

**House of Assembly—No 144**

As received from the Legislative Council and read a first time, 15 May 2013

South Australia

**Foreign Ownership of Land Bill 2012**

A BILL FOR

An Act to provide for the disclosure of foreign ownership of certain land; and for other purposes.

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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 *Foreign Ownership of Land Act 2012*.

#### 2—Commencement

- 5 This Act will come into operation on a day to be fixed by proclamation.

#### 3—Interpretation

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

*acquire* includes obtain, gain, receive or acquire—

- 10 (a) by purchase, exchange or lease; and
- (b) by will, devolution or operation of law; and
- (c) by grant or gift; and
- (d) by enforcement of a security;

*agreement* means any agreement, whether formal or informal and whether express or implied;

- 15 *corporation* means any body corporate;

*department* means the administrative unit that is, under the Minister, responsible for the administration of this Act;

*director*, in relation to a corporation, includes—

- 20 (a) any person occupying or acting in the position of director of the corporation, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person under whose directions or instructions the directors of the corporation are accustomed to act

- 25 *foreign corporation* means a body (whether incorporated or unincorporated) that is formed outside Australia and its external Territories;

*foreign natural person* means a person—

- (a) who is not an Australian citizen within the meaning of the *Australian Citizenship Act 1948* of the Commonwealth; and

- (b) —
- (i) whose continued presence in Australia is subject to a limitation as to time imposed by law; or
  - (ii) who is not domiciled in Australia;

5 ***foreign person*** means—

- (a) a foreign natural person; or
- (b) a foreign corporation; or
- (c) a corporation in which, on its last accounting date, a foreign natural person or a foreign corporation holds a controlling interest; or
- 10 (d) a corporation in which, on its last accounting date, 2 or more persons, each of whom is either a foreign natural person or a foreign corporation, hold an aggregate controlling interest;

***foreign trust*** means—

- 15 (a) a unit trust in which—
  - (i) a foreign person holds a controlling interest; or
  - (ii) 2 or more foreign persons hold an aggregate controlling interest; on the last accounting date of the trust; and
- (b) a trust (other than a unit trust)—
  - 20 (i) in respect of which—
    - (A) not less than 15% of the total income of the trust was paid to or applied for the benefit of a foreign person, alone or together with any associate or associates of the foreign person; or
    - 25 (B) not less than 40% of the total income of the trust was paid to or applied for the benefit of 2 or more foreign persons, together with any associate or associates of any of them, during the most recent year of income in respect of the trust; or
  - (ii) in respect of which—
    - 30 (A) not less than 15% of the capital of the trust is held by the trustee of the trust for a foreign person, alone or together with any associate or associates of the foreign person; or
    - (B) not less than 40% of the capital of the trust is held by the trustee of the trust for 2 or more foreign persons, together with any associate or associates of any of them,
- 35 on the last accounting date of the trust;

***interest in land*** includes an estate or interest in land and any improvements on the land but does not include—

- (a) a security interest in land; or
- (b) an estate or interest in an easement over land; or

(c) the estate or interest of a lessee of freehold land or a sublessee of leasehold land where the term of the lease or the sublease, as the case may be, including all options given under the lease or sublease, as the case may be, does not exceed 25 years; or

5 (d) an estate or interest of a kind prescribed by the regulations;

***last accounting date*** means—

(a) for a corporation—the last day of the most recent financial year for which the corporation reported, or was required to report, to its members under section 314 of the *Corporations Act 2001* of the Commonwealth;

10 (b) for a trust—the last day of the most recent year of income for the trust;

***officer***, in relation to a corporation, includes—

(a) a director, secretary, executive officer or employee of the corporation; and

(b) a receiver and manager of property of the corporation appointed under a power contained in an instrument; and

15 (c) an official manager or deputy official manager of the corporation; and

(d) a liquidator of the corporation appointed in a voluntary winding up of the corporation; and

(e) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons;

20 but does not include—

(f) a receiver who is not also a manager; or

(g) a receiver and manager appointed by a court; or

(h) a liquidator appointed by a court;

***prescribed form*** means—

25 (a) if a form is prescribed by regulation—that form; or

(b) in any other case—a form approved by the registrar;

***register*** means the register maintained under section 10;

***registering authority*** means the person responsible for keeping a register for dealings in land;

30 ***registrar*** means the Registrar-General;

***relevant land*** means land other than land that is, in accordance with a Development Plan under the *Development Act 1993*, zoned as being suitable for residential or industrial purposes;

35 ***security interest*** means any mortgage, encumbrance or other charge on land created for securing a loan or the payment of an annuity or sum of money other than a loan, but does not include an interest created by a transfer by way of security of the legal estate of an interest in land;

*share*, in relation to a corporation, means a share in the share capital of the corporation, and—

(a) includes stock into which all or any of the share capital of the corporation has been converted; and

5 (b) except in section 9—includes an interest in such a share or in such stock;

*year of income* means a year of income within the meaning of the *Income Tax Assessment Act 1936* of the Commonwealth.

(2) In this Act—

10 (a) a person who directly or indirectly controls an interest in land will be deemed to have *acquired* that interest; and

(b) a reference to *acquire* includes a reference to agreeing to acquire.

(3) For the purposes of this Act, the time of acquisition of an interest in land will be—

15 (a) where the interest in land is acquired as the result of the granting of a lease of Crown land—the time when the lease commences; and

(b) where the interest in land is acquired under an agreement—the time of entry into possession of that interest; and

(c) where the interest in land is acquired otherwise than under paragraph (a) or (b)—the time when the event that gave rise to the acquisition occurred.

20 (4) For the purposes of subsection (3)(b), the time of entry into possession in respect of an interest in land means the time under an agreement when the person acquiring the interest is entitled to—

(a) occupy, use and control that interest; or

(b) the rents and profits of that interest.

