

South Australia

# Stamp Duties Act 1923

An Act relating to stamp duties.

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## Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary provisions**

### **Division 1—Short title**

#### **1—Short title**

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

### **Division 2—Interpretative provisions**

#### **2—Interpretation**

- (1) 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;

***approved form*** means a form approved by the Commissioner;

***assessment*** means an assessment or reassessment by the Commissioner under Part 3 of the *Taxation Administration Act 1996*, and ***assess*** and ***assessed*** have corresponding meanings;

***Australian market licensee*** means the holder of an Australian market licence under Chapter 7 of the *Corporations Act 2001* of the Commonwealth;

***beneficial interest*** means an equitable interest or an interest vested both at law and in equity in the holder of the interest and includes a potential beneficial interest;

***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 the person appointed or acting as the Commissioner of State Taxation, and includes a person appointed or acting as a Deputy Commissioner of State Taxation (see Part 9 of the *Taxation Administration Act 1996*);

***CUFS*** means an interest, issued by or on behalf of CHESSE 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 charged under this Act, and includes penalty tax and interest payable under Part 5 of the *Taxation Administration Act 1996* in relation to duty under this Act;

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

**financial product** means—

- (a) any stock, share or other similar security of a corporation (including a government, semi-government or municipal corporation), company or society; or
- (b) any debenture, debenture stock, bond, note or other similar security of a corporation (including a government, semi-government or municipal corporation), company or society (whether constituting a charge on the assets of the corporation, company or society or not); or
- (c) any interest in a managed investment scheme registered under Chapter 5C of the *Corporations Act 2001* of the Commonwealth; or
- (d) any other stock or security that is bought or sold through the agency of a participant in a financial market within the meaning of Chapter 7 of the *Corporations Act 2001* of the Commonwealth operated by an Australian market licensee; or
- (e) a CUFS; or
- (f) any other stock, security or interest brought within the ambit of this definition by the regulations,

and includes a right in respect of a financial product but does not include any stock, security or interest excluded from the ambit of this definition by the regulations;

**forge** includes counterfeit;

**GST** means the tax payable under the GST law;

**GST law** means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* (Cwth); and
- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods and services;

**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;



**intellectual property** includes—

- (a) a registered patent, circuit layout, or design;
- (b) a right under the *Plant Breeder's Rights Act 1994* (Cwth);
- (c) a trade mark;
- (d) a copyright;

**interest** in property means a legal or equitable interest and includes a potential, contingent, expectant or inchoate interest;

**jurisdiction** means—

- (a) a State or Territory of Australia; or
- (b) a country or place subject to the laws of a particular legislative authority;

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

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

**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;

**property** means real or personal property and includes—

- (a) intellectual property (except know-how and confidential information); and
- (b) an interest in property;

**recognised financial market** means—

- (a) a financial market operated by the Australian Stock Exchange Limited; or
- (b) a financial market of a stock exchange brought within the ambit of this definition by the regulations;

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

**rent** includes an amount (however it may be described in a lease) to be paid by a lessee to a lessor to reimburse, offset or defray the lessor's liability to GST;

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

**sale** of property includes any transaction under which the property is converted into money;

**spouse** of a person includes a *de facto* husband or wife of the person who has been co-habiting continuously with the person for at least three years;

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

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

**State** includes the Australian Capital Territory and the Northern Territory;

**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 under a law of this or any other State, a law of the Commonwealth, or a law of any other place);

**transfer**, in relation to property, means transfer, assure or vest at law or in equity (whether or not the transfer, assurance or vesting is subject to registration, the issue of a certificate of title or some other similar requirement);

**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.

- (2) An interest of a particular kind in the proceeds of the sale of property is, until the property is sold, taken to be an interest of the same kind in the property.

**Example—**

A beneficial interest in the proceeds of the sale of property is, until the property is sold, taken to be a beneficial interest in the property.

- (3) A person is taken to transfer a leasehold or other interest in land held from the Crown if the person surrenders the interest so that the Crown may grant to a person other than the surrenderor a leasehold or other interest in the land.

### **3—Taxation Administration Act**

This Act should be read together with the *Taxation Administration Act 1996* which makes provision for the administration and enforcement of this Act and other taxation laws.

## **Division 3—Territorial application of Act**

### **3A—Principles for determining territorial relationship**

- (1) An instrument relates to property situated in a particular jurisdiction if it—
- (a) creates, transfers, redeems, renounces, surrenders, cancels or extinguishes an interest in property situated in the relevant jurisdiction; or
  - (b) deals with an interest in property situated in the relevant jurisdiction in any other way; or
  - (c) acknowledges, evidences or records a transaction to which paragraph (a) or (b) refers.
- (2) A potential, contingent, expectant or other inchoate interest is to be regarded as an interest in property in a particular jurisdiction if the realisation of the potentiality, contingency or expectancy, or the occurrence of any act or event necessary to perfect the interest could result in—
- (a) an interest in property situated in that jurisdiction; or
  - (b) an interest in the proceeds of the sale of property situated in that jurisdiction.

- (3) For the purpose of calculating duty on an instrument that relates to a potential, contingent, expectant or other inchoate interest—
- (a) the interest is to be treated as an actual interest ie as if the potentiality, contingency or expectancy had been realised or anything necessary to perfect the interest had occurred; and
  - (b) if the interest is dependent in any way on the exercise of a discretion or any other contingency, it will be presumed that the discretion has been exercised, or the contingency has been realised, so as to give rise to the greatest possible liability to duty in this State.
- (4) An interest in property is taken to be situated in the jurisdiction in which the property to which the interest relates is situated.

### **3B—Territorial application of Act**

- (1) This Act applies in respect of an instrument that relates to property situated, or a matter or thing to be done, in South Australia irrespective of whether—
- (a) the instrument is within or outside South Australia; or
  - (b) the instrument was executed within or outside South Australia.
- (2) If an instrument relates to property situated in part in South Australia and in part outside South Australia, duty is to be calculated as if the instrument related only to the property situated in South Australia.
- (3) This section operates subject to any other specific provision dealing with how duty is to be calculated on an instrument that relates to property within and outside South Australia.<sup>1</sup>

#### **Note—**

- 1 Section 81B deals with the duty payable on a mortgage over property within and outside the State.

### **3C—Special rules for determining location of certain forms of intangible property**

- (1) This section applies to intangible property of the following kinds—
- (a) business or product goodwill;
  - (b) intellectual property (except know-how and confidential information);
  - (c) rights conferred under a franchise agreement or licence (including a statutory licence granted under the law of the Commonwealth but not a statutory licence granted under the law of the State).
- (2) If intangible property to which this section applies is a business asset, it is taken to be wholly situated in South Australia if the business is carried on wholly in South Australia and, if not, is taken to be situated in the various jurisdictions in which the business is carried on in proportion to the volume of business carried on in each.
- (3) The Commissioner is to determine proportions for the purposes of subsection (2) having regard to—
- (a) the turnover of the business; and

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- (b) the relative extent of income generated by the business in each jurisdiction in which the business is carried on; and
  - (c) the relative extent of the work carried on in each of the relevant jurisdictions; and
  - (d) any other relevant factors.
- (4) If intangible property to which this section applies is not a business asset, it is taken to be situated in the jurisdiction in which the owner—
- (a) if a company—
    - (i) in the case of a company incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth—is taken, under that Act, to be registered;
    - (ii) in any other case—is incorporated; or
  - (b) if a natural person—is ordinarily resident.

**3D—Statutory licence**

The property in a statutory licence granted under the law of South Australia, and in any rights deriving from such a licence, is taken to be situated in South Australia.

## **Part 2—General provisions with respect to stamp duties**

### **4—Imposition of stamp duties**

- (1) Subject to the exemptions contained in Schedule 2 and the other provisions of this Act, the stamp duties specified in that Schedule are charged in respect of the instruments specified in that Schedule.
- (2) The parties who executed an instrument are jointly and severally liable to pay the duty charged in respect of the instrument.

### **6—Denotation of duty**

- (1) Subject to any express provision to the contrary, the payment of duty on an instrument is to be denoted on the instrument by an impressed stamp.
- (2) Subject to any express provision to the contrary, if another provision of this Act provides for duty on an instrument to be denoted by an adhesive stamp, the duty may be denoted by an impressed stamp or an adhesive stamp.

### **7—Distribution of stamps, commission etc**

- (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 financial institution paying duty to the Commissioner in respect of cheque forms and cheques may be allowed commission at the prescribed rate.

### **8—Stamps to be provided**

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.

### **11—Appropriate stamps to be used**

- (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.

## **12—Adhesive stamps to be cancelled**

- (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.

## **13—How instruments to be stamped**

- (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.
- (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.

## **14—Instruments to be separately charged**

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.

## **15A—Ascertainment of value of property**

- (1) If the value of property is to be ascertained by reference to an actual or notional cost of acquisition, any component of the cost of acquisition that is referable to GST payable on its sale or supply is to be regarded as a component of its value.
- (2) In ascertaining the value of property for the purpose of assessing *ad valorem* duty on an instrument, the existence of an overriding power of revocation or reconveyance in that or any other instrument may be disregarded.

### **16—Duty in force when instrument produced for stamping to apply**

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.

### **17—Duty payable in respect of instruments conditionally executed**

- (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.

### **18—Duty on other instruments**

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.

### **19A—Certain copies dutiable**

- (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 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
  - (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.

## **20—Time for payment of duty and stamping**

- (1) Subject to any express provision to the contrary, if an instrument is chargeable with duty, the duty must be paid and the instrument stamped—
  - (a) in the case of an instrument executed in South Australia—within two months after its execution; or
  - (b) in the case of an instrument executed outside South Australia—within two months after its receipt in South Australia or within six months after its execution, whichever period first expires.
- (2) If duty or further duty becomes chargeable on an instrument in consequence of an event occurring after its execution, the duty must be paid and the instrument stamped within two months after that event.
- (3) The payment in relation to an instrument of any penalty tax or interest under Part 5 of the *Taxation Administration Act 1996* must be denoted on the instrument by a particular stamp.
- (4) If an instrument that is chargeable with stamp duty is not produced to the Commissioner for stamping within the period prescribed by this section, 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.

## **21—Admissibility of unstamped instruments in evidence**

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.

## **22—Except as aforesaid no unstamped instrument to be received in evidence**

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.



### **23—Assessments and stamping of instruments**

- (1) If the result of an assessment relating to an instrument is that the instrument is not chargeable with duty, the instrument may be stamped by the Commissioner with a particular stamp denoting that it is not chargeable with duty.
- (2) If the result of an assessment relating to an instrument is that the instrument is chargeable with duty or further duty, the instrument is, on payment of any duty or further duty payable in respect of the instrument, to be stamped or further stamped in accordance with the assessment, and, when so stamped, may also be stamped by the Commissioner with a particular stamp denoting that it is duly stamped.
- (3) If the result of an assessment relating to a stamped instrument is that duty or further duty is chargeable in respect of the instrument, the instrument is, from the date of the assessment until the duty or further duty is paid and the instrument is further stamped, to be taken to be insufficiently stamped, and this subsection applies despite the fact that the instrument has already been stamped, whether under this section or another provision of this Act, with a particular stamp denoting that it is not chargeable with duty or 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, subject to subsection (3), 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.

### **27—No instrument to be enrolled or registered unless stamped**

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.



## Part 3—Special provisions with respect to certain stamp duties

### Division 1—Agreements

#### 29—Adhesive stamp may be used for agreement not under seal

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.

#### 30—When agreement comprised of several letters

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.

#### 31—Certain contracts to be chargeable as conveyances on sale

- (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 financial products 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.

### **31A—Duty on agreements for "walk in walk out" sales of land used for primary production**

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.

## **Division 2—Rental business**

### **31B—Interpretation**

In this Division, 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, and includes a hire-purchase agreement, but does not include a contract or agreement conferring a right to the possession or use of goods, or providing for the sale of goods, incidentally to a lease of, or licence to occupy, or the sale of, 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 Division in respect of rental business or hiring arrangements;

***dutiable rental business*** means rental business consisting of one or more of the following—

- (a) conferring rights to the possession or use of goods under a contractual bailment to which this Division applies;
- (b) guaranteeing the obligations of the bailee under a contractual bailment to which this Division applies;
- (c) acquiring the rights of the bailor under a contractual bailment to which this Division applies;
- (d) providing financial accommodation under a bailment plan where the trading stock is situated in South Australia;
- (e) guaranteeing the obligations of the bailee under a bailment plan where the trading stock is situated in South Australia;

***equipment financing arrangement*** means—

- (a) a hire purchase agreement; or
- (b) a contractual bailment for a term of not less than 9 months under which the final payment is not required to be made earlier than 8 months after the agreement is entered into;

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

***hire-purchase agreement*** means—

- (a) a contract or agreement for the letting of goods with an option to purchase the goods; or
- (b) a contract or agreement for the sale of goods by instalments (whether the contract or agreement describes the instalments as rent or hire or otherwise),

but does not include a contract or agreement under which property in the goods passes on or before delivery of the goods;

***registered*** means registered under section 31E;

***related corporation***, in relation to a corporation, means a corporation that is related to the first-mentioned corporation under section 50 of the *Corporations Act 2001* of the Commonwealth;

***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.

### **31C—Jurisdictional nexus**

- (1) This Division applies to a contractual bailment if—
  - (a) the goods are, or are to be, used solely or predominantly in South Australia; or
  - (b) the goods are delivered to the bailee in South Australia and—
    - (i) they are to be used outside Australia; or
    - (ii) they are not to be used solely in any one Australian State and it is not possible to determine which Australian State is to be the jurisdiction of predominant use.
- (2) If a motor vehicle is taken on hire under an equipment financing arrangement, and the motor vehicle is, or is to be, registered under the law of a State, the State in which the motor vehicle is registered will be taken to be the jurisdiction of its predominant use.

### **31D—Obligation to be registered**

- (1) A person who carries on rental business consisting of or involving dutiable rental business must be registered.  
Maximum penalty: \$10 000.
- (2) The section applies—
  - (a) irrespective of where the rental business is transacted; and
  - (b) whether or not the person is resident, or has a place of business, within the State.

### **31E—Registration**

- (1) The Commissioner shall register any person who applies in the approved form for registration under this section.
- (2) A registered person who is no longer required to be registered may, by notice in the approved form given to the Commissioner, cancel his registration under this section.

### **31F—Lodgement of statement and payment of duty**

- (1) A person who is, or ought to be, registered must, not later than the 21st day of each month—
  - (a) lodge with the Commissioner a statement in the approved form setting out—
    - (i) the total amount received during the previous month in respect of dutiable rental business; and
    - (ii) the amount representing the component referable to equipment financing arrangements entered into before 1 October 2003 (the *old equipment financing component*); and
    - (iii) the amount representing the component referable to equipment financing arrangements entered into on or after 1 October 2003 (the *new equipment financing component*); and
    - (iv) the amount representing the component referable to other kinds of rental business (the *general rental business component*); and

**Exception—**

The statement need not include amounts received in respect of hire purchase agreements entered into before 1 January 2003.

- (b) pay to the Commissioner duty equivalent to the aggregate of—
  - (i) 1.8% of the old equipment financing component; and
  - (ii) 0.75% of the new equipment financing component; and
  - (iii) if the general rental business component exceeds \$6 000—1.8% of the amount of the excess.
- (2) The amount to be disclosed in respect of dutiable rental business or a particular component of dutiable rental business under subsection (1)—
  - (a) is to include amounts received for services incidental or related to the business or the relevant component of the business; but
  - (b) is not to include amounts received to reimburse, offset or defray liability to GST.

**Exception—**

If an equipment financing arrangement (or a collateral agreement) provides that the financier is to be responsible for servicing the goods—

- (a) the cost of servicing, if separately charged, need not be disclosed and is not liable to duty; or
  - (b) if the cost of servicing is not separately charged, a proportion of the consideration received by the financier that the Commissioner considers properly referable to servicing the goods, need not be disclosed and is not liable to duty.
- (3) If the Commissioner is satisfied, on application in the approved form by a registered person, that the total on which duty is to be calculated for the ensuing 12 months is likely to be less than \$120 000, the Commissioner may permit the person to lodge statements and pay duty on an annual basis.
- (4) A person must comply with any conditions on which the Commissioner grants permission under subsection (3).  
Maximum penalty: \$10 000.
- (5) The Commissioner may, at any time, revoke a permission granted under subsection (3) for breach of a condition or any other proper reason.

**31H—Manner of denoting duty on statement**

The duty paid by a 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.

### **31I—Matter not to be included in statement**

- (1) Nothing contained in section 31F shall require a 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 under a hire-purchase agreement or 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 first mentioned person); or
  - (c) business transacted by a registered person in respect of which the registered person has paid duty under a corresponding law if the Commissioner is satisfied, on application by the registered person, that—
    - (i) the duty paid under the corresponding law is not less than would be applicable under this Act; and
    - (ii) it would be reasonable to allow the person the benefit of this subsection in respect of that business; or
  - (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.

(1a) If—

- (a) a registered person, in respect of any period for which duty is payable under this Division 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 duty paid under the corresponding law is less than would be applicable under this Act; 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:
- (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 Division,

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 person receives in excess of \$6 000 per month for or in relation to the use of goods under a contractual bailment (other than an equipment financing arrangement) that provides for the person to be responsible for the servicing of those goods, the 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 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.

### **31K—Calculation by other methods**

- (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 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.

### **31L—Passing on a rental duty**

- (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: \$250.

Expiation fee: \$80.

- (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.

### **31M—Ascertainment and disclosure of place of use of goods**

- (1) A person who carries on a rental business may rely on a statement of the person who takes goods on hire as to where the goods will be solely or predominantly used during the course of the hire or, in the case of a motor vehicle, where the motor vehicle will be registered, unless the person knows that the statement is false.
- (2) A person who carries on a rental business is not bound to inquire as to any change in the place of use of the goods or, in the case of a motor vehicle, the place of registration.
- (3) If the Commissioner finds that insufficient duty has been paid, the failure to pay the correct amount of duty does not constitute a tax default under the *Taxation Administration Act 1996* if—
- (a) the failure to pay the correct amount of duty results from reliance on information on which the person liable for the duty was entitled to rely under this section; and
  - (b) the correct amount of duty is paid within 3 months after the issue of a notice of assessment of the duty by the Commissioner.
- (4) A person who falsely represents that the goods that the person takes, or proposes to take, on hire will be used solely or predominantly outside South Australia, is guilty of an offence.

Maximum penalty: \$10 000.

## Division 3—Annual licences

### 32—Interpretation

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;

**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 for assurance or insurance and includes—

- (a) an amount charged to a policy holder to reimburse, offset or defray the insurer's liability for GST in respect of the assurance or insurance;
- (b) a levy charged to a policy holder;
- (c) an instalment of premium.

### 33—Annual licence required for insurance business

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.

### **34—Application for annual licence**

- (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 application.

### **35—Issuing and term of annual licence**

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

### **36—Monthly returns in respect of general insurance business**

- (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.

### **36A—Duty if annual licence application or monthly return not lodged as required**

A company, person or firm that does not lodge an application for an annual licence, or does not lodge a monthly return, as required under this Act is nevertheless liable to pay duty to the Commissioner as if the company, person or firm had lodged the application or return required under this Act immediately before the end of the period allowed for such lodgment.

### **37—Denoting of duty**

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

### **38—Duty payable on acquisition of insurance business**

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.

### **42AA—Duty in respect of policies effected outside South Australia**

- (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 approved 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 does not lodge a return as required under this section is nevertheless liable to pay duty to the Commissioner as if the company, person or firm had lodged the return required under this section immediately before the end of the period allowed for such lodgment.
- (5) Subsection (1) does not apply to any policy of life assurance.

### **42AB—Insurers not required to be licensed**

- (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.

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Division 3—Annual licences

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- (3) Where an insurer is neither required to be 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—
- (a) furnish a return to the Commissioner stating the amount of premium; and
  - (b) pay stamp duty calculated by reference to the amount of the premium and the appropriate rate prescribed by Schedule 2 in relation to annual licence applications.
- (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.

## **Division 4—Application for motor vehicle registration**

### **42A—Interpretation**

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

*market value*, in relation to a motor vehicle, means the amount (inclusive of GST) 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.

#### **42B—Duty on applications for motor vehicle registration or transfer of registration**

- (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 (inclusive of GST) 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 (inclusive of GST) 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.
- (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.

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Division 4—Application for motor vehicle registration

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- (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.
- (4) A person who does not lodge an application to register a motor vehicle, or transfer the registration of a motor vehicle, as required is nevertheless liable to pay duty to the Commissioner as if the person had lodged the required application immediately before the end of the period allowed for making such an application.
- (5) If a person drives a motor vehicle on a road without registration in contravention of the *Motor Vehicles Act 1959*, the person is to be taken to have been required by this Act to lodge an application to register the vehicle not later than the day preceding the day on which the vehicle is so driven on a road.
- (6) A person is to be taken to be required by this Act to lodge an application to transfer the registration of a motor vehicle within the period within which such an application is required to be made under the *Motor Vehicles Act 1959*.
- (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.



#### **42BA—Concessional rate of duty on some applications to transfer registration**

- (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.

#### **42C—Refund of duty where vehicle returned or registration or transfer in error**

If, on application, the Commissioner is satisfied, in relation to the registration, or transfer of the registration, of a motor vehicle—

- (a) that, within three months after the registration or transfer, the vehicle was returned by the applicant to the person from whom it was acquired and accepted by that person; or
- (b) that the registration or transfer was made in error,

the Commissioner may refund the duty paid in respect of the application for the registration or transfer.

#### **42D—Taxation Administration Act and functions of Registrar**

The *Taxation Administration Act 1996* applies in relation to—

- (a) the payment of money to the Registrar of Motor Vehicles as duty under this Act; and
- (b) the performance of functions by the Registrar under this Act or the *Motor Vehicles Act 1959* in relation to duty under this Act,

as if the Registrar were the Commissioner.

## **42E—Regulations**

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, 42BA, 42C, 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 clause 2 of Schedule 2.

## **Division 5—Cheques**

### **43—Interpretation**

In this Act, unless the contrary intention appears—

*cheque* means—

- (a) a cheque for the purposes of the *Cheques Act 1986* of the Commonwealth;
- (b) an instrument of a prescribed class;

*financial institution* has the same meaning as in the *Cheques Act 1986* of the Commonwealth;

*unstamped cheque* means a cheque drawn against an account held with a financial institution in South Australia on which duty or exemption from duty is not denoted in a form approved by the Commissioner.

