

South Australia

# Statutes Amendment and Repeal (Budget 2015) Act 2015

An Act to amend various Acts, and to repeal the *Hindmarsh Island Bridge Act 1999*, for the purposes of the 2015 State Budget.

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

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *Statutes Amendment and Repeal (Budget 2015) Act 2015*.

**2—Commencement**

- (1) Subject to this section, this Act will come into operation on the day on which it is assented to by the Governor.
- (2) Part 2 will come into operation on a day to be fixed by proclamation.
- (3) Part 3 will be taken to have come into operation at midnight on 30 June 2015.
- (4) Part 4 will be taken to have come into operation on 1 July 2015.
- (5) Part 6 will be taken to have come into operation on 1 July 2015.
- (6) Part 7 will be taken to have come into operation on 1 July 2011 immediately after the *Statutes Amendment (Land Holding Entities and Tax Avoidance Schemes) Act 2011* is taken to have come into operation.
- (7) Part 8 and Part 9 will be taken to have come into operation on 18 June 2015.
- (8) Part 11 will come into operation on 1 July 2016.
- (9) Part 12 will come into operation on 1 July 2018.
- (10) Sections 56 and 59(1) and (2) will be taken to have come into operation on 1 July 2015.
- (11) Sections 57 and 59(3) will come into operation on 1 July 2016.
- (12) Section 58 will come into operation on a day to be fixed by proclamation.
- (13) Part 16 will be taken to have come into operation on 1 July 2015.
- (14) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act.

**3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

**Part 2—Amendment of *Gaming Machines Act 1992***

**4—Repeal of section 28A**

Section 28A—delete the section

**5—Repeal of section 38A**

Section 38A—delete the section

## Part 3—Amendment of *Land Tax Act 1936*

### 6—Amendment of section 5—Exemption or partial exemption of certain land from land tax

- (1) Section 5(10)—after paragraph (g) insert:
  - (h) land may be wholly exempted from land tax if—
    - (i) the land is owned by the trustee of a special disability trust; and
    - (ii) the Commissioner is satisfied that the land constitutes the principal place of residence of the principal beneficiary of the special disability trust.
- (2) Section 5—after subsection (12) insert:
  - (12a) The Commissioner may, on application under this subsection, grant—
    - (a) a waiver or refund of land tax paid or payable by or on behalf of a trustee of a special disability trust on land for a particular financial year; or
    - (b) a refund of an amount paid by or on behalf of a trustee of a special disability trust as a transferee of land to the transferor of land as an adjustment of land tax paid or payable on the land for the financial year in which settlement takes place,if the following criteria are satisfied:
    - (c) the land was acquired by the trustee during the course of the financial year;
    - (d) the Commissioner is satisfied that the land constitutes or will constitute the principal place of residence of the principal beneficiary of the special disability trust during the course of the financial year;
    - (e) the application is made not more than 5 years after the assessment of the liability to the tax to which the application relates.
- (3) Section 5(13)—after the definition of *domestic partner* insert:

*principal beneficiary*—

  - (a) has the meaning given in section 1209M(1) of the Social Security Act, in the case of a special disability trust within the meaning of section 1209L of that Act; or
  - (b) has the meaning given in section 52ZZZWA(1) of the Veterans' Entitlements Act, in the case of a special disability trust within the meaning of section 52ZZZW of that Act;

- (4) Section 5(13)—after the definition of *retired persons' relocatable home park* insert:

*Social Security Act* means the *Social Security Act 1991* of the Commonwealth;

*special disability trust* means—

- (a) a special disability trust within the meaning of section 1209L of the Social Security Act; or
- (b) a special disability trust within the meaning of section 52ZZZW of the Veterans' Entitlements Act;

- (5) Section 5(13)—after the definition of *spouse* insert:

*Veterans' Entitlements Act* means the *Veterans' Entitlements Act 1986* of the Commonwealth.

## **7—Amendment of section 5A—Waiver or refund of land tax for residential land in certain cases**

- (1) Section 5A(1)—delete "if the following criteria are satisfied:" and paragraphs (c) to (g) (inclusive) and substitute:

if—

- (c) the following criteria are satisfied:
  - (i) the land became the applicant's principal place of residence during the course of the financial year;
  - (ii) proper grounds for exempting the land from land tax under section 5 came into existence when the land became the applicant's principal place of residence;
  - (iii) the applicant must have divested himself or herself, before the end of the financial year, of any other land in respect of which the applicant has had the benefit of a relevant concession for the financial year;
  - (iv) unless the Commissioner allows otherwise in a particular case, no rent or other consideration has been paid or is payable for occupation, during the financial year, of the land or any other land in respect of which the applicant has had the benefit of a relevant concession for the financial year, while the applicant owned both the land and other such land;
  - (v) the criteria for the time being determined by regulation; or
- (d) in the case of a waiver or refund under paragraph (a), the following criteria are satisfied:
  - (i) the land ceased to be the applicant's principal place of residence during the course of the previous financial year;
  - (ii) proper grounds for exempting the land from land tax under section 5 existed immediately before the land ceased to be the applicant's principal place of residence;

- (iii) the applicant must have divested himself or herself of the land before the end of the financial year;
  - (iv) unless the Commissioner allows otherwise in a particular case, no rent or other consideration has been paid or is payable for occupation, during the financial year or the previous financial year, of the land or any other land in respect of which the applicant has had the benefit of a relevant concession for the financial year or the previous financial year, while the applicant owned both the land and other such land;
  - (v) the criteria for the time being determined by regulation.
- (2) Section 5A(4)(c)—delete paragraph (c) and substitute:
- (c) in the case of an application for a refund—must be made not more than 5 years after the assessment of the liability to the tax.

**8—Amendment of section 13A—Commissioner may determine that minor interest is to be disregarded**

- (1) Section 13A(1), definition of *prescribed land*—delete the definition and substitute:
- prescribed land* means land where—
- (a) 2 or more persons are the owners of the land; or
  - (b) the land is held on trust (other than a trust arising because of a contract to purchase or acquire an estate or interest in the land);
- (2) Section 13A—after subsection (3) insert:
- (3a) If the Commissioner forms the opinion for the purposes of subsection (3) that the purpose, or 1 of the purposes, for the creation of an interest was to reduce the amount of land tax payable in respect of land—
- (a) subsection (5) will be taken to have applied in relation to the interest from the date on which the interest was created; and
  - (b) if—
    - (i) the land was wholly or partially exempted from land tax for a particular financial year; and
    - (ii) the Commissioner is satisfied, on the basis of having formed the opinion, that there were not, in respect of that financial year, proper grounds for exempting the land from land tax,the Commissioner may withdraw the exemption in respect of that financial year.
- (3) Section 13A(4)(a)—after "pieces of land" insert:
- and, if relevant, the relationship between a trustee and a beneficiary or beneficiaries or between 2 or more trustees or 2 or more beneficiaries

- (4) Section 13A(5)(a) and (b)—delete paragraphs (a) and (b) and substitute:
- (a) the person holding the prescribed interest is taken not to be—
    - (i) an owner of land for the purposes of this Act to the extent of the prescribed interest; or
    - (ii) in a case in which subsection (9)(a)(ii) applies in relation to a beneficiary, a beneficiary under a relevant trust for the purposes of this Act; and
  - (b) the land tax payable in respect of the land is to be assessed, and is payable—
    - (i) as if the land were wholly owned by the owner or owners of the land who do not hold the prescribed interest (or, if relevant, any such prescribed interest); and
    - (ii) in a case in which subsection (9)(a)(ii) applies in relation to a beneficiary, as if the interest of the beneficiary did not exist.
- (5) Section 13A(9)(a)—delete paragraph (a) and substitute:
- (a) a reference to an interest in land is a reference—
    - (i) to an estate, interest or other circumstance that makes a person an owner of land under this Act (but does not include an interest consisting only of a right of occupation); or
    - (ii) to an interest that a person has in land that arises by virtue of a trust, either as trustee or beneficiary, other than—
      - (A) a trust arising because of a contract to purchase or acquire an estate or interest in the land; or
      - (B) an interest arising in any other circumstances prescribed by the regulations; and

## **9—Amendment of section 19—Time for payment of tax**

Section 19—after its present contents (now to be designated as subsection (1)) insert:

- (2) If—
- (a) a person who otherwise would have been served with an assessment for the payment of land tax has not been served with such an assessment on account of—
    - (i) gaining an exemption (or partial exemption) from land tax that should not have applied under this Act (including by an exemption continuing after it should have come to an end); or
    - (ii) receiving a waiver or refund that should not have been given; and
  - (b) the failure to serve the assessment is attributable (wholly or in part) to—



- (i) false, misleading or incomplete information that has been provided to the Commissioner; or
- (ii) information that should have been provided to the Commissioner not being so provided,

then the provision, or non-provision, of that information (as the case may be) will be taken to constitute a tax default by the person for the purposes of the *Taxation Administration Act 1996*.