25 (5) For the purposes of the definition of *foreign person*, a foreign natural person or a foreign corporation will be deemed to have a controlling interest in a corporation where the person or the corporation, as the case may be, has a controlling interest in the holding corporation of that first corporation.

#### 4—Holding corporations and subsidiaries

30 (1) A reference in this Act to a *holding corporation* of another corporation is a reference to a corporation of which that other corporation is a subsidiary.

(2) For the purposes of this Act, but subject to subsection (3)—

(a) a corporation will be deemed to be a subsidiary of another corporation if that other corporation—

35 (i) is in a position to control more than one-half of the voting power in the first corporation; or

(ii) holds more than one-half of the issued shares in the first corporation (excluding any shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital); and

(b) a corporation will be deemed to be a subsidiary of another corporation if the first corporation is a subsidiary of any corporation that is that other corporation's subsidiary (including a corporation that is that other corporation's subsidiary by another application or other applications of this paragraph).

(3) In determining whether a corporation is a subsidiary of another corporation—

(a) any shares held or power exercisable by that other corporation in a fiduciary capacity will be treated as not held or exercisable by it; and

(b) subject to paragraphs (c) and (d), any shares held or power exercisable—

(i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or

(ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary that is concerned only in a fiduciary capacity,

will be treated as held or exercisable by that other corporation; and

(c) any shares held or power exercisable by any person under the provisions of any debentures of the first corporation, or of a trust deed for securing any issue of such debentures, will be disregarded; and

(d) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) will be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable solely by way of security for the purposes of a money lending agreement.

## 5—Substantial and controlling interests in corporations and unit trusts

(1) For the purposes of this Act—

(a) a person will be taken to hold a *substantial interest* in a corporation or unit trust if the person, alone or together with any associate or associates of the person, is in a position to control not less than 15% of the voting power in the corporation or attached to the issued units in the unit trust, as the case may be; and

(b) 2 or more persons will be taken to hold an *aggregate substantial interest* in a corporation or unit trust if they, together with any associate or associates of any of them, are in a position to control not less than 40% of the voting power in the corporation or attached to the issued units in the unit trust, as the case may be.

(2) Where—

(a) a person holds a substantial interest in a corporation or unit trust; or

(b) 2 or more persons hold an aggregate substantial interest in a corporation or unit trust,

that person will be taken to hold a controlling interest in the corporation or unit trust, or those persons will be taken to hold an aggregate controlling interest in the corporation or unit trust as the case may be, unless the Minister declares that, having regard to all the circumstances, that person together with the associate or associates (if any) of that person is not, or those persons together with the associate or associates (if any) of each of them are not, in a position to determine the policy of the corporation or unit trust, as the case may be.

(3) Where—

- (a) a person holds a substantial interest, or 2 or more persons hold an aggregate substantial interest, in a corporation; and
- (b) that corporation is in a position to control all or any of the voting power in another corporation,

that person or those persons together will be taken to be in a position to control so much of the voting power of the other corporation as the first corporation is in a position to control.

- (4) An officer of a corporation or the manager or trustee of a unit trust, as the case may be, referred to in subsection (2) may apply to the Minister, at any time prior to the expiration of the periods referred to in sections 16(1), 17(1), 17(3), 19 and 20, seeking a declaration that for the purposes of subsection (2) a person referred to in subsection (2), together with the associate or associates (if any) of that person, is not in a position to determine the policy of the relevant corporation or unit trust, as the case may be.
- (5) For the purposes of calculating whether or not a notification has been lodged within the time limits specified in sections 16(1), 17(1), 17(3), 19 and 20, the period of time during which an application made under subsection (4) is in the office of the Minister to the date of the notification to the applicant of the Minister's declaration will be excluded from that calculation.

## 6—Voting power

In this Act, a reference to the *voting power* in a corporation or a unit trust is a reference to the maximum number of votes that might be cast at a general meeting of the corporation or the unit-holders of the unit trust, as the case may be.

## 7—Control of voting power

A reference in this Act to *control of the voting power* in a corporation or attached to the issued units in a unit trust is a reference to control by the shareholders or unit-holders recorded in the share register or unit-holders register of the corporation or the unit trust, as the case may be.

## 8—Associates

For the purposes of this Act, the following persons are associates of a person:

- (a) the person's spouse or a parent or remoter lineal ancestor, son, daughter or remoter issue, brother or sister of the person;
- (b) any trustee for the person;
- (c) any trustee of a unit trust in which the person is a unit-holder;



- (d) any partner of the person;
- (e) any corporation of which the person is an officer;
- (f) where the person is a corporation—any officer of the corporation;
- (g) any employee or employer of the person;
- 5 (h) any officer of any corporation of which the person is an officer;
- (i) any employee of a natural person of whom the person is an employee;
- (j) any corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person or, where the person is a corporation, of  
10 the directors of the person;
- (k) any corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the person is accustomed or under an obligation, whether formal or informal, to act;
- (l) any corporation in which the person holds a substantial interest;
- 15 (m) where the person is a corporation—a person who holds a substantial interest in the corporation;
- (n) any person who is, under this section, an associate of any other person who is an associate of the person (including a person who is an associate of the person by another application or other applications of this paragraph).

## 20 **9—Trustee company common funds**

For the purposes of this Act, where the legal estate of an interest in land held at the commencement of this Act or acquired after the commencement of this Act by a trustee company (within the meaning of the *Trustee Companies Act 1988*) was  
25 acquired through the investment of moneys forming part of a common fund of the trustee company, the interest in land held or acquired, as the case may be, will be deemed not to be held or acquired by a foreign person.