### **44—Duty on cheques and cheque forms**

- (1) A financial institution must, not later than the 7th day of each month—
  - (a) lodge with the Commissioner a return, in a form approved by the Commissioner, of—
    - (i) all cheque forms issued during the preceding month by the financial institution to be used in drawing on accounts held by the financial institution in South Australia; and
    - (ii) all unstamped cheques paid by the financial institution during the preceding month; and
  - (b) pay to the Commissioner duty at a rate prescribed by Schedule 2 less commission referred to in section 7 on each cheque form and cheque to which the return relates.
- (2) A financial institution is entitled to recover duty on a cheque form issued or an unstamped cheque paid by the financial institution from the person to whom the cheque form was issued or the payee of the unstamped cheque and may deduct the amount of the duty from an account of the person at the financial institution or from the amount paid on the cheque.
- (3) A financial institution that does not lodge a return as required under subsection (1) is nevertheless liable to pay duty to the Commissioner as if the financial institution had lodged the return required under that subsection immediately before the end of the last day for such lodgement.

- (4) Duty on cheque forms issued by financial institutions is to be denoted in a form approved by the Commissioner.
- (5) If a cheque form issued by a financial institution in respect of an account held with the financial institution in South Australia is exempt from duty, the fact that it is so exempt is to be denoted in a form approved by the Commissioner.

#### **45—Duty not to be chargeable after certain date**

- (1) Despite any other provision of this Act, duty is not chargeable on a cheque form issued by a financial institution or a cheque paid by a financial institution on or after 1 July 2004.
- (2) No refund of duty on cheque forms is to be allowed on or after 1 July 2004.
- (3) After 1 July 2004, the Governor may, by proclamation, fix a date for the repeal of this Division and Schedule 2 clause 13.
- (4) On the date fixed under subsection (3), this Division (including this section) and Schedule 2 clause 13 are repealed.

#### **46—Power to make regulations**

The power to make regulations conferred on the Governor by section 112 includes power to make regulations with respect to returns and the payment of duty under section 44 and the obligations of financial institutions.

### **Division 6—Conveyances and conveyances on sale**

#### **60—Interpretation**

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 *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).

### **60A—Value of property conveyed or transferred**

- (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.
- (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 Act 2001* of the Commonwealth; 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 Act 2001* of the Commonwealth; 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 Act 2001* of the Commonwealth) 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*, in relation to a company, means a person who would have a substantial shareholding in the company as defined in section 9 of the *Corporations Act 2001* of the Commonwealth if the reference to 5% in paragraph (a) of the definition of *substantial holding* in that section were replaced by a reference at 50%.

#### **60B—Refund of duty where transaction is rescinded or annulled**

- (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 5 years 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*.

#### **60C—Refund of duty on reconveyance of property subject to a common law mortgage**

- (1) If—
- (a) *ad valorem* duty is paid on a conveyance of property (the *prior conveyance*); and
  - (b) the sole purpose of the conveyance is to secure a liability under a loan, indemnity or guarantee; and
  - (c) a conveyance (the *later conveyance*) reconveys the property to the person by whom the security was given under the terms of the security or on extinguishment or termination of the secured liability,

this section applies to the later conveyance.

- (2) If the Commissioner is satisfied that a conveyance is one to which this section applies—
- (a) no stamp duty is payable on the conveyance; and
  - (b) the Commissioner must, on application by the person to whom the property is reconveyed, refund the duty paid on the prior conveyance.

#### **61—Method or estimating value of consideration where consideration consists of shares**

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.

## 62—Land use entitlements

- (1) This section applies to a transaction under which a person—
  - (a) acquires a share in a company or an interest under a trust; or
  - (b) becomes entitled, as the owner of a share in a company or an interest under a trust, to the possession of land.
- (2) Subject to the following exceptions, if a person acquires a notional interest in land as a result of a transaction to which this section applies, the transaction is dutiable under this section.

### Exceptions—

- 1 The acquisition of a share in a company or an interest under a trust that confers a right to occupy a dwelling is not dutiable under this section if the dwelling is part of a scheme consisting of two or more dwellings owned and administered by the company or the trustees of the trust.
  - 2 The acquisition of a share in a company or an interest under a trust that confers a right to occupy a dwelling is not dutiable under this section if the dwelling is part of a retirement village scheme under the *Retirement Villages Act 1987*.
  - 3 A transaction exempted by the regulations from this section is not dutiable under this section.
- (3) An instrument that gives effect to, or acknowledges, evidences or records a transaction that is dutiable under this section is dutiable as a conveyance of a notional interest in the land.
  - (4) The value of the notional interest acquired as a result of the transaction is determined as follows—
    - (a) if the person acquires a right to exclusive possession of land—the value of the notional interest is equivalent to the value of an unencumbered estate in fee simple in the land;
    - (b) in any other case—the value of the notional interest is a proportion of the value of an unencumbered estate in fee simple in the land reflecting the more limited extent of the possessory right.

## 64—Consideration in case of lease

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.

## 65—Where consideration consists of real or personal property

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.

## 66—Where consideration is payable in instalments

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.

## **67—Computation of duty where instruments are interrelated**

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

## **68—Duty in certain cases**

- (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.

#### **70—Evasion of duty**

- (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.

#### **71—Instruments chargeable as conveyances operating as voluntary dispositions *inter vivos***

- (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.
- (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) the creation of an interest in property subject to a trust; or
    - (iv) a transfer of an interest in property subject to a trust; or
    - (v) the surrender or renunciation of an interest in property subject to a trust; or
    - (vi) the redemption, cancellation or extinguishment of an interest in property subject to a trust,whether or not any consideration is given for the transaction; or

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- (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 financial product or a unit under a unit trust scheme, or an interest in land, a financial product 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 under the constitution of a managed investment scheme registered under Chapter 5C of the *Corporations Act 2001* of the Commonwealth; 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*:
  - (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 financial product 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 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 in property subject to the trust;
  - (ia) a transaction under which there is a *pro rata* increase or diminution of the number of units held by the unitholders in a unit trust so that each unitholder's holding, expressed as a proportion of the aggregate number of units, remains unaffected by the transaction;
  - (j) a voluntary disposition of property that is wholly for charitable or religious purposes;
  - (k) a transfer of a prescribed class.
- (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 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.

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- (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 financial product 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 financial product 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;

**public company** means a public company within the meaning of the *Corporations Act 2001* of the Commonwealth;

**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.

#### **71AA—Instruments disclaiming etc an interest in the estate of a deceased person**

- (1) This section applies to an instrument under which a person who is, or may be, entitled to share in the distribution of the estate of a deceased person—
  - (a) disclaims an interest in the estate; or
  - (b) assigns or transfers an interest in the estate to another.
- (2) An instrument to which this section applies is taken to be a conveyance of property operating as a voluntary disposition *inter vivos* (whether or not consideration is given for the transaction).
- (3) For the purpose of calculating *ad valorem* duty payable on an instrument to which this section applies, the value of the interest subject to the conveyance is to be determined as if the estate had been distributed and the interest were an interest in possession.

#### **71A—Provision where trust property distributed *in specie***

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.

#### **71B—Partition or division of property**

- (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.
- (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).

#### **71C—Concessional rates of duty in respect of purchase of first home etc**

- (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

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- (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) —
  - (A) 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
  - (B) 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.

(1b) If the Commissioner is satisfied on an application under this section—

- (a) that the conveyance relates to a genuine farm; and
- (b) that the conveyance would be one to which this section applies if it related only to the relevant component of the genuine farm,

this section applies to a notional conveyance of the relevant component of the genuine farm.

(2) The duty payable upon a conveyance or notional conveyance to which this section applies will, if it gives effect to a relevant contract entered into before 27 May 2004, 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:

$$A = B - \left( C - D \frac{(E - F)}{1000} \right)$$

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

**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.

(3) The duty payable upon a conveyance or notional conveyance to which this section applies will, if it gives effect to a relevant contract entered into on or after 27 May 2004, be as follows:

- (a) where the amount by reference to which the duty would, apart from this section, be calculated (the *property value*) does not exceed \$80 000—no duty will be payable;

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- (b) where the property value exceeds \$80 000 but does not exceed \$100 000—the duty payable is the relevant percentage of the duty that would, apart from this section, be payable;

In paragraph (b), the *relevant percentage* is a percentage in a range beginning at 2.5% for a property value of \$81 000, increasing in steps of 2.5% for each additional \$1 000 of property value, and ending at 50% for a property value of \$100 000.

- (c) where the property value exceeds \$100 000 but does not exceed \$150 000—the duty payable will be 50% of the duty that would, apart from this section, be payable;
- (d) the maximum concession under this subsection (\$2 415) is reached at a property value of \$150 000 and where the property value exceeds \$150 000 but does not exceed \$250 000 the amount of duty payable is the amount that would, apart from this section, be payable less a concession calculated by reducing the maximum concession by \$24 for each additional \$1 000 by which the property value exceeds \$150 000;
- (e) where the property value exceeds \$250 000—no concession applies.

**Note—**

For the purposes of this subsection, property values are to be expressed to the nearest multiple of \$1 000 and if a property value lies exactly at the mid point between two multiples of \$1 000, the property value is to be rounded down to the lower of those multiples.

- (4) Where the Commissioner is satisfied by such evidence as the Commissioner may require that—
- (a) 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; and
- (b) the person or persons occupied, as their principal place of residence, a dwelling house constructed subsequent to the conveyance, on the land comprised in the conveyance, or under rights conferred by shares comprised in the conveyance, within 2 years of the date of the conveyance,

the Commissioner must 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.

- (5) Where, on the conveyance of a genuine farm, the amount by reference to which duty would, apart from this section, be calculated exceeds the prescribed maximum, the duty payable on the conveyance is calculated as follows:
- (a) first, calculate the duty on the conveyance apart from this section;
- (b) then, subtract from this amount the duty that would be payable apart from this section on a notional conveyance of the relevant component of the farm;
- (c) finally, add to this amount the duty calculated on the notional conveyance in accordance with this section.



- (6) In this section—

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

***genuine farm*** means land as to which the Commissioner is satisfied—

- (a) the land is to be used for primary production by the person seeking the benefit of this section; and
- (b) the land is, by itself, or in conjunction with other land owned by that person, capable of supporting economically viable primary production operations;

***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 component*** of a genuine farm means the part of the farm constituted by the dwelling house and its curtilage, or the part of the land that is to constitute the site and curtilage of a dwelling house that is to be constructed;

***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.

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

### **71CA—Exemption from duty in respect of certain maintenance agreements etc**

- (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
  - (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.

### **71CB—Exemption from duty in respect of certain transfers between spouses or former spouses**

- (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 three 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.

#### **71CC—Interfamilial transfer of farming property**

- (1) A transfer of an interest in land, or land and goods, referred to in subsection (1a) 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

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- (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.
- (1a) Subsection (1) applies to—
- (a) land used for the business of primary production; and
  - (b) goods comprising livestock, machinery, implements and other goods used or acquired for the business of primary production conducted on the land referred to in paragraph (a).
- (1b) In assessing the duty payable on an instrument, the Commissioner is to apply the following principles:
- (a) if the instrument gives effect solely to a transaction, or part of a transaction, that is exempt from duty under this section, then no duty is payable on the instrument;
  - (b) if the instrument gives effect to a transaction, or part of a transaction, of which some of the elements are exempt from duty under this section and others not, the instrument will be assessed for duty as if it gave effect only to those elements of the transaction that are not exempt from duty under 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.
- (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;
  - (ca) a child or remoter lineal descendant of the 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).
- (6) This section applies in relation to instruments executed after its commencement.

#### **71CD—Duty on conveyances by Official Trustee etc**

Where, on the bankruptcy of a debtor, property of the debtor is vested in the Official Trustee in Bankruptcy or a registered trustee under the *Bankruptcy Act 1966* of the Commonwealth—

- (a) a subsequent conveyance of the property by the Official Trustee or registered trustee to the bankrupt or former bankrupt is exempt from stamp duty;
- (b) a subsequent conveyance of the property by the Official Trustee or registered trustee to some other person will be assessed for stamp duty as though the conveyance were from the bankrupt or former bankrupt to that person.

#### **71D—Concessional duty to encourage mineral or petroleum exploration activity**

- (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.

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- (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:  
$$D = (A - V) + \$1000$$
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*; or
  - (d) an exploration licence granted under the *Offshore Minerals Act 2000*.
- (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*.

**71DA—Duty on certain conveyances between superannuation funds etc**

- (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—
    - (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.

- (1a) If on application made under this section the Commissioner is satisfied—

- (a) that the applicant is a party to an instrument that is a conveyance of property, or an agreement to convey property, from a superannuation fund to a pooled superannuation trust; and
- (b) that the purpose of the conveyance is to satisfy standards relating to the investment of assets of the superannuation fund prescribed by or under the SIS Act; and
- (c) that the only consideration for the conveyance is the right to share in the income and assets of the pooled superannuation trust whether that right is in the form of units issued by the trust or some other form,

this section applies to the instrument.

- (1b) If on application made under this section the Commissioner is satisfied—

- (a) that the applicant is a party to an instrument that is a conveyance of property, or an agreement to convey property, from a pooled superannuation trust—
  - (i) to a superannuation fund; or
  - (ii) to another pooled superannuation trust at the direction of a superannuation fund; and
- (b) that the only consideration passing from the superannuation fund to the firstmentioned pooled superannuation trust for the conveyance is the surrender by the superannuation fund of the whole or part of its right to share in the income and assets of the pooled superannuation trust,

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 approved deposit fund as defined by section 47 of the SIS Act;

***pooled superannuation trust*** means a pooled superannuation trust as defined in the SIS Act;

***the SIS Act*** means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

- (6) This section applies to an instrument of a kind referred to in subsection (1), (1a) or (1b) if it was first lodged for stamping with the Commissioner on or after the commencement of the subsection concerned.

## **Division 7—Gaming machine surcharge**

### **71EA—Interpretation**

- (1) In this Division—

***direct interest***—see section 71EB(1);

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

***gaming machine business*** means a business conducted in pursuance of a gaming machine licence;

***gaming machine licence*** means a gaming machine licence under the *Gaming Machines Act 1992*;

***gaming machine surcharge*** means the duty imposed under this Division;

***hold***—a person ***holds*** a share in a private entity if the person—

- (a) is registered as the holder; or
- (b) is beneficially entitled to the share; or
- (c) controls the exercise of rights attached to the share;

***indirect interest***—see section 71ED(1);

***net gambling revenue*** means net gambling revenue as defined for the purposes of section 72 of the *Gaming Machines Act 1992*;

***person*** includes a private entity;

***private company*** means—

- (a) a company that is limited by shares but whose shares are not quoted on a recognised financial market; or
- (b) a company that is not limited by shares,

but does not include a company that is excluded from the ambit of this definition by the regulations;



**private entity** means a private company or a private unit trust scheme;

**private unit trust scheme** means—

- (a) a unit trust scheme in which less than 50 persons hold units; or
- (b) a unit trust scheme in which 50 or more persons hold units if 20 or fewer persons hold 75 per cent or more in number or value of the units on issue,

but does not include a unit trust scheme that is an approved deposit fund or a pooled superannuation trust within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwth);

**proportionate interest**—see sections 71EB(3), 71EC(2) and 71ED(3);

**related entity**—see section 71EC(1);

**share** in a private entity means—

- (a) where the private entity is a private company—a share or other interest that—
    - (i) entitles the holder to vote at a general meeting of shareholders of the private company; or
    - (ii) entitles the holder to share in dividends or would entitle the holder to share in dividends assuming that there were profits out of which dividends could be declared; or
    - (iii) entitles the holder to share in the distribution of the assets of the company in the event of a winding up; or
    - (iv) confers entitlements of two or more kinds mentioned above;
  - (b) where the private entity is a private unit trust—a unit in the trust.
- (2) Property is taken to be held beneficially by a private unit trust scheme if it is held by the trustees of the scheme in trust for the unitholders.
  - (3) If an interest that is to be valued for the purposes of this Division is the potential interest of an object of a discretionary trust, the interest is to be valued as if it were the greatest beneficial interest in the property subject to the trust that could be conferred under the terms of the trust.

### **71EB—Direct interests**

- (1) A person has a **direct interest** in a private entity if the person holds a share in the private entity.
- (2) A direct interest is to be expressed as a proportionate interest.
- (3) The **proportionate interest** is the highest of the following:
  - (a) a percentage representing the proportion of votes that the person would be entitled to exercise (or control) at a general meeting of shareholders or unitholders assuming that all shareholders or unitholders exercised their voting rights;
  - (b) a percentage representing the extent the person is entitled to participate in dividends or distributions of income;
  - (c) a percentage representing the extent to which the person would be entitled to participate in distribution of assets on a winding up of the private entity.

- (4) The proportionate interest of a person is to be determined as if any power that the person has to increase the extent of an interest (by varying the constituent documents of the private entity or in any other way) had been exercised so as to maximise the relevant interest in the private entity.

### 71EC—Related entities

- (1) Two private entities are *related entities* if—
  - (a) one has a direct interest in the other; or
  - (b) a series of such relationships can be traced between them through another or other related entities (*intermediate entities*).
- (2) If a private entity is related to another private entity by a relationship traced through an intermediate entity or intermediate entities, the private entity's proportionate interest in the other is calculated by multiplying the relevant fractions together and expressing the result as a percentage.

**Example—**

Entity A (a private company) holds a 75% proportionate interest in entity B (a private unit trust scheme) which in turn holds a 50% proportionate interest in entity C (a private company). In this case, the proportionate interest of entity A in entity C (insofar as it is traced through entity B) is 37.5%.

### 71ED—Indirect interests

- (1) If a person has a direct interest in a private entity (entity A) which is related to another private entity (entity B), the person has an *indirect interest* in entity B.
- (2) An indirect interest is to be expressed as a proportionate interest.
- (3) The proportionate interest is calculated by multiplying together—
  - (a) a fraction representing the person's proportionate interest in entity A; and
  - (b) a fraction representing entity A's proportionate interest in entity B,and expressing the result as a percentage.

**Example—**

X holds a proportionate interest of 33⅓% in entity A (a private company) which in turn holds a 75% proportionate interest in entity B (a private unit trust scheme) which in turn holds a 50% proportionate interest in entity C (a private company). In this case X's indirect interest in entity C is to be expressed as a proportionate interest of 12.5%

### 71EE—Notional interests

- (1) If a private entity owns a gaming machine business or an interest in a gaming machine business, a person who holds a direct or indirect interest in the private entity is taken to have a notional interest in the gaming machine business.
- (2) The value of the notional interest is calculated as follows:

$$V = p \times v_1$$

where—

*p* is a fraction representing the person's proportionate interest in the private entity;

$v_I$  is the value of the gaming machine business or the interest in the gaming machine business (as the case requires).

### **71EF—Application of this Division**

- (1) This Division applies to the following transactions—
  - (a) the transfer of an interest in a gaming machine business; or
  - (b) the transfer of a notional interest in a gaming machine business.
- (2) A transfer includes any transaction as a result of which the amount or value of the interest or notional interest of a person (the transferor) in a gaming machine business is diminished or extinguished and another person (the transferee) gains an interest or notional interest in the gaming machine business or the transferee's interest or notional interest increases in amount or value.

#### **Example—**

Suppose that a gaming machine business is operated by a private entity. The shares of a particular person in the private entity are redeemed or cancelled. This transaction is to be regarded as a transfer of the shareholder's notional interest to the remaining shareholders because their respective notional interests are increased by the value of the notional interest that has been extinguished by the redemption or cancellation.

- (3) However, a transfer does not include—
  - (a) a transaction by way of mortgage; or
  - (b) a transaction between members of the same family group by way of gift; or
  - (c) a transaction between members of the same family group for which there is no consideration of a commercial nature.

### **71EG—Imposition of surcharge**

- (1) A gaming machine surcharge is imposed on a transaction to which this Division applies.
- (2) The surcharge is in addition to any other duty payable under this Act in respect of the transaction.
- (3) The surcharge is calculated as follows:

$$A = p \times 0.05 \times NGR$$

where—

$A$  is the amount of the surcharge

$p$  is —

- (a) if the whole of the gaming machine business is transferred—1;
- (b) in any other case—a fraction representing the relationship between the value of the interest or notional interest transferred and the value of the gaming machine business

*NGR* is the net gambling revenue derived from the business for the last 12 complete calendar months before the date of the transaction or, if the business was not carried on during that period or for the whole of that period, an amount determined by the Liquor and Gambling Commissioner to be reasonable having regard to net gambling revenue derived during that period from similar businesses.

### **71EH—Exempt transactions**

- (1) A transaction is exempt from the surcharge if—
  - (a) no liability to duty is imposed (apart from this Division) in respect of the transaction (or an instrument by which it is effected); or
  - (b) the transaction is effected by a conveyance that is exempt from *ad valorem* duty under this Act.
- (2) The regulations may exempt transactions of a specified class from the surcharge.

### **71EI—Notice of transaction to which this Division applies**

- (1) If a transaction to which this Division applies occurs, the parties to the transaction must within 2 months after the date of the transaction—
  - (a) lodge a return with the Commissioner; and
  - (b) pay the relevant amount of the surcharge.

Maximum penalty: \$10 000.

- (2) The return must be in a form approved by the Commissioner and contain the following information—
  - (a) the names and addresses of the parties to the transaction; and
  - (b) the date of the transaction; and
  - (c) particulars of the transaction and the interest or notional interest transferred as a result of the transaction; and
  - (d) sufficient details to enable the calculation of the fraction representing the relationship between the value of the interest or notional interest transferred and the value of the gaming machine business; and
  - (e) details of the net gambling revenue for the last 12 calendar months before the date of the transaction; and
  - (f) other information required by the Commissioner.

### **71EJ—Recovery of duty**

- (1) The Commissioner may recover a surcharge payable on a transaction to which this Division applies as a debt—
  - (a) from a party to the transaction; or
  - (b) if the relevant gaming machine business is owned by a private entity—from the private entity.
- (2) If the Commissioner recovers the surcharge from a private entity, the private entity may recover the relevant amount from the parties to the transaction.

## Division 8—Transactions effected without creating dutiable instrument

### 71E—Transactions otherwise than by dutiable instrument

- (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 Act 2001* of the Commonwealth;
  - (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;

**Stamp Duties Act 1923—1.7.2004 to 3.11.2004**

Part 3—Special provisions with respect to certain stamp duties

Division 8—Transactions effected without creating dutiable instrument

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- (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.
- (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 parties to the transaction are nevertheless jointly and severally liable to pay duty to the Commissioner as if such a statement had been lodged with the Commissioner immediately before the end of that period of two months.
- (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.

**71F—Statutory transfers**

- (1) A statutory transfer is a transfer or vesting of assets or liabilities that takes effect by or under the provisions of a special Act.
- (2) The parties to a statutory transfer must, within 2 months after a statutory transfer takes effect, lodge with the Commissioner a statement in a form approved by the Commissioner setting out—
  - (a) a description of the property subject to the statutory transfer; and
  - (b) the value of that property; and
  - (c) any other information required by the Commissioner.
- (3) Duty is payable on the statement as if it were a conveyance, executed by the parties to the statutory transfer, operating as a voluntary disposition *inter vivos* of the property subject to the statutory transfer.