- (3) In connection with the operation of subsection (2)—
  - (a) the tax default will be taken to have occurred on the day on which the exemption applied from, or the waiver or refund was given (as the case may be); and
  - (b) an assessment under subsection (1) may specify any interest accrued or penalty tax payable under the *Taxation Administration Act 1996* in respect of a preceding financial year, including where an assessment of land tax has not been previously served with respect to that financial year, or where an assessment served with respect to that financial year did not identify the tax default; and
  - (c) a liability to pay interest under the *Taxation Administration Act 1996* will accrue from the day applying under paragraph (a) (and not a day determined under section 25(1) of that Act).

## 10—Transitional provisions

- (1) In this section—

*principal Act* means the *Land Tax Act 1936*.
- (2) Paragraph (c) of section 5A(4) of the principal Act as inserted by section 7 of this Act applies in relation to an application under section 5A for a refund of land tax or an amount representing land tax if the liability to the tax was assessed for the 2014/2015 financial year or a subsequent financial year (and paragraph (c) of section 5A(4) of the principal Act as in force immediately before the commencement of section 7 of this Act continues to apply in relation to an application under section 5A for a refund of land tax or an amount representing land tax if the liability to the tax was assessed for an earlier financial year).
- (3) An interest may be or become subject to the operation of section 13A of the principal Act, as amended by this Part, in respect of a financial year commencing after the commencement of this Part no matter when the interest was created, including in a case where the interest was created before the commencement of this Part.

## Part 4—Amendment of *Local Government Act 1999*

### 11—Amendment of section 294—Power to enter and occupy land in connection with an activity

- (1) Section 294(7)—delete subsection (7) and substitute:
- (7) A council does not require a mining tenement or other authorisation under the *Mining Act 1971* with respect to the exercise of powers under this section but, to the extent to which a council, other than an exempt council, recovers extractive minerals under this section—
    - (a) the council will be required to pay royalty on the extractive minerals at the rate set out in section 17(4)(a) of the *Mining Act 1971* and as if this requirement to pay such royalty were a requirement imposed under that Act (and on the basis that this requirement will apply even if the extractive minerals are not to be sold or used by the council as envisaged by section 17(1) of the *Mining Act 1971*); and
    - (b) the provisions of the *Mining Act 1971* designated by subsection (7a) will apply to and in relation to the council as if, in recovering the extractive minerals, the council is—
      - (i) carrying out operations under that Act (and required to comply with the provisions of that Act); and
      - (ii) the holder of a mining tenement under that Act for the recovery of extractive minerals.
  - (7a) The following provisions of the *Mining Act 1971* are designated for the purposes of subsection (7)(b):
    - (a) sections 14B to 14F (inclusive);
    - (b) section 17(10), (11) and (12);
    - (c) sections 17B to 17D (inclusive);
    - (d) section 17E;
    - (e) sections 17G and 18;
    - (f) sections 76 to 77D (inclusive);
    - (g) section 89A;
    - (h) section 91;
    - (i) section 92.
  - (7b) In connection with subsections (7) and (7a)—
    - (a) to the extent that there is an inconsistency between section 7(2) of the *Mining Act 1971* and subsections (7) and (7a) of this section, those subsections will apply to the extent of the inconsistency (so as to allow the *Mining Act 1971* to regulate the operations of a council to the extent envisaged by those subsections); and

- (b) royalty received or recovered under this section will not be payable into the Extractive Areas Rehabilitation Fund but the designated amount on account of that royalty must be paid into the prescribed fund for the purposes of the *Local Government Research and Development Scheme*.
- (2) Section 294(8)—before the definition of *minerals* insert:
- designated amount** means the amount that represents 40 cents per tonne of extractive minerals recovered under this section, other than extractive minerals recovered by operation of section 20C of the *Highways Act 1926*;
- exempt council** means, in relation to a financial year commencing on or after 1 July 2015, a council whose total annual revenue for the financial year immediately preceding the relevant financial year, as reported in its audited financial statements, does not exceed the prescribed amount;
- extractive minerals** means extractive minerals as defined by the *Mining Act 1971*;
- (3) Section 294(8)—after the definition of *minerals* insert:
- prescribed amount** means—
- (a) in relation to the 2015/2016 financial year—\$5 million;
- (b) in relation to a succeeding financial year—the amount obtained by multiplying \$5 million by a proportion obtained by dividing the CPI for the March quarter of the immediately preceding financial year by the CPI for March 2015;
- prescribed fund** means the Local Government Taxation Equivalents Fund under section 31A of the *Local Government Finance Authority Act 1983*;

## Part 5—Amendment of *Motor Vehicles Act 1959*

### 12—Amendment of section 38B—Registration fees for certain incapacitated persons or carers

Section 38B(1)—delete subsection (1) and substitute:

- (1) If the Registrar is satisfied by such evidence as the Registrar requires—
- (a) that—
- (i) the owner of a motor vehicle, in consequence of the loss of the use of 1 or both legs, is permanently unable to use public transport; and
- (ii) the motor vehicle will, during the period for which it is sought to be registered, be wholly or mainly used for the transport of the owner; or
- (b) that—

- (i) the owner of a motor vehicle is the parent or legal guardian of a child who, in consequence of the loss by the child of the use of 1 or both of his or her legs, is permanently unable to use public transport; and
- (ii) the motor vehicle will, during the period for which it is sought to be registered, be wholly or mainly used for transporting the child,

the prescribed registration fee for that motor vehicle must be reduced by the prescribed amount.

## **Part 6—Amendment of *Rates and Land Tax Remission Act 1986***

### **13—Amendment of long title**

Long title—delete "rates and land tax payable by certain persons" and substitute:

certain rates payable by certain persons; for the payment of an amount to certain persons as a concession to assist with cost of living pressures

### **14—Amendment of section 1—Short title**

Section 1—delete "*Rates and Land Tax Remission*" and substitute:

Cost of Living Concessions

### **15—Substitution of section 3**

Section 3—delete the section and substitute:

#### **2—Interpretation**

- (1) In this Act, unless the contrary intention appears—

*approved aged persons housing scheme* means a scheme, administered by an organisation or body approved by the Minister—

- (a) under which houses or residential units in a residential complex are made available for occupation predominantly by persons of or over a fixed qualifying age of at least 50 years; and
- (b) under which the occupiers of houses or residential units in the scheme are entitled to continue in occupation of those houses or residential units for life, subject only to conditions providing or allowing for termination of that entitlement approved by the Minister;

*eligible person*—see section 3(1);

*rates* means rates payable under the Acts set out in Schedule 1 and includes—

- (a) any rates or charges payable under the *Local Government Act 1999* for the provision or treatment of water or the removal of sewage; and

- (b) charges payable to an irrigation authority under Part 7 of the *Irrigation Act 1994*; and
- (c) charges payable to a water industry entity under Part 4 of the *Water Industry Act 2012*;

