 36:	substituted by 50, 1984, s. 3(1) (Sched. 6); 47, 1990, s. 4
Section 37:	repealed by 100, 1986, s. 11; inserted by 47, 1990, s. 4
Section 38:	amended by 50, 1984, s. 3(1) (Sched. 6); repealed by 100, 1986, s. 11; inserted by 47, 1990, s. 4
Section 39:	substituted by 47, 1990, s. 4
Section 40:	inserted by 47, 1990, s. 4
Section 41:	substituted by 47, 1990, s. 4
Section 41(1):	amended by 74, 1991, s. 9; 88, 1992, s. 19(a)
Section 41(2):	amended by 88, 1992, s. 19(b)
Section 41(4):	substituted by 88, 1992, s. 19(c)
Section 42:	substituted by 47, 1990, s. 4
Section 42AA(4):	substituted by 88, 1992, s. 20
Section 42AA(4a) and (4b):	inserted by 88, 1992, s. 20
Section 42AB:	inserted by 8, 1986, s. 4
Section 42A:	definition of "applicant" substituted by 100, 1986, s. 12(a) definition of "commercial motor vehicle" inserted by 64, 1989, s. 3(a) definition of "dealer" substituted by 100, 1986, s. 12(b) definition of "list price" inserted by 100, 1986, s. 12(b) definition of "market value" inserted by 100, 1986, s. 12(b) definition of "new motor vehicle" inserted by 100, 1986, s. 12(c) definition of "optional equipment" inserted by 100, 1986, s. 12(c) definition of "primary producer" inserted by 64, 1989, s. 3(b) definition of "second-hand motor vehicle" inserted by 100, 1986, s. 12(d)
Section 42B(1):	substituted by 100, 1986, s. 13(a)
Section 42B(1aa):	inserted by 100, 1986, s. 13(a)
Section 42B(1a):	amended by 28, 1977, s. 2(a); 83, 1994, s. 2(a)
Section 42B(1b):	inserted by 28, 1977, s. 2(b); substituted by 33, 1990, s. 2(a); repealed by 83, 1994, s. 2(b)
Section 42B(1c):	inserted by 33, 1990, s. 2(a); repealed by 83, 1994, s. 2(b)
Section 42B(2):	amended by 28, 1977, s. 2(c); 83, 1994, s. 2(c)
Section 42B(4) - (6):	substituted by 100, 1986, s. 13(b)
Section 42B(7):	amended by 83, 1994, s. 2(d)
Section 42B(6a) and (6b):	inserted by 74, 1991, s. 10; substituted by 88, 1992, s. 21
Section 42B(7):	repealed by 100, 1986, s. 13(b); inserted by 33, 1990, s. 2(b)
Section 42B(8):	repealed by 50, 1984, s. 3(1) (Sched. 6)

Section 42BA:	inserted by 72, 1995, s. 3
Section 42C:	repealed by 33, 1990, s. 3; inserted by 74, 1991, s. 11
Section 42C(1):	amended by 72, 1995, s. 4
Section 42C(4) and (5):	substituted by 88, 1992, s. 22
Section 42D(1a):	amended by 50, 1984, s. 3(1) (Sched. 6); 100, 1986, s. 14; 33, 1990, s. 4
Section 42E:	amended by 33, 1990, s. 5
Sections 43 - 45A and heading:	repealed by 111, 1980, s. 9
Section 46:	definition of "bill of exchange" amended by 19, 1991, s. 2(a) definition of "payment order" inserted by 19, 1991, s. 2(b)
Section 46A:	inserted by 89, 1983, s. 9; amended and redesignated as s. 46A(1) by 19, 1991, s. 3
Section 46A(2):	inserted by 19, 1991, s. 3(b)