## **Part 2—Administration**

### **10—Register**

- (1) The registrar must maintain a register called the *Foreign Ownership of Land Register*.
- 30 (2) All prescribed forms lodged with the registrar form part of the register.
- (3) The register may be maintained wholly or partly—
  - (a) on paper, or electronically or in such other medium as the registrar from time to time considers appropriate; and
  - (b) in such device for storing or processing information as the registrar from time  
35 to time considers appropriate.
- (4) The registrar may from time to time cause a copy to be made, by the means approved from time to time by the Minister for the purposes of this section, of any part of the register, including any prescribed form and, on the registrar certifying that the copy is an accurate copy of that part, that copy will form part of the register.

- (5) The registrar—
- (a) may cause particulars recorded in one part of the register to be recorded in another part of the register; and
  - (b) may cause to be deleted from a part of the register particulars that the registrar is satisfied have been accurately recorded in another part of the register.
- (6) The registrar may cause to be destroyed any prescribed form which has been copied under subsection (4) and that copy will be—
- (a) recognised as a true copy of that part of the register; and
  - (b) received in evidence in any court or tribunal acting judicially.

### **11—Accurately completed prescribed forms**

Each prescribed form lodged with the registrar must be completed so as to clearly and accurately indicate in respect of each acquisition of an interest in land such information as is prescribed.

### **12—Rectification of register**

Where the registrar is satisfied that there is an error or omission in the register or a failure to comply with this Act in respect of any prescribed form or acquisition, the registrar may do all things necessary to rectify the error, omission or failure.

### **13—Access to information in register**

- (1) Subject to subsection (2), a person may, on payment of the prescribed fee and during the hours and on the days appointed by the registrar for that purpose—
- (a) obtain particulars of information recorded or contained in the register; and
  - (b) obtain extracts of particulars of information recorded or contained in the register; and
  - (c) on the giving of adequate notice to allow its preparation—obtain from the registrar copies of any statistical data available from the computerised information recorded in the register.
- (2) The registrar must not, without the written authorisation of the Minister, provide to a person particulars of information recorded or contained in the register that would disclose or lead to the disclosure of the address of the principal place of residence of a consul or a member of the staff of an embassy.

### **14—Delegation**

The registrar may delegate the registrar's powers under this Act to an officer or employee of the department.

### **15—Annual report**

- (1) The registrar must, as soon as practicable after 30 June in each year, prepare a report on the administration of this Act during the previous period of 12 months and submit the report to the Minister.

- (2) The Minister is to cause each report submitted to the Minister under subsection (1) to be laid before both Houses of Parliament within 14 sitting days after it is received by the Minister.

### Part 3—Notification of ownership

#### 16—Disclosure of present interest

- 5
- (1) A foreign person who has the legal estate of an interest in relevant land vested in the person (other than as trustee) at the commencement of this Act, must, in respect of that interest, lodge a duly completed prescribed form (a *notification of ownership*) with the registrar not later than 12 months after that commencement.
- 10
- (2) Where the agent of a foreign person referred to in subsection (1) duly completes and lodges a notification of ownership on behalf of that foreign person, that foreign person will be deemed to have duly completed the notification of ownership in respect of the relevant interest in land.
- 15
- (3) A person who has the legal estate of an interest in relevant land vested in the person as trustee for a foreign person or foreign trust at the commencement of this Act, must, in respect of that interest, lodge a duly completed prescribed form (a *trustee notification of ownership*) with the registrar not later than 12 months after that commencement.

#### 17—Disclosure of acquisition

- 20
- (1) A foreign person who acquires the legal estate of an interest in relevant land (other than as trustee for a foreign person or a foreign trust) after the commencement of this Act, must, in respect of that interest, lodge a duly completed notification of ownership with the registrar not later than 90 days after the date of that acquisition.
- 25
- (2) Where the agent of a person referred to in subsection (1) duly completes and lodges the notification of ownership on behalf of that person, that person will be deemed to have duly completed the notification of ownership in respect of the relevant interest in land.
- 30
- (3) A person who acquires the legal estate of an interest in relevant land as trustee for a foreign person or a foreign trust after the commencement of this Act, must, in respect of that interest, lodge a duly completed trustee notification of ownership with the registrar not later than 90 days after the date of that acquisition.
- 35
- (4) A person who holds, as trustee, an interest (other than the legal estate) in relevant land must, for the purposes of this Act, on the request of the person who holds (as trustee) the legal estate of that interest, supply to the person holding the legal estate the name, usual place of residence and details of the interest held in respect of each person for whom the first person holds as trustee and must state whether or not each such person is a foreign person.
- 40
- (5) Despite subsections (1) and (3), where an interest in relevant land is acquired because of the death of a person—
- (a) the personal representative of the deceased person will not be required to lodge a trustee notification of ownership in respect of the interest in land vested in the person as personal representative; and

(b) a person beneficially entitled to an interest in the land of the deceased person will not be required to lodge a notification of ownership before documents that result in that interest vesting in the person beneficially entitled are lodged with the relevant registering authority.

5 (6) Where a person referred to in subsection (5)(b) is under a legal disability and the person's guardian duly completes and lodges the notification of ownership referred to in that subsection on behalf of that person, that person will be deemed to have duly completed the notification of ownership in respect of the relevant interest in land.

### **18—Disclosure of disposal of interest**

10 (1) Where the legal estate of an interest in relevant land is registered or recorded in the register or records of a relevant registering authority—

(a) in the name of a foreign person; or

(b) in the name of a person who is the trustee for a foreign person or a foreign trust,

15 and the legal estate is disposed of, the person in whose name the legal estate is registered or recorded must, in respect of the legal estate, lodge a notification of that disposal in the prescribed form with the registrar not later than 90 days after the date on which that disposal took place.