- (4) If a statement is not lodged as required by this section within 2 months after the statutory transfer takes effect—
- (a) each party to the transfer is guilty of an offence and liable to a penalty not exceeding \$10 000; and
  - (b) the parties to the transfer are jointly and severally liable to pay duty to the Commissioner as if such a statement had been lodged with the Commissioner immediately before the end of that period of 2 months.
- (5) A statutory transfer arising from the merger of credit unions, or transferring assets from one credit union to another, is exempt from this section.
- (6) In this section—
- special Act* means—
- (a) the *Financial Sector (Transfer of Business) Act 1999*; or
  - (b) the *Financial Sector (Transfer of Business) Act 1999* of the Commonwealth; or
  - (c) any other Act of the State, another State, or the Commonwealth prescribed by regulation for the purposes of this section.

## **Division 9—Leases**

### **72—Agreement for lease to be charged as a lease**

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.

### **73—Leases, how to be charged in respect of produce etc**

- (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.

#### 74—Duty in respect of certain kinds of lease

- (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.

#### 75—Consideration for lease

- (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
  - (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.



## 75A—Abolition of duty on leases

- (1) No liability to duty arises in relation to a lease entered into on or after 1 July 2004.
- (2) After 1 July 2004, the Governor may, by proclamation, fix a date for the repeal of this Division and Schedule 2 clause 10.
- (3) On the date fixed under subsection (2), this Division (including this section) and Schedule 2 clause 10 are repealed.
- (4) In this section—

*lease* includes an agreement for a lease or any other document for the tenancy or occupancy of land or a tenement.

## Division 10—Mortgages

### 76—Interpretation

In this Act—

*home* means any residential premises;

*home mortgage*—a mortgage is a home mortgage if—

- (a) the mortgagor is a natural person; and
- (b) the whole of the amount secured by the mortgage has been, is being, or is to be, used for any of the following purposes:
  - (i) purchasing land on which a home that the mortgagor (or, if there are two or more mortgagors, at least one of them) intends to occupy as his or her sole or principal place of residence has been, or is to be, built;
  - (ii) building, or making additions or improvements to, a home that the mortgagor (or, if there are two or more mortgagors, at least one of them) occupies or intends to occupy as his or her sole or principal place of residence;
  - (iii) repaying a loan previously taken out for one or more of the above purposes,

but if the amount secured by the mortgage is to be used for some purpose in addition to a purpose mentioned above, the mortgage is not a home mortgage;

**Examples—**

- 1 A person takes out a mortgage over his or her home to secure a loan which is to be used in part to finance home improvements and in part to finance the purchase of a motor vehicle. In this case, the mortgage is not a home mortgage.
- 2 A person takes out a mortgage to finance the purchase of shop premises with an attached residence, intending to occupy the residence as his or her principal place of residence. In this case, the mortgage is not a home mortgage.

*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.
- 1 A *mortgage* includes an instrument that would, assuming the fulfilment of a condition to which the instrument is subject, fall into one of the above categories.
  - 2 A *mortgage* includes an agreement that gives rise to a presumptive mortgage under section 10(3) of the *Consumer Credit (South Australia) Code*.

### **77—Where mortgage consists of several instruments**

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.

### **78—Security for stock, how to be charged**

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.

### **79—Mortgage securing future and contingent liabilities**

- (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).

**Exceptions—**

- 1 Paragraph (b) 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 extended solely because of fluctuations in the rate of exchange.
  - 2 If a mortgage becomes chargeable with further duty under paragraph (b), and the rate of duty payable on the mortgage has increased since it was previously stamped, then the further duty is to be calculated by subtracting from the amount of duty calculated under paragraph (b)(ii) the amount that would have been already paid if duty had then been calculated and paid at the higher rate.
- (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.

- (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.

### **80—Security for repayment by periodical payments, how to be charged**

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.

### **81—Transfers and further charges**

- (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*.

### **81A—Duty may be denoted in certain cases by adhesive stamps**

- (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 \$6 000 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 \$6 000; 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 \$6 000.

### **81B—Duty chargeable proportioned to value of South Australian property**

- (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.

### **81C—Duty paid on one mortgage may be denoted as having been paid on another mortgage**

- (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 Act 2001* of the Commonwealth.

### **81D—Refinancing of primary producers' loans**

- (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 mortgage) that is being fully 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 Act 2001* of the Commonwealth;

*public company* means a public company within the meaning of the *Corporations Act 2001* of the Commonwealth.

- (5) This section applies in relation to mortgages executed after the commencement of section 5 of the *Stamp Duties (Miscellaneous No. 2) Amendment Act 1997*.

### **81E—Refinancing of loan due to rural branch closure**

- (1) If the Commissioner is satisfied—
  - (a) that a mortgage over property with a financial institution as mortgagee (the *new mortgage*) provides for the refinancing of a loan secured by a previous mortgage (with another financial institution as mortgagee) that is being fully discharged; and
  - (b) that both the new mortgage and the previous mortgage apply to the same, or substantially the same, property; and

- (c) that the sole or principal reason for refinancing the loan is the closure of a branch office (situated in a town, township or settlement outside Metropolitan Adelaide) of the financial institution that was the mortgagee under the previous mortgage; and
  - (d) that the financial institution that was the mortgagee under the previous mortgage does not have another branch office in the same town, township or settlement; and
  - (e) that the mortgagee under the new mortgage is a financial institution with a branch office—
    - (i) in the same town, township or settlement as the closing branch office; or
    - (ii) if no financial institution has a branch office in that town, township or settlement—in the next closest town, township or settlement (outside Metropolitan Adelaide) in which a branch office of a financial institution is situated; and
  - (f) that the mortgagor under both mortgages is the same person,
- duty is not chargeable on so much of the amount under the new mortgage as was subjected to the payment of duty 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—

**branch office** of a financial institution includes an agent of the financial institution who is authorised to act as a branch office of the financial institution;

**financial institution** means a financial institution within the meaning of the *Financial Institutions Duty Act 1983*;

**Metropolitan Adelaide** means the part of the State that is comprised of Metropolitan Adelaide within the meaning of the *Development Act 1993*.
  - (5) This section applies in relation to mortgages executed after its commencement.

## 82—Unregistered mortgages protected by caveats

- (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.

### **83—Exemption from duty for first home owners**

- (1) If the Commissioner is satisfied that a mortgage secures a loan taken out to finance liabilities under an eligible first home owner transaction entered into on or after 27 May 2004, the following provisions apply:
- (a) if the mortgage secures liabilities under the eligible first home owner transaction and no other liability—no stamp duty is payable in respect of the mortgage;
  - (b) if the mortgage secures liabilities under the eligible first home owner transaction and some other liability—the stamp duty otherwise payable is reduced by the amount of stamp duty that would, apart from this subsection, have been applicable if the mortgage—
    - (i) secured only liabilities under the eligible first home owner transaction; but
    - (ii) attracted no concessional rate of duty as a home mortgage.
- (2) A transaction is an eligible first home owner transaction if—
- (a) the party or parties to the transaction who seek the benefit of this section have made an application for a first home owner grant under the *First Home Owner Grant Act 2000* in relation to the transaction and comply with the eligibility criteria under that Act; and
  - (b) the transaction—
    - (i) is an eligible transaction; and
    - (ii) has been completed,within the meaning of that Act.
- (3) The Commissioner may stamp a mortgage under this section in anticipation of the relevant conditions for an exemption or partial exemption as prescribed by this section being satisfied.
- (4) If the conditions are not in fact satisfied, the Commissioner may recover the amount of the exemption or partial exemption from any party to the mortgage as a debt.



## Part 3A—Special provisions relating to financial products

### Division 1—Interpretation

#### 90A—Interpretation

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

**Australian CS facility licensee** means the holder of an Australian CS facility licence under Chapter 7 of the *Corporations Act 2001* of the Commonwealth;

**broker** means a person who is a broker under the operating rules of a registered market licensee;

**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;

**CS facility** means a clearing and settlement facility within the meaning of Chapter 7 of the *Corporations Act 2001* of the Commonwealth operated by an Australian CS facility licensee;

**CSF identifier**, in relation to a CSF transaction, means a distinctive code assigned to, or in relation to, the transaction by, or under the operating rules of, the relevant CS facility;

**CSF participant** means a person who is a participant in relation to a CS facility within the meaning of section 761A of the *Corporations Act 2001* of the Commonwealth;

**CSF transaction** means—

- (a) a transaction that is conducted through a CS facility in order to allow parties to a transaction relating to financial products to meet obligations to each other that arise from entering into the transaction and that is of a kind prescribed by regulations made for the purposes of paragraph (b) of section 768A of the *Corporations Act 2001* of the Commonwealth; or
- (b) a transaction of a kind brought within the ambit of this definition by the regulations;

**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) a CSF transaction made to reverse a CSF transaction that was made mistakenly not more than seven days earlier;
- (b) the CSF transaction so reversed;

**exempt transaction** means a conveyance (including a sale or purchase) of a quoted financial product made after 30 June 2001;

**financial market** means a financial market within the meaning of Chapter 7 of the *Corporations Act 2001* of the Commonwealth;

**foreign company** has the same meaning as is assigned to the term by section 9 of the *Corporations Act 2001* of the Commonwealth;

**identification code**, in relation to a CSF participant, means a code that, for the purposes of the operating rules of the relevant CS facility, is the CSF participant's identification code, or one of the CSF participant's identification codes, as the case may be;

**operating rules** of a CS facility, or of a financial market, has the same meaning as is assigned to the term by section 761A of the *Corporations Act 2001* of the Commonwealth;

**proper CSF transaction** means—

- (a) a CSF transaction involving a financial product effected in accordance with the operating rules of the relevant CS facility; or
- (b) a CSF transaction involving a financial product that substantially complies with the operating rules of the relevant CS facility;

**quoted financial product** means a financial product that is quoted on a recognised financial market (see section 2);

**registered CS facility licensee** means an Australian CS facility licensee registered by the Commissioner under Division 4;

**registered market licensee** means an Australian market licensee registered by the Commissioner under Division 4;

**relevant company** means—

- (a) a South Australian registered company; or
- (b) a foreign company with a registered office under the *Corporations Act 2001* of the Commonwealth that is situated in this State;

**relevant CSF participant**, in relation to a CSF transaction, means the CSF participant who is, according to Division 3, liable to pay duty chargeable in respect of the transaction, or, if no duty is chargeable, the CSF participant who would be so liable if duty were chargeable;

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

**South Australian registered company** means a company incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth that is taken to be registered in South Australia for the purposes of that Act;

**transfer document**, in relation to a CSF transaction, means a document that is used to effect the transfer of a financial product from one party to the transaction to the other party;

**transfer value**, in relation to a financial product involved in a CSF transaction, means—

- (a) in a case involving the sale of the financial product—the total consideration for the sale or the unencumbered market value of the financial product as at the date of sale, whichever is the greater; or

- (b) in any other case—the unencumbered market value of the financial product at the date of the transaction.

### **90AB—Share buy-back**

- (1) An instrument under which a shareholder transfers or divests shares to give effect to a transaction under which a company buys back its own shares is a conveyance of the shares.
- (2) This section—
- (a) applies to an instrument whether created or executed before or after the commencement of this section; and
  - (b) applies whether the transfer or divestiture of shares occurred before, or occurs after, the commencement of this section; but
  - (c) does not apply in relation to redeemable preference shares unless they are bought back on terms other than those on which they were on issue.

### **90AC—Exempt transactions**

- (1) No duty is payable under this Part in relation to an exempt transaction.
- (2) No return is required under this Part in relation to an exempt transaction.

## **Division 2—Duty on sales and purchases by brokers**

### **90B—Application of Division**

- (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 financial product only where—
- (a) the sale or purchase of the financial product—
    - (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 financial product is—
      - (A) a financial product of a relevant company; or
      - (B) a unit of a unit trust scheme the principal register of which is situated in this State; and
  - (b) the consideration for the sale or purchase is in money or money's worth not less than the unencumbered market value of the financial product; and
  - (c) the financial product is quoted on, or permission to deal therein has been granted by, a financial market of a registered market licensee; and
  - (d) no duty is charged against the transferor or the transferee under Schedule 2 in respect of the conveyance or transfer of the financial products on the sale thereof.

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- (2) A sale or purchase of a financial product 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 financial product, 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 financial product 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 financial product, 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 financial product 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.

**90C—Records of sales and purchases of financial products**

- (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 financial product sold or purchased; and
  - (g) the selling or purchase price of such financial product or, if more than one, of each financial product 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.

- (3) Subsection (1) does not require a dealer to make a record—
  - (a) in respect of a sale of a financial product, 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 financial product, 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 made in circumstances prescribed by the regulations for the purposes of this subsection.
- (4) Subsection (1) does not apply to the sale or purchase of a financial product, 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) A dealer who fails to make a record as required under this section, or fails to keep the record, is guilty of an offence.  
Penalty: \$10 000.

#### **90D—Returns to be lodged and duty paid**

- (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 approved form in accordance with this section; and
  - (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 approved 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 does not lodge a return as required under this section is nevertheless liable to pay duty to the Commissioner as if the dealer had lodged the return required under this section immediately before the time before which it was required to be lodged.

### 90E—Endorsement of instrument of transfer as to payment of duty

- (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 a CSF transaction, 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: \$10 000.
- (3) If an instrument of transfer of a financial product has affixed to it, in accordance with this section or a corresponding Act, the respective stamps of the dealers by whom the sale and purchase of that financial product has been effected, the instrument will be taken to be duly stamped with *ad valorem* duty.

### 90F—Power of dealer to recover paid duty

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 a financial product 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.

### 90G—Transactions in S.A. financial products on U.K. stock exchange

- (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;  
*financial product* means—
  - (a) a financial product of a corporation that, under the *Corporations Act 2001* of the Commonwealth, is taken to be registered in the State; or
  - (b) a financial product of a corporation incorporated outside Australia that is listed on a register of the corporation in the State;  
*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;  
*relevant transaction* means a transaction effecting a transfer from one person to another of a beneficial interest in a financial product 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 financial product that the trustee holds in trust; or
  - (b) is directed by a beneficiary to hold a financial product on behalf of some other person,
- the trustee shall be deemed to have effected a relevant transaction in relation to that financial product.
- (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 does not furnish a return as required under this section is nevertheless liable to pay duty to the Commissioner as if the trustee had furnished the return required under this section immediately before the end of the period allowed for furnishing such a return.
- (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 financial products 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 financial products; 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 financial products 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 financial products; or
  - (e) is made or effected by or to a person who is—

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- (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 financial products 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 financial products 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 financial products 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.

### **Division 3—Duty on certain clearing and settlement transactions**

#### **90H—Application of Division**

This Division applies to a CSF transaction relating to a financial product if (and only if)—

- (a) the transaction is a proper CSF transaction conducted through a CS facility operated by a registered CS facility licensee; and
- (b) the transaction is made otherwise than on a sale or purchase to which Division 2 applies; and
- (c) the financial product 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; or
  - (iv) a financial product of a class prescribed for the purposes of this section.



### **90I—Requirement to make record of CSF transactions**

- (1) If a CSF transaction relating to a financial product to which this Division applies occurs, the CSF participant to the transaction or, if there is more than one of them, the CSF participant who is the transferee or controls the transferee's holding in relation to the transaction, must immediately make a record that complies with this section in a form determined or approved by the Commissioner.
- (2) The record must show—
  - (a) the date of the transaction; and
  - (b) a CSF identifier for the transaction; and
  - (c) the name of the transferee in relation to the transaction and, unless another CSF participant controls the transferor in relation to the transaction, the name of the transferor; and
  - (d) the identification code of the CSF participant making the record and the identification code of the other CSF participant party to the transaction (if any); and
  - (e) the quantity and full description of the financial product involved in the transaction; and
  - (f) the transfer value of the financial product or, if more than one of them, of each financial product involved in the transaction and the total transfer value of all; and
  - (g) the amount of duty chargeable under this Act in respect of the transaction; and
  - (h) if *ad valorem* duty is not chargeable in respect of the transaction, 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 transaction that was made mistakenly, the CSF identifier of that earlier transaction; and
  - (j) any other particulars prescribed for the purposes of this section.
- (3) A CSF participant may, in any record made in accordance with this section, incorporate additional information for the participant's own use.
- (4) A CSF participant who fails to make a record as required by this section, or fails to keep the record, is guilty of an offence.

Maximum penalty: \$10 000.

### **90J—Transfer document or record to be treated as instrument of conveyance**

- (1) For the purposes of this Act—
  - (a) a transfer document for a CSF transaction of a financial product to which this Division applies; or
  - (b) if there is no such document for a CSF transaction of a financial product to which this Division applies, the record made under section 90I in relation to the transaction,

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will be taken to be an instrument of conveyance or conveyance on sale (as the case may require) of the financial product, subject to this Act, chargeable with duty accordingly.

- (2) The CSF participant to a CSF transaction of a financial product to which this Division applies or, if there is more than one of them, the CSF participant who is the transferee or controls the transferee's holding in relation to the transaction, is liable to pay the duty chargeable under subsection (1).
- (3) If the CSF participant liable to pay duty in respect of a CSF transaction is not the transferee in relation to the transaction, the participant may recover from the transferee the amount of 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.

**90K—Particulars to be included in a transfer document**

The relevant CSF participant must include in any transfer document for a CSF transaction to which this Division applies the particulars required by the Commissioner under the conditions of registration of the registered CS facility licensee.

Maximum penalty: \$2 000.

**90L—Relevant CSF participant's identification code equivalent to stamping**

When the relevant CSF participant's identification code is included in a transfer document for a CSF transaction to which this Division applies, the transfer document is to be taken to be duly stamped but without affecting the relevant CSF participant's liability to pay any duty chargeable under this Act.

**90M—Returns to be lodged and duty paid**

- (1) The relevant CSF participant must, not later than seven days after the end of the month in which the participant has been involved in a CSF transaction to which this Division applies—
  - (a) make a report to the registered CS facility licensee through which the transaction was conducted; and
  - (b) if duty is chargeable in respect of the transaction, pay the duty to that registered CS facility licensee.
- (2) The provisions of the *Taxation Administration Act 1996* apply in relation to the requirement for the making of a report, or the payment of duty, to a registered CS facility licensee as if the requirement were for the making of the report, or the payment of duty, to the Commissioner.

**90N—Monthly returns by registered CS facility licensees**

A registered CS facility licensee 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 the registered CS facility licensee; and

- (b) pay to the Commissioner any duty paid to the registered CS facility licensee under this Act in respect of a CSF transaction conducted in the preceding month.

#### **90O—Particulars reported by participants to be kept by registered CS facility licensees**

The particulars reported to a registered CS facility licensee under this Division must be kept by the registered CS facility licensee in a legible form, or so as to be readily convertible into such a form, in accordance with any directions of the Commissioner, for a period of not less than five years from the date on which the report is made.

#### **90P—Refund for error transaction**

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—Registration of Australian market licensees and CS facility licensees**

#### **90Q—Registration process**

- (1) The Commissioner may register an Australian market licensee or an Australian CS facility licensee for the purposes of this Part.
- (2) An application for registration must be made to the Commissioner in a form approved by the Commissioner.
- (3) An application must be accompanied by—
  - (a) such information as the Commissioner requires to determine the application; and
  - (b) the fee, if any, prescribed by the regulations.
- (4) The Commissioner may grant or refuse an application for registration.
- (5) A registration will be subject to conditions specified by the Commissioner at the time of registration or by subsequent written notice given to the Australian market licensee or the Australian CS facility licensee.
- (6) The Commissioner may suspend or cancel the registration of an Australian market licensee or Australian CS facility licensee.
- (7) However, the Commissioner may only take action under subsection (6)—
  - (a) after having given to a person involved in the administration of the Australian market licensee or Australian CS facility licensee (as the case may be) determined by the Commissioner to be appropriate in the circumstances—
    - (i) written reasons of the Commissioner's intention to suspend or cancel the registration; and
    - (ii) an opportunity to make submissions; and
  - (b) after having considered any submissions made by that person.

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- (8) Subsection (7) does not apply to the cancellation of a registration at the request of the relevant entity.

**90R—Disclosure of information**

Nothing in the *Taxation Administration Act 1996* prevents the disclosure to a registered market licensee or a registered CS facility licensee of information acquired in, or in connection with, the administration of this Part.

**Division 5—Duty on other conveyances**

**90T—Application of Division**

This Division applies to a conveyance or conveyance on sale of a financial product only where—

- (a) the financial product is—
  - (i) a financial product of a company that, under the *Corporations Act 2001* of the Commonwealth, is taken to be registered in the State; or
  - (ii) a financial product 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 a CSF transaction to which Division 3 applies.

**90U—Financial products liable to duty**

Subject to section 90V, a conveyance or conveyance on sale of a financial product to which this Division applies is only liable to duty if the financial product is—

- (a) a financial product of a relevant company; or
- (b) a unit of a unit trust scheme the principal register of which is situated in this State; or
- (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.

**90V—Proclaimed countries**

- (1) No duty is payable under this Act in respect of a conveyance or conveyance on sale of a financial product 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.
- (3) This section does not operate to exempt a transaction from duty under Part 4.