Section 47:	amended by 50, 1984, s. 3(1) (Sched. 6)
Sections 47B - 47D:	repealed by 70, 1981, s. 5
Section 48(3):	amended by 70, 1981, s. 6; by 50, 1984, s. 3(1) (Sched. 6)
Section 48(5):	amended by 50, 1984, s. 3(1) (Sched. 6)
Section 48A(1):	amended by 101, 1976, s. 4(a); substituted by 95, 1982, s. 4(a)
Section 48A(2):	amended by 101, 1976, s. 4(a); 95, 1982, s. 4(b)
Section 48A(3):	repealed by 70, 1981, s. 7(a)
Section 48A(3a):	amended by 101, 1976, s. 4(a); repealed by 70, 1981, s. 7(a)
Section 48A(4):	amended by 101, 1976, s. 4
Section 48A(5):	amended by 95, 1982, s. 4(c)
Section 48A(5a) - (5d):	inserted by 70, 1981, s. 7(b)
Section 48A(5e):	inserted by 95, 1982, s. 4(d)
Section 48A(7):	inserted by 19, 1991, s. 4
Section 49:	amended by 88, 1992, s. 23
Section 51(1):	substituted by 88, 1992, s. 24
Section 53 and heading:	repealed by 81, 1985, s. 8
Sections 54 - 59A and heading:	repealed by 50, 1984, s. 3(1) (Sched. 6)
Heading preceding section 59B:	inserted by 27, 1978, s. 7; deleted in pursuance of the <i>Acts Republication Act 1967</i> as its function is now exhausted
Section 59B:	inserted by 27, 1978, s. 7; amended by 50, 1984, s. 3(1) (Sched. 6); 52, 1989, s. 6; 88, 1992, s. 25; repealed by 83, 1994, s. 3
Section 60:	definition of "conveyance" amended by 38, 1996, s. 40
Section 60A:	substituted by 95, 1982, s. 5
Section 60A(1):	amended by 36, 1990, s. 4
Section 60A(4):	amended by 50, 1984, s. 3(1) (Sched. 6)
Section 60A(4a) and (4b):	inserted by 20, 1997, s. 3(a)
Section 60A(6) - (8):	inserted by 20, 1997, s. 3(b)
Section 61:	amended by 95, 1982, s. 6
Section 63:	repealed by 95, 1982, s. 7
Section 65:	amended by 95, 1982, s. 8
Section 66(1):	amended by 95, 1982, s. 9(a); redesignated as s. 66 in pursuance of the <i>Acts Republication Act 1967</i>
Section 66(2) and (3):	substituted by 28, 1977, s. 3; repealed by 95, 1982, s. 9(b)
Section 66(4):	repealed by 95, 1982, s. 9(b)
Section 66A:	repealed by 33, 1990, s. 6
Section 66AB:	amended by 101, 1976, s. 5; 111, 1980, s. 10; 70, 1981, s. 8; repealed by 33, 1990, s. 6
Section 66B:	amended by 28, 1977, s. 4; repealed by 95, 1982, s. 10
Section 67:	repealed by 95, 1982, s. 10; inserted by 33, 1990, s. 6
Section 68(1):	amended by 95, 1982, s. 11(a); 50, 1984, s. 3(1) (Sched. 6); repealed by 33, 1990, s. 7
Section 68(2):	amended by 95, 1982, s. 11(b); repealed by 33, 1990, s. 7
Section 68(3):	amended by 95, 1982, s. 11(c)
Section 68(4):	amended by 95, 1982, s. 11(d)
Section 68(5):	amended by 95, 1982, s. 11(e)
Section 69:	repealed by 33, 1990, s. 8
Section 70:	substituted by 50, 1984, s. 3(1) (Sched. 6)

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Section 71(3) and (4):	substituted by 111, 1980, s. 11