**rating authority** means the authority to whom rates are payable under the Acts set out in Schedule 4;

**residential premises** means premises occupied solely or primarily for residential purposes;

**residential tenancy agreement** has the same meaning as in the *Residential Tenancies Act 1995*.

- (2) For the purposes of this Act, a person **occupies residential premises as an owner** if the person occupies the premises—
- (a) as his or her principal place of residence; and
  - (b) as—
    - (i) a sole or joint proprietor of an estate in freehold in possession; or
    - (ii) a sole or joint proprietor of a Crown lease or Crown under lease; or
    - (iii) a purchaser of an estate in fee simple under an agreement for sale and purchase where the purchase price is payable in more than 2 instalments; or
    - (iv) the occupier under an agreement to occupy provided that—
      - (A) no rent is payable; and
      - (B) the tenure is for the life of the occupier and not subject to earlier determination except by the occupier; and
      - (C) the occupier is liable for all rates and taxes; or
    - (v) —
      - (A) joint proprietor with other persons who own; or
      - (B) a shareholder in a body corporate that owns,  
a block of home units or other group residential premises (the person to be regarded for the purposes of this subparagraph as being the sole or joint proprietor of the home unit or residential premises he or she occupies); or

- (vi) a lessee or licensee of land other than Crown land under a lease or licence that extends for 5 or more years and under which the premises occupied by the person on that land remains the property of that person; or
  - (vii) the occupier of a house or residential unit in an approved aged persons housing scheme; or
  - (viii) a beneficiary under an estate entitling the person to occupy the premises in 1 of the capacities referred to in subparagraphs (i) to (vii); or
  - (ix) a person of a class prescribed by the regulations.
- (3) For the purposes of this Act, a person *occupies residential premises as a tenant* if the person occupies the premises—
- (a) as his or her principal place of residence; and
  - (b) as—
    - (i) a tenant specified in a residential tenancy agreement relating to the premises; or
    - (ii) a person of a class prescribed by the regulations.

### **3—Entitlement to payment of concession**

- (1) A person is an *eligible person* for a financial year if, on 1 July of that financial year, the person—
- (a) occupied residential premises as an owner or tenant of the premises; and
  - (b) was of a class prescribed by the regulations for the purposes of this subsection.
- (2) A person who—
- (a) is an eligible person for a financial year; and
  - (b) satisfies the eligibility requirements prescribed by the regulations,
- is entitled to payment by the Minister of an amount determined in accordance with the regulations in respect of that financial year.

### **16—Amendment of section 4—Remission of rates**

Section 4(2)—delete subsection (2)

### **17—Amendment of section 7—No interest etc payable**

Section 7—after its present contents (now to be designated as subsection (1)) insert:

- (2) No interest is payable by the Minister in respect of an amount to which a person is entitled under this Act.

### **18—Amendment of section 8—Offences etc**

- (1) Section 8(1)—delete "for the remission of rates"

- (2) Section 8(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$2 500.

- (3) Section 8(3)—delete subsection (3) and substitute:

- (3) A person who has received a payment under this Act that the person is not entitled to receive must—

- (a) inform the Minister, in writing, of that fact; and
- (b) refund the amount of the payment to the Minister in accordance with any directions of the Minister.

Maximum penalty: \$2 500.

- (4) If a person has received a payment under this Act that the person is not entitled to receive, the amount of the payment is recoverable as a debt due to the Minister.

## 19—Insertion of section 9

After section 8 insert:

### 9—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or desirable for the purposes of this Act.
- (2) A regulation under this Act may be of general, limited or varied application according to—
  - (a) the classes of person; or
  - (b) the circumstances; or
  - (c) any other specified factor,to which the regulation is expressed to apply.
- (3) A regulation under this Act may—
  - (a) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or some other person; and
  - (b) be brought into operation on a date specified in the regulations that is earlier than the date of its publication in the Gazette.

## Part 7—Amendment of *Stamp Duties Act 1923* that is taken to have effect on 1 July 2011

### 20—Amendment of section 91—Interpretation

Section 91(1), definition of *private unit trust scheme*—after "widely held trust" insert:  
, 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* of the Commonwealth

## **Part 8—Amendment of *Stamp Duties Act 1923* that is taken to have effect on 18 June 2015 (Corporate reconstructions)**

### **21—Amendment of section 102—Value of notional interest acquired as a result of dutiable transaction**

Section 102(2)—delete subsection (2)

### **22—Amendment of section 102B—Acquisition statement**

Section 102B(1)—after "the dutiable transaction" insert:

, or, if the transaction was an exempted transaction under Part 4AA but the exemption has been revoked by the Commissioner, within 2 months after receiving notification of the revocation

### **23—Amendment of section 102G—Multiple incidences of duty**

Section 102G(3) and (4)—delete subsections (3) and (4)

### **24—Insertion of Part 4AA**

After Part 4 insert:

## **Part 4AA—Corporate group exemptions**

### **102H—Interpretation**

(1) In this Part—

*corporate group*—see section 102J;

*corporation* has the same meaning as in section 9 of the *Corporations Act 2001* of the Commonwealth and includes a unit trust scheme;

*direct interest*—see section 102I;

*exempted transaction* means a transaction that is exempted from duty under section 102L;

*exemption application* means an application to the Commissioner under section 102M;

*hold*—a person holds property (including a security of a corporation) if the person—

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

*indirect interest*—see section 102I;

*ineligible trust* means a discretionary trust that is not a unit trust;

*security*, of a corporation, includes—

- (a) an issued share of the corporation; and



- (b) if the corporation is a unit trust scheme—a unit issued under the scheme.
- (2) For the purposes of this Part—
- (a) a reference to anything done by or held by a unit trust scheme is to be taken to refer to the thing being done by or held by a trustee or custodian of the unit trust scheme as trustee or custodian of that unit trust scheme; and
  - (b) a corporation that is a unit trust scheme is taken to be a party to a transaction if the trustee or custodian of the unit trust scheme enters into the transaction as trustee or custodian of the scheme; and
  - (c) subject to subsection (3), a corporation that is a partner in a partnership is to be regarded as beneficially entitled to a proportionate share in each and every item of property of the partnership; and
  - (d) a transfer of the registration of a motor vehicle will be taken to be a conveyance of the vehicle from the transferor to the transferee.
- (3) Subsection (2)(c) does not apply in relation to a corporation in a particular case if the Commissioner considers, having regard to the circumstances of the corporation and any relevant corporate group of which the corporation is a member, that the provision would operate unfairly in that case.

### **102I—Direct and indirect interests**

- (1) If a corporation (A) holds securities of another corporation (B), A has a *direct interest* in B.
- (2) The direct interest that A has in B is to be expressed as a proportionate interest calculated by determining the percentage of B's total securities held by A.

#### **Example—**

Corporation A holds 75% of corporation B's securities. In this case the proportionate interest of corporation A in corporation B is 75%.

- (3) Two corporations are *related corporations* if—
  - (a) 1 has a direct interest in the other; or
  - (b) a series of such relationships can be traced between them through another or other related corporations.
- (4) If a corporation (A) has a direct interest in a corporation (B) which is related to another corporation (C), A has an *indirect interest* in C.
- (5) The indirect interest that a corporation has in another corporation is to be expressed as a proportionate interest calculated by multiplying together—
  - (a) a percentage representing the proportionate interest of A in B; and

- (b) a percentage representing B's proportionate interest in C, and expressing the result as a percentage.

**Example—**

Corporation X holds a proportionate interest of 33 $\frac{1}{3}$ % in corporation A which in turn holds a 75% proportionate interest in corporation B which in turn holds a 50% proportionate interest in corporation C. In this case corporation X's indirect interest in corporation C is to be expressed as a proportionate interest of 12.5%.