## Part 4—Land rich entities

### Division 1—Preliminary

#### 91—Interpretation

(1) In this Part—

*asset* includes any form of property;

*associate*—see subsection (4);

*constituent documents* of a private entity means—

- (a) for a private company—its constitution; or
- (b) for a unit trust scheme—the instruments constituting or governing the administration of the scheme;

*corresponding law* means a law of another State, or a Territory, of the Commonwealth that imposes duties corresponding to those imposed by this Act;

*direct interest*—see section 92(1);

*executive officer* of a company has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

*group* means a group of associates;

*hold*—a person *holds* a share or unit in a private entity if the person—

- (a) is registered as the holder; or
- (b) is beneficially entitled to the share or unit; or
- (c) controls the exercise of rights attached to the share or unit;

*indirect interest*—see section 92B;

*land asset* means an interest in land (including a right to explore for minerals, petroleum or other substances on land or to recover minerals, petroleum or any other substance from land) but does not include—

- (a) a mortgage, lien or charge; or
- (b) an interest under a warrant or writ;

*local land asset* means a land asset consisting of an interest in land in South Australia;

*majority interest* in a land rich entity means a proportionate interest in the entity of more than 50 per cent;

*notional interest*—see section 93;

*private company* means—

- (a) a company that is limited by shares but whose shares are not quoted on a recognised financial market; or
- (b) a company that is not limited by shares,

but does not include a company excluded from the ambit of this definition by the regulations;

**private entity** means a private company or a private unit trust scheme;

**private trust** means a trust other than one in which the public is (or has been) invited to invest;

**private unit trust scheme** means—

- (a) a unit trust scheme in which less than 50 persons hold units; or
- (b) a unit trust scheme in which 50 or more persons hold units if 20 or fewer persons hold 75 per cent or more in number or value of the units on issue,

but does not include a unit trust scheme that is an approved deposit fund or a pooled superannuation trust within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwth);

**proportionate interest** in a private entity means—

- (a) for a person or group that has a direct or indirect interest in the entity—the percentage representing the extent of that interest; or
- (b) for a person or group that has both a direct and an indirect interest in the entity—an aggregate percentage representing the extent of both those interests;

**related**—see section 92A;

**relative** of a person means a spouse, brother, sister, parent or child of the person;

**underlying**—the underlying assets (or a particular class of underlying assets) of a private entity include both the assets (or assets of the relevant class) held beneficially by the private entity and its notional interests in the assets (or assets of the relevant class) of related entities;

**unit** in a unit trust scheme means—

- (a) a right to participate in profits, income or distribution of assets under the scheme; or
- (b) a right to any such right of participation;

**unit trust scheme** means an arrangement under which investors may acquire rights to participate, as beneficiaries under a trust, in profits, income or distribution of assets arising from the acquisition, holding, management, use or disposal of property;

**winding up**—a unit trust scheme is wound up if the assets subject to the scheme are distributed in their entirety.

- (2) Property is taken to be held beneficially by a unit trust scheme if it is held by the trustees of the scheme in trust for the unitholders.
- (3) A private entity or other person that is an object of a discretionary trust is to be regarded, for the purposes of this Part, as beneficially entitled to the trust property unless—
  - (a) the private entity or other person satisfies the Commissioner that this subsection operates unreasonably in the circumstances of the particular case; and

- 
- (b) the Commissioner determines that the private entity or other person is not, in the circumstances of the particular case, to be regarded as beneficially entitled to the trust property.
- (4) A person is an *associate* of, or *associated* with, another if—
- (a) they are married or in a relationship of de facto marriage; or
  - (b) one is the parent, child, brother or sister of the other; or
  - (c) they are in partnership; or
  - (d) they are private companies which are related bodies corporate for the purposes of the *Corporations Act 2001* of the Commonwealth; or
  - (e) one is a private company and the other is a director or executive officer of, or shareholder in, the company; or
  - (f) they are both trustees of a private trust or one is a trustee of a private trust and the other is a beneficiary of the private trust; or
  - (g) a chain of relationships can be traced between them under one or more of the above paragraphs,
- (but a person is not to be regarded as an associate of another if the Commissioner is satisfied that the association has not arisen as a result of a common commercial interest or purpose and they will act entirely independently of each other).
- (5) An obligation or liability imposed under this Part on a unit trust scheme attaches to the trustees for the time being of the scheme jointly and severally.
- (6) An obligation or liability imposed under this Part on a group attaches to the members of the group jointly and severally.

## 92—Direct interests

- (1) A person has a *direct interest* in a private entity if the person holds a share or unit in the private entity.
- (2) A direct interest that a person or group has in a private entity is to be expressed as a proportionate interest.
- (3) The *proportionate interest* is the highest of the following:
- (a) a percentage representing the proportion of votes that the person or members of the group would be entitled to exercise (or control) at a general meeting of shareholders or unitholders assuming that all shareholders or unitholders exercised their voting rights;
  - (b) a percentage representing the extent the person or members of the group are entitled to participate in dividends or distributions of income;
  - (c) a percentage representing the extent to which the person or members of the group would be entitled to participate in the distribution of assets on a winding up of the private entity.

- (4) The proportionate interest of a person or group in a private entity is to be determined as if any power that the person has, or the members of the group or any of them have, to increase the extent of an interest (by varying the constituent documents of the private entity or in any other way) had been exercised so as to maximise the relevant interest in the private entity.

### 92A—Related entities

- (1) Two private entities are *related entities* if—
- one has a direct interest in the other; or
  - a series of such relationships can be traced between them through another or other related entities (*intermediate entities*).
- (2) If a private entity is related to another private entity by a relationship traced through an intermediate entity or intermediate entities, the private entity's proportionate interest in the other is calculated by multiplying the relevant fractions together and expressing the result as a percentage.

**Example—**

Entity A (a private company) holds a 75 per cent proportionate interest in entity B (a private unit trust scheme) which in turn holds a 50% proportionate interest in entity C (a private company). In this case the proportionate interest of entity A in entity C (insofar as it is traced through entity B) is 37.5 per cent.

### 92B—Indirect interests

- (1) If a person or group has a direct interest in a private entity (entity A) which is related to another private entity (entity B), the person or group has an *indirect interest* in entity B.
- (2) An indirect interest that a person or group has in a private entity is to be expressed as a proportionate interest.
- (3) The proportionate interest is calculated by multiplying together—
- a fraction representing the proportionate interest of the person or group in entity A; and
  - a fraction representing entity A's proportionate interest in entity B,
- and expressing the result as a percentage.

**Example—**

X holds a proportionate interest of 33⅓% in entity A (a private company) which in turn holds a 75% proportionate interest in entity B (a private unit trust scheme) which in turn holds a 50% proportionate interest in entity C (a private company). In this case the X's indirect interest in entity C is to be expressed as a proportionate interest of 12.5%.

### 93—Notional interest in assets of related entity

- (1) A private entity has a notional interest in an asset held beneficially by a related entity if—
- the private entity holds a majority interest in the related entity; or
  - a chain of majority interests can be traced between the private entity and the related entity.



**Example—**

Entity A holds a 75% proportionate interest in entity B which in turn holds a 60% proportionate interest in entity C which in turn holds a 40% proportionate interest in entity D. In this case entity A has a notional interest in the assets held beneficially by entity B and entity C but not in the assets held by entity D.

- (2) The value of the notional interest is calculated as follows:

$$V = V_1 \times P$$

Where—

$V_1$  is the unencumbered value of the asset;

$P$  is a fraction representing the proportionate interest of the private entity in the related entity.

**Division 2—Land rich entity****94—Land rich entity**

- (1) A private entity is a *land rich entity* if—
- (a) the unencumbered value of the underlying local land assets of the private entity and associated private entities is \$1m or more; and
  - (b) the unencumbered value of the entity's underlying land assets comprises 80 per cent or more of the unencumbered value of the entity's total underlying assets.
- (2) In determining the unencumbered value of a private entity's total underlying assets, assets of the following classes are to be excluded from consideration—
- (a) money in cash or on deposit with a financial institution;
  - (b) negotiable instruments;
  - (c) shares or units in a related private entity;
  - (d) contractual rights or interests other than—
    - (i) an interest in land arising from a contract or option to purchase the land; or
    - (ii) a right or interest under a loan transaction that is to be taken into account under subsection (4);
  - (e) monetary entitlements from shareholders or unitholders under the terms on which shares or units were issued;
  - (f) an asset of a class that is, under the regulations, to be excluded from consideration.
- (3) Further, in determining the value of a private entity's total underlying assets as at a particular time, any asset (other than a land asset) acquired by the entity or a related entity within the previous 2 years is to be excluded from consideration unless the private entity satisfies the Commissioner that the asset was not acquired solely or mainly for the purpose of avoiding duty under this Part.

- (4) A loan transaction is to be taken into account for the purposes of subsection (2)(d)(ii) unless—
- (a) the loan is repayable on demand or within 12 months of the date of the loan; or
  - (b) the loan is to a director, shareholder, trustee or beneficiary, or a relative of a director, shareholder, trustee or beneficiary, of the private entity or an associated private entity.

### **Division 3—Dutiable transactions**

#### **95—General principle of liability to duty**

- (1) A person or group that acquires a majority interest, or increases its majority interest, in a land rich entity notionally acquires an interest in the underlying local land assets of the entity and is liable to duty in respect of the notional acquisition.
- (2) The following transactions are therefore dutiable:
- (a) a transaction as a result of which a person or group has a majority interest in a land rich entity; or
  - (b) a transaction as a result of which a person or group that has a majority interest in a land rich entity increases its majority interest in the entity.
- (3) A transaction is dutiable under this Part even though the person or group that has a majority interest, or increases its majority interest, in the land rich entity as a result of the transaction—
- (a) is not a party to the transaction; or
  - (b) has a passive role in the transaction.
- (4) For example, any of the following is capable of being a dutiable transaction:
- (a) an allotment of shares in a company or units in a unit trust scheme; or
  - (b) the variation or abrogation of rights attaching to shares in a company or units in a unit trust scheme; or
  - (c) the redemption, surrender or cancellation of shares in a company or units in a unit trust scheme.
- (5) However, if a private entity acquires a local land asset and, as a result of the acquisition, becomes a land rich entity, and conveyance duty is paid in respect of the transaction, the transaction is not dutiable under this Part.

#### **96—Value of notional interest acquired as a result of dutiable transaction**

- (1) If a person or group has, as a result of a dutiable transaction, a majority interest in a land rich entity the value of the notional interest acquired in the entity's underlying local land assets is determined as follows:

$$NV = TV \times P$$

Where—

*NV* is the value to be of the notional interest acquired.

*TV* is the total unencumbered value of all the entity's underlying local land assets.

$P$  is the fraction representing the proportionate interest of the person or group in the entity.

- (2) If a person or group that has a majority interest in a land rich entity increases its majority interest as a result of a dutiable transaction the value of the notional interest acquired in the entity's underlying local land assets is determined as follows:

$$NV = TV \times (P_2 - P_1)$$

Where—

$NV$  is the value to be ascertained.

$TV$  is the total unencumbered value of all the entity's underlying local land assets.

$P_1$  is the fraction representing the proportionate interest in the entity before the increase.

$P_2$  is the fraction representing the proportionate interest in the entity after the increase.

### 97—Calculation of duty

- (1) If the total unencumbered value of the entity's underlying local land assets is \$1.5m or more, duty in respect of a transaction under which a person or group acquires a majority interest in a land rich entity is to be equivalent to the duty payable on a conveyance of land with an unencumbered value equivalent to the value of the acquirer's notional interest in the entity's underlying local land assets.
- (2) If the total unencumbered value of the entity's underlying local land assets is less than \$1.5m, duty is to be calculated in accordance with the following formula:

$$D = \left[ \frac{(TV - \$1m)}{\$0.5m} \times d_1 \right] + \left[ \left( 1 - \frac{(TV - \$1m)}{\$0.5m} \right) \times d_2 \right]$$

Where—

$D$  is the amount of the duty.

$TV$  is the total unencumbered value of all the entity's underlying local land assets.

$d_1$  is the duty that would be payable if subsection (1) were applicable.

$d_2$  is the duty that would be payable in respect of a transaction for the acquisition of financial products with a dutiable value equivalent to the value of the notional interest.

- (3) Duty on a dutiable transaction under which a person or group increases its majority interest in a land rich entity is to be calculated as follows:

$$D = d_1 - d_2$$

Where—

$D$  is the amount of the duty.

$d_1$  is the amount that would have been payable if the person or group had acquired the whole of its interest in a single transaction at the time of the increase.

$d_2$  is the amount that would have been payable if the person or group had acquired its pre-existing interest in a single transaction at the time of the increase.

- (4) However, if any part of a majority interest in a land rich entity was acquired by the relevant person or group more than 3 years before the date of a dutiable transaction (the *earlier acquisition*), the duty calculated under the above provisions is to be rebated by a percentage representing the extent of the earlier acquisition as a proportion of the majority interest as a whole.
- (5) If a person or group acquires or increases a majority interest in a land rich entity through the acquisition of financial products and duty has been paid under this Act or a corresponding law in respect of the transaction for the acquisition of the financial products, the duty calculated under this section is to be reduced by the amount of the duty paid.

## Division 4—Payment and recovery of duty

### 98—Acquisition statement

- (1) If a dutiable transaction occurs, the person or group that acquires or increases its majority interest in the land rich entity must, within 2 months after the date of the dutiable transaction—
  - (a) lodge a return with the Commissioner; and
  - (b) pay the relevant amount of duty.Maximum penalty: \$10 000.
- (2) The return must contain the following information:
  - (a) the name and address of the person, or the name and address of each member of the group, that has the majority interest or has increased its majority interest as a result of the transaction; and
  - (b) the date of the transaction; and
  - (c) particulars of—
    - (i) the interest acquired as a result of the transaction; and
    - (ii) any other interests held and the dates and circumstances of their acquisition; and
    - (iii) the underlying land assets and the underlying local land assets of the land rich entity as at the date of the transaction; and
    - (iv) the underlying assets of the land rich entity as at the date of the transaction; and
    - (v) amounts of duty paid under this Act or a corresponding law in relation to the acquisition of the majority interest in the land rich entity; and
  - (d) other information required by the Commissioner.

### 99—Recovery from entity

- (1) If a person or group fails to pay duty as required under this Part, the Commissioner may recover the duty, as a debt, from the relevant private entity.

- (2) Instead of, or as well as, proceeding against the private entity for recovery of duty as a debt, the Commissioner may register a charge on any of its land for the amount of the unpaid duty.
- (3) The Commissioner must give written notice of the registration of a charge under this section to—
  - (a) the registered proprietor of the land; and
  - (b) the person in default, or each member of the group in default.
- (4) If the duty remains unpaid 6 months after the registration of the charge, the Commissioner may apply to the District Court for an order for the sale of the land.
- (5) On an application under subsection (4), the Court may make an order for sale of the land by public auction and, in that event, the proceeds of sale are to be applied as follows:
  - (a) firstly—in payment of the costs of the sale and other costs of proceeding under this section; and
  - (b) secondly—in discharging liabilities secured by an instrument registered in priority to the registered charge; and
  - (c) thirdly—in discharging the liability to duty; and
  - (d) fourthly—in discharging other liabilities as directed by the Court; and
  - (e) fifthly—in payment to the registered proprietor of the land immediately before the completion of the sale.
- (6) If the Commissioner recovers duty under this section, the private entity may recover the amount paid to, or recovered from, the entity from the person or persons principally liable for the payment of the duty.

## Division 5—Miscellaneous

### 100—Valuation of interest under contract or option to purchase land

If an interest in land consists of an interest arising under a contract or option to purchase the land, the interest is to be valued, for the purposes of this Part, by subtracting from the market value of the land the amount that the purchaser under the contract or the holder of the option would be required to pay in order to complete the purchase.

### 101—Exempt transactions

- (1) A transaction under which a person or a group acquires an interest in a land rich entity is exempt from duty under this Part if it takes place in circumstances in which a conveyance of an interest in the underlying local land assets would not attract *ad valorem* duty.

#### Example—

Suppose that A is entitled under the will of B to 60% of the shares in X Pty Ltd, a land rich entity, owning land in the State valued at \$2m. A's acquisition of the shares on distribution of the estate is exempt from duty because a conveyance of the land itself would, if it occurred in these circumstances (ie on distribution of the estate), be exempt from *ad valorem* duty.

- (2) The following transactions are exempt from duty under this Part:
- (a) an acquisition of an interest in a land rich entity that takes place under a compromise or arrangement approved by a court under Part 5.1 of the *Corporations Act 2001* of the Commonwealth;
  - (b) a transaction exempted by regulation from duty under this Part.

### **102—Multiple incidences of duty**

- (1) If it is possible under this Part to assess the incidence of duty in different ways in respect of the same transaction, duty will be assessed so as to maximise the return to the revenue but not so as to extend the incidence of duty beyond a single person or group identified in the assessment.
- (2) If a person or a group acquires a majority interest in a land rich entity, and another person or group later acquires a majority interest in the land rich entity without diminishing the former majority interest, the Commissioner may, if satisfied that it is just and equitable to do so, exempt the later acquisition, wholly or partly, from duty under this Part.

**Example—**

Suppose the shares of X Pty Ltd, a land rich entity, are divided into Class A and Class B. The Class A shares confer rights to dividends but no rights to share in the distribution of assets on winding up of the company. The Class B shares confer no rights to dividends but do confer rights to share in the distribution of assets on the winding up of the company. Suppose that A acquires all the Class A shares and pays duty under this Part on the acquisition of a majority interest in the company. Suppose that B then acquires all the Class B shares. In this case, the Commissioner could, if satisfied that it would be just and equitable to do so, grant relief under the above subsection.

- (3) If a group acquires a majority interest in a land rich entity as a result of a dutiable transaction, and a person or group that is a member or subgroup of the group acquires that majority interest from the group, the Commissioner may, if satisfied that it is just and equitable to do so, exempt the later acquisition, wholly or partly, from duty under this Part.

## Part 5—Miscellaneous provisions

### 106—Spoiled or unused stamps

- (1) 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.
- (2) For the purposes of Part 4 of the *Taxation Administration Act 1996*—
  - (a) an application under this section is to be taken to be an application for a refund; and
  - (b) the giving of stamps or money under this section is to be taken to be the making of a refund.

### 106A—Transfer of financial products not to be registered unless duly stamped

- (1) A transfer of a financial product to which Division 5 of Part 3A applies must not be registered by the corporation, company or society by which the financial product 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 financial products 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 approved 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 financial product (other than a CSF transaction within the meaning of Part 3A) 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 financial product 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), taken to have been duly stamped.

- (3) After a transfer of any financial product 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 five 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: \$10 000.
- (5) The right or title of any transferee or subsequent holder of any financial product shall not be invalidated by reason only that the transfer of the financial product was registered by a corporation, company or society in contravention of the provisions of this section.

### **107—Transfer of property to correct error**

- (1) If the Commissioner is satisfied, on application by a party to an instrument submitted for stamping, that the sole purpose of the instrument is to reverse or correct a disposition of property resulting from an error in an earlier instrument, the Commissioner may grant relief from stamp duty under this section.
- (2) The Commissioner may require the applicant to provide such information (verified if the Commissioner thinks fit by statutory declaration) as the Commissioner thinks necessary to decide the application.
- (3) If the Commissioner grants relief from stamp duty under this section, the duty chargeable on the instrument is ten dollars plus the amount (if any) by which the duty that would have been paid on the earlier instrument if it had been correctly made in the first instance exceeds the amount of duty actually paid on that instrument.

### **108—Penalties for certain offences**

- (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.

### **109—Penalty for fraud**

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
- (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.

### **111—Remedy for misappropriation**

- (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 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.

### **112—Regulations**

- (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.

#### **114—Exemption from stamp duty**

- (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.

## Schedule 1—Transitional provisions

### 1—Commencement of consequential regulations

Regulations under this Act that are consequential on the amendments made to this Act by the *Statutes Amendment (Financial Institutions) Act 1999* or are consequential on the *Cheques and Payment Orders Amendment Act 1998* of the Commonwealth may come into operation on 1 December 1998 or on any subsequent day occurring before the regulations were made.

## Schedule 2—Stamp duties and exemptions

### Part 1—Specified instruments

#### 1—Annual licence application or monthly return

- (1) Annual licence application or monthly return to be 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 application 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 | \$11.00  |
| (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 |
- (2) For the purposes of this item, subject to the exemptions in subclause (3)—
- (a) the premiums referred to in subclause (1)(a) are net premiums and shall be counted so as to exclude any amount in respect of stamp duty on the annual licence application 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

- (b) in the case of an application for 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 subclause (1)(a); and
- (c) the premiums referred to in subclause (1)(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
- (d) in the case of a monthly return, there must be deducted from the amount of the premiums referred to in subclause (1)(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
- (e) 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
- (f) 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
- (g) the duty in respect of any one licence under subclause (1)(a) shall not in any case be less than \$100.

(3) **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 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.

**2—Application to register or transfer registration of motor vehicle**

- (1) Application to register or transfer the registration of a motor vehicle—component payable in respect of registration—
  - (a) where the value of the motor vehicle (not being a commercial motor vehicle or a trailer)—
 

(i) does not exceed \$1 000—for every \$100 or fractional part of \$100 of that value	\$1.00
(ii) 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
(iii) 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
(iv) 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
  - (b) where the value of the motor vehicle (being a commercial motor vehicle or a trailer)—
 

(i) does not exceed \$1 000—for every \$100 or fractional part of \$100 of that value	\$1.00
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- |       |  |   |
|-------|--|---|
| (ii)  | exceeds \$1 000, but does not exceed \$2 000 | \$10.00 plus<br>\$2.00 for every<br>\$100 or<br>fractional part of<br>\$100 of the<br>excess over<br>\$1 000 of that<br>value |
| (iii) | exceeds \$2 000                              | \$30.00 plus<br>\$3.00 for every<br>\$100 or<br>fractional part of<br>\$100 of the<br>excess over<br>\$2 000 of that<br>value |
- (c) 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.
- (2) **Exemptions from component payable under subclause (1) in respect of registration**
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.
- 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.
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.
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
  - (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.



- (3) Application to register or transfer the registration of a motor vehicle—component payable in respect of 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) | \$15.00 |
| (b) 12 months  | \$60.00 |
- (4) **Exemptions from component payable under subclause (3) in respect of a policy of insurance**
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.
  - 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 is 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.
  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.
  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.

**3—Conveyance or transfer on sale of property not otherwise charged**

- (1) 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 financial product (where no return lodged with the Commissioner under section 90D or furnished under section 90G relates to the sale)—
    - (i) if the financial product is quoted on a recognised financial market—for every \$100 and any fractional part of \$100 of the value of the financial product \$0.30
    - (ii) if the financial product is not quoted on a recognised financial market—for every \$100 and any fractional part of \$100 of the value of the financial product \$0.60
  - (b) in any other case (not being a conveyance or transfer on sale of any financial product)—where the value of the property conveyed—
    - (i) does not exceed \$12 000—for every \$100 or fractional part of \$100 of the value \$1.00
    - (ii) 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
    - (iii) 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
    - (iv) 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

(v) exceeds \$100 000 but does not exceed \$200 000	\$2 830 plus \$4.00 for every \$100 or fractional part of \$100 of the excess over \$100 000 of that value
(vi) exceeds \$200 000 but does not exceed \$250 000	\$6 830 plus \$4.25 for every \$100 or fractional part of \$100 of the excess over \$200 000 of that value
(vii) exceeds \$250 000 but does not exceed \$300 000	\$8 955 plus \$4.75 for every \$100 or fractional part of \$100 of the excess over \$250 000 of that value
(viii) exceeds \$300 000 but does not exceed \$500 000	\$11 330 plus \$5.00 for every \$100 or fractional part of \$100 of the excess over \$300 000 of that value
(ix) exceeds \$500 000	\$21 330 plus \$5.50 for every \$100 or fractional part of \$100 of the excess over \$500 000 of that value

(2) **Exemption**

1. Conveyance or transfer of a mortgage or an interest in a mortgage (including such a conveyance or transfer under which a chose in action consisting of the debt secured by that mortgage or part of that debt is also conveyed or transferred).
2. Conveyance or transfer of any debenture, debenture stock, bond, note or other financial product 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 financial product 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.