Section 71(4a):	inserted by 36, 1990, s. 5(a); amended by 88, 1992, s. 26(a); substituted by 18, 1996, s. 4
Section 71(5):	repealed by 66, 1979, s. 3; inserted by 111, 1980, s. 11; amended by 95, 1982, s. 12(a); 21, 1988, s. 5
Section 71(6):	amended by 54, 1976, s. 7; repealed by 66, 1979, s. 3; inserted by 111, 1980, s. 11
Section 71(7):	repealed by 66, 1979, s. 3; inserted by 111, 1980, s. 11
Section 71(8):	repealed by 66, 1979, s. 3; inserted by 111, 1980, s. 11; amended by 95, 1982, s. 12(b)
Section 71(9) and (10):	inserted by 111, 1980, s. 11
Section 71(11):	inserted by 111, 1980, s. 11; amended by 36, 1990, s. 5(b)
Section 71(11a):	inserted by 36, 1990, s. 5(c)
Section 71(12) and (13):	inserted by 111, 1980, s. 11
Section 71(14):	inserted by 111, 1980, s. 11; amended by 42, 1992, s. 3
Section 71(15):	inserted by 111, 1980, s. 11; definition of "discretionary trust" repealed by 36, 1990, s. 5(d) definition of "public company" amended by 50, 1984, s. 3(1) (Sched. 6); 88, 1992, s. 26(b) definition of "unit" repealed by 36, 1990, s. 5(d) definition of "unit trust scheme" amended by 50, 1984, s. 3(1) (Sched. 6); repealed by 36, 1990, s. 5(d)
Section 71A:	amended by 111, 1980, s. 12; 50, 1984, s. 3(1) (Sched. 6)
Section 71B:	amended and redesignated as s. 71B(1) by 95, 1982, s. 13
Section 71B(2) - (5):	inserted by 95, 1982, s. 13(b)
Section 71C:	inserted by 66, 1979, s. 4
Section 71C(1):	amended by 81, 1985, s. 9(a), (b); 8, 1989, s. 3(a), (b); 52, 1989, s. 7(a); 42, 1992, s. 4(a); 20, 1997, s. 4(a)
Section 71C(1a):	inserted by 8, 1989, s. 3(c)
Section 71C(2):	amended by 95, 1982, s. 14; 81, 1985, s. 9(c)-(e); substituted by 52, 1989, s. 7(b); amended by 42, 1992, s. 4(b); 20, 1997, s. 4(b)-(d)
Section 71C(2a):	inserted by 81, 1985, s. 9(f)
Section 71C(2b):	inserted by 52, 1989, s. 7(c); repealed by 14, 1994, s. 4
Section 71C(3):	definition of "Housing Trust home" inserted by 8, 1989, s. 3(d) definitions of "prescribed amount" and "prescribed maximum" inserted by 20, 1997, s. 4(e) definition of "relevant contract" inserted by 42, 1992, s. 4(c)
Section 71C(4):	substituted by 52, 1989, s. 7(d)
Section 71CA:	inserted by 30, 1982, s. 3
Section 71CA(2) and (3):	substituted by 83, 1994, s. 4
Section 71CB:	inserted by 21, 1988, s. 6; substituted by 83, 1994, s. 5
Section 71CC:	inserted by 31, 1994, s. 7
Section 71CC(1):	amended by 18, 1996, s. 5(a)-(c)
Section 71CC(5):	definition of "natural person" or "person" inserted by 18, 1996, s. 5(d)
Section 71D:	inserted by 111, 1980, s. 13
Section 71D(1) and (2):	substituted by 19, 1991, s. 5(a)
Section 71D(2a):	inserted by 19, 1991, s. 5(a)
Section 71D(3):	definition of "exploration tenement" amended by 83, 1994, s. 12 (Sched.)