**102J—Parent corporations and corporate groups**

- (1) If a corporation (A) has—
- (a) a direct or indirect interest in another corporation (B) that is a proportionate interest of 90% or more; or
  - (b) a direct and indirect interest in another corporation (B) that, in combination, constitutes a proportionate interest of 90% or more,

then, subject to subsection (2)—

- (c) A is the *parent corporation* of B; and
  - (d) B is a *subsidiary* of A.
- (2) If, under subsection (1), corporation A is not entitled (whether directly or indirectly) to cast, or control the casting of, 90% or more of the maximum number of votes at a general meeting of corporation B, B is not a subsidiary of A.
- (3) A *corporate group* is comprised of—
- (a) a parent corporation; and
  - (b) the subsidiaries of the parent corporation.

**102K—Transactions to which this Part applies**

This Part applies to—

- (a) a transaction involving a conveyance of property, or an agreement to convey property, from a member of a corporate group to another member, or to other members, of the corporate group; and
  - (b) a transaction whereby, under Part 4, a member of a corporate group notionally acquires from another member of the same corporate group an interest in the underlying local land assets of a land holding entity,
- if—
- (c) the corporate group's interest in the property the subject of the transaction is not diminished as a result of the transaction; and
  - (d) the purpose, or 1 of the purposes, of the transaction is—
    - (i) to change the structure of the corporate group; or

- (ii) to change the holding of property within the corporate group; and
- (e) the transaction does not result in property of the corporate group being held by a member of the corporate group as trustee of an ineligible trust; and
- (f) the transaction is not part of a tax avoidance scheme within the meaning of Part 6A of the *Taxation Administration Act 1996*.

### **102L—Exemption from duty**

- (1) If the Commissioner is satisfied that this Part applies to a transaction, the Commissioner must exempt the transaction from duty.
- (2) If the Commissioner exempts a transaction from duty under subsection (1), the Commissioner must assess the transaction, and any instrument that gives effect to, acknowledges, evidences or records the transaction, as exempt from duty.

### **102M—Application for exemption**

- (1) A member of a corporate group may apply to the Commissioner, in a manner and form determined by the Commissioner, for an exemption under section 102L at any time before, or within 5 years after, the completion of the transaction to which the application relates.
- (2) An application for an exemption under section 102L in relation to a proposed transaction must be accompanied by draft copies of all instruments that it is intended will give effect to, or acknowledge, evidence or record, the transaction.
- (3) The Commissioner may require a member of the corporate group applying for an exemption for a transaction under section 102L to provide such additional information or evidence as the Commissioner may require for the purpose of determining whether the transaction, or any instrument connected to the transaction, is exempt from duty under this Part.
- (4) The Commissioner may require the information or evidence to be given on oath or verified by statutory declaration.
- (5) If the Commissioner determines to exempt from duty a transaction, or a proposed transaction, in relation to which an application has been made under this section, the Commissioner must advise the applicant in writing that the transaction, and any instruments giving effect to, or acknowledging, evidencing or recording, the transaction, are exempt from duty.

### **102N—Conditions of exemption**

An exemption granted under section 102L in relation to a proposed transaction is subject to a condition that the applicant will, within 2 months after the transaction occurs, advise the Commissioner in writing if—

- (a) the actual transaction, or any circumstances relating to it, differs materially from the proposed transaction, or any circumstances of the proposed transaction, as specified in the exemption application; or
- (b) any information relevant to the transaction, or to any circumstances relating to it, differs materially from the information specified in the exemption application.

### **102O—Revocation of exemption**

The Commissioner may revoke an exemption granted under section 102L if—

- (a) the Commissioner ceases to be satisfied that this Part applies to the exempted transaction; or
- (b) a party to the exempted transaction fails to comply with a condition under section 102N; or
- (c) the Commissioner becomes aware that—
  - (i) any draft copies of instruments accompanying the application for the exemption differ in a material particular from the corresponding instruments submitted for assessment by the Commissioner; or
  - (ii) the applicant for the exemption provided false or misleading information, or failed to provide relevant information, in support of the application.

### **102P—Duty payable if transaction ceases to be exempt**

If the Commissioner determines to revoke an exemption granted under section 102L in relation to a transaction, the following provisions apply:

- (a) the Commissioner must give written notice of the determination to the parties to the transaction or to the parent corporation of the corporate group to which the parties belong;
- (b) if the exemption is revoked after the transaction takes place—
  - (i) duty is payable in relation to the transaction from the date of the transaction; and

- (ii) the liability of the parties to pay duty is to be assessed in relation to the circumstances applying at the date of the transaction as if the transaction had not been an exempted transaction; and
- (iii) the duty chargeable on an instrument is to be calculated according to the rates in force as at the date of the instrument; and
- (iv) for the purposes of section 20, the duty is to be regarded as having become chargeable on any relevant instrument in consequence of the Commissioner's determination to revoke the exemption; and
- (v) the parties to the transaction may, at the discretion of the Commissioner, be liable to pay interest and penalty tax as if the failure to pay duty at the date of the transaction were a tax default under the *Taxation Administration Act 1996*; and
- (vi) the members of the corporate group to which the parties to the transaction belong are jointly and severally liable for payment of the duty.

## **Part 9—Amendment of *Stamp Duties Act 1923* that is taken to have effect on 18 June 2015 (General tax reforms)**

### **25—Amendment of section 2—Interpretation**

Section 2—after subsection (3) insert:

- (4) For the purposes of the application of this Act to and in relation to land (whether referred to as land, real property (or property when it is constituted by land) or a land asset under this Act), the following will be taken to be within the concept of land:
  - (a) an estate or interest in land (including land covered by water);
  - (b) without limiting paragraph (a), a right in relation to land brought within the ambit of this paragraph by subsection (5);
  - (c) without limiting paragraph (a) or (b), any of the following or an estate or interest in any of the following:
    - (i) a mining tenement;
    - (ii) without limiting subparagraph (i), a pipeline constructed under the authority of a pipeline licence under the *Petroleum and Geothermal Energy Act 2000*;
    - (iii) an interest conferred by a forestry property (vegetation) agreement (within the meaning of the *Forest Property Act 2000*).

- (5) For the purposes of paragraph (b) of subsection (4), the following are brought within the ambit of that paragraph by this subsection:
- (a) an option to acquire land;
  - (b) subject to section 31, a right to acquire an estate or interest in land;
  - (c) any other right or interest prescribed by the regulations.
- (6) Subsections (4) and (5) do not extend to—
- (a) a carbon right under the *Forest Property Act 2000*; or
  - (b) a lease granted under the *Aquaculture Act 2001*, including a sublease of such a lease; or
  - (c) any other interest excluded from the application of either subsection by the regulations.
- (7) For the purposes of this Act (other than Part 4), land will be taken to include anything fixed to land, including anything—
- (a) separately owned from the land; or
  - (b) fixed to the land but notionally severed or considered to be legally separate to the land by virtue of or as a result of another Act or law (so that a separation by another Act for the purposes of that Act will not affect the operation of this paragraph for the purposes of the imposition and calculation of duty).
- (8) In connection with the operation of subsection (7)—
- (a) the subsection applies to all items fixed to the land whether or not they constitute fixtures at law; and
  - (b) all fixtures at law will be taken to be within the application of the subsection.
- (9) However, if an item is separately owned from land or notionally severed or considered to be legally separate to land—
- (a) the item will not be taken to form part of a conveyance of the land unless the item is also conveyed; and
  - (b) if the item remains fixed to the land (in the manner contemplated by the preceding subsections)—a conveyance of the item without a conveyance of the land is subject to duty as if it were a conveyance of land.
- (10) Subsection (9)(b) does not extend to a transportable home.
- (11) In this section—
- Mining Act*** means—
- (a) the *Mining Act 1971*; or
  - (b) the *Offshore Minerals Act 2000*; or
  - (c) the *Opal Mining Act 1995*; or

(d) the *Petroleum and Geothermal Energy Act 2000*;

**mining tenement** means a lease or licence granted—

- (a) under a Mining Act; or
- (b) under or on account of any other Act that confers, or that ratifies an indenture or other arrangement that confers, a right to explore for, or to recover, any minerals, resources or other materials or substances that would, but for that other Act, be subject to the operation of a Mining Act;

**transportable home** means a structure that—

- (a) has the character of a dwelling; and
- (b) is designed—
  - (i) to be fixed to the land when being used as a dwelling; but
  - (ii) to be able to be moved in a state that would allow the structure to be reused as a dwelling at another place,

but does not include, in any event, a caravan, campervan or other item that is capable of being registered under the *Motor Vehicles Act 1959*.