**4—Conveyance operating as voluntary disposition *inter vivos***

- |     |  |   |  |   |
|-----|--|---|--|---|
| (1) | Conveyance operating as a voluntary disposition <i>inter vivos</i> of any property (including a statement under Part 4)— |   |  |   |
|     | (a)  | in the case of a CSF transaction relating to a financial product to which Division 3 of Part 3A applies—for every \$100 and any fractional part of \$100 of the value of the financial product        | \$0.30   |   |
|     | (aa)   | in the case of the disposition of any financial product (excluding the transfer of a financial product referred to in paragraph (a)) where no return furnished under section 90G relates to the sale— |  |   |
|     |  | (i)   | if the financial product is quoted on a recognised financial market—for every \$100 and any fractional part of \$100 of the value of the financial product     | \$0.30  |
|     |  | (ii)  | if the financial product is not quoted on a recognised financial market—for every \$100 and any fractional part of \$100 of the value of the financial product | \$0.60  |
|     | (b)  | in any other case—where the value of the property conveyed—   |  |   |
|     |  | (i)   | does not exceed \$12 000—for every \$100 or fractional part of \$100 of the value  | \$1.00  |
|     |  | (ii)  | 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   |
|     |  | (iii)   | 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   |
|     |  | (iv)  | 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 |

(v) exceeds \$100 000 but does not exceed \$200 000	\$2 830 plus \$4.00 for every \$100 or fractional part of \$100 of the excess over \$100 000 of that value
(vi) exceeds \$200 000 but does not exceed \$250 000	\$6 830 plus \$4.25 for every \$100 or fractional part of \$100 of the excess over \$200 000 of that value
(vii) exceeds \$250 000 but does not exceed \$300 000	\$8 955 plus \$4.75 for every \$100 or fractional part of \$100 of the excess over \$250 000 of that value
(viii) exceeds \$300 000 but does not exceed \$500 000	\$11 330 plus \$5.00 for every \$100 or fractional part of \$100 of the excess over \$300 000 of that value
(ix) exceeds \$500 000	\$21 330 plus \$5.50 for every \$100 or fractional part of \$100 of the excess over \$500 000 of that value

(2) **Exemption**

1. 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 or an interest in a mortgage (including such a conveyance or transfer under which a chose in action consisting of the debt secured by that mortgage or part of that debt is also conveyed or transferred).
3. Conveyance or transfer of a financial product to or by a person who is a trustee under section 90G.

**Stamp Duties Act 1923—1.7.2004 to 3.11.2004**

Schedule 2—Stamp duties and exemptions

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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.

**5—Conveyance for partition or division of property**

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

**6—Conveyance for appointment of new trustee or retirement of trustee**

Conveyance for effectuating the appointment of a new trustee or the retirement of a trustee, not being a conveyance operating as a voluntary disposition *inter vivos* \$10.00

**7—Conveyance of any other kind**

Conveyance of any other kind not before charged \$10.00

**8—Deed**

Deed or transfer of any kind not otherwise specified in this Schedule \$10.00

**9—Instrument discharging mortgage or charge over land**

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

**10—Lease or agreement for lease**

- (1) 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.

**(2) Exemptions**

- 1. Lease or agreement for a lease or any written document for the tenancy or occupancy of land or a tenement where—
  - (a) the term of the lease, proposed lease, tenancy or occupancy commences on or after 1 January 2002; and
  - (b) the rent reserved, averaged over the term of the lease, proposed lease, tenancy or occupancy, does not exceed the rate of \$50 000 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.

**11—Mortgage, bond, debenture, covenant or warrant of attorney**

- (1) 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 \$6 000—\$10.00;
  - (ii) if the security is a home mortgage and the secured liability exceeds \$6 000—\$10.00 plus \$0.35 for every \$100 or fractional part of \$100 over \$6 000;
  - (iii) in any other case in which the secured liability exceeds \$6 000—\$10.00 plus \$0.45 for every \$100 or fractional part of \$100 over \$6 000,

(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.

**(2) 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 341 of the *Corporations Act 2001* of the Commonwealth 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*.

### **12—Return under section 42AA**

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.

### **13—Return under section 44**

- (1) Return lodged with the Commissioner by a financial institution under section 44—

Duty is payable on each cheque form or cheque to which the return relates as follows:

For every cheque form or cheque \$0.10

- (2) **Exemptions**

1. A cheque form issued by a financial institution in respect of an account held with the financial institution—
  - (a) outside of South Australia; or
  - (b) by a part of the Public Service; or
  - (c) by or on behalf of a body established for a charitable, educational, benevolent, religious, sporting, community or philanthropic purpose; or
  - (d) by a friendly society or by or on behalf of a community or publicly subsidised hospital.
2. A cheque drawn (whether before or after the commencement of this provision) against an account held with a financial institution outside of South Australia.
3. A cheque drawn by any financial institution in South Australia upon any other financial institution in South Australia, not payable to bearer or to order and used solely for the purpose of settling or clearing any account between such financial institutions.

### **14—Return under section 90D**

- (1) Return lodged with the Commissioner by a dealer pursuant to section 90D—

Duty is payable on each sale and each purchase of financial products 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



(2) **Exemptions**

1. Any sale of financial products to which the return relates, which sale was made by a broker on his or her own account or behalf, where the financial products concerned were purchased by him or her on, or within 10 clear days (not including any day on which the market of which he or she is a member is closed) of, the day of the sale.
2. Any purchase of financial products to which the return relates, which purchase was made by a broker on his or her own account or behalf, where the financial products concerned were sold by him or her on, or within 10 clear days (not including any day on which the market of which he or she is a member is closed) of, the day of the purchase.

**15—Return under section 90G**

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 financial product comprised in the disposition	\$0.30
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**Part 2—General exemptions from all stamp duties**

**16—General exemptions**

The following instruments are exempt 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.
- 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.
- 15 Any transfer of any fire, personal accident, fidelity, guarantee, livestock, plate glass or marine insurance or assurance policy.
- 16 Any cemetery leases.
- 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 financial product 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 financial product conveyed or transferred to him or her.
- 20 Conveyance or transfer of a financial product 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.
- 20A Conveyance or transfer of property if the Commissioner is satisfied that—
- (a) the conveyance or transfer is made as a consequence of the conversion of an undertaking (for which a deed had been lodged under Division 5 of Part 7.12 of the *Corporations Law* as in force before the commencement of the *Managed Investments Act 1998* of the Commonwealth) to a managed investment scheme registered under Chapter 5C of the *Corporations Act 2001* of the Commonwealth; and
  - (b) the members have, after the conveyance or transfer, the same beneficial interests in the scheme property as they had prior to the conveyance or transfer.

- 21 Conveyance or transfer of a financial product if the conveyance of 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 financial products of a South Australian registered company within the meaning of section 90A (not being a CUFS).
- 23 (1) 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.
- (2) In this exemption—
- 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);

*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.

- (3) For the purposes of paragraphs (a) and (b) of the definition of *prescribed person*, 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.
- 24 A conveyance or transfer of a financial product to or from a nominee company established by a dealer or a CSF participant solely for the purpose of facilitating settlement of transactions relating to financial products entered into in the ordinary course of business.
- 24AA A conveyance or transfer of a financial product 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 financial product to which Division 3 of Part 3A applies.
- 24B A conveyance or transfer of a financial product 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 A proper CSF transaction of a financial product 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*.
- 24D A conveyance of a financial product that is an exempt transaction within the meaning of section 90A.
- 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 *Victims of Crime Act 2001* or a corresponding previous law.
- 26 A transaction (or an instrument effecting or acknowledging, evidencing or recording a transaction) by a trustee of a regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwlth)) in the ordinary course of administering the fund—
- (a) creating an interest in the fund in favour of a beneficiary of the superannuation scheme; or
  - (b) redeeming, cancelling or extinguishing such an interest.



## Legislative history

### Notes

- This version is comprised of the following:
 

Part 1	1.8.2003 (Reprint No 33)
Part 2	1.8.2003 (Reprint No 33)
Part 3	1.7.2004
Part 3A	1.8.2003 (Reprint No 33)
Part 4	1.8.2003 (Reprint No 33)
Part 5	1.8.2003 (Reprint No 33)
Schedules	24.11.2003 (Reprint No 35)
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1923	1569	<i>Stamp Duties Act 1923</i>	21.11.1923	21.11.1923
1927	1822	<i>Stamp Duties Act 1927</i>	21.12.1927	24.12.1927 ( <i>Gazette 22.12.1927 p1609</i> )
1928	1860	<i>Stamp Duties Amendment Act 1928</i>	17.10.1928	17.10.1928
1928	1877	<i>Lottery and Gaming Act Amendment Act 1928</i>	1.11.1928	1.11.1928
1935	2246	<i>Statute Law Revision Act 1935</i>	19.12.1935	19.12.1935
1936	2312	<i>Stamp Duties Act Amendment Act 1936</i>	19.11.1936	19.11.1936
1937	2359	<i>Stamp Duties Act Amendment Act 1937</i>	19.11.1937	19.11.1937
1938	2387	<i>Stamp Duties Act Amendment Act 1938</i>	25.8.1938	25.8.1938 except s 4(1)—16.1.1939: s 4
1941	48	<i>Stamp Duties Act Amendment Act 1941</i>	27.11.1941	27.11.1941
1942	22	<i>Stamp Duties Act Amendment Act 1942</i>	12.11.1942	12.11.1942
1944	30	<i>Stamp Duties Act Amendment Act 1944</i>	14.12.1944	14.12.1944
1945	32	<i>Stamp Duties Act Amendment Act 1945 as amended by 41/1947</i>	3.1.1946	3.1.1946 except s 3—3.9.1939: s 4(1)

**Stamp Duties Act 1923—1.7.2004 to 3.11.2004**

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1947	41	<i>Stamp Duties Act Amendment Act 1947</i>	11.12.1947	11.12.1947
1950	16	<i>Stamp Duties Act Amendment Act 1950</i>	2.11.1950	2.11.1950
1952	5	<i>Stamp Duties Act Amendment Act 1952</i>	2.10.1952	2.10.1952
1952	42	<i>Statute Law Revision Act 1952</i>	4.12.1952	4.12.1952
1952	55	<i>Stamp Duties Act Amendment Act (No. 2) 1952</i>	8.1.1953	8.1.1953 except ss 4—6—22.1.1953 ( <i>Gazette 22.1.1953 p72</i> )
1953	30	<i>Stamp Duties Act Amendment Act 1953</i>	10.12.1953	10.12.1953
1954	29	<i>Stamp Duties Act Amendment Act 1954</i>	2.12.1954	2.12.1954
1956	8	<i>Stamp Duties Act Amendment Act 1956</i>	11.10.1956	11.10.1956 except s 6—10.9.1956: s 6(3)
1959	45	<i>Stamp Duties Act Amendment Act 1959</i>	17.12.1959	1.2.1960 ( <i>Gazette 7.1.1960 p1</i> )
1960	7	<i>Stamp Duties Act Amendment Act 1960</i>	19.5.1960	1.2.1960: s 3(2)
1962	32	<i>Banks Statutory Obligations Amendment Act 1962 as amended by 77/1973</i>	1.11.1962	1.11.1962
1964	24	<i>Statutes Amendment (Stamp Duties and Motor Vehicles) Act 1964</i>	9.10.1964	9.10.1964: s 2(1) except ss 3—8, 9(b)— (l)—19.10.1964 ( <i>Gazette 15.10.1964 p1203</i> )
1965	58	<i>Stamp Duties Act Amendment Act 1965 as amended by 59/1966</i>	23.12.1965	23.12.1965 except ss 5, 7, 8, 10—13, 15((a), (c)—(k), 17 & 18— 14.2.1966: s 3
1966	46	<i>Lottery and Gaming Act Amendment Act (No. 2) 1966</i>	13.10.1966	8.12.1966: s 3A
1966	59	<i>Stamp Duties Act Amendment Act 1966</i>	10.11.1966	21.11.1966 ( <i>Gazette 19.11.1966 p1882</i> ) except s 9(1)—14.2.1966: s 9(2)
1967	14	<i>Marketable Securities Transfer Act 1967</i>	6.4.1967	1.7.1967 ( <i>Gazette 25.5.1967 p1657</i> )
1967	48	<i>Stamp Duties Act Amendment Act 1967</i>	19.10.1967	19.10.1967
1968	26	<i>Stamp Duties Act Amendment Act (No. 2) 1968</i>	5.12.1968	1.1.1969 ( <i>Gazette 5.12.1968 p2429</i> )
1968	32	<i>Stamp Duties Act Amendment Act 1968 as amended by 42/1974</i>	12.12.1968	1.2.1969 ( <i>Gazette 12.12.1968 p2558</i> )
1968	56	<i>Stamp Duties Act Amendment Act (No. 3) 1968</i>	19.12.1968	1.2.1969 ( <i>Gazette 19.12.1968 p2670</i> )
1970	42	<i>Stamp Duties Act Amendment Act 1970</i>	3.12.1970	3.12.1970
1971	71	<i>Stamp Duties Act Amendment Act 1971 as amended by 103/1971</i>	4.11.1971	1.12.1971 ( <i>Gazette 11.11.1971 p1928</i> ) except s 13(3)—1.1.1972 ( <i>Gazette 3.12.1971 p2298</i> )
1971	80	<i>Stamp Duties Act Amendment Act (No. 2) 1971</i>	18.11.1971	1.1.1972 ( <i>Gazette 23.12.1971 p2627</i> )

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1971	103	<i>Stamp Duties Act Amendment Act 1971 Amending Act 1971</i>	3.11.1971	30.11.1971: s 1(1)
1973	77	<i>Statute Law Revision Act 1973</i>	6.12.1973	6.12.1973
1974	42	<i>Statute Law Revision Act 1974</i>	11.4.1974	11.4.1974
1974	90	<i>Stamp Duties Act Amendment Act 1974</i>	2.12.1974	16.12.1974 except s 7—2.1.1975 ( <i>Gazette 2.12.1974 p3555</i> )
1975	63	<i>Stamp Duties Act Amendment Act 1975</i>	4.9.1975	18.9.1975 ( <i>Gazette 18.9.1975 p1574</i> )
1975	76	<i>Statutes Amendment (Gift Duty and Stamp Duties) Act 1975</i>	16.10.1975	14.7.1975: s 2
1976	54	<i>Statutes Amendment (Gift Duty and Stamp Duties) Act 1976</i>	28.10.1976	14.7.1976: s 2
1976	101	<i>Stamp Duties Act Amendment Act 1976</i>	16.12.1976	16.12.1976 except s 2—16.6.1977 ( <i>Gazette 16.6.1977 p1708</i> )
1976	104	<i>Racing Act 1976</i>	16.12.1976	Sch 2—1.1.1977 ( <i>Gazette 16.12.1976 p2252</i> )
1977	28	<i>Stamp Duties Act Amendment Act 1977</i>	28.7.1977	28.7.1977
1978	27	<i>Stamp Duties Act Amendment Act 1978</i>	30.3.1978	30.3.1978: s 2 except ss 3—6 & 9— uncommenced
1978	89	<i>Stamp Duties Act Amendment Act (No. 2) 1978</i>	30.11.1978	18.1.1979 ( <i>Gazette 18.1.1979 p97</i> )
1979	66	<i>Stamp Duties Act Amendment Act 1979</i>	15.11.1979	1.11.1979: s 2
1980	111	<i>Stamp Duties Act Amendment Act 1980</i>	18.12.1980	6.11.1980: s 2
1981	70	<i>Stamp Duties Act Amendment Act 1981</i>	30.10.1981	2.11.1981 ( <i>Gazette 30.10.1981 p1423</i> )
1982	15	<i>Stamp Duties Act Amendment Act 1982</i>	11.3.1982	22.3.1982 ( <i>Gazette 18.3.1982 p857</i> )
1982	30	<i>Stamp Duties Act Amendment Act (No. 2) 1982</i>	8.4.1982	24.12.1981: s 2 except s 4—19.8.1982 ( <i>Gazette 19.8.1982 p512</i> )
1982	95	<i>Stamp Duties Act Amendment Act (No. 3) 1982</i>	23.12.1982	23.12.1982 ( <i>Gazette 23.12.1982 p1935</i> )
1982	(139)	<i>Gazette 8.7.1982 p95</i>	—	8.7.1982
1983	65	<i>Stamp Duties Act Amendment Act 1983</i>	29.9.1983	1.1.1984 ( <i>Gazette 24.11.1983 p1515</i> )
1983	89	<i>Stamp Duties Act Amendment Act (No. 2) 1983</i>	1.12.1983	1.1.1984: s 2
1984	50	<i>Statute Law Revision Act 1984</i>	24.5.1984	Sch 6—1.11.1984 ( <i>Gazette 1.11.1984 p1398</i> )
1985	81	<i>Stamp Duties Act Amendment Act 1985</i>	22.8.1985	5.8.1985: s 2
1986	8	<i>Stamp Duties Act Amendment Act 1986</i>	13.3.1986	13.3.1986
1986	100	<i>Stamp Duties Act Amendment Act (No. 2) 1986</i>	11.12.1986	18.12.1986 except ss 16(a), (b), (c), (d) & 18(h), (i)—1.2.1987 ( <i>Gazette 18.12.1986 p1877</i> )

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1987	2	<i>Statutes Amendment (Taxation) Act 1987</i>	5.3.1987	5.3.1987
1988	21	<i>Stamp Duties Act Amendment Act 1988</i>	14.4.1988	7.12.1987 except s 3—14.6.1988: s 2
1989	8	<i>Stamp Duties Act Amendment Act 1989</i>	16.3.1989	1.2.1988: s 2
1989	52	<i>Stamp Duties Act Amendment Act (No. 2) 1989</i>	14.9.1989	21.9.1989 ( <i>Gazette 21.9.1989 p915</i> ) except ss 3 & 7—9.8.1989 and except ss 4 & 5—1.10.1989: s 2
1989	64	<i>Stamp Duties Act Amendment Act (No. 3) 1989</i>	29.10.1989	28.3.1990 ( <i>Gazette 15.3.1990 p729</i> )
1990	4	<i>Stamp Duties Act Amendment Act 1990</i>	29.3.1990	29.3.1990
1990	33	<i>Stamp Duties Act Amendment Act (No. 2) 1990</i>	26.4.1990	26.4.1990
1990	36	<i>Stamp Duties Act Amendment Act (No. 3) 1990</i>	3.5.1990	24.5.1990 ( <i>Gazette 17.5.1990 p1359</i> )
1990	47	<i>Stamp Duties Act Amendment Act (No. 4) 1990</i>	8.11.1990	1.7.1990 except s 5(2)—1.1.1991: s 2
1991	19	<i>Stamp Duties (Concessional Duty and Exemptions) Amendment Act 1991</i>	18.4.1991	18.4.1991
1991	54	<i>Motor Vehicles (Historic Vehicles and Disabled Persons' Parking) Amendment Act 1991</i>	28.11.1991	3.2.1992 ( <i>Gazette 23.1.1992 p200</i> )
1991	74	<i>Stamp Duties (Assessments and Forms) Amendment Act 1991</i>	12.12.1991	12.12.1991 ( <i>Gazette 12.12.1991 p1746</i> )
1992	42	<i>Stamp Duties (Rates) Amendment Act 1992</i>	31.8.1992	1.9.1992: s 2
1992	71	<i>Statutes Amendment (Expiation of Offences) Act 1992</i>	19.11.1992	1.3.1993 ( <i>Gazette 18.2.1993 p600</i> )
1992	88	<i>Stamp Duties (Penalties, Reassessments and Securities) Amendment Act 1992</i>	10.12.1992	14.12.1992 ( <i>Gazette 10.12.1992 p1754</i> )
1994	14	<i>Stamp Duties (Securities Clearing House) Amendment Act 1994</i>	12.5.1994	1.9.1994 ( <i>Gazette 18.8.1994 p490</i> )
1994	31	<i>Stamp Duties (Concessions) Amendment Act 1994</i>	30.5.1994	30.5.1994 except ss 5, 6 & 10— 1.6.1994: s 2
1994	59	<i>Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994</i>	27.10.1994	1.1.1995 ( <i>Gazette 8.12.1994 p1942</i> )
1994	76	<i>Motor Vehicles (Conditional Registration) Amendment Act 1994</i>	8.12.1994	2.3.1995 ( <i>Gazette 2.3.1995 p734</i> )
1994	83	<i>Stamp Duties (Miscellaneous) Amendment Act 1994</i>	8.12.1994	8.12.1994
1995	49	<i>Stamp Duties (Marketable Securities) Amendment Act 1995</i>	13.7.1995	1.7.1995: s 2
1995	72	<i>Stamp Duties (Miscellaneous) Amendment Act 1995</i>	2.11.1995	23.11.1995 ( <i>Gazette 23.11.1995 p1412</i> )