Section 71D(4):	substituted by 19, 1991, s. 5(b)
Section 71D(5) and (6):	inserted by 19, 1991, s. 5(b)
Section 71DA:	inserted by 83, 1994, s. 6
Section 71E and heading:	inserted by 21, 1988, s. 7
Section 71E(1):	amended by 18, 1996, s. 6(a), (b)
Section 71E(1a):	inserted by 18, 1996, s. 6(c)
Section 71E(2):	amended by 88, 1992, s. 27
Section 71E(4a):	inserted by 74, 1991, s. 12
Section 71E(10):	repealed by 33, 1990, s. 9
Heading preceding section 75:	repealed by 81, 1985, s. 10

Section 75:	repealed by 81, 1985, s. 10; inserted by 72, 1995, s. 5
Heading preceding section 75AA:	deleted in pursuance of the <i>Acts Republication Act 1967</i> , as its function is now exhausted
Section 75AA:	repealed by 50, 1984, s. 3(1) (Sched. 6)
Section 76:	definition of "liability" inserted by 88, 1992, s. 28 definition of "mortgage" substituted by 88, 1992, s. 28
Section 76A:	inserted by 8, 1986, s. 5; repealed by 88, 1992, s. 29
Section 79:	substituted by 88, 1992, s. 30
Section 80:	amended by 95, 1982, s. 15
Section 81:	redesignated as s. 81(1) by 18, 1996, s. 7
Section 81(2):	inserted by 18, 1996, s. 7
Section 81A:	inserted by 101, 1976, s. 6
Section 81B:	inserted by 111, 1980, s. 14; substituted by 88, 1992, s. 31
Section 81C:	inserted by 95, 1982, s. 16
Section 81C(6):	amended by 83, 1994, s. 12 (Sched.)
Section 81D:	inserted by 31, 1994, s. 8
Heading preceding section 82:	repealed by 50, 1984, s. 3(1) (Sched. 6)
Section 82:	repealed by 50, 1984, s. 3(1) (Sched. 6); inserted by 21, 1988, s. 8
Section 82(2):	amended by 42, 1992, s. 5
Sections 82A and 83:	repealed by 50, 1984, s. 3(1) (Sched. 6)
Sections 84 - 84J:	repealed by 50, 1984, s. 3(1) (Sched. 6)
Sections 85 - 90 and heading:	repealed by 104, 1976, s. 4(2) (Sched. 2)
Part 3A heading:	substituted by 14, 1994, s. 5
Part 3A Division 1 heading:	inserted by 14, 1994, s. 5
Section 90A:	amended by 14, 1994, s. 6(a) definition of "broker" amended by 52, 1989, s. 8(a); 14, 1994, s. 6(b) definition of "error transaction" inserted by 14, 1994, s. 6(c) definition of "foreign company" inserted by 14, 1994, s. 6(c) definition of "identification code" inserted by 14, 1994, s. 6(c) definition of "odd lot" inserted by 70, 1981, s. 9 definition of "odd lot specialist" inserted by 70, 1981, s. 9; amended by 52, 1989, s. 8(b) definition of "proper SCH transfer" inserted by 14, 1994, s. 6(d) definition of "relevant company" inserted by 14, 1994, s. 6(d) definition of "relevant SCH participant" inserted by 14, 1994, s. 6(d) definition of "SCH" inserted by 14, 1994, s. 6(d) definition of "SCH business rules" inserted by 14, 1994, s. 6(d) definition of "SCH participant" inserted by 14, 1994, s. 6(d) definition of "SCH-regulated transfer" inserted by 14, 1994, s. 6(d) definition of "South Australian registered company" inserted by 14, 1994, s. 6(e) definition of "transfer document" inserted by 14, 1994, s. 6(e) definition of "transfer identifier" inserted by 14, 1994, s. 6(e) definition of "transfer value" inserted by 14, 1994, s. 6(e)
Part 3A Division 2 heading:	inserted by 14, 1994, s. 7