## **26—Amendment of section 14—Instruments to be separately charged**

- (1) Section 14(b)—delete paragraph (b)
- (2) Section 14—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
  - (2) Without limiting the effect of subsection (1), an instrument relating to classes of property that are chargeable with different rates of duty, or relating to a class of property chargeable with duty and a class of property not chargeable with duty, is to be treated for the purposes of this Act as if the provisions of the instrument relating to each of the different class of property were a separate instrument and related only to that class of property.
  - (3) A person liable to pay duty on an instrument of a kind referred to in subsection (2) must provide the Commissioner with evidence of the value of each of the different classes of property conveyed or transferred by the instrument.

## **27—Amendment of section 31—Certain contracts to be chargeable as conveyances on sale**

- (1) Section 31(1)—after paragraph (a) insert:
  - (b) stock, implements and other chattels if the contract or agreement provides for the sale as a going concern of land used wholly or mainly for the business of primary production together with such stock, implements and other chattels held or used in connection with the business; or

(2) Section 31(2)—delete subsection (2) and substitute:

(1a) For the purpose of calculating *ad valorem* duty payable on a contract or agreement under subsection (1), the value of the estate or interest contracted or agreed to be sold is to be determined on the basis that the consideration specified as being payable for the estate or interest represents the value of the estate or interest.

(1b) However, if it appears to the Commissioner that the consideration specified as being payable for the estate or interest may be less than the value of the estate or interest and—

(a) no evidence of the value of the estate or interest is furnished to the Commissioner; or

(b) evidence of the value of the estate or interest furnished to the Commissioner is, in the Commissioner's opinion, unsatisfactory,

the Commissioner may cause a valuation of the estate or interest to be made by a person appointed by the Commissioner and may assess the duty payable by reference to the valuation.

(1c) 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 under subsection (1b) to the person liable to pay the duty and may recover the amount so charged from the person as a debt due to the Crown.

(2) If duty has been duly paid on a contract or agreement in accordance with subsection (1), the following provisions apply:

(a) any conveyance made to the purchaser under the contract or agreement is chargeable with duty only if the value of the estate or interest under the conveyance on the date of the conveyance is greater than the consideration specified in the contract or agreement or on account of an assessment under subsection (1b) (as the case requires);

(b) if the conveyance is chargeable with duty under paragraph (a), the amount of duty paid on the contract or agreement is to be deducted from the duty payable on the conveyance;

(c) if the conveyance is not chargeable with duty under paragraph (a), the Commissioner, on application and on the production of the contract or agreement duly stamped, must stamp the conveyance with a particular stamp denoting that it is duly stamped.

## **28—Repeal of section 31A**

Section 31A—delete the section



## **29—Amendment of section 60A—Value of property conveyed or transferred**

Section 60A—after subsection (8) insert:

- (9) In addition to the preceding subsections, when determining the value of property—
  - (a) it is to be assumed that a hypothetical purchaser would, when negotiating the price for the property, have knowledge of all existing information relating to the property; and
  - (b) no account is to be taken of any amount that a hypothetical purchaser would have to expend to reproduce, or otherwise acquire a permanent right of access to and use of, existing information relating to the property.

## **30—Substitution of section 62**

Section 62—delete the section and substitute:

### **62—Land use entitlements**

- (1) This section applies to—
  - (a) a transaction under which a person acquires a share in a company or an interest under a trust that confers a right to the possession of a dwelling that is owned and administered by the company or the trustees of the trust; or
  - (b) a transaction under which a person acquires a right to the possession of land as a result of becoming or being the owner of a share in a company or an interest under a trust.
- (2) This section does not apply to—
  - (a) a transaction under which a person acquires a share in a company or an interest under a trust that confers a right to the possession of a dwelling that is part of a retirement village scheme under the *Retirement Villages Act 1987*; or
  - (b) a transaction exempted by the regulations from this section.
- (3) An instrument that gives effect to, or acknowledges, evidences or records, a transaction to which this section applies is dutiable under this Act as if—
  - (a) it were a conveyance of an interest in the dwelling or land; and
  - (b) the value of the interest in the dwelling or land were—
    - (i) if the person acquires a right to exclusive possession of the dwelling or land—the value of an unencumbered estate in fee simple in the dwelling or land; or

- (ii) in any other case—a proportion of the value of an unencumbered estate in fee simple in the dwelling or land reflecting the more limited extent of the possessory right.
- (4) If a lease is conveyed, assigned or transferred as part of a transaction to which this section applies, duty payable under this section on account of the transaction will be reduced to the extent that duty is paid on the conveyance, assignment or transfer of the lease.

### **31—Amendment of section 67—Computation of duty where instruments are interrelated**

- (1) Section 67(2)(b)—delete "section 31A" and substitute:
  - section 31(1)(b)
- (2) Section 67—after subsection (4) insert:
  - (5) If 2 or more instruments to which this section applies together form or arise from substantially 1 series of transactions, the instruments are to be taken for the purposes of the calculation of duty to form or arise from a single transaction made when the earlier or earliest of the transactions was made.

### **32—Repeal of section 71B**

Section 71B—delete the section

### **33—Insertion of section 71CAA**

After section 71C insert:

#### **71CAA—Special disability trusts**

- (1) In this section—
  - immediate family member* of a principal beneficiary, means a person—
    - (a) who is a natural parent, adoptive parent or step-parent of the principal beneficiary; or
    - (b) who is, or was when the principal beneficiary was under 18 years of age, a legal guardian of the principal beneficiary; or
    - (c) who is a grandparent or step-grandparent of the principal beneficiary; or
    - (d) who is a sibling or step-sibling of the principal beneficiary;
  - principal beneficiary*—
    - (a) has the meaning given in section 1209M(1) of the Social Security Act, in the case of a special disability trust within the meaning of section 1209L of that Act; or

- (b) has the meaning given in section 52ZZZWA(1) of the Veterans' Entitlements Act, in the case of a special disability trust within the meaning of section 52ZZZW of that Act;

***Social Security Act*** means the *Social Security Act 1991* of the Commonwealth;

***special disability trust*** means—

- (a) a special disability trust within the meaning of section 1209L of the Social Security Act; or
- (b) a special disability trust within the meaning of section 52ZZZW of the Veterans' Entitlements Act;

***Veterans' Entitlements Act*** means the *Veterans' Entitlements Act 1986* of the Commonwealth.

- (2) The following instruments are exempt from stamp duty in the circumstances set out in subsections (3) to (6) (inclusive):
  - (a) a declaration of trust that establishes a special disability trust;
  - (b) a transfer of an interest in land to the trustee of a special disability trust.
- (3) The person declaring the trust, or the transferor of the interest in the land (as the case may be), must be an immediate family member of the principal beneficiary of the special disability trust.
- (4) In the case of a declaration of trust under subsection (2)(a), the trust must hold land that constitutes the principal place of residence of the principal beneficiary of the special disability trust, or must hold land that will so constitute the principal place of residence of the principal beneficiary of the special disability trust within 12 months of the declaration of trust.
- (5) In the case of a transfer of an interest in land under subsection (2)(b), land in respect of which an interest is being transferred to the trustee of the special disability trust must constitute the principal place of residence of the principal beneficiary of the special disability trust, or the relevant land must so constitute the principal place of residence of the principal beneficiary of the special disability trust within 12 months of the transfer.
- (6) There must be no consideration provided for the declaration or transfer.