(2) Where—

20 (a) the legal estate of an interest in relevant land is registered or recorded in the register or records of a relevant registering authority in the name of a person who is not a foreign person, as trustee for a foreign person or a foreign trust; and

(b) an interest other than the legal estate in that land is disposed of; and

25 (c) because of that disposal, the person in whom the legal estate of that interest in land was vested no longer holds the legal estate as trustee for a foreign person or a foreign trust,

30 the person in whose name the legal estate was registered or recorded must, in respect of the legal estate, lodge a notification of that disposal in the prescribed form with the registrar not later than 90 days after the date on which that disposal took place.

### **19—Notification on ceasing to be a foreign person**

(1) Where the legal estate of an interest in relevant land is registered or recorded in the register or records of a relevant registering authority—

35 (a) in the name of a foreign person (other than as trustee for a foreign person or a foreign trust) and the person ceases to be a foreign person; or

(b) in the name of a person, who is not a foreign person, as trustee for a foreign person or a foreign trust and that foreign person or foreign trust ceases to be a foreign person or foreign trust, as the case may be,

40 the person in whose name the legal estate is registered or recorded must, in respect of that interest, lodge a notification of that cessation in the prescribed form with the registrar not later than 90 days after the date on which the cessation took place.

Maximum penalty: \$2 500.

- (2) Where the agent of a person required to lodge a notification under subsection (1) duly completes and lodges a notification in the prescribed form on behalf of that person, that person will be deemed to have duly completed the notification in respect of the relevant interest in land.

5 **20—Notification on becoming a foreign person**

- (1) Where the legal estate of an interest in relevant land is registered or recorded in the register or records of a relevant registering authority—
- (a) in the name of a person (other than as trustee) who becomes a foreign person;  
or
- 10 (b) in the name of a trustee for a person or trust who becomes a foreign person or a foreign trust, as the case may be,

the person in whose name the legal estate is registered or recorded must, in respect of that interest, lodge a duly completed notification in the prescribed form with the registrar not later than 90 days after that person or trust became a foreign person or a foreign trust, as the case may be.

15

- (2) Where the agent of a person required to lodge a notification under subsection (1) duly completes and lodges a notification in the prescribed form on behalf of that person, that person will be deemed to have duly completed the notification in respect of the relevant interest in land.

20 **21—Other registries and transitional**

- (1) Every person required to lodge a notification of ownership or trustee notification of ownership with the registrar under section 17 will be deemed to have complied with the requirements of that section if that person, within the period specified in that section, lodges with the relevant registering authority a duly completed notification of ownership or trustee notification of ownership, as the case may require, contemporaneously with such other documents as are required to be lodged with that registering authority to enable the registration or recording of the relevant acquisition.

25

- (2) Every document that is lodged with a registering authority after the commencement of this Act for the registration or recording of a dealing in respect of an acquisition of an interest in land to which section 17(1) or (3) applies, will, even though the acquisition was made before the commencement of this Act, be accompanied by—

30

- (a) a notification of ownership or trustee notification of ownership, as the case may require; or
- (b) a certificate of exemption referred to in subsection (3); or
- 35 (c) evidence, in the prescribed form, that a notification of ownership or trustee notification of ownership has been lodged with the registrar,

in respect of that acquisition, contemporaneously with such other documents as are required to be lodged with that registering authority to enable the registration or recording of that acquisition.

40

- (3) Where an acquisition of an interest in relevant land occurred prior to the commencement of this Act the registrar may, in the registrar's absolute discretion, issue in respect of that acquisition a certificate of exemption in the prescribed form, exempting that acquisition from the application of subsection (2)(a) and (c).

(4) Despite any other Act or law to the contrary, a registering authority must not register or record in its register or records any documents lodged with that registering authority after the commencement of this Act, in respect of an acquisition of an interest in relevant land where the registering authority is not satisfied that subsection (2) has been complied with.

(5) Every notification of ownership or trustee notification of ownership, as the case may be, lodged with a registering authority under this section must be produced by that registering authority to the registrar within 30 days of the registration or recording of the acquisition in respect of which it was lodged with that registering authority.

## **22—Registrar may require additional information**

(1) The registrar may, for the purpose of—

(a) ascertaining whether there is any liability on a person to lodge a prescribed form; or

(b) ascertaining whether a person is required to comply with this Act or whether the Act has been contravened or not complied with by a person in any respect; or

(c) enquiring into any matter connected with the administration of this Act, by notice in writing, require a person—

(d) to give information of a kind and in a form or manner specified in the notice or to produce records (or copies of records) of a kind specified in the notice (being information or records believed to be within the knowledge, in the custody or under the control of the person) at a place and within a time specified in the notice, to the registrar or an officer authorised by the registrar and specified in the notice; or

(e) to attend before the registrar or an officer authorised by the registrar and specified in the notice at a time and place specified in the notice and there to give information and to produce records of a kind specified in the notice (being information or records believed to be within the knowledge, in the custody or under the control of the person) and to answer questions or to do all or any of those things.

(2) The registrar or an officer authorised by the registrar under subsection (1) may require information sought under this section to be given, verbally on oath or in writing by statutory declaration, as the case may be, and for that purpose the registrar, that officer or any justice may administer an oath or take a declaration.

(3) The registrar or an officer authorised by the registrar under subsection (1) may cause to be made copies of or extracts from the whole or part of the information or records produced under subsection (1).

(4) A notice under subsection (1) which requires a person to give information to, to attend before or to produce records to an officer authorised by the registrar under subsection (1) may specify that officer by name or by the office that the officer holds.