Section 90B:	amended by 50, 1984, s. 3(1) (Sched. 6); 14, 1994, s. 8; amended and redesignated as s. 90B(1) by 49, 1995, s. 3
Section 90B(2) and (3):	inserted by 49, 1995, s. 3(b)
Section 90C(1):	amended by 14, 1994, s. 9(a); 49, 1995, s. 4(a), (b)
Section 90C(1)(a) and (b):	repealed by 49, 1995, s. 4(c)
Section 90C(2):	repealed by 49, 1995, s. 4(d)
Section 90C(3):	amended by 70, 1981, s. 10; 49, 1995, s. 4(e)
Section 90C(5):	amended by 49, 1995, s. 4(f)
Section 90C(6):	substituted by 14, 1994, s. 9(b); amended by 49, 1995, s. 4(g)
Section 90C(7):	amended by 49, 1995, s. 4(h)
Section 90C(8):	amended by 71, 1992, s. 3(1) (Sched. 6); 14, 1994, s. 9(c), (d); 49, 1995, s. 4(i)

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Section 90C(9):	repealed by 100, 1986, s. 15
Section 90D(a1):	inserted by 49, 1995, s. 5(a)
Section 90D(1):	amended by 49, 1995, s. 5(b)
Section 90D(2):	amended by 49, 1995, s. 5(c)
Section 90D(3):	substituted by 88, 1992, s. 32; 14, 1994, s. 10(a); amended by 49, 1995, s. 5(d)
Section 90D(4):	substituted by 88, 1992, s. 32; amended by 49, 1995, s. 5(e)
Section 90D(5):	inserted by 88, 1992, s. 32
Section 90D(6):	inserted by 88, 1992, s. 32; amended by 14, 1994, s. 10(b)
Section 90D(7) and (8):	inserted by 88, 1992, s. 32
Section 90E(1):	amended by 14, 1994, s. 11; 49, 1995, s. 6(a)
Section 90E(2):	substituted by 88, 1992, s. 33; amended by 49, 1995, s. 6(b)
Section 90E(3):	amended by 36, 1990, s. 6
Section 90F:	amended by 49, 1995, s. 7
Section 90G:	inserted by 8, 1986, s. 6
Section 90G(1):	definition of "broker" amended by 52, 1989, s. 9(c) definition of "jobber" repealed and definition of "market maker" inserted in its place by 52, 1989, s. 9(a) definition of "the U.K. Stock Exchange" repealed and definition of "the U.K. and Ireland Stock Exchange" inserted in its place by 52, 1989, s. 9(b)
Section 90G(5):	substituted by 88, 1992, s. 34
Section 90G(5a) and (5b):	inserted by 99, 1992, s. 34
Section 90G(6):	amended by 100, 1986, s. 16(a), (b); 52, 1989, s. 9(c)-(f); 49, 1995, s. 8
Section 90G(7):	amended by 100, 1986, s. 16(c), (d); 52, 1989, s. 9(c), (g)
Section 90G(8):	substituted by 100, 1986, s. 16(e)
	Division 3 of Part 3A comprising ss. 90H - 90O and heading inserted by 14, 1994, s. 12
Section 90H:	amended by 18, 1996, s. 8
Section 90I:	redesignated as s. 90I(1) by 83, 1994, s. 7
Section 90I(2):	inserted by 83, 1994, s. 7
	Division 4 of Part 3A comprising ss. 90P - 90S and heading inserted by 14, 1994, s. 12
	Division 5 of Part 3A comprising ss. 90T - 90V and heading inserted by 83, 1994, s. 8
	Part 4 comprising ss. 91 - 105C and heading inserted by 36, 1990, s. 7
Section 91(1):	definition of "majority shareholder" substituted by 88, 1992, s. 35(a) definition of "private company" substituted by 88, 1992, s. 35(b) definition of "private scheme" or "scheme" amended by 88, 1992, s. 35(c); 18, 1996, s. 9
Section 91(2):	amended by 88, 1992, s. 35(d)-(f)
Section 92(1):	amended by 88, 1992, s. 36
Section 93(1):	amended by 88, 1992, s. 37; 83, 1994, s. 9
Section 100(4) and (5):	inserted by 88, 1992, s. 38
Section 101(1):	amended by 88, 1992, s. 39(a)
Section 101(2):	amended by 88, 1992, s. 39(b)