### **34—Amendment of section 71D—Concessional duty to encourage exploration activity**

- (1) Section 71D(1)(a)—delete "an exploration tenement" wherever occurring and substitute in each case:
  - a prescribed tenement

- (2) Section 71D(3)(b)—delete paragraph (b) and substitute:
- (b) an exploration licence granted under the *Petroleum and Geothermal Energy Act 2000*; or
- (3) Section 71D(3)—after the definition of *exploration tenement* insert:
- prescribed tenement* means—
- (a) an exploration tenement; or
- (b) a retention tenement;
- retention tenement* means—
- (a) a retention lease under the *Mining Act 1971*; or
- (b) a retention licence under the *Petroleum and Geothermal Energy Act 2000*; or
- (c) a retention lease under the *Petroleum (Submerged Lands) Act 1982*; or
- (d) a retention licence under the *Offshore Minerals Act 2000*.
- (4) Section 71D(4)—delete "an exploration tenement" wherever occurring and substitute in each case:
- a prescribed tenement

### **35—Amendment of section 71E—Transactions otherwise than by dutiable instrument**

- (1) Section 71E(1)(a)(ii)—delete subparagraph (ii)
- (2) Section 71E(1a)—delete subsection (1a)

### **36—Amendment of section 91—Interpretation**

- (1) Section 91(1), definition of *goods* (d)—delete "the business of" and substitute:
- land used for
- (2) Section 91(1) definition of *goods* (f)—delete paragraph (f) and substitute:
- (f) a motor vehicle or trailer; or
- (3) Section 91(1), definition of *goods*—after paragraph (g) insert:
- or
- (h) without limiting a preceding paragraph, goods that do not have a significant connection with an entity's underlying local land assets.
- (4) Section 91(1), definition of *interest in land*—delete the definition

### **37—Amendment of section 92—Land assets**

- (1) Section 92(1)—delete "an interest in land" and substitute:
- land
- (2) Section 92(2)—delete "consisting of an interest in" and substitute:
- constituted by

### 38—Insertion of Part 4A Divisions 3, 4 and 5

Part 4A—after Division 2 insert:

#### **Division 3—Abolition of duty on conveyance or transfer of certain property**

##### **104A—Interpretation**

In this Division—

*dutiable land transaction* means a transaction that results in duty being payable on a conveyance or transfer of land or as if there were a conveyance or transfer of land.

##### **104B—Application of Division**

- (1) Subject to this section, this Division applies to all property other than—
  - (a) land; or
  - (b) prescribed goods.
- (2) In connection with subsection (1), this Division does not affect the operation of any other provision of this Act that is relevant to the determination, calculation or imposition of duty in relation to land or prescribed goods, or that is relevant to an instrument, financial product, unit trust scheme, asset, right, entitlement, interest, conveyance or transaction that relates (either directly or indirectly) to land or any prescribed goods.
- (3) Subsection (2) expires on 1 July 2018.
- (4) In this section—

*prescribed goods* means goods the subject of an arrangement that includes a dutiable land transaction where those goods have a significant connection with the land, but does not include the following:

- (a) goods that are stock-in-trade;
- (b) materials held for use in manufacture;
- (c) goods under manufacture;
- (d) goods held or used in connection with land used for primary production;
- (e) livestock;
- (f) a motor vehicle or trailer;
- (g) a ship or vessel.

- (5) The Commissioner may, if the Commissioner considers it to be fair and reasonable to do so, in the circumstances of a particular case, determine that specified goods, or specified classes of goods, the subject of an arrangement that includes a dutiable land transaction are to be taken not to be prescribed goods for the purposes of this Division.

#### **104C—Abolition of duty on conveyance or transfer of certain property**

- (1) No liability to duty arises in relation to a conveyance or transfer of property to which this Division applies executed on or after 18 June 2015.
- (2) Subsection (1) does not apply to a conveyance or transfer of property that arises from a contract of sale or other transaction entered into before 18 June 2015 (and the duty chargeable in relation to such a conveyance or transfer will be calculated according to the rates in force as at the date on which the contract of sale or other transaction was entered into as if the conveyance or transfer had been executed on that date).

#### **104D—Relevant rates**

Despite section 16, the duty chargeable in relation to a conveyance, transfer of property or instrument to which this Division applies executed before 18 June 2015 but produced to the Commissioner for the purposes of being stamped on or after that date will be calculated according to the rates in force as at the date on which the conveyance or transfer was executed.

#### **104E—Non-derogation provision**

- (1) Nothing in this Division affects the operation of Part 3 Division 4.
- (2) Nothing in this Division affects the operation of Part 4.

### **Division 4—Abolition of gaming machine surcharge**

#### **104F—Abolition of gaming machine surcharge**

- (1) No liability to gaming machine surcharge (within the meaning of Part 3 Division 7) arises in relation to a transaction to which Part 3 Division 7 applies if the date of the transaction is 18 June 2015 or later.
- (2) Subsection (1) does not apply to a transaction that arises from a contract of sale or other transaction entered into before 18 June 2015.
- (3) Despite section 71EI, the parties to a transaction to which Part 3 Division 7 applies are not required to lodge a return with the Commissioner under that section if no liability to gaming machine surcharge arises in relation to the transaction by virtue of this section.

## **Division 5—Abolition of duty relating to financial products**

### **105—Abolition of duty relating to financial products**

- (1) No liability to duty arises in relation to a conveyance or instrument under Part 3A executed on or after 18 June 2015.
- (2) Subsection (1) does not apply to a conveyance or instrument that arises from a contract of sale or other transaction entered into before 18 June 2015 (and the duty chargeable in relation to such a conveyance or instrument will be calculated according to the rates in force as at the date on which the contract of sale or other transaction was entered into as if the conveyance or instrument had been executed on that date).
- (3) Section 88 does not apply to a financial product if no liability to duty arises in relation to the financial product by virtue of this section.
- (4) Despite section 16, the duty chargeable in relation to a conveyance or instrument to which this section applies executed before 18 June 2015 but produced to the Commissioner for the purposes of being stamped on or after that date will be calculated according to the rates in force as at the date on which the conveyance or instrument was executed.

### **39—Insertion of section 109**

After section 108 insert:

#### **109—Anti-avoidance provision**

- (1) In this section—

*prescribed date*, in relation to a prescribed instrument, means the date that duty would have been payable in the ordinary course of events, as determined by the Commissioner, rather than on account of the scheme, contract, agreement, arrangement or undertaking that has been entered into (in the opinion of the Commissioner) in order, wholly or in part, to avoid or reduce a liability to duty;

*prescribed instrument or transaction* means an instrument or transaction that—

- (a) has been entered into in connection with, or as part of; or
- (b) has been made pursuant to or in relation to; or
- (c) is in any other way connected with,

a scheme, contract, agreement, arrangement or undertaking entered into, wholly or in part, to avoid or reduce a liability to duty on account of—

- (d) a change in the amount of duty payable on or after 1 July 2016 on account of the operation of section 71DC as to be inserted (or as inserted) into this Act by the *Statutes Amendment and Repeal (Budget 2015) Act 2015*; or

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- (e) the abolition of duty on qualifying land on or after 1 July 2018 on account of the operation of section 105A, as to be inserted (or as inserted) into this Act by the *Statutes Amendment and Repeal (Budget 2015) Act 2015*.
- (2) If the Commissioner forms the opinion that an instrument or transaction executed or entered into on or after 18 June 2015 is a prescribed instrument or transaction, the duty chargeable on the instrument or in relation to the transaction will be calculated according to the rates in force on the prescribed date.
- (3) For the purposes of subsection (2), the Commissioner may have regard to—
  - (a) the nature of any relationship between the parties to the instrument or transaction; and
  - (b) any commercial or other arrangements existing between the parties to the instrument or transaction before the instrument was entered into, made or executed or the transaction was entered into; and
  - (c) any arrangements surrounding or relating to any land that is the subject of the instrument or transaction before the instrument was entered into, made or executed or the transaction was entered into; and
  - (d) any other matter the Commissioner considers relevant.
- (4) This section—
  - (a) operates to the exclusion of section 16; and
  - (b) operates in addition to Part 6A of the *Taxation Administration Act 1996*.
- (5) In addition, if the Commissioner forms an opinion in relation to an instrument or transaction under subsection (2)—
  - (a) a deliberate tax default will be taken to have occurred on the prescribed date for the purposes of the *Taxation Administration Act 1996*; but
  - (b) the Commissioner may not—
    - (i) remit any interest; or
    - (ii) remit any penalty tax, payable under Part 5 of that Act.