- (5) Even though a notice issued under subsection (1) requires a person to give information to, to attend before or to produce records to an officer whose name or office is specified in the notice, the registrar may at any time (without notice to the person to whom the notice was given) authorise another officer for that purpose to exercise any power or perform any duty that the other officer would be able to exercise or perform if the other officer were authorised under subsection (1).
- (6) The regulations may prescribe scales of expenses to be allowed to persons whose attendance is required under this section.

### **23—Registrar may enter information**

Where in respect of an acquisition of an interest in relevant land—

- (a) a notification of ownership or trustee notification of ownership is not lodged with the registrar under this Act; or
- (b) a notification of ownership or trustee notification of ownership lodged with the registrar is not complete in respect of any material particular,

the registrar may, in respect of that acquisition and until correct or more accurate particulars are provided to the registrar, record in the register such particulars as the registrar considers appropriate for that acquisition.

## **Part 4—Offences and penalties**

### **24—Offence not to comply with section 22**

- (1) A person who contravenes a requirement made of the person under section 22(1) commits an offence against this Act.  
Maximum penalty: \$75 000.
- (2) A person must not be convicted of an offence defined in subsection (1) if the court hearing the charge is satisfied—
- (a) that the defendant could not, by the exercise of reasonable diligence, have complied with the requirement to which the charge relates; or
- (b) that the defendant complied with that requirement to the extent of the defendant's ability to do so.
- (3) A person is not excused from complying with a requirement under section 22 to give information or answer a question on the ground that the information or answer might tend to incriminate the person or make the person liable to a penalty.
- (4) Information given or an answer made by a person in complying with a requirement under section 22, which might tend to incriminate the person or make the person liable to a penalty, is not admissible against the person in any proceedings brought against the person in a court in the State with a view to the punishment of the person for an alleged offence except—
- (a) proceedings in respect of an offence under this Act; or
- (b) proceedings in respect of an offence in connection with verification of the information or answer by oath or affirmation.

- (5) Where a person commits an offence defined in subsection (1)—
- (a) the offence will be a continuing offence and be deemed to continue for as long as the requirement in respect of which the offence was committed is not complied with; and
  - (b) the court may, on convicting the person of the offence, in addition to any penalty that it may impose under subsection (1), order the person to pay a penalty of \$10 000 for each day on which the offence is, under paragraph (a), deemed to have continued to the date of the person's conviction of the offence.

(6) Subsection (5) applies even though the failure or conduct alleged against a defendant related to a particular time or a particular period.

(7) Where a person has been convicted of an offence against subsection (1), the court may, in addition to imposing a penalty that it may impose under subsection (1) and, where applicable, subsection (5), order the person to comply with the requirement in respect of which the offence was committed.

(8) Where a court makes an order under subsection (7), it must specify in the order a place where and a time or period by or within which the order is to be complied with.

(9) A person who contravenes an order made by a court under subsection (7) commits an offence against this Act.

Maximum penalty: \$150 000.

(10) A person who after conviction of an offence defined in subsection (1) or this subsection (the previous conviction) continues to fail to comply with the requirement in respect of which the person incurred the previous conviction commits an offence against this Act.

Maximum penalty: \$15 000 for each day on which the person has continued to fail to comply with the requirement from the date of the last occurring previous conviction to the date of the person's conviction for the offence under this subsection last committed by the person.

(11) When a person is convicted of an offence as defined in subsection (1) and the court makes an order under subsection (7), the person will not be punished under subsection (10) for continuing to fail to comply with the requirement to which the order relates.

## **25—False or misleading statements**

(1) A person must not give an answer, whether orally or in writing, that is false or misleading in a material particular to a question put to the person under section 22.

Maximum penalty: \$75 000.

(2) A person must not, in providing information under section 22, make a statement or representation that is false or misleading in a material particular.

Maximum penalty: \$75 000.



- 5 (3) A person (including the agent of a foreign person) must not, in communicating information to the registrar in respect of the acquisition of an interest in relevant land by completing a notification of ownership or trustee notification of ownership make any answer, statement or representation that is false or misleading in a material particular.

Maximum penalty: \$75 000.

- (4) It is a defence to a charge under subsection (1) or (2) to prove that the defendant believed on reasonable grounds that the answer, statement or representation was neither false nor misleading.

- 10 (5) It is a defence to a charge under subsection (3) to prove that when the answer, statement or representation was given or made, the defendant believed on reasonable grounds the answer, statement or representation was neither false nor misleading.

- 15 (6) For the purposes of this Act, a notification of ownership, trustee notification of ownership or other prescribed form that is incorrectly completed in a material particular is not a duly completed form.

## 26—Offences by corporations

- (1) Where a corporation commits an offence against this Act—

- 20 (a) the chairperson of directors, managing director or other governing officer, by whatever name called, and every member of the governing body, by whatever name called; and  
(b) every person who in this State manages or acts or takes part in the management or administration of the business of that corporation in this State,

25 will be deemed to have committed an offence against this Act and will be liable to be proceeded against and punished accordingly.

- (2) It is a defence to a charge of an offence against this Act brought against a person specified in subsection (1) to prove that the offence was committed without that person's knowledge or connivance and that the person could not by due diligence have prevented the commission of the offence.

- 30 (3) Subsection (1) applies so as not to limit or affect in any way the liability of a corporation to be proceeded against and punished for an offence against this Act.

## 27—General penalty

- (1) A person who contravenes a provision of this Act commits an offence against this Act.

- 35 (2) Where no penalty is expressly provided, a person who commits an offence against this Act is liable to a maximum penalty of—

- (a) for a first offence—\$75 000; or  
(b) for a second or subsequent offence—\$150 000.

## Part 5—Forfeiture and restraint

### 28—Show cause, Minister’s determination and appeal procedures

(1) In this Part—

*ERD Court* means the Environment, Resources and Development Court established under the *Environment, Resources and Development Court Act 1993*.