Section 101(6):	amended by 88, 1992, s. 39(c)
Section 101(7):	amended by 88, 1992, s. 39(d)
Section 102:	amended by 88, 1992, s. 40
Section 103(1):	amended by 88, 1992, s. 41(a)-(c)
Section 103(3):	amended by 88, 1992, s. 41(d)
Section 103(5):	amended by 88, 1992, s. 41(e)

Section 106:	amended by 50, 1984, s. 3(1) (Sched. 6)
Section 106A(1):	amended by 70, 1981, s. 11(a); 83, 1994, s. 10(a)
Section 106A(1a) and (1b):	inserted by 70, 1981, s. 11(b)
Section 106A(2):	amended by 14, 1994, s. 13; 83, 1994, s. 10(b)
Section 106A(3):	amended by 83, 1994, s. 10(c)
Section 106A(4):	substituted by 83, 1994, s. 10(d)
Section 106A(5):	amended by 83, 1994, s. 10(e)
Section 107:	substituted by 14, 1994, s. 14
Section 108(1):	amended by 59, 1994, Sched. 2
Section 109:	amended by 88, 1992, s. 42
Section 110:	repealed by 88, 1992, s. 43
Section 110A:	redesignated as s. 110A(1) by 100, 1986, s. 17
Section 110A(2):	inserted by 100, 1986, s. 17
Section 112(1):	amended by 74, 1991, s. 13(a)
Section 112(5):	inserted by 74, 1991, s. 13(b)
Section 113:	repealed by 50, 1984, s. 3(1) (Sched. 6)
Section 114:	inserted by 27, 1978, s. 8
Schedule 1:	deleted in pursuance of the <i>Acts Republication Act 1967</i> , as its function is now exhausted
Schedule 2:	
AGREEMENT or any MEMORANDUM:	amended by 42, 1992, s. 6(a); repealed by 88, 1992, s. 44(a)
AFFIDAVIT OR DECLARATION:	amended by 50, 1984, s. 3(1) (Sched. 6); repealed by 81, 1985, s. 11(a)
ANNUAL LICENCE:	amended by 65, 1983, s. 3; 8, 1986, s. 7(a); 100, 1986, s. 18(a), (b); 47, 1990, s. 5(1)(a), (b), (d)
Paragraph (1):	repealed by 47, 1990, s. 5(1)(c)
Exemption No. 3:	inserted by 111, 1980, s. 15(a); substituted by 100, 1986, s. 18(c)
Exemption No. 4:	inserted by 111, 1980, s. 15(a)
Exemption Nos. 5 and 6:	inserted by 81, 1985, s. 11(b)
Exemption No. 7:	inserted by 8, 1986, s. 7(b)
Exemption No. 8:	inserted by 100, 1986, s. 18(d)
APPLICATION - (A):	amended by 64, 1989, s. 4(a), (b); 31, 1994, s. 9(a)
Exemption No. 2:	amended by 100, 1986, s. 18(e)
Exemption No. 4:	substituted by 64, 1989, s. 4(c); 30, 1996, s. 43(a)
Exemption No. 5A:	inserted by 8, 1986, s. 7(c)
Exemption No. 10:	substituted by 83, 1994, s. 12 (Sched.)
Exemption No. 10A:	inserted by 76, 1994, s. 7(a); substituted by 77, 1995, s. 17(a); 30, 1996, s. 43(b)
Exemption No. 10B:	inserted by 77, 1995, s. 17(a); repealed by 30, 1996, s. 43(b)
Exemption No. 11A:	inserted by 54, 1991, s. 5(a); repealed by 30, 1996, s. 43(c)
Exemption No. 12:	amended by 19, 1991, s. 6(a)
Exemption No. 13:	amended by 19, 1991, s. 6(b)
Exemption No. 14:	amended by 19, 1991, s. 6(c)
Exemption No. 15:	substituted by 19, 1991, s. 6(d); amended by 72, 1995, s. 6(a)-(c)
Exemption No. 16:	substituted by 28, 1977, s. 5
Exemption No. 17:	inserted by reg. 139, 1982; substituted by 81, 1985, s. 11(c)
Exemption No. 18:	inserted by 31, 1994, s. 9(b)
APPLICATION - (B):	amended by 47, 1990, s. 5(2); 77, 1995, s. 17(b)
Exemption No. 2:	substituted by 64, 1989, s. 4(d); 30, 1996, s. 43(d)
Exemption No. 3A:	inserted by 8, 1986, s. 7(d)
Exemption No. 5:	substituted by 83, 1994, s. 12 (Sched.)