#### **40—Transitional provision**

The amendments made to sections 31 and 67(2)(b) of the *Stamp Duties Act 1923*, and the repeal of section 31A of that Act, by this Part will be taken to extend in their operation to and in relation to contracts, agreements and instruments entered into or executed before 18 June 2015 as if the *Stamp Duties Act 1923*, as amended by section 27, 28 and 31(1) of this Act, was the Act in force immediately before the contract, agreement or instrument was entered into or executed (as the case may be).



## **Part 10—Amendment of *Stamp Duties Act 1923* that takes effect on assent**

### **41—Amendment of section 60—Interpretation**

Section 60—after its present contents (now to be designated as subsection (1)) insert:

- (2) If—
- (a) an instrument is deemed to be a conveyance operating as a voluntary disposition *inter vivos* by operation of a provision of section 71; but
  - (b) another provision of section 71 expressly provides that the instrument is deemed not to be, or taken not to be, a conveyance operating as a voluntary disposition *inter vivos*,
- the instrument will not be considered to constitute a conveyance on sale within the meaning of subsection (1).

### **42—Amendment of section 60A—Value of property conveyed or transferred**

Section 60A(1)—delete subsection (1) and substitute:

- (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 as at the date of the conveyance, assuming that the property had, at that date, been free from any encumbrances.

### **43—Amendment of section 65—Where consideration consists of real or personal property**

Section 65—delete "date of the sale shall" and substitute:

date of the conveyance will

### **44—Amendment of section 71—Instruments chargeable as conveyances**

- (1) Section 71(5)(j)—delete paragraph (j) and substitute:

- (j) a transfer of property to a body established wholly for charitable or religious purposes where the Commissioner is satisfied that the property will not be used (wholly or predominantly) for commercial or business purposes (including on the basis that this paragraph will not apply even if any revenue, income or other benefit arising from the use of the property for commercial or business purposes will be applied towards the charitable or religious purposes of the body);

- (2) Section 71(15), definition of *family group*—after "affinity" insert:

, including where the relationship of affinity arises from 2 persons being domestic partners

#### 45—Amendment of section 71CC—Interfamilial transfer of farming property

(1) Section 71CC—after subsection (1) insert:

(1aa) Subsection (1) extends to—

- (a) a case where natural person (A) or natural person (B) is a potential beneficiary under a discretionary trust as if a reference to a natural person were a reference to the natural person as a potential beneficiary under a discretionary trust with the trustee of that trust being the natural person's trustee; and
- (b) a case where natural person (A) or natural person (B) is a beneficiary of a trust (including a discretionary trust) with more than 1 beneficiary (or potential beneficiary); and
- (c) a case where natural person (A) or natural person (B) is a unit holder under a unit trust scheme as if—
  - (i) a reference to a trustee for the natural person included a reference to the trustee of the unit trust; and
  - (ii) a reference to a person being a beneficiary of a trust included a reference to a person being the holder of a unit in a unit trust scheme; and
- (d) a case where natural person (A) or natural person (B) is a member of a self managed superannuation fund as if—
  - (i) a reference to a trustee for a natural person included a reference to the trustee of the self managed superannuation fund; and
  - (ii) a reference to a person being a beneficiary of a trust included a reference to a person being a member of a self managed superannuation fund.

(2) Section 71CC(3)—after "exempt from duty under this section" insert:

(including so as to clarify which beneficiary or potential beneficiary, or beneficiaries or potential beneficiaries, under a trust are the natural persons who have had the relevant business relationship)

(3) Section 71CC(5)—after the definition of *relative* insert:

*self managed superannuation fund* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

#### 46—Amendment of section 71DB—Concessional duty on purchases of off-the-plan apartments

Section 71DB(4)—delete "date of the sale" and substitute:

date of the conveyance

#### 47—Amendment of section 71EA—Interpretation

Section 71EA(1), definition of *family group*—after "affinity" insert:

, including where the relationship of affinity arises from 2 persons being domestic partners

#### 48—Amendment of Schedule 2

(1) Schedule 2, clause 2(2)—after item 19 insert:

20. 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 or she is the owner of the motor vehicle; and
  - (b) that he or she is the parent or legal guardian of a child who, in consequence of the loss by the child of the use of 1 or both of his or her legs, is permanently unable to use public transport; and
  - (c) that the motor vehicle will be wholly or mainly used for transporting the child; and
  - (d) that he or she is not enjoying the benefit of this exemption in respect of any other motor vehicle currently owned by him or her.
21. Any application to register a motor vehicle in, or to transfer the registration of a motor vehicle to, the name of an entity which satisfies the Registrar of Motor Vehicles—
  - (a) that the entity is a disability services provider endorsed as an income tax exempt charity under the *Income Tax Assessment Act 1997* of the Commonwealth; and
  - (b) that the motor vehicle will be wholly or mainly used for transporting people with disabilities.

(2) Schedule 2, clause 2(4)—after item 8 insert:

9. Policy of insurance where the application for registration is made by a person who satisfies the Registrar of Motor Vehicles—
  - (a) that he or she is the owner of the motor vehicle; and
  - (b) that he or she is the parent or legal guardian of a child who, in consequence of the loss by the child of the use of 1 or both of his or her legs, is permanently unable to use public transport; and
  - (c) that the motor vehicle will be wholly or mainly used for transporting the child; and
  - (d) that he or she is not enjoying the benefit of this exemption in respect of any other motor vehicle currently owned by him or her.

10. Policy of insurance where the application for registration is made by an entity which satisfies the Registrar of Motor Vehicles—
  - (a) that the entity is a disability services provider endorsed as an income tax exempt charity under the *Income Tax Assessment Act 1997* of the Commonwealth; and
  - (b) that the motor vehicle will be wholly or mainly used for transporting people with disabilities.

#### **49—Transitional provisions**

- (1) A reference in section 60A(1) of the *Stamp Duties Act 1923*, as in force before the commencement of section 42 of this Act and at any previous time, to the date of the sale of property conveyed or transferred is to be taken to have been (and to always have been) a reference to the date of the conveyance of the property.
- (2) A reference in section 65 of the *Stamp Duties Act 1923*, as in force before the commencement of 43 of this Act and at any previous time, to the date of the sale of property is to be taken to have been (and to always have been) a reference to the date of the conveyance of the property.
- (3) Despite subclauses (1) and (2), an amendment made by section 42 or 43 does not operate to impose duty in respect of an instrument or transaction if, before 17 December 2013—
  - (a) an assessment of duty was made in respect of the instrument or transaction; and
  - (b) an objection to the assessment was lodged with the Minister not later than 60 days after the date of service of the assessment on the person assessed as liable to pay duty.