(2) Where in respect of an interest in relevant land—

(a) a foreign person has the legal estate of an interest in relevant land vested in the foreign person at the commencement of this Act or acquires the legal estate of an interest in relevant land after the commencement of this Act (other than as trustee); or

(b) a foreign person has the beneficial interest of an interest in relevant land at the commencement of this Act or acquires the beneficial interest of an interest in relevant land after the commencement of this Act,

and the foreign person, where the foreign person has completed or is deemed to have completed the notification of ownership, or the person who completed the trustee notification of ownership in respect of the interest in relevant land beneficially held or acquired by the foreign person, is convicted of an offence (a *prescribed offence*)—

(c) against section 16 or 20; or

(d) where it is incorrectly stated that the person beneficially entitled to the interest in relevant land is not a foreign person—against section 17,

the Minister may, by notice in writing—

(e) where the person convicted of the offence has not lodged an appeal against conviction—within 30 days after the expiration of the time for lodging an appeal against that conviction; or

(f) where the person convicted of the offence has appealed against that conviction and on the final determination of that appeal the appeal is dismissed—within 30 days of the dismissal of the appeal,

require the person who has the legal estate of the interest in relevant land (a *prescribed person*) to show cause, in writing and within 60 days of the date of the issue of the notice, why that interest should not be forfeited to the Crown under this Part.

(3) Where the Minister issues a notice under subsection (2), the Minister must, in writing, immediately—

(a) notify each person who has a registered security interest in that interest in relevant land; and

(b) on receiving written advice under subsection (5) in respect of any person who has an unregistered security interest in that interest in relevant land, notify each such person; of the issue of the notice.

- (4) Where the Minister is of the opinion that—
- (a) a prescribed offence in respect of an interest in relevant land has been committed without the knowledge or connivance of the public officer of a corporation, or a person in the State who manages or acts or takes part in the management or administration of the business of that corporation in the State; and
  - (b) the public officer or that person, as the case may be, had used the person's best endeavours to ascertain the correct percentage, for the purposes of section 5, of the interest in relevant land owned by foreign persons,
- the Minister must immediately notify those persons whom the Minister notified under subsections (2) and (3) that the Minister does not intend to take any further action under this Part in respect of the notice given under subsection (2).
- (5) A person (or a person's agent) who receives notification under subsection (2) must, within 30 days of the date of the issue of the notice or such extended period as the Minister may allow, advise the Minister in writing of the full and correct names and addresses of all persons who have an interest (whether a security interest or otherwise and whether registered or unregistered) in the interest in relevant land.
- (6) Where the Minister has issued a notice under subsection (2) in respect of an interest in relevant land, the Minister must, having considered the written response (if any) to that notice and within 90 days of the issue of that notice, determine whether or not that interest in relevant land should be forfeited to the Crown.
- (7) Where the Minister determines under subsection (6) that an interest in relevant land should be forfeited to the Crown, the Minister must—
- (a) in writing, immediately notify those persons whom the Minister notified under subsections (2) and (3) of the Minister's determination; and
  - (b) within 14 days after the Minister's determination advertise the determination in the Gazette and in a newspaper circulating in the locality where the interest in land is situated.
- (8) Where the Minister determines under subsection (6) that an interest in relevant land should not be forfeited to the Crown, the Minister must immediately notify those persons whom the Minister notified under subsections (2) and (3) that the Minister does not intend to take any further action under this Part in respect of the notice given under subsection (2).
- (9) A prescribed person may appeal to the ERD Court from a determination of the Minister made under subsection (6) by serving notice of appeal on the Minister not later than 42 days after the person has been advised of the Minister's determination.
- (10) Service of the notice of appeal on the Minister may be effected by serving it on the registrar.
- (11) Not later than 7 days before the hearing of an appeal, the appellant must notify the Minister and the registrar of the ERD Court whether the appellant intends to rely on the written response (if any) to the notice given under subsection (2) or whether the appellant proposes to adduce further evidence on the appeal.
- (12) Jurisdiction is conferred on the ERD Court to hear and consider matters referred to it under this Part and to make determinations on the matters.

## 29—Authorisation to sell or recommended forfeiture

(1) Where—

(a) a prescribed person has not lodged an appeal under section 28(9) against the determination of the Minister made under section 28(6); or

(b) a prescribed person has appealed under section 28(9) against the determination of the Minister made under section 28(6) and on the final determination of that appeal the appeal is dismissed,

the Minister must, immediately, despite any other Act—

(c) where there is a registered security interest in the interest in relevant land—without any other authority than this Act, authorise the holder of the security interest, in writing, to sell the interest in land under the procedures in this Part; or

(d) where there is no registered security interest in the interest in relevant land—recommend to the Governor that the interest in land be forfeited to the Crown.

(2) Where the Minister takes action under subsection (1), the Minister must immediately notify—

(a) the person who has the legal estate of an interest in land, the subject of the determination; and

(b) any person (other than the person authorised under subsection (1)(a) to sell the interest in land) whom the Minister has been advised in writing has a security interest in the interest in land,

of the course of action adopted.

(3) Where the Minister, under subsection (1), authorises the holder of a registered security interest in a relevant interest in land to sell the interest in land, the holder may—

(a) where the holder has advised the Minister in writing within 30 days (or such extended period as the Minister may allow) of receiving written authorisation under subsection (1)(c) that the holder wishes to sell the interest in land; and

(b) on production of a statutory declaration to the Minister that the holder of the registered security interest was not aware and had no knowledge of the prescribed offence, the subject of the determination of the Minister under section 28(6), at the time of the execution of the relevant security interest,

without further notice whatsoever to the person who has the legal estate of the interest in land, the subject of the determination, sell the interest in land.