1995	77	<i>Motor Vehicles (Heavy Vehicles Registration Charges) Amendment Act 1995</i>	23.11.1995	1.7.1996 ( <i>Gazette 30.5.1996 p2637</i> )
1995	83	<i>Stamp Duties (Valuations—Objections and Appeals) Amendment Act 1995</i>	30.11.1995	30.11.1995
1996	18	<i>Stamp Duties (Miscellaneous) Amendment Act 1996</i>	24.4.1996	24.4.1996 ( <i>Gazette 24.4.1996 p2068</i> )
1996	30	<i>Motor Vehicles (Miscellaneous No. 2) Amendment Act 1996</i>	2.5.1996	s 43—1.7.1996 ( <i>Gazette 30.5.1996 p2637</i> , erratum <i>Gazette 6.6.1996 p2874</i> )
1996	38	<i>Statutes Amendment (Community Titles) Act 1996</i>	9.5.1996	s 40—4.11.1996 ( <i>Gazette 31.10.1996 p1460</i> )
1996	82	<i>Statutes Amendment (Taxation Administration) Act 1996</i>	5.12.1996	Pt 6 (ss 77—133)—1.7.1997 ( <i>Gazette 19.12.1996 p1924</i> )
1997	20	<i>Stamp Duties (Miscellaneous) Amendment Act 1997</i>	27.3.1997	7.1.1997 except s 4—1.2.1997: s 2
1997	42	<i>Stamp Duties (Rates of Duty) Amendment Act 1997</i>	17.7.1997	17.7.1997
1997	82	<i>Stamp Duties (Miscellaneous No. 2) Amendment Act 1997</i>	24.12.1997	1.1.1998: s 2
1998	36	<i>Stamp Duties (Miscellaneous) Amendment Act 1998</i>	23.7.1998	1.6.1998 except ss 3(c) & 4(3)—27.7.1998 and except ss 3(b) & 4(2)—1.9.1998: s 2
1998	71	<i>Stamp Duties (Share Buy-backs) Amendment Act 1998</i>	3.12.1998	3.12.1998
1999	11	<i>Stamp Duties (Miscellaneous) Amendment Act 1999</i>	18.3.1999	18.3.1999
1999	40	<i>Stamp Duties (Conveyance Rates) Amendment Act 1999</i>	5.8.1999	5.8.1999
1999	41	<i>Statutes Amendment (Financial Institutions) Act 1999</i>	5.8.1999	Pt 4 (ss 16—23)—1.12.1998: s 2
2000	11	<i>Offshore Minerals Act 2000</i>	4.5.2000	4.5.2002 (s 7(5) Acts Interpretation Act 1915)
2000	21	<i>National Tax Reform (State Provisions) Act 2000</i>	8.6.2000	8.6.2000
2000	80	<i>Stamp Duties (Land Rich Entities and Redemption) Amendment Act 2000</i>	14.12.2000	14.12.2000 ( <i>Gazette 14.12.2000 p3520</i> )
2000	94	<i>TAB (Disposal) Act 2000</i>	21.12.2000	Sch 4 (cl 3)—14.12.2001 ( <i>Gazette 6.12.2001 p5267</i> )
2001	23	<i>Statutes Amendment (Corporations) Act 2001</i>	14.6.2001	Pt 30 (ss 105—117)—15.7.2001 being the day on which the <i>Corporations Act 2001</i> of the Commonwealth came into operation: Commonwealth of Australia Gazette No. S 285, 13.7.2001 ( <i>Gazette 21.6.2001 p2270</i> )
2001	27	<i>Statutes Amendment (Taxation Measures) Act 2001</i>	26.7.2001	Pt 4 (ss 10—13)—26.7.2001 except Pt 4 (s 14)—1.1.2002: s 2
2001	58	<i>Victims of Crime Act 2001</i>	15.11.2001	Sch 2 (cl 6)—1.1.2003 ( <i>Gazette 19.12.2002 p4736</i> )

## Stamp Duties Act 1923—1.7.2004 to 3.11.2004

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2002	15	<i>Stamp Duties (Rental Business and Conveyance Rates) Amendment Act 2002</i>	5.9.2002	5.9.2002 except ss 5 & 6—1.1.2003: s 2
2002	34	<i>Statutes Amendment (Corporations—Financial Services Reform) Act 2002</i>	28.11.2002	Pt 11 (ss 26—46)—1.8.2003 ( <i>Gazette 10.7.2003 p2913</i> )
2002	35	<i>Statutes Amendment (Stamp Duties and Other Measures) Act 2002</i>	28.11.2002	Pt 6 (ss 15—27)—28.11.2002: s 2(1)
2002	39	<i>Stamp Duties (Gaming Machine Surcharge) Amendment Act 2002</i>	28.11.2002	28.11.2002 ( <i>Gazette 28.11.2002 p4293</i> )
2003	31	<i>Stamp Duties (Rental and Mortgage Duty) Amendment Act 2003</i>	24.7.2003	1.10.2003: s 2
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 ( <i>Gazette 13.11.2003 p4048</i> )
<b>2004</b>	<b>21</b>	<b><i>Statutes Amendment (Budget 2004) Act 2004</i></b>	<b>1.7.2004</b>	<b>Pt 4 (ss 9—12)—1.7.2004: s 2(1)</b>

### Provisions amended since 3 February 1976

- 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.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 44/2003 s 3(1) (Sch 1)	§
Pt 1 Div 1 heading	inserted by 80/2000 s 3	§
Pt 1 Div 2 heading	inserted by 80/2000 s 4	§
s 2	deleted in pursuance of the <i>Acts Republication Act 1967</i>	§
s 3	deleted in pursuance of the <i>Acts Republication Act 1967</i> as its function is now exhausted	§
s 2(1) (previously s 4)	redesignated as s 2 by 82/1996 s 77(2); redesignated as s 2(1) by 80/2000 s 5(g)	§
adhesive stamp	inserted by 8/1986 s 2(a)	§
approved form	inserted by 35/2002 s 15	§
assessment	inserted by 82/1996 s 77(1)(a)	§
Australian market licensee	inserted by 34/2002 s 26(a)	§
authorised officer	inserted by 100/1986 s 3(a); deleted by 82/1996 s 77(1)(a)	§
beneficial interest	inserted by 80/2000 s 5(a)	§

business of primary production	inserted by 31/1994 s 3	§
Commissioner	substituted by 82/1996 s 77(1)(b)	§
CUFSS	inserted by 18/1996 s 3(a)	§
die	substituted by 8/1986 s 2(b)	§
discretionary trust	inserted by 36/1990 s 3(a)	§
duty	substituted by 88/1992 s 3(a); 82/1996 s 77(1)(c)	§
financial product	inserted by 34/2002 s 26(b)	§
fixed interest security	inserted by 111/1980 s 3(a); deleted by 81/1985 s 3	§
GST	inserted by 21/2000 s 22(a)	§
GST law	inserted by 21/2000 s 22(a)	§
impressed stamp	inserted by 8/1986 s 2(c)	§
intellectual property	inserted by 80/2000 s 5(b)	§
interest	inserted by 80/2000 s 5(b)	§
jurisdiction	inserted by 80/2000 s 5(b)	§
marketable security	amended by 111/1980 s 3(b); 50/1984 s 3(1) (Sch 6); 88/1992 s 3(b); 18/1996 s 3(b); 23/2001 s 105(a); deleted by 34/2002 s 26(c)	§
money	substituted by 50/1984 s 3(1) (Sch 6)	§
potential beneficial interest	inserted by 80/2000 s 5(c)	§
property	inserted by 80/2000 s 5(c)	§
recognised financial market	inserted by 34/2002 s 26(d)	§
recognised stock exchange	inserted by 80/2000 s 5(c); deleted by 34/2002 s 26(d)	§
records	inserted by 100/1986 s 3(b)	§
rent	inserted by 21/2000 s 22(b)	§
right in respect of a marketable security	deleted by 34/2002 s 26(e)	§
right in respect of a financial product	inserted by 34/2002 s 26(e)	§
sale	inserted by 80/2000 s 5(d)	§
spouse	inserted by 80/2000 s 5(d)	§
savings bank	substituted by 50/1984 s 3(1) (Sch 6); deleted by 41/1999 s 16	§
stamp	substituted by 8/1986 s 2(d)	§
stamped	substituted by 8/1986 s 2(d)	§
State	inserted by 80/2000 s 5(f)	§
stock	amended by 50/1984 s 3(1) (Sch 6); 23/2001 s 105(b)	§
transfer	inserted by 80/2000 s 5(e)	§

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unit	inserted by 36/1990 s 3(b)	§
unit trust scheme	inserted by 36/1990 s 3(b)	§
s 2(2) and (3)	inserted by 80/2000 s 5(g)	§
s 3	inserted by 82/1996 s 78	§
Div 3 of Pt 1 comprising ss 3A—3D and heading	inserted by 80/2000 s 6	§
s 3C(4)	amended by 23/2001 s 106	§
New Pt 2 heading	inserted by 82/1996 s 78	§
s 4	inserted by 82/1996 s 78	§
s 5	amended by 50/1984 s 3(1) (Sch 6); deleted by 82/1996 s 78	§
s 5A	inserted by 111/1980 s 4; deleted by 82/1996 s 78	§
s 5AB	inserted by 81/1985 s 4; substituted by 52/1989 s 3; deleted by 82/1996 s 78	§
s 5 (previously s 5B)	inserted by 111/1980 s 4; amended by 50/1984 s 3(1) (Sch 6); redesignated as s 5 by 82/1996 s 79; deleted by 80/2000 s 7	§
s 6	amended by 50/1984 s 3(1) (Sch 6); substituted by 100/1986 s 4; 82/1996 s 80	§
s 6AA	inserted by 100/1986 s 4; deleted by 82/1996 s 80	§
s 6A	inserted by 8/1986 s 3; amended by 2/1987 s 6(a); deleted by 82/1996 s 80	§
s 6B	inserted by 2/1987 s 6(b); deleted by 82/1996 s 80	§
s 7(3)	substituted by 82/1997 s 3; amended by 41/1999 s 17	§
s 7(4)	amended by 50/1984 s 3(1) (Sch 6); deleted by 82/1997 s 3	§
Old Pt 2 heading	deleted by 82/1996 s 81	§
s 9	deleted by 82/1996 s 81	§
s 10	amended by 88/1992 s 4; deleted by 82/1996 s 81	§
s 12(3)	substituted by 88/1992 s 5	§
s 15	deleted by 82/1996 s 82	§
s 15A	substituted by 21/2000 s 23	§
s 17	deleted by 111/1980 s 5; inserted by 4/1990 s 2	§
s 19	amended by 50/1984 s 3(1) (Sch 6); substituted by 88/1992 s 6; deleted by 82/1996 s 83	§
s 19A	inserted by 111/1980 s 6	§
s 19A(1)	amended by 88/1992 s 7; 82/1996 s 84	§
s 20(1)	substituted by 111/1980 s 7(a); 82/1996 s 85(a)	§
s 20(1aa)	inserted by 88/1992 s 8(a); deleted by 82/1996 s 85(a)	§

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s 20(1a)	inserted by 111/1980 s 7(a); amended by 88/1992 s 8(b), (c); deleted by 82/1996 s 85(a)	§
s 20(2)	amended by 111/1980 s 7(b); 88/1992 s 8(d); substituted by 82/1996 s 85(a)	§
s 20(3)	substituted by 88/1992 s 8(e); 82/1996 s 85(a)	§
s 20(4)	inserted by 21/1988 s 3; amended by 88/1992 s 8(f); 82/1996 s 85(b)	§
s 20(5)—(7)	inserted by 21/1988 s 3	§
s 20(8)	inserted by 21/1988 s 3; deleted by 82/1996 s 85(c)	§
s 21(1)	redesignated as s 21 in pursuance of the <i>Acts Republication Act 1967</i>	§
s 21(2)—(4)	deleted by 50/1984 s 3(1) (Sch 6)	§
s 22	amended by 50/1984 s 3(1) (Sch 6)	§
s 23(1)	substituted by 100/1986 s 5(a); 82/1996 s 86(a)	§
s 23(1a) and (1b)	inserted by 100/1986 s 5(a); deleted by 82/1996 s 86(a)	§
s 23(2)	amended by 100/1986 s 5(b); substituted by 82/1996 s 86(a)	§
s 23(3)	amended by 100/1986 s 5(c); substituted by 82/1996 s 86(a)	§
s 23(4)	amended by 82/1996 s 86(b)	§
s 23(5)	substituted by 88/1992 s 9	§
s 23A	inserted by 88/1992 s 10; deleted by 82/1996 s 87	§
s 24	amended by 21/1988 s 4; 88/1992 s 11; 83/1995 s 2; deleted by 82/1996 s 87	§
s 25	amended by 50/1984 s 3(1) (Sch 6); deleted by 100/1986 s 6	§
s 26	amended by 50/1984 s 3(1) (Sch 6); deleted by 82/1996 s 87	§
s 27A	substituted by 100/1986 s 7; deleted by 82/1996 s 88	§
s 27B	substituted by 100/1986 s 7; amended by 14/1994 s 3; deleted by 82/1996 s 88	§
s 27C	amended by 50/1984 s 3(1) (Sch 6); substituted by 100/1986 s 7; deleted by 82/1996 s 88	§
s 27D	substituted by 100/1986 s 7; amended by 88/1992 s 12; deleted by 82/1996 s 88	§
s 27E	deleted by 82/1996 s 88	§
s 28 and heading	deleted by 81/1985 s 5	§
Heading preceding s 29	deleted by 44/2003 s 3(1) (Sch 1)	§
Pt 3 Div 1 heading	inserted by 44/2003 s 3(1) (Sch 1)	§
s 31(1)	amended by 34/2002 s 27	§
s 31(2)—(4)	amended by 50/1984 s 3(1) (Sch 6)	§
s 31A	amended by 31/1994 s 4	§

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Heading preceding s 31B	amended by 50/1984 s 3(1) (Sch 6); deleted by 44/2003 s 3(1) (Sch 1)	§
Pt 3 Div 2 heading	inserted by 44/2003 s 3(1) (Sch 1)	§
s 31B (previously s 31B(1))	amended by 50/1984 s 3(1) (Sch 6); redesignated as s 31B in pursuance of the <i>Acts Republication Act 1967</i> ; amended by 44/2003 s 3(1) (Sch 1)	§
bailee	inserted by 88/1992 s 13(a)	§
bailment plant	inserted by 88/1992 s 13(a)	§
bailor	inserted by 88/1992 s 13(a)	§
bank	deleted by 50/1984 s 3(1) (Sch 6)	§
contractual bailment	inserted by 88/1992 s 13(a); substituted by 15/2002 s 3(a)	§
corresponding law	inserted by 31/1994 s 5; amended by 44/2003 s 3(1) (Sch 1)	§
dutiable rental business	inserted by 31/2003 s 4(1)	§
equipment financing arrangement	inserted by 31/2003 s 4(1)	§
credit arrangement	deleted by 50/1984 s 3(1) (Sch 6)	§
credit business	deleted by 50/1984 s 3(1) (Sch 6)	§
discount transaction	deleted by 50/1984 s 3(1) (Sch 6)	§
goods	amended by 88/1992 s 13(b)	§
guarantee	deleted by 50/1984 s 3(1) (Sch 6)	§
guarantor	deleted by 50/1984 s 3(1) (Sch 6)	§
hire-purchase agreement	inserted by 15/2002 s 3(b)	§
interest	deleted by 50/1984 s 3(1) (Sch 6)	§
loan	amended by 101/1976 s 2(1)(a); deleted by 50/1984 s 3(1) (Sch 6)	§
prescribed rate	substituted by 95/1982 s 3(a); deleted by 50/1984 s 3(1) (Sch 6)	§
principal	deleted by 50/1984 s 3(1) (Sch 6)	§
rate of interest	deleted by 50/1984 s 3(1) (Sch 6)	§
registered credit union	substituted by 101/1976 s 2(1)(b); deleted by 50/1984 s 3(1) (Sch 6)	§
registered person	deleted by 31/2003 s 4(2)	§
registered	inserted by 31/2003 s 4(2)	§
related corporation	amended by 50/1984 s 3(1) (Sch 6); 88/1992 s 13(c); substituted by 23/2001 s 107	§
rental business	substituted by 88/1992 s 13(d)	§
s 31B(1a)	substituted by 95/1982 s 3(b); deleted by 50/1984 s 3(1) (Sch 6)	§
s 31B(2)—(10)	deleted by 50/1984 s 3(1) (Sch 6)	§



s 31C	substituted by 89/1983 s 3; deleted by 50/1984 s 3(1) (Sch 6); inserted by 15/2002 s 4; substituted by 31/2003 s 5	§
s 31D	amended by 89/1983 s 4; 71/1992 s 3(1) (Sch); 88/1992 s 14; 82/1996 s 89; substituted by 31/2003 s 5	§
s 31E(1)	amended by 35/2002 s 16(a)	§
s 31E(2)	substituted by 89/1983 s 5; amended by 35/2002 s 16(b)	§
s 31F	amended by 101/1976 s 3; 89/1983 s 6; 50/1984 s 3(1) (Sch 6); 81/1985 s 6; 100/1986 s 8; 52/1989 s 4; 74/1991 s 3; 88/1992 s 15; 82/1996 s 90; 21/2000 s 24; 15/2002 s 5; 35/2002 s 17; substituted by 31/2003 s 6	§
s 31G	amended by 50/1984 s 3(1) (Sch 6); 74/1991 s 4; deleted by 88/1992 s 16	§
s 31H	amended by 82/1996 s 91	§
s 31I(1)	amended by 50/1984 s 3(1) (Sch 6); 74/1991 s 5; 31/1994 s 6(a); 83/1994 s 12 (Sch); 82/1996 s 92(a)—(c); 15/2002 s 6(a); 31/2003 s 7(1)	§
s 31I(1)(d) and (e)	deleted by 50/1984 s 3(1) (Sch 6)	§
s 31I(1)(f)	deleted by 81/1985 s 7(a)	§
s 31I(1)(h)	deleted by 31/2003 s 7(2)	§
s 31I(1a)	inserted by 31/1994 s 6(b); amended by 31/2003 s 7(3); 44/2003 s 3(1) (Sch 1)	§
s 31I(1b)	inserted by 31/1994 s 6(b); amended by 44/2003 s 3(1) (Sch 1)	§
s 31I(1b)(a)	deleted by 31/2003 s 6(4)	§
s 31I(1c) (previously s 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); amended by 82/1996 s 92(d); 15/2002 s 6(b); 31/2003 s 7(5)	§
s 31I(2)	deleted by 82/1996 s 92(e)	§
s 31J	amended by 71/1992 s 3(1) (Sch); deleted by 82/1996 s 93	§
s 31K(3)	amended by 82/1996 s 94	§
s 31L	deleted by 70/1981 s 3; inserted by 15/1982 s 3	§
s 31L(1)	amended by 50/1984 s 3(1) (Sch 6); 100/1986 s 9(1)(a); 71/1992 s 3(1) (Sch); 82/1996 s 95	§
s 31L(3)	deleted by 50/1984 s 3(1) (Sch 6); inserted by 100/1986 s 9(1)(b)	§
s 31L(4) and (5)	deleted by 50/1984 s 3(1) (Sch 6)	§
Heading preceding s 31M	deleted by 50/1984 s 3(1) (Sch 6)	§
s 31M	deleted by 50/1984 s 3(1) (Sch 6); inserted by 100/1986 s 10; substituted by 74/1991 s 6; amended by 88/1992 s 17; deleted by 82/1996 s 96; inserted by 31/2003 s 8	§

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s 31MA	inserted by 89/1983 s 7; deleted by 50/1984 s 3(1) (Sch 6)	§
s 31N	amended by 89/1983 s 8; 50/1984 s 3(1) (Sch 6); 100/1986 s 10; 74/1991 s 7; 88/1992 s 18; 82/1996 s 97; deleted by 31/2003 s 9	§
s 31O	deleted by 50/1984 s 3(1) (Sch 6)	§
s 31P	deleted by 70/1981 s 4; inserted by 15/1982 s 4; deleted by 50/1984 s 3(1) (Sch 6)	§
ss 31Q—31T	deleted by 50/1984 s 3(1) (Sch 6)	§
Heading preceding s 32	deleted by 44/2003 s 3(1) (Sch 1)	§
Pt 3 Div 3 heading	inserted by 44/2003 s 3(1) (Sch 1)	§
s 32		
assurance or insurance business	amended by 50/1984 s 3(1) (Sch 6)	§
general insurance business	inserted by 47/1990 s 3	§
life insurance policy	inserted by 47/1990 s 3	§
policy	amended by 50/1984 s 3(1) (Sch 6)	§
premium	inserted by 74/1991 s 8; substituted by 21/2000 s 25	§
s 33	substituted by 47/1990 s 4	§
s 34	amended by 50/1984 s 3(1) (Sch 6); substituted by 47/1990 s 4	§
s 34(3)	amended by 82/1996 s 98(a)	§
s 34(4)	deleted by 82/1996 s 98(b)	§
s 34A	deleted by 47/1990 s 4	§
s 35	amended by 111/1980 s 8; 50/1984 s 3(1) (Sch 6); substituted by 47/1990 s 4	§
s 35(1)	amended by 82/1996 s 99	§
s 36	substituted by 50/1984 s 3(1) (Sch 6); 47/1990 s 4	§
s 36(4)	deleted by 82/1996 s 100	§
s 36A	inserted by 82/1996 s 101	§
s 37	deleted by 100/1986 s 11; inserted by 47/1990 s 4; amended by 82/1996 s 102	§
s 38	amended by 50/1984 s 3(1) (Sch 6); deleted by 100/1986 s 11; inserted by 47/1990 s 4	§
s 39	substituted by 47/1990 s 4; deleted by 82/1996 s 103	§
s 40	inserted by 47/1990 s 4; deleted by 82/1996 s 103	§
s 41	substituted by 47/1990 s 4; amended by 74/1991 s 9; 88/1992 s 19; deleted by 82/1996 s 103	§
s 42	substituted by 47/1990 s 4; deleted by 82/1996 s 103	§

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s 42AA(1)	amended by 35/2002 s 18	§
s 42AA(4)	substituted by 88/1992 s 20; substituted by 82/1996 s 104	§
s 42AA(4a) and (4b)	inserted by 88/1992 s 20; deleted by 82/1996 s 104	§
s 42AB	inserted by 8/1986 s 4	§
s 42AB(3)	amended by 82/1996 s 105	§
Heading preceding s 42A	deleted by 44/2003 s 3(1) (Sch 1)	§
Pt 3 Div 4 heading s 42A	inserted by 44/2003 s 3(1) (Sch 1)	§
applicant	substituted by 100/1986 s 12(a)	§
commercial motor vehicle	inserted by 64/1989 s 3(a)	§
dealer	substituted by 100/1986 s 12(b)	§
list price	inserted by 100/1986 s 12(b); substituted by 21/2000 s 26(a)	§
market value	inserted by 100/1986 s 12(b); substituted by 21/2000 s 26(b)	§
new motor vehicle	inserted by 100/1986 s 12(c)	§
optional equipment	inserted by 100/1986 s 12(c)	§
primary producer	inserted by 64/1989 s 3(b)	§
second-hand motor vehicle	inserted by 100/1986 s 12(d)	§
s 42B(1)	substituted by 100/1986 s 13(a); amended by 21/2000 s 27	§
s 42B(1aa)	inserted by 100/1986 s 13(a)	§
s 42B(1a)	amended by 28/1977 s 2(a); 83/1994 s 2(a)	§
s 42B(1b)	inserted by 28/1977 s 2(b); substituted by 33/1990 s 2(a); deleted by 83/1994 s 2(b)	§
s 42B(1c)	inserted by 33/1990 s 2(a); deleted by 83/1994 s 2(b)	§
s 42B(2)	amended by 28/1977 s 2(c); 83/1994 s 2(c)	§
s 42B(3a)	deleted by 94/2000 Sch 4 cl 3	§
s 42B(4)—(6)	substituted by 100/1986 s 13(b); 82/1996 s 106	§
s 42B(6a) and (6b)	deleted by 82/1996 s 106	§
s 42B(7)	amended by 83/1994 s 2(d)	§
s 42B(6a) and (6b)	inserted by 74/1991 s 10; substituted by 88/1992 s 21	§
s 42B(7)	deleted by 100/1986 s 13(b); inserted by 33/1990 s 2(b)	§
s 42B(8)	deleted by 50/1984 s 3(1) (Sch 6)	§
s 42BA	inserted by 72/1995 s 3	§
s 42C	deleted by 33/1990 s 3; inserted by 74/1991 s 11; amended by 88/1992 s 22; 72/1995 s 4; substituted by 82/1996 s 107	§