### **Part 11—Amendment of *Stamp Duties Act 1923* that takes effect on 1 July 2016**

#### **50—Insertion of section 71DC**

After section 71DB insert:

#### **71DC—Concessional duty on designated real property transfers**

- (1) In this section—

*qualifying land* means land that is being used for any purpose other than—

  - (a) land that is taken to be used for residential purposes in accordance with subsection (2)(a), other than land of a classification excluded by the regulations; or
  - (b) land that is taken to be used for primary production in accordance with subsection (2)(b), other than land of a classification excluded by the regulations.
- (2) For the purposes of the definition of *qualifying land*—
  - (a) land will be taken to be used for residential purposes if—

- (i) the Commissioner, after taking into account information provided by the Valuer-General, determines that it is being predominantly used for that purpose; or
    - (ii) the Commissioner, after taking into account information provided by the Valuer-General, determines that although the land is not being used for any particular purpose at the relevant time the land should be taken to be used for residential purposes due to improvements that are residential in character having been made to the land; or
    - (iii) the Commissioner, after taking into account information provided by the Valuer-General, determines that the land is vacant, or vacant with only minor improvements, that the land is within a zone established by a Development Plan under the *Development Act 1993* that envisages the use, or potential use, of the land as residential, and that the land should be taken to be used for residential purposes due to that zoning (subject to the qualification that if the zoning of the land indicates that the land could, in a manner consistent with the Development Plan, be used for some other purpose (other than for primary production) then the vacant land will not be taken to be used for residential purposes); and
  - (b) land will be taken to be used for primary production if—
    - (i) the Commissioner, after taking into account information provided by the Valuer-General, determines that it is being predominantly used for primary production purposes; or
    - (ii) the Commissioner, after taking into account information provided by the Valuer-General, determines that although the land is not being used at the relevant time the land should be taken to be used for primary production purposes due to a classification that has been assigned to the land by the Valuer-General.
- (3) For the purposes of subsections (1) and (2), the date that is relevant to a determination as to whether land is qualifying land is the date of the relevant conveyance or transfer.
- (4) Subject to subsections (5) and (7), subsection (6) applies to the conveyance or transfer of an interest in qualifying land executed on or after 1 July 2016.
- (5) Subsection (6) does not apply to a conveyance or transfer of an interest that arises from a contract of sale or other transaction entered into before 1 July 2016.

- (6) The duty payable on a conveyance or transfer to which this subsection applies (to the extent to which it provides for the conveyance or transfer of an interest in qualifying land) will be  $66\frac{2}{3}\%$  of the amount of duty payable apart from this subsection.
- (7) Subject to subsection (8), subsection (9) applies to the conveyance or transfer of an interest in qualifying land executed on or after 1 July 2017.
- (8) Subsection (9) does not apply to a conveyance or transfer of an interest that arises from a contract of sale or other transaction entered into before 1 July 2017.
- (9) The duty payable on a conveyance or transfer to which this subsection applies (to the extent to which it provides for the conveyance or transfer of an interest in qualifying land) will be  $33\frac{1}{3}\%$  of the amount of duty payable apart from subsection (6) or this subsection.

## **Part 12—Amendment of *Stamp Duties Act 1923* that takes effect on 1 July 2018**

### **51—Amendment of section 71—Instruments chargeable as conveyances**

- (1) Section 71(3)—delete "to which subsection (4) applies"
- (2) Section 71(4), (4a) and (4b)—delete subsections (4), (4a) and (4b)
- (3) Section 71(5)(ia)—delete paragraph (ia)
- (4) Section 71—after subsection (14) insert:
  - (14a) This section does not apply to an instrument that relates to a unit trust scheme, an interest in a unit trust scheme, a financial product, or an interest in a financial product, executed on or after 1 July 2018.

### **52—Amendment of section 98—Land holding entity**

Section 98—delete "if the unencumbered value of the underlying local land assets of the relevant entity is \$1 000 000 or more" and substitute:

if the relevant entity holds local land assets

## 53—Insertion of Part 4A Division 6

Part 4A—after Division 5 insert:

### **Division 6—Abolition of duty on designated real property transfers**

#### **105A—Abolition of duty on designated real property transfers**

(1) In this section—

*qualifying land* means land that is being used for any purpose other than—

- (a) land that is taken to be used for residential purposes in accordance with subsection (2)(a), other than land of a classification excluded by the regulations; or
- (b) land that is taken to be used for primary production in accordance with subsection (2)(b), other than land of a classification excluded by the regulations.

(2) For the purposes of the definition of *qualifying land*—

- (a) land will be taken to be used for residential purposes if—
  - (i) the Commissioner, after taking into account information provided by the Valuer-General, determines that it is being predominantly used for that purpose; or
  - (ii) the Commissioner, after taking into account information provided by the Valuer-General, determines that although the land is not being used for any particular purpose at the relevant time the land should be taken to be used for residential purposes due to improvements that are residential in character having been made to the land; or
  - (iii) the Commissioner, after taking into account information provided by the Valuer-General, determines that the land is vacant, or vacant with only minor improvements, that the land is within a zone established by a Development Plan under the *Development Act 1993* that envisages the use, or potential use, of the land as residential, and that the land should be taken to be used for residential purposes due to that zoning (subject to the qualification that if the zoning of the land indicates that the land could, in a manner consistent with the Development Plan, be used for some other purpose (other than for primary production) then the vacant land will not be taken to be used for residential purposes); and
- (b) land will be taken to be used for primary production if—

- (i) the Commissioner, after taking into account information provided by the Valuer-General, determines that it is being predominantly used for primary production purposes; or
  - (ii) the Commissioner, after taking into account information provided by the Valuer-General, determines that although the land is not being used at the relevant time the land should be taken to be used for primary production purposes due to a classification that has been assigned to the land by the Valuer-General.
- (3) Subject to subsection (4), this section applies to the conveyance or transfer of an interest in qualifying land executed on or after 1 July 2018.
- (4) This section does not apply to a conveyance or transfer of an interest that arises from a contract of sale or other transaction entered into before 1 July 2018 (and the duty chargeable in relation to such a conveyance or transfer will be calculated according to the rates in force as at the date on which the contract of sale or other transaction was entered into as if the conveyance or transfer had been executed on that date and, if relevant, according to the provisions of section 71DC).
- (5) No liability to duty arises in relation to a conveyance or transfer of property to which this section applies (to the extent to which it provides for the conveyance or transfer of an interest in qualifying land).
- (6) Despite section 16, the duty chargeable in relation to a conveyance or transfer to which this section applies executed before 1 July 2018 but produced to the Commissioner for the purposes of being stamped on or after that date will be calculated according to the rates in force as at the date on which the conveyance or transfer was executed (and, if relevant, according to the provisions of section 71DC).

## **Part 13—Amendment of *Supreme Court Act 1935***

### **54—Amendment of section 130—Court fees**

Section 130—after subsection (2) insert:

- (3) Fees charged in respect of proceedings, or any step in proceedings, in the court's probate jurisdiction may be based on the value of the deceased person's estate or on any other basis, whether or not the fee exceeds the actual administrative cost incurred.



## **Part 14—Amendment of *Taxation Administration Act 1996***

### **55—Amendment of section 93—Appeal prohibited unless tax is paid**

- (1) Section 93(1)—delete "the whole of the amount of any tax" and substitute:  
50% of the whole of the tax
- (2) Section 93(2)—delete "the tax" and substitute:  
the amount of tax required to be paid under subsection (1)

## **Part 15—Amendment of *Water Industry Act 2012***

### **56—Repeal of section 93**

Section 93—delete the section

### **57—Repeal of section 94**

Section 94—delete the section

### **58—Amendment of section 115—Regulations**

Section 115(2)(h)—delete paragraph (h)

### **59—Transitional provisions**

- (1) In this section—  
*principal Act* means the *Water Industry Act 2012*.
- (2) The repeal of section 93 of the principal Act by this Act does not affect any liability to pay the Save the River Murray levy for the 2014/2015 financial year, or for any preceding financial year (and that section will be taken to continue to apply in relation to such a liability as if it has not been repealed).
- (3) The Save the River Murray Fund is wound up on the commencement of this subsection by force of this subsection.

## **Part 16—Repeal of *Hindmarsh Island Bridge Act 1999***

### **60—Repeal of *Hindmarsh Island Bridge Act 1999***

The *Hindmarsh Island Bridge Act 1999* is repealed.

### **61—Transitional provision**

- (1) The repeal of the *Hindmarsh Island Bridge Act 1999* does not affect a liability to make a payment in respect of any period concluding before 1 July 2015 (and that Act will be taken to continue to apply in relation to such a liability as if it had not been repealed).
- (2) On the repeal of the *Hindmarsh Island Bridge Act 1999*, the Tripartite Deed under that Act will no longer apply so as to give rise to liability to make a payment in respect of any period commencing on or after 1 July 2015 (even though the Term under the Deed has not expired).