## 30—Sale of relevant interest in land

(1) A person who is authorised under section 29(1) to sell a particular interest in relevant land must arrange for the sale of the interest in land within 6 months of the date of the Minister's written authorisation to that person to sell the interest in land.

(2) Despite subsection (1), where the Minister is of the opinion that it would be more appropriate, having regard to market forces or other circumstances, that the sale of an interest in land under subsection (1) should be delayed, the Minister may, from time to time, extend the period referred to in that subsection.

- (3) Where a person—
- (a) does not advise the Minister under section 29(3)(a) that the person wishes to sell the relevant interest in land; and
  - (b) does not sell the interest in land within the period of time referred to in subsection (1), or such extended period as the Minister may allow under subsection (2),

the Minister, without any other authority than this Act, may sell the interest in land at the earliest occasion the Minister considers appropriate.

- (4) Every sale or attempted sale of an interest in land under this section must, in the first instance, be by public auction.
- (5) For the purposes of transferring an estate or interest in an interest in land sold under this Part, an instrument in the form prescribed or required by the relevant registering authority and executed—

- (a) by the person authorised under this Part to sell the relevant interest in land; or
- (b) by the Minister under subsection (3),

will vest in the purchaser, free of all security interests (but subject to all other existing interests whether registered or unregistered), the legal estate of the interest in land sold as completely and effectually as if the instrument had been executed by the registered owner of the interest in land.

- (6) A relevant registering authority must, on production of an instrument of transfer executed under subsection (5) and where necessary a request for substitute title, record particulars of the instrument and request (if any) in the relevant register and where necessary issue a new title in the form required by the registering authority for the interest in land despite section 36(7) and that an instrument of title to the land is not produced.

### **31—Application of and accounting for proceeds of sale**

- (1) Where an interest in relevant land is sold under the authority of this Part, the person receiving the proceeds of the sale must immediately apply those proceeds—
- (a) firstly, in payment of all costs, charges and expenses properly incurred as incidental to the sale, or any attempted sale; and
  - (b) secondly, in payment, in order of priority, of any registered security interests in the interest in land; and
  - (c) thirdly, subject to subsection (3), in payment of all claims made under that subsection; and
  - (d) fourthly, in payment of the balance to the Consolidated Account.
- (2) The Minister may recover by action in a court of competent jurisdiction any proceeds of sale to be applied under subsection (1)(d) as a debt due to the Crown.
- (3) A person who claims an unregistered security interest in an interest in land sold under this Part, may, within 90 days of the date of the sale of that interest, make application to the Minister for a declaration under subsection (4).

(4) Where a person makes an application under subsection (3) the Minister may, where the Minister is satisfied that the person was not a party to the commission of a prescribed offence in respect of the relevant interest in land, declare the nature, extent and value of that person's estate or interest in the interest in land (including accruing interest (if any)).

(5) A claim by a person for an estate or interest in an interest in land forfeited or sold under this Part will be of no effect against the Crown unless an application in respect of that estate or interest is made under subsection (3) and then only to the extent to which the proceeds of sale available under subsection (1) will permit.

(6) Where a sale referred to in subsection (1) of an interest in relevant land is made by the holder of a registered security interest, the holder must give to the Minister a full written accounting of—

(a) the debt due to the holder and any other holder of a registered security interest in the relevant interest in land; and

(b) the costs, charges and expenses properly incurred as incidental to the sale or any attempted sale; and

(c) the disbursement of the proceeds of the sale.

### **32—Declaration of forfeiture**

(1) The Governor may, on the recommendation of the Minister made under section 29(1)(d), declare by order in council that the relevant interest in relevant land is forfeited to the Crown and section 33 will apply.

(2) Every declaration of forfeiture made under subsection (1) will take effect from the date of its publication in the Gazette.

(3) Where the Governor under subsection (1) declares an interest in relevant land forfeited to the Crown, the Minister must immediately notify the person who had the legal estate of the interest in land the subject of the declaration of forfeiture.

### **33—Effect of declaration of forfeiture**

On the making of a declaration of forfeiture under section 32, all existing interests (whether registered or unregistered) in the interest in relevant land to which the declaration relates will be preserved and continued in existence in respect of that interest in land as if the declaration had not been made and the interest in land to which the declaration relates may be sold by the Minister as if it were a disposal of an interest in land by the Minister under section 30(3).

### **34—Documents of title**

(1) A person who, in respect of an interest in relevant land sold under section 30, is in possession of documents of title to the interest in land must deliver the documents of title to a person authorised in that behalf by the Minister, on demand of that authorised person.

(2) Where a person has delivered documents of title to an interest in relevant land in compliance with subsection (1), the person is to be discharged from any duty or obligation had by the person to any other person in relation to the disposition of the documents of title and from all liability that, but for this subsection, might have arisen because of that delivery.

### 35—Recording of authorised sales and forfeiture declarations

- (1) A registering authority, in respect of an interest in relevant land sold under this Part, must—
- 5 (a) on lodgement with the registering authority of an instrument of transfer executed under section 30(5); and
- (b) on production to the registering authority of sufficient evidence of the sale, record particulars of the sale under this Part in the register in the keeping of the registering authority and must do so despite any other Act or that any relevant document of title to that interest is not produced to the registering authority.
- 10 (2) Every order in council and authorisation of the Minister made under this Part will be conclusive evidence of the matters contained in them.