Exemption No. 5A:	inserted by 76, 1994, s. 7(b); substituted by 77, 1995, s. 17(c); 30, 1996, s. 43(e)
Exemption No. 5B:	inserted by 77, 1995, s. 17(c); repealed by 30, 1996, s. 43(e)
Exemption No. 6A:	inserted by 54, 1991, s. 5(b); repealed by 30, 1996, s. 43(f)
Exemption No. 8:	amended by 89, 1978, s. 3
Exemption No. 8(c):	repealed by 89, 1978, s. 3
BANK NOTE:	repealed by 111, 1980, s. 15(b)

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BILL OF EXCHANGE payable on demand etc.:	amended by 70, 1981, s. 12(a); substituted by 89, 1983, s. 10(a); 19, 1991, s. 6(e)
BILL OF EXCHANGE, being a cheque:	inserted by 89, 1983, s. 10(a); amended by 50, 1984, s. 3(1) (Sched. 6)
BILL OF EXCHANGE, being a payment order:	inserted by 19, 1991, s. 6(f)
BILL OF EXCHANGE and PROMISSORY NOTE drawn or made:	amended by 70, 1981, s. 12(b)
BILL OF EXCHANGE and PROMISSORY NOTE of any other kind (except a bank note):	
Exemption No. 4:	substituted by 19, 1991, s. 6(g); amended by 83, 1994, s. 12 (Sched.)
Exemption No. 4A:	inserted by 19, 1991, s. 6(g)
BILL OF LADING OR SHIPPING NOTE:	
CONTRACT NOTE (not otherwise charged):	repealed by 81, 1985, s. 11(d)
CONTRACT NOTE:	repealed by 50, 1984, s. 3(1) (Sched. 6)
CONTRACT:	repealed by 50, 1984, s. 3(1) (Sched. 6)
CONVEYANCE OR TRANSFER:	amended by 101, 1976, s. 7; 111, 1980, s. 15(c), (d); 95, 1982, s. 17(a)-(d); 89, 1983, s. 10(c); 50, 1984, s. 3(1) (Sched. 6); 81, 1985, s. 11(e), (g); 8, 1986, s. 7(e); 42, 1992, s. 6(b); 88, 1992, s. 44(b), (c); 49, 1995, s. 9(a)
paragraph (aab):	repealed by 81, 1985, s. 11(f)
paragraph (ab):	repealed by 89, 1983, s. 10(b)
Exemption No. 1:	substituted by 81, 1985, s. 11(h)
Exemption No. 2:	inserted by 81, 1985, s. 11(h)
Exemption Nos. 3:	inserted by 100, 1986, s. 18(f)
Exemption No. 4:	inserted by 100, 1986, s. 18(f); amended by 83, 1994, s. 12 (Sched.)
Exemption No. 5:	inserted by 100, 1986, s. 18(f); substituted by 83, 1994, s. 12 (Sched.)
CONVEYANCE operating:	substituted by 101, 1976, s. 8; amended by 81, 1985, s. 11(i); 36, 1990, s. 8; 88, 1992, s. 44(d), (e); 14, 1994, s. 15(a); 49, 1995, s. 9(b)
Exemption No. 2:	inserted by 81, 1985, s. 11(j)
Exemption Nos. 3:	inserted by 100, 1986, s. 18(g)
Exemption No. 4:	inserted by 100, 1986, s. 18(g); amended by 83, 1994, s. 12 (Sched.)
Exemption No. 5:	inserted by 100, 1986, s. 18(g); substituted by 83, 1994, s. 12 (Sched.)