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s 42D	amended by 50/1984 s 3(1) (Sch 6); 100/1986 s 14; 33/1990 s 4; substituted by 82/1996 s 107	§
s 42E	amended by 33/1990 s 5; 82/1996 s 108; 44/2003 s 3(1) (Sch 1)	§
ss 43—45A and heading	deleted by 111/1980 s 9	§
Heading preceding s 43	inserted by 82/1997 s 4; deleted by 44/2003 s 3(1) (Sch 1)	§
Pt 3 Div 5 heading	inserted by 44/2003 s 3(1) (Sch 1)	§
s 43	inserted by 82/1997 s 4	§
bank	deleted by 41/1999 s 18(a)	§
cheque	amended by 41/1999 s 18(b)	§
Cheques and Payment Orders Act 1986	deleted by 41/1999 s 18(c)	§
financial institution	inserted by 41/1999 s 18(c)	§
unstamped cheque	amended by 41/1999 s 18(d)	§
s 44	inserted by 82/1997 s 4	§
s 44(1)	amended by 41/1999 s 19(a), (b)	§
s 44(2) and (3)	amended by 41/1999 s 19(c)	§
s 44(4)	amended by 41/1999 s 19(d)	§
s 44(5)	amended by 41/1999 s 19(e)	§
s 45		
s 45(1)	s 45 inserted by 82/1997 s 4	§
	s 45 amended by 41/1999 s 20	§
	<b>s 45 amended and redesignated as s 45(1) by 21/2004 s 9(1), (2)</b>	<b>1.7.2004</b>
<b>s 45(2)—(4)</b>	<b>inserted by 21/2004 s 9(2)</b>	<b>1.7.2004</b>
Heading preceding s 46	deleted by 82/1997 s 4	§
s 46	amended by 19/1991 s 2; substituted by 82/1997 s 4; amended by 41/1999 s 21	§
s 46A	inserted by 89/1983 s 9; amended by 19/1991 s 3; deleted by 82/1997 s 4	§
s 47	amended by 50/1984 s 3(1) (Sch 6); deleted by 82/1997 s 4	§
s 47A	deleted by 82/1997 s 4	§
ss 47B—47D	deleted by 70/1981 s 5	§
s 48	amended by 70/1981 s 6; 50/1984 s 3(1) (Sch 6); deleted by 82/1997 s 4	§
s 48A	amended by 101/1976 s 4; 70/1981 s 7; 95/1982 s 4; 19/1991 s 4; 82/1996 s 109; deleted by 82, 1997 s 4	§
s 49	amended by 88/1992 s 23; deleted by 82/1997 s 4	§
s 50	deleted by 82/1997 s 4	§

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s 51	amended by 88/1992 s 24; deleted by 82/1997 s 4	§
s 52	deleted by 82/1997 s 4	§
s 53 and heading	deleted by 81/1985 s 8	§
ss 54—59A and heading	deleted by 50/1984 s 3(1) (Sch 6)	§
Heading preceding s 59B	inserted by 27/1978 s 7; deleted in pursuance of the <i>Acts Republication Act 1967</i> as its function is now exhausted	§
s 59B	inserted by 27/1978 s 7; amended by 50/1984 s 3(1) (Sch 6); 52/1989 s 6; 88/1992 s 25; deleted by 83/1994 s 3	§
Heading preceding s 60	deleted by 44/2003 s 3(1) (Sch 1)	§
Pt 3 Div 6 heading	inserted by 44/2003 s 3(1) (Sch 1)	§
s 60		
conveyance	amended by 38/1996 s 40; 80/2000 s 8	§
s 60A	substituted by 95/1982 s 5	§
s 60A(1)	amended by 36/1990 s 4	§
s 60A(4)	amended by 50/1984 s 3(1) (Sch 6)	§
s 60A(4a) and (4b)	inserted by 20/1997 s 3(a)	§
s 60A(6)	inserted by 20/1997 s 3(b); amended by 23/2001 s 108(a)—(c)	§
s 60A(7)	inserted by 20/1997 s 3(b)	§
s 60A(8)	inserted by 20/1997 s 3(b)	§
majority shareholder	substituted by 23/2001 s 108(d)	§
spouse	deleted by 80/2000 s 9	§
s 60B(1)	amended by 35/2002 s 19	§
s 60C	inserted by 80/2000 s 10	§
s 61	amended by 95/1982 s 6	§
s 62	inserted by 80/2000 s 11	§
s 62(2) and (3)	substituted by 27/2001 s 10	§
s 63	deleted by 95/1982 s 7	§
s 65	amended by 95/1982 s 8	§
s 66(1)	amended by 95/1982 s 9(a); redesignated as s 66 in pursuance of the <i>Acts Republication Act 1967</i>	§
s 66(2) and (3)	substituted by 28/1977 s 3; deleted by 95/1982 s 9(b)	§
s 66(4)	deleted by 95/1982 s 9(b)	§
s 66A	deleted by 33/1990 s 6	§
s 66AB	amended by 101/1976 s 5; 111/1980 s 10; 70/1981 s 8; deleted by 33/1990 s 6	§
s 66B	amended by 28/1977 s 4; deleted by 95/1982 s 10	§

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s 67	deleted by 95/1982 s 10; inserted by 33/1990 s 6	§
s 67(2)	amended by 34/2002 s 28	§
s 67(5) and (6)	deleted by 82/1996 s 110	§
s 67(8)	deleted by 27/2001 s 11	§
s 68(1)	amended by 95/1982 s 11(a); 50/1984 s 3(1) (Sch 6); deleted by 33/1990 s 7	§
s 68(2)	amended by 95/1982 s 11(b); deleted by 33/1990 s 7	§
s 68(3)	amended by 95/1982 s 11(c)	§
s 68(4)	amended by 95/1982 s 11(d)	§
s 68(5)	amended by 95/1982 s 11(e)	§
s 69	deleted by 33/1990 s 8	§
s 70	substituted by 50/1984 s 3(1) (Sch 6)	§
s 71(2)	substituted by 82/1996 s 111; deleted by 35/2002 s 20	§
s 71(3)	substituted by 111/1980 s 11; amended by 80/2000 s 12(a)	§
s 71(4)	substituted by 111/1980 s 11; amended by 80/2000 s 12(b); 34/2002 s 29(a)	§
s 71(4a)	inserted by 36/1990 s 5(a); amended by 88/1992 s 26(a); substituted by 18/1996 s 4; amended by 23/2001 s 109(a)	§
s 71(5)	deleted by 66/1979 s 3; inserted by 111/1980 s 11; amended by 95/1982 s 12(a); 21/1988 s 5; 80/2000 s 12(d)—(f); 34/2002 s 29(b)	§
s 71(5)(a)	deleted by 80/2000 s 12(c)	§
s 71(6)	amended by 54/1976 s 7; deleted by 66/1979 s 3; inserted by 111/1980 s 11; amended by 80/2000 s 12(g)	§
s 71(7)	deleted by 66/1979 s 3; inserted by 111/1980 s 11	§
s 71(8)	deleted by 66/1979 s 3; inserted by 111/1980 s 11; amended by 95/1982 s 12(b)	§
s 71(9) and (10)	inserted by 111/1980 s 11	§
s 71(11)	inserted by 111/1980 s 11; amended by 36/1990 s 5(b); 34/2002 s 29(c)	§
s 71(11a)	inserted by 36/1990 s 5(c)	§
s 71(12) and (13)	inserted by 111/1980 s 11	§
s 71(14)	inserted by 111/1980 s 11; amended by 42/1992 s 3	§
s 71(15)	inserted by 111/1980 s 11;	§
discretionary trust	deleted by 36/1990 s 5(d)	§
potential beneficial interest	deleted by 80/2000 s 12(h)	§
public company	amended by 50/1984 s 3(1) (Sch 6); 88/1992 s 26(b); 23/2001 s 109(b)	§

transfer	deleted by 80/2000 s 12(h)	§
unit	deleted by 36/1990 s 5(d)	§
unit trust scheme	amended by 50/1984 s 3(1) (Sch 6); deleted by 36/1990 s 5(d)	§
s 71AA	inserted by 80/2000 s 13	§
s 71A	amended by 111/1980 s 12; 50/1984 s 3(1) (Sch 6)	§
s 71B	amended and redesignated as s 71B(1) by 95/1982 s 13	§
s 71B(2) and (3)	inserted by 95/1982 s 13(b); deleted by 82/1996 s 112	§
s 71B(4) and (5)	inserted by 95/1982 s 13(b)	§
s 71C	inserted by 66/1979 s 4	§
s 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); 44/2003 s 3(1) (Sch 1)	§
s 71C(1a)	inserted by 8/1989 s 3(c)	§
s 71C(1b)	inserted by 35/2002 s 21(a)	§
s 71C(2)	amended by 95/1982 s 14	§
	amended by 81/1985 s 9(c)—(e)	§
	substituted by 52/1989 s 7(b)	§
	amended by 42/1992 s 4(b)	§
	amended by 20/1997 s 4(b)—(d)	§
	amended by 35/2002 s 21(b)	§
	<b>amended by 21/2004 s 10(1)</b>	<b>1.7.2004</b>
<b>s 71C(3)</b>	<b>inserted by 21/2004 s 10(2)</b>	<b>1.7.2004</b>
s 71C(4)	s 71C (2a) inserted by 81/1985 s 9(f)	§
	s 71C(2a) substituted by 35/2002 s 21(c)	§
	<b>s 71C(2a) redesignated as s 71C(4) by 21/2004 s 10(3)</b>	<b>1.7.2004</b>
s 71C(5)	s 71C(2b) inserted by 52/1989 s 7(c)	§
	s 71C(2b) deleted by 14/1994 s 4	§
	s 71C(2b) inserted by 35/2002 s 21(d)	§
	<b>s 71C(2b) redesignated as s 71C(5) by 21/2004 s 10(3)</b>	<b>1.7.2004</b>
<b>s 71C(6)</b>	<b>s 71C(3) redesignated as s 71C(6) by 21/2004 s 10(3)</b>	<b>1.7.2004</b>
genuine farm	inserted by 35/2002 s 21(e)	§
Housing Trust home	inserted by 8/1989 s 3(d)	§
prescribed amount	inserted by 20/1997 s 4(e)	§
prescribed maximum	inserted by 20/1997 s 4(e)	§
relevant component	inserted by 35/2002 s 21(f)	§
relevant contract	inserted by 42/1992 s 4(c)	§

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s 71C(7)	s 71C(4) substituted by 52/1989 s 7(d)	§
	<b>s 71C(4) redesignated as s 71C(7) by 21/2004 s 10(3)</b>	<b>1.7.2004</b>
s 71CA	inserted by 30/1982 s 3	§
s 71CA(2) and (3)	substituted by 83/1994 s 4	§
s 71CB	inserted by 21/1988 s 6; substituted by 83/1994 s 5	§
s 71CB(1)		
spouses	amended by 80/2000 s 14	§
s 71CC	inserted by 31/1994 s 7	§
s 71CC(1)	amended by 18/1996 s 5(a)—(c); 11/1999 s 2(a); 35/2002 s 22(a)	§
s 71CC(1a)	inserted by 11/1999 s 2(b)	§
s 71CC(1b)	inserted by 35/2002 s 22(b)	§
s 71CC(5)		
natural person	inserted by 18/1996 s 5(d)	§
person	inserted by 18/1996 s 5(d)	§
relative	amended by 11/1999 s 2(c)	§
spouse	deleted by 80/2000 s 15	§
s 71CD	inserted by 42/1997 s 2	§
s 71D	inserted by 111/1980 s 13	§
s 71D(1) and (2)	substituted by 19/1991 s 5(a)	§
s 71D(2a)	inserted by 19/1991 s 5(a)	§
s 71D(3)		
exploration tenement	amended by 83/1994 s 12 (Sch); 11/2000 Sch 2	§
s 71D(4)	substituted by 19/1991 s 5(b)	§
s 71D(5) and (6)	inserted by 19/1991 s 5(b)	§
s 71DA	inserted by 83/1994 s 6	§
s 71DA(1a) and (1b)	inserted by 42/1997 s 3(a)	§
s 71DA(5)		
complying superannuation fund	amended by 42/1997 s 3(b)	§
pooled superannuation trust	inserted by 42/1997 s 3(c)	§
the SIS Act	inserted by 42/1997 s 3(c)	§
s 71DA(6)	substituted by 42/1997 s 3(d)	§
Heading preceding s 71EA	inserted by 39/2002 s 3; deleted by 44/2003 s 3(1) (Sch 1)	§
Pt 3 Div 7 heading	inserted by 44/2003 s 3(1) (Sch 1)	§
s 71EA	inserted by 39/2002 s 3	§
s 71EA(1)		
this Division	deleted by 44/2003 s 3(1) (Sch 1)	§

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ss 71EB—71EJ	inserted by 39/2002 s 3	§
Heading preceding s 71E	inserted by 21/1988 s 7; deleted by 44/2003 s 3(1) (Sch 1)	§
Pt 3 Div 8 heading	inserted by 44/2003 s 3(1) (Sch 1)	§
s 71E	inserted by 21/1988 s 7	§
s 71E(1)	amended by 18/1996 s 6(a), (b)	§
s 71E(1a)	inserted by 18/1996 s 6(c)	§
s 71E(2)	amended by 88/1992 s 27; 23/2001 s 110	§
s 71E(2)(d)	deleted by 80/2000 s 16	§
s 71E(4a)	inserted by 74/1991 s 12	§
s 71E(6)	amended by 82/1996 s 113	§
s 71E(10)	deleted by 33/1990 s 9	§
s 71F	inserted by 35/2002 s 23	§
Heading preceding s 72	deleted by 44/2003 s 3(1) (Sch 1)	§
Pt 3 Div 9 heading	inserted by 44/2003 s 3(1) (Sch 1)	§
Heading preceding s 75	deleted by 81/1985 s 10	§
s 75	deleted by 81/1985 s 10; inserted by 72/1995 s 5	§
<b>s 75A</b>	<b>inserted by 21/2004 s 11</b>	<b>1.7.2004</b>
Heading preceding s 75AA	deleted in pursuance of the <i>Acts Republication Act 1967</i> , as its function is now exhausted	§
s 75AA	deleted by 50/1984 s 3(1) (Sch 6)	§
Heading preceding s 76	deleted by 44/2003 s 3(1) (Sch 1)	§
Pt 3 Div 10 heading	inserted by 44/2003 s 3(1) (Sch 1)	§
s 76		
home	inserted by 31/2003 s 10(1)	§
home mortgage	inserted by 31/2003 s 10(1)	§
liability	inserted by 88/1992 s 28	§
mortgage	substituted by 88/1992 s 28; amended by 31/2003 s 10(2)	§
s 76A	inserted by 8/1986 s 5; deleted by 88/1992 s 29	§
s 79	substituted by 88/1992 s 30	§
s 79(2)	amended by 31/2003 s 11	§
s 80	amended by 95/1982 s 15	§
s 81	redesignated as s 81(1) by 18/1996 s 7	§
s 81(2)	inserted by 18/1996 s 7	§
s 81A	inserted by 101/1976 s 6	§
s 81A(1) and (2)	amended by 31/2003 s 12	§
s 81B	inserted by 111/1980 s 14; substituted by 88/1992 s 31	§
s 81C	inserted by 95/1982 s 16	§
s 81C(6)	amended by 83/1994 s 12 (Sch); 23/2001 s 111	§
s 81D	inserted by 31/1994 s 8	§
s 81D(1)	amended by 82/1997 s 5(a)	§

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s 81D(4)		
subsidiary	amended by 23/2001 s 112(a)	§
public company	amended by 23/2001 s 112(b)	§
s 81D(5)	amended by 82/1997 s 5(b)	§
s 81D(6)	deleted by 82/1997 s 5(c)	§
s 81E	inserted by 82/1997 s 6	§
Heading preceding s 82	deleted by 50/1984 s 3(1) (Sch 6)	§
s 82	deleted by 50/1984 s 3(1) (Sch 6); inserted by 21/1988 s 8	§
s 82(2)	amended by 42/1992 s 5	§
s 82A	deleted by 50/1984 s 3(1) (Sch 6)	§
s 83	deleted by 50/1984 s 3(1) (Sch 6)	§
	<b>inserted by 21/2004 s 12</b>	<b>1.7.2004</b>
ss 84—84J	deleted by 50/1984 s 3(1) (Sch 6)	§
ss 85—90 and heading	deleted by 104/1976 s 4(2) (Sch 2)	§
Pt 3A heading	substituted by 14/1994 s 5; amended by 34/2002 s 30	§
Pt 3A Div 1 heading	inserted by 14/1994 s 5	§
s 90A	amended by 14/1994 s 6(a)	§
Australian CS facility licensee	inserted by 34/2002 s 31(a)	§
broker	amended by 52/1989 s 8(a); 14/1994 s 6(b); substituted by 11/1999 s 3; 34/2002 s 31(a)	§
CS facility	inserted by 34/2002 s 31(b)	§
CSF identifier	inserted by 34/2002 s 31(b)	§
CSF participant	inserted by 34/2002 s 31(b)	§
CSF transaction	inserted by 34/2002 s 31(b)	§
error transaction	inserted by 14/1994 s 6(c); substituted by 34/2002 s 31(c)	§
exempt transaction	inserted by 21/2000 s 28(a); substituted by 27/2001 s 12; substituted by 34/2002 s 31(c)	§
financial market	inserted by 34/2002 s 31(c)	§
foreign company	inserted by 14/1994 s 6(c); amended by 23/2001 s 113(a)	§
identification code	inserted by 14/1994 s 6(c); substituted by 34/2002 s 31(d)	§
odd lot	inserted by 70/1981 s 9; deleted by 34/2002 s 31(e)	§
odd lot specialist	inserted by 70/1981 s 9; amended by 52/1989 s 8(b); deleted by 34/2002 s 31(e)	§
operating rules	inserted by 34/2002 s 31(e)	§
proper CSF transaction	inserted by 34/2002 s 31(e)	§
proper SCH transfer	inserted by 14/1994 s 6(d); deleted by 34/2002 s 31(e)	§

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quoted financial product	inserted by 34/2002 s 31(e)	§
quoted marketable security	inserted by 21/2000 s 28(b); deleted by 34/2002 s 31(e)	§
recognised stock exchange	inserted by 21/2000 s 28(b); deleted by 80/2000 s 17	§
registered CS facility licensee	inserted by 34/2002 s 31(e)	§
registered market licensee	inserted by 34/2002 s 31(e)	§
relevant company	inserted by 14/1994 s 6(d); amended by 23/2001 s 113(b)	§
relevant CSF participant	inserted by 34/2002 s 31(f)	§
relevant SCH participant	inserted by 14/1994 s 6(d); deleted by 34/2002 s 31(f)	§
SCH	inserted by 14/1994 s 6(d); deleted by 34/2002 s 31(f)	§
SCH business rules	inserted by 14/1994 s 6(d); deleted by 34/2002 s 31(f)	§
SCH participant	inserted by 14/1994 s 6(d); deleted by 34/2002 s 31(f)	§
SCH-regulated transfer	inserted by 14/1994 s 6(d); deleted by 34/2002 s 31(f)	§
South Australian registered company	inserted by 14/1994 s 6(e); substituted by 23/2001 s 113(c)	§
transfer document	inserted by 14/1994 s 6(e); substituted by 34/2002 s 31(g)	§
transfer identifier	inserted by 14/1994 s 6(e); deleted by 34/2002 s 31(g)	§
transfer value	inserted by 14/1994 s 6(e); substituted by 34/2002 s 31(g)	§
s 90AB	inserted by 71/1998 s 2	§
s 90AC	inserted by 21/2000 s 28(c)	§
Pt 3A Div 2 heading	inserted by 14/1994 s 7	§
s 90B(1) (previously s 90B)	amended by 50/1984 s 3(1) (Sch 6); 14/1994 s 8; amended and redesignated as s 90B(1) by 49/1995 s 3; amended by 34/2002 s 32(a)—(d)	§
s 90B(2)	inserted by 49/1995 s 3(b); amended by 34/2002 s 32(a)	§
s 90B(3)	inserted by 49/1995 s 3(b); amended by 34/2002 s 32(a), (b)	§
s 90C(1)	amended by 14/1994 s 9(a); 49/1995 s 4(a), (b); 34/2002 s 33(a)	§
s 90C(1)(a) and (b)	deleted by 49/1995 s 4(c)	§
s 90C(2)	deleted by 49/1995 s 4(d)	§
s 90C(3)	amended by 70/1981 s 10; 49/1995 s 4(e); 34/2002 s 33(a), (b)	§

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s 90C(4)	amended by 34/2002 s 33(a)	§
s 90C(5)	amended by 49/1995 s 4(f)	§
s 90C(6)	substituted by 14/1994 s 9(b); amended by 49/1995 s 4(g); substituted by 82/1996 s 114	§
s 90C(7)	amended by 49/1995 s 4(h); deleted by 82/1996 s 114	§
s 90C(8)	amended by 71/1992 s 3(1) (Sch 6); 14/1994 s 9(c), (d); 49/1995 s 4(i); deleted by 82/1996 s 114	§
s 90C(9)	deleted by 100/1986 s 15	§
s 90D(a1)	inserted by 49/1995 s 5(a)	§
s 90D(1)	amended by 49/1995 s 5(b); 35/2002 s 24(a)	§
s 90D(2)	amended by 49/1995 s 5(c); 35/2002 s 24(b)	§
s 90D(3)	substituted by 88/1992 s 32; 14/1994 s 10(a); amended by 49/1995 s 5(d); substituted by 82/1996 s 115	§
s 90D(4)	substituted by 88/1992 s 32; amended by 49/1995 s 5(e); deleted by 82/1996 s 115	§
s 90D(5)	inserted by 88/1992 s 32; deleted by 82/1996 s 115	§
s 90D(6)	inserted by 88/1992 s 32; amended by 14/1994 s 10(b); deleted by 82/1996 s 115	§
s 90D(7) and (8)	inserted by 88/1992 s 32; deleted by 82/1996 s 115	§
s 90E(1)	amended by 14/1994 s 11; 49/1995 s 6(a); 34/2002 s 34(a)	§
s 90E(2)	substituted by 88/1992 s 33; amended by 49/1995 s 6(b); 82/1996 s 116	§
s 90E(3)	amended by 36/1990 s 6; substituted by 34/2002 s 34(b)	§
s 90F	amended by 49/1995 s 7; 34/2002 s 35	§
s 90G	inserted by 8/1986 s 6	§
s 90G(1)		
broker	amended by 52/1989 s 9(c)	§
jobber	deleted	§
market maker	inserted in its place by 52/1989 s 9(a)	§
marketable security	amended by 23/2001 s 114; renamed	§
financial product	by 34/2002 s 36(a)	§
relevant transaction	amended by 34/2002 s 36(a)	§
the U.K. Stock Exchange	deleted	§
the U.K. and Ireland Stock Exchange	inserted in its place by 52/1989 s 9(b)	§
s 90G(3)	amended by 34/2002 s 36(a)	§

s 90G(5)	substituted by 88/1992 s 34; 82/1996 s 117(a)	§
s 90G(5a) and (5b)	inserted by 99/1992 s 34; deleted by 82/1996 s 117(a)	§
s 90G(6)	amended by 100/1986 s 16(a), (b); 52/1989 s 9(c)—(f); 49/1995 s 8; 34/2002 s 36(b)—(d)	§
s 90G(7)	amended by 100/1986 s 16(c), (d); 52/1989 s 9(c), (g); 34/2002 s 36(b)	§
s 90G(8)	substituted by 100/1986 s 16(e); deleted by 82/1996 s 117(b)	§
Div 3 of Pt 3A comprising ss 90H—90O and heading	inserted by 14/1994 s 12; amended by 83/1994 s 7; 18/1996 s 8; 82/1996 ss 118, 119; deleted and ss 90H—90P and heading inserted in its place by 34/2002 s 37	§
Div 4 of Pt 3A comprising ss 90P—90S and heading	inserted by 14/1994 s 12; amended by 82/1996 ss 120, 121; deleted and ss 90Q, 90R and heading inserted in its place by 34/2002 s 37	§
Div 5 of Pt 3A comprising ss 90T—90V and heading	inserted by 83/1994 s 8	§
s 90T	amended by 23/2001 s 115; 34/2002 s 38	§
s 90U	amended by 34/2002 s 39	§
s 90V(1)	amended by 34/2002 s 40	§
s 90V(3)	inserted by 80/2000 s 18	§
Pt 4 comprising ss 91—105C and heading	inserted by 36/1990 s 7; amended by 88/1992 ss 35—41; 83/1994 s 9; 18/1996 s 9; 82/1996 ss 122—127; deleted and ss 91—102 and headings inserted in its place by 80/2000 s 19	§
s 91(1)		
executive officer	amended by 23/2001 s 116(a)	§
private company	substituted by 34/2002 s 41	§
s 91(4)	amended by 23/2001 s 116(b)	§
s 97(2) and (5)	amended by 34/2002 s 42	§
s 101(2)	substituted by 27/2001 s 13; amended by 34/2002 s 43	§
s 106	amended by 50/1984 s 3(1) (Sch 6); redesignated as s 106(1) by 82/1996 s 128	§
s 106(2)	inserted by 82/1996 s 128	§
s 106A(1)	amended by 70/1981 s 11(a); 83/1994 s 10(a); 34/2002 s 44(a), (b)	§
s 106A(1a)	inserted by 70/1981 s 11(b); amended by 35/2002 s 25; 34/2002 s 44(c)	§
s 106A(1b)	inserted by 70/1981 s 11(b)	§
s 106A(2)	amended by 14/1994 s 13; 83/1994 s 10(b); 34/2002 s 44(d)—(f)	§
s 106A(3)	amended by 83/1994 s 10(c); 82/1996 s 129(a); 34/2002 s 44(g)	§
s 106A(4)	substituted by 83/1994 s 10(d); amended by 82/1996 s 129(b)	§

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s 106A(5)	amended by 83/1994 s 10(e); 34/2002 s 44(h), (i)	§
s 107	substituted by 14/1994 s 14; deleted by 82/1996 s 130; inserted by 35/2002 s 26	§
s 108(1)	amended by 59/1994 Sch 2	§
s 109	amended by 88/1992 s 42	§
s 110	deleted by 88/1992 s 43	§
s 110A	amended by 100/1986 s 17; deleted by 82/1996 s 131	§
s 111	amended by 82/1996 s 132	§
s 112(1)	amended by 74/1991 s 13(a)	§
s 112(5)	inserted by 74/1991 s 13(b)	§
s 113	deleted by 50/1984 s 3(1) (Sch 6)	§
s 114	inserted by 27/1978 s 8	§
Sch 1	deleted in pursuance of the <i>Acts Republication Act 1967</i> , as its function is now exhausted; inserted by 41/1999 s 22	§
Sch 2		
Heading	substituted by 44/2003 s 3(1) (Sch 1)	§
Pt 1 heading	inserted by 44/2003 s 3(1) (Sch 1)	§
AGREEMENT or any MEMORANDUM	amended by 42/1992 s 6(a); deleted by 88/1992 s 44(a)	§
AFFIDAVIT OR DECLARATION	amended by 50/1984 s 3(1) (Sch 6); deleted 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); 82/1996 s 133; 36/1998 s 3(a); amended and redesignated as cl 1 by 44/2003 s 3(1) (Sch 1)	§
Paragraph (1)	deleted by 47/1990 s 5(1)(c)	§
Exemption No. 2	amended by 41/1999 s 23(a)	§
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 to Register a Motor Vehicle	amended and redesignated as cl 2 by 44/2003 s 3(1) (Sch 1)	§
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 (Sch)	§
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); deleted by 30/1996 s 43(b)	§
Exemption No. 11A	inserted by 54/1991 s 5(a); deleted 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)	§
paragraph (ab)	deleted by 36/1998 s 3(b)	§
Exemption No. 16	substituted by 28/1977 s 5	§
Exemption No. 17	inserted by r 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); 36/1998 s 3(c)	§
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 (Sch)	§
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); deleted by 30/1996 s 43(e)	§
Exemption No. 6A	inserted by 54/1991 s 5(b); deleted by 30/1996 s 43(f)	§
Exemption No. 8	amended by 89/1978 s 3	§
Exemption No. 8(c)	deleted by 89/1978 s 3	§
BANK NOTE	deleted by 111/1980 s 15(b)	§
BILL OF EXCHANGE payable on demand...	amended by 70/1981 s 12(a); substituted by 89/1983 s 10(a); 19/1991 s 6(e); deleted by 82/1997 s 7(a)	§
BILL OF EXCHANGE, being a cheque...	inserted by 89/1983 s 10(a); amended by 50/1984 s 3(1) (Sch 6); deleted by 82/1997 s 7(a)	§
BILL OF EXCHANGE, being a payment order	inserted by 19/1991 s 6(f); deleted by 82/1997 s 7(a)	§
BILL OF EXCHANGE and PROMISSORY NOTE drawn or made...	amended by 70/1981 s 12(b); deleted by 82/1997 s 7(a)	§

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BILL OF EXCHANGE and PROMISSORY NOTE (not being a bill or note...	deleted by 82/1997 s 7(a)	§
BILL OF EXCHANGE and PROMISSORY NOTE of any other kind (except a bank note)	amended by 19/1991 s 6(g); 83/1994 s 12 (Sch); deleted by 82/1997 s 7(a)	§
BILL OF LADING OR SHIPPING NOTE	deleted by 81/1985 s 11(d)	§
CONTRACT NOTE (not otherwise charged)	deleted by 50/1984 s 3(1) (Sch 6)	§
CONTRACT NOTE	deleted by 50/1984 s 3(1) (Sch 6)	§
CONTRACT	deleted by 50/1984 s 3(1) (Sch 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) (Sch 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); 40/1999 s 2(a); 15/2002 s 7(a); 34/2002 s 45(a), (b); amended and redesignated as cl 3 by 44/2003 s 3(1) (Sch 1)	§
paragraph (aab)	deleted by 81/1985 s 11(f)	§
paragraph (ab)	deleted by 89/1983 s 10(b)	§
Exemption No. 1	substituted by 81/1985 s 11(h); 80/2000 s 20(a)	§
Exemption No. 2	inserted by 81/1985 s 11(h); amended by 34/2002 s 45(c)	§
Exemption No. 3	inserted by 100/1986 s 18(f); amended by 34/2002 s 45(d)	§
Exemption No. 4	inserted by 100/1986 s 18(f); amended by 83/1994 s 12 (Sch)	§
Exemption No. 5	inserted by 100/1986 s 18(f); substituted by 83/1994 s 12 (Sch)	§
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); 42/1997 s 4; 40/1999 s 2(b); 15/2002 s 7(b); 34/2002 s 45(e); amended and redesignated as cl 4 by 44/2003 s 3(1) (Sch 1)	§
Exemption No. 2	inserted by 81/1985 s 11(j); substituted by 80/2000 s 20(b)	§
Exemption No. 3	inserted by 100/1986 s 18(g); amended by 34/2002 s 45(f)	§
Exemption No. 4	inserted by 100/1986 s 18(g); amended by 83/1994 s 12 (Sch)	§
Exemption No. 5	inserted by 100/1986 s 18(g); substituted by 83/1994 s 12 (Sch)	§



CONVEYANCE for the partition	amended by 95/1982 s 17(e); 42/1992 s 6(c); redesignated as cl 5 by 44/2003 s 3(1) (Sch 1)	§
CONVEYANCE for effectuating	amended by 111/1980 s 15(e); 42/1992 s 6(d); redesignated as cl 6 by 44/2003 s 3(1) (Sch 1)	§
CONVEYANCE to which s 71D applies	inserted by 111/1980 s 15(f); deleted by 19/1991 s 6(h)	§
CONVEYANCE of any other kind	amended by 42/1992 s 6(e); redesignated as cl 7 by 44/2003 s 3(1) (Sch 1)	§
DEED	substituted by 42/1992 s 6(f); redesignated as cl 8 by 44/2003 s 3(1) (Sch 1)	§
DOCUMENT or other INSTRUMENT	deleted by 95/1982 s 17(f)	§
INSTALMENT PURCHASE AGREEMENT	deleted by 50/1984 s 3(1) (Sch 6)	§
INSTRUMENT	amended by 42/1992 s 6(g); redesignated as cl 9 by 44/2003 s 3(1) (Sch 1)	§
LEASE (not being a lease...)	amended by 111/1980 s 15(g); 81/1985 s 11(k); deleted by 72/1995 s 6(d)	§
LEASE or AGREEMENT FOR LEASE	inserted by 72/1995 s 6(d); amended and redesignated as cl 10 by 44/2003 s 3(1) (Sch 1)	§
Exemption No. 1	substituted by 27/2001 s 14	§
LEASE made subsequently...	deleted by 72/1995 s 6(e)	§
LETTER OF ALLOTMENT	deleted by 81/1985 s 11(l)	§
MORTGAGE	amended by 101/1976 s 9; 88/1992 s 44(f)(i); 31/2003 s 13; amended and redesignated as cl 11 by 44/2003 s 3(1) (Sch 1)	§
Exemption No. 3	inserted by 88/1992 s 44(f)(ii); amended by 23/2001 s 117(a)	§
Exemption No. 4	inserted by 72/1995 s 6(f)	§
POWER OF ATTORNEY	deleted by 42/1992 s 6(h)	§
RECEIPTS	deleted by 50/1984 s 3(1) (Sch 6)	§
RETURN lodged with the Commissioner by a company	redesignated as cl 12 by 44/2003 s 3(1) (Sch 1)	§
RETURN lodged with the Commissioner by a financial institution under s 44	inserted by 82/1997 s 7(b); amended by 41/1999 s 23(b); amended and redesignated as cl 13 by 44/2003 s 3(1) (Sch 1)	§
Exemption No. 1	amended by 41/1999 s 23(c), (d)	§
Exemption No. 2	amended by 41/1999 s 23(e)	§
Exemption No. 3	amended by 41/1999 s 23(f), (g)	§

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RETURN lodged with the Commissioner by a dealer	amended by 111/1980 s 15(h); 42/1992 s 6(i); 49/1995 s 9(c), (d); 34/2002 s 44(g); amended and redesignated as cl 14 by 44/2003 s 3(1) (Sch 1)	§
Exemption No. 1	amended by 100/1986 s 18(h); substituted by 34/2002 s 45(h)	§
Exemption No. 2	amended by 100/1986 s 18(i); substituted by 34/2002 s 45(h)	§
RETURN under s 90G	inserted by 8/1986 s 7(f); substituted by 42/1992 s 6(j); amended by 49/1995 s 9(e); 34/2002 s 45(i); redesignated as cl 15 by 44/2003 s 3(1) (Sch 1)	§
TOTALIZATOR	deleted by 104/1976 s 4(2) (Sch 2)	§
TOTALIZATOR AGENCY BOARD	deleted by 104/1976 s 4(2) (Sch 2)	§
Pt 2 heading	inserted by 44/2003 s 3(1) (Sch 1)	§
GENERAL EXEMPTIONS FROM ALL STAMP DUTIES	amended and redesignated as cl 16 by 44/2003 s 3(1) (Sch 1)	§
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	deleted by 50/1984 s 3(1) (Sch 6)	§
Exemption No. 19	substituted by 14/1994 s 15(b); amended by 34/2002 s 45(j)	§
Exemption No. 20	amended by 14/1994 s 15(c); 34/2002 s 45(k)	§
Exemption No. 20A	inserted by 11/1999 s 4; amended by 23/2001 s 117(b)	§
Exemption No. 21	amended by 14/1994 s 15(c); 34/2002 s 45(l)	§
Exemption No. 22	inserted by 83/1994 s 11; amended by 18/1996 s 10(a); 23/2001 s 117(c); 34/2002 s 45(m)	§
Exemption No. 23	amended by 50/1984 s 3(1) (Sch 6)	§
prescribed person	amended by 50/1984 s 3(1) (Sch 6)	§
Exemption No. 24	inserted by 52/1989 s 10; substituted by 14/1994 s 15(d); amended by 49/1995 s 9(f); substituted by 34/2002 s 45(n)	§
Exemption No. 24AA	inserted by 18/1996 s 10(b); amended by 34/2002 s 45(o)	§
Exemption No. 24A	inserted by 14/1994 s 15(d); amended by 34/2002 s 45(p)	§
Exemption No. 24B	inserted by 14/1994 s 15(d); amended by 34/2002 s 45(q)	§

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Exemption No. 24C	inserted by 72/1995 s 6(g); amended by 34/2002 s 45(r)	§
Exemption No. 24D	inserted by 21/2000 s 28(d); amended by 34/2002 s 45(s)	§
Exemption No. 25	inserted by 74/1991 s 14; amended by 58/2001 Sch 2 cl 6	§
Exemption No. 26	inserted by 80/2000 s 20(c)	§
Form A	deleted by 72/1995 s 6(h)	§
Sch 3	deleted by 47/1990 s 6	§

## **Transitional etc provisions associated with Act or amendments**

### ***Stamp Duties Act Amendment Act 1988***

#### **9—Transitional provision**

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.

### ***Stamp Duties Act Amendment Act 1989***

#### **4—Application of Act**

The amendments effected by this Act apply to conveyances lodged with the Commissioner of Stamps for stamping on or after 1 February, 1988.

### ***Stamp Duties Act Amendment Act (No. 4) 1990***

#### **7—Transitional provisions**

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.

### ***Stamp Duties (Rates) Amendment Act 1992***

#### **7—Application of amendments**

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).

## ***Stamp Duties (Penalties, Reassessments and Securities) Amendment Act 1992***

### **45—Transitional provision**

- (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.

## ***Stamp Duties (Concessions) Amendment Act 1994***

### **10—Transitional provision**

The amendments made by sections 5 and 6 of this Act apply in relation to rental business transacted on or after 1 June 1994.

## ***Stamp Duties (Miscellaneous) Amendment Act 1996***

### **11—Transitional provision**

The amendments made by this Act do not affect the amount of duty chargeable on an instrument executed before the commencement of this Act.

## ***Stamp Duties (Miscellaneous No. 2) Amendment Act 1997***

### **8—Transitional provision**

A bank is not required to pay duty on a cheque form or cheque under the principal Act as amended by this Act if duty has already been paid in relation to the cheque form or cheque under the repealed provisions of the principal Act.

## ***Stamp Duties (Miscellaneous) Amendment Act 1998***

### **4—Transitional provision**

- (1) The amendment made by section 3(a) of this Act does not apply in relation to—
  - (a) insurance premiums received or charged in account (whether directly or by agents) before 1 June 1998; or
  - (b) insurance premiums received or charged in account (whether directly or by agents) before 1 August 1998 relating to policies to be in force for 12 months or less commencing before 1 September 1998,with the effect that those insurance premiums will be chargeable with duty as if section 3(a) had not been enacted.
- (2) The amendment made by section 3(b) of this Act does not apply in relation to applications made before the commencement of section 3(b).
- (3) The amendment made by section 3(c) of this Act does not apply in relation to applications where the term of the registration is to take effect before 1 September 1998, with the effect that those applications will be charged with duty as if section 3(c) had not been enacted.

## ***Stamp Duties (Conveyance Rates) Amendment Act 1999***

### **3—Application of amendments**

- (1) The amendments made by section 2 of this Act apply to instruments first lodged with the Commissioner of State Taxation for stamping on or after the commencement of this Act.
- (2) However, if on application under this subsection the Commissioner of State Taxation is satisfied that an instrument lodged for stamping gives effect to a written agreement entered into before 27 May 1999, the amendments made by section 2 of this Act will not apply to the instrument (and the instrument will be chargeable with duty as if those amendments had not been enacted).

## ***Commonwealth Places (Mirror Taxes Administration) (Modification of State Taxing Laws) Regulations 2000 (No. 8 of 2000)***

### **4—Prescribed modification of State taxing laws (s. 7(1))**

Each State taxing law is modified under section 7(1) of the Act by the addition of a provision to the following effect:

- (1) "This State taxing law is to be read together with its corresponding applied law as a single body of law."
- (2) The principle in subregulation (1) is subject to any express exceptions and qualifications prescribed under the Act and the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth.

## ***Stamp Duties (Land Rich Entities and Redemption) Amendment Act 2000***

### **21—Amendments relating to redemption to operate retrospectively and prospectively**

- (1) The MSP amendments operate both prospectively and retrospectively.

- (2) However—
- (a) the MSP amendments do not operate retrospectively in respect of an instrument or transaction made or occurring before the relevant date but on or after 30 September 1999; and
  - (b) the MSP amendments only operate to impose a liability in respect of an instrument or transaction made or occurring before 30 September 1999 if—
    - (i) no assessment of duty in respect of the instrument or transaction had been made before the relevant date; or
    - (ii) an assessment of duty in respect of the instrument or transaction had been made before the relevant date but—
      - no objection to the assessment was made within 60 days after the date of the assessment; or
      - an objection to the assessment was made and the objection was disallowed; and
  - (c) the MSP amendments do not validate the assessment of duty made in relation to the transaction that was the subject of the High Court's judgment in the case of *MSP Nominees Pty Ltd and another v Commissioner of Stamps*<sup>1</sup> or authorise a reassessment of duty in that case.

- (3) In this section—

*MSP amendments* means the amendments made by sections 5, 6, 7 and 12 of this Act insofar as they are applicable to the redemption, cancellation or extinguishment of an interest in a unit trust scheme;

*relevant date* means the date of the introduction of the Bill for this Act into the Parliament.

**Note—**

1 (1999) 166 ALR 149.

## ***Stamp Duties (Rental Business and Conveyance Rates) Amendment Act 2002***

### **8—Application of amendments**

- (1) The amendments made by section 7 of this Act apply to instruments first lodged with the Commissioner of State Taxation for stamping on or after the commencement of that section.
- (2) However, if on application under this subsection the Commissioner of State Taxation is satisfied that an instrument lodged for stamping gives effect to a written agreement entered into on or before 11 July 2002, the amendments made by section 7 of this Act will not apply to the instrument (and the instrument will be chargeable with duty as if those amendments had not been enacted).

## ***Statutes Amendment (Stamp Duties and Other Measures) Act 2002***

### **27—Transitional provision**

The amendment made to the principal Act by section 21(c) of this Act does not apply in relation to stamp duty paid before the commencement of that section.

## ***Stamp Duties (Gaming Machine Surcharge) Amendment Act 2002***

### **4—Application of amendments**

The amendments made by this Act do not apply to a transaction entered into before the commencement of this Act.

## ***Statutes Amendment (Corporations—Financial Services Reform) Act 2002***

### **46—Transitional provisions**

- (1) The Australian Stock Exchange Limited will, on the commencement of this section, be taken to be a registered market licensee under Part 3A of the principal Act without the need for an application under Division 4 of that Part (as enacted by this Act).
- (2) The body registered by the Commissioner of State Taxation under Division 4 of Part 3A of the principal Act immediately before the commencement of this section will, on that commencement, be taken to be a registered CS facility licensee under Part 3A of the principal Act without the need for an application under Division 4 of that Part (as enacted by this Act).

## ***Stamp Duties (Rental and Mortgage Duty) Amendment Act 2003, Sch— Transitional provision***

- 1 Part 3 Division 2 of the *Stamp Duties Act 1923* (the Act) is to be read subject to the following qualification:

An amount received under or in respect of a contract, agreement or arrangement entered into before 1 October 2003 is required to be included in a statement to be lodged under section 31F of the Act if (and only if) it was required to be brought into account for the calculation of rental duty under the relevant provisions of the Act, as in force immediately before 1 October 2003.

## **Historical versions**

- Reprint—1.11.1984
- Reprint No 1—12.12.1991
- Reprint No 2—3.2.1992
- Reprint No 3—1.9.1992
- Reprint No 4—14.12.1992
- Reprint No 5—1.3.1993
- Reprint No 6—1.6.1994
- Reprint No 7—1.9.1994
- Reprint No 8—1.1.1995
- Reprint No 9—2.3.1995
- Reprint No 10—13.7.1995
- Reprint No 11—30.11.1995
- Reprint No 12—24.4.1996
- Reprint No 13—1.7.1996
- Reprint No 14—4.11.1996
- Reprint No 15—27.3.1997
- Reprint No 16—1.7.1997

## **Stamp Duties Act 1923—1.7.2004 to 3.11.2004**

### Legislative history

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Reprint No 17—17.7.1997  
Reprint No 18—1.1.1998  
Reprint No 19—27.7.1998  
Reprint No 20—1.9.1998  
Reprint No 21—3.12.1998  
Reprint No 22—18.3.1999  
Reprint No 23—5.8.1999  
Reprint No 24—8.6.2000  
Reprint No 25—14.12.2000  
Reprint No 26—15.7.2001  
Reprint No 27—26.7.2001  
Reprint No 28—1.1.2002  
Reprint No 29—4.5.2002  
Reprint No 30—5.9.2002  
Reprint No 31—28.11.2002  
Reprint No 32—1.1.2003  
Reprint No 33—1.8.2003  
Reprint No 34—1.10.2003  
Reprint No 35—24.11.2003