CONVEYANCE for the partition:	amended by 95, 1982, s. 17(e); 42, 1992, s. 6(c)
CONVEYANCE for effectuating:	amended by 111, 1980, s. 15(e); 42, 1992, s. 6(d)
CONVEYANCE to which section 71D applies:	inserted by 111, 1980, s. 15(f); repealed by 19, 1991, s. 6(h)
CONVEYANCE of any other kind:	amended by 42, 1992, s. 6(e)
DEED:	substituted by 42, 1992, s. 6(f)
DOCUMENT or other INSTRUMENT:	repealed by 95, 1982, s. 17(f)
INSTALMENT PURCHASE AGREEMENT:	repealed by 50, 1984, s. 3(1) (Sched. 6)
INSTRUMENT of discharge:	amended by 42, 1992, s. 6(g)
LEASE (not being a lease...):	amended by 111, 1980, s. 15(g); 81, 1985, s. 11(k); repealed by 72, 1995, s. 6(d)

LEASE or AGREEMENT FOR a LEASE:	inserted by 72, 1995, s. 6(d)
LEASE made subsequently...:	repealed by 72, 1995, s. 6(e)
LETTER OF ALLOTMENT:	repealed by 81, 1985, s. 11(l)
MORTGAGE:	amended by 101, 1976, s. 9; 88, 1992, s. 44(f)(i)
Exemption No. 3:	inserted by 88, 1992, s. 44(f)(ii)
Exemption No. 4:	inserted by 72, 1995, s. 6(f)
POWER OF ATTORNEY:	repealed by 42, 1992, s. 6(h)
RECEIPTS:	repealed by 50, 1984, s. 3(1) (Sched. 6)
RETURN lodged with the Commissioner by a South Australian dealer:	amended by 111, 1980, s. 15(h); 42, 1992, s. 6(i); 49, 1995, s. 9(c), (d)
Exemption No. 1:	amended by 100, 1986, s. 18(h)
Exemption No. 2:	amended by 100, 1986, s. 18(i)
RETURN under section 90G:	inserted by 8, 1986, s. 7(f); substituted by 42, 1992, s. 6(j); amended by 49, 1995, s. 9(e)
TOTALIZATOR:	repealed by 104, 1976, s. 4(2) (Sched. 2)
TOTALIZATOR AGENCY BOARD:	repealed by 104, 1976, s. 4(2) (Sched. 2)
GENERAL EXEMPTIONS FROM ALL STAMP DUTIES:	
Exemption No. 1	substituted by 111, 1980, s. 15(i)
Exemption No. 1A:	inserted by 88, 1992, s. 44(g)
Exemption No. 6:	substituted by 101, 1976, s. 10; 30, 1982, s. 4; 95, 1982, s. 17(g)
Exemption No. 13:	substituted by 42, 1992, s. 6(k)
Exemption No. 13C:	inserted by 8, 1986, s. 7(g)
Exemption Nos. 14A and 14B:	repealed by 50, 1984, s. 3(1) (Sched. 6)
Exemption No. 19:	substituted by 14, 1994, s. 15(b)
Exemption Nos. 20 and 21:	amended by 14, 1994, s. 15(c)
Exemption No. 22:	inserted by 83, 1994, s. 11; amended by 18, 1996, s. 10(a)
Exemption No. 23:	amended by 50, 1984, s. 3(1) (Sched. 6) definition of "prescribed person" amended by 50, 1984, s. 3(1) (Sched. 6)
Exemption No. 24:	inserted by 52, 1989, s. 10; substituted by 14, 1994, s. 15(d); amended by 49, 1995, s. 9(f)
Exemption No. 24AA:	inserted by 18, 1996, s. 10(b)
Exemption Nos. 24A and 24B:	inserted by 14, 1994, s. 15(d)
Exemption No. 24C:	inserted by 72, 1995, s. 6(g)
Exemption No. 25:	inserted by 74, 1991, s. 14
Form A:	repealed by 72, 1995, s. 6(h)
Schedule 3:	repealed by 47, 1990, s. 6

Stamp Duties Act 1923**APPENDIX 2**

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25