### 36—Restraining orders

- (1) Where in respect of an interest in relevant land, a person has been, or is about to be, charged with a prescribed offence, the Supreme Court may, on application made to it by the registrar (on the directions of the Minister) make a restraining order in respect of that interest, and such other ancillary order as it considers appropriate.
- 15 (2) On the making of a restraining order—
- (a) the management and control of the interest in relevant land to which it relates will pass to the person named in the order as manager of that interest and remain in that person while the order remains in force; and
- 20 (b) the person whose interest is restrained by an order made under this section, is incompetent in law to pass title to that interest while the order remains in force; and
- (c) a person who holds as trustee an interest in relevant land to which it relates for the person whose interest is restrained will, while the order remains in force, hold that interest for the person named in the order and must deal with that interest as directed by the manager.
- 25 (3) The manager named in a restraining order is empowered to deal with (other than to dispose of) that interest of which the person is manager in and for the purposes of the management as if the manager were the absolute owner of the interest subject always to the manager being prudent and diligent in the management of the interest and to the manager complying with conditions specified in the order as regulating the management of the interest.
- 30 (4) Where a restraining order has been made, the applicant for the restraining order must cause a copy of the order to be given to every person who, to the applicant's knowledge—
- 35 (a) has the legal estate of the relevant interest in land; and
- (b) has a registered security interest in the relevant interest in land.
- (5) A person or the trustee, agent or servant of that person—
- 40 (a) to whose interest in land a restraining order made under subsection (1) relates; or

- (b) to whom a copy of a restraining order made under subsection (1) has been given or is deemed to have been given,

must not attempt to do or purport to do any act in disobedience to or wilful disregard of the order, while it remains in force.

- 5 (6) A person who contravenes subsection (5) in respect to any order made by a judge is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual—5 years imprisonment; or  
(b) in the case of a corporation—\$200 000.

- 10 (7) On production to the person of a copy of a restraining order made under this section, a person charged with the keeping of registers relating to an interest in land referred to in the order must not register any dealing with respect to that interest without the written consent of the Minister until the order has been revoked or discharged.

### **37—Procedure on application for restraining order**

- 15 (1) On an application under section 36 for a restraining order, the Supreme Court may require notice of the application to be given to such person as it considers should be informed of the proceedings.
- (2) Every person to whom notice of an application under section 36 for a restraining order has been given is entitled to be heard with respect to the matter of the application.
- 20 (3) Where notice of an application under section 36 for a restraining order is given to a foreign person in respect of whose interest in relevant land a restraining order is sought or to another person who holds that interest as trustee, the notice will have effect as if it were a copy of a restraining order duly made in respect of that foreign person's interest, until the matter of the application has been disposed of.

### **38—Variation, revocation or discharge of order**

- 25 (1) A restraining order made under section 36 is discharged—
- (a) if at the expiration of the period ordered by the Supreme Court in that regard, proceedings against a person have not been commenced in respect of a prescribed offence; or
- 30 (b) if the person charged with committing the offence, because of which charge the restraining order was made, has been acquitted of the charge or the charge has been withdrawn; or
- (c) if the person charged with committing the offence, because of which the restraining order was made, having been convicted of the charge, has had the person's conviction quashed on appeal, unless the court hearing the appeal
- 35 otherwise orders; or
- (d) if the Minister gives a notice under section 28(4) or 28(8); or
- (e) if an appeal under section 28(9) to the ERD Court is upheld; or
- 40 (f) on lodgement with the relevant registering authority of an instrument of transfer executed under section 30(5).



- (2) A restraining order made under section 36 may, on application made to the Supreme Court, be varied or revoked at any time for any reason appearing to the Supreme Court to be sufficient.
- (3) On an application for revocation of a restraining order, the applicant must cause notice of the application to be given to—
- (a) the manager of the interest in relevant land to which the restraining order relates; and
  - (b) such other person as the Supreme Court considers should be informed of the proceedings,
- and the manager and such other person are entitled to be heard with respect to the matter of the application.

## Part 6—Miscellaneous

### 39—Searches

Every officer having the charge of records which are available for search by the public must permit the registrar and any person authorised by the registrar in that behalf, free of charge, to make searches of and to make copies of or extracts from any documents of title, or records in the department, registry or office relating to any acquisition of an interest in relevant land or matter in which the registrar is or may, for the purposes of this Act, be interested.

### 40—Service of documents

- (1) Where under this Act, a document or notice is required or permitted to be given to or served on a person, the document or notice may be given or served—
- (a) where the person is a natural person—by giving it to or serving it personally on the person or by sending it by post to the person at the person's usual or last known place of abode or business; or
  - (b) where the person is a corporation—by leaving it at or sending it by post to the registered office of the corporation.
- (2) If a document left at or sent by post to the address of the registered office of a corporation will not be, or is not likely to be, received by the corporation, a document may be served on the corporation by delivering a copy of the document personally to each of 2 directors of the corporation who reside in the State or by sending a copy of the document by post to each of 2 such directors at the address of those directors last known to the person sending the copy of the document.
- (3) In this section registered office, of a corporation, means—
- (a) its registered office under the *Corporations Act 2001* of the Commonwealth; or
  - (b) if paragraph (a) does not apply—
    - (i) its principal place of business in the State; or
    - (ii) if subparagraph (i) does not apply, its principal place of business in Australia.

#### 41—Evidentiary provisions

In any proceedings under this Act—

- (a) it will not be necessary to prove the appointment of the Minister, the registrar or a delegate of the registrar to do an act or take a proceeding; and
- 5 (b) a signature purporting to be that of the Minister, the registrar or a delegate of the registrar will be taken to be the signature it purports to be until the contrary is proved; and
- 10 (c) a document purporting to be a copy of or an extract (certified by the registrar) from a document lodged in the land registry will, on its production in that proceeding be evidence and, in the absence of evidence to the contrary, conclusive evidence of—
  - (i) in the case of an office copy—the last document and its contents; or
  - (ii) in the case of an extract—of the matters contained in the document; and
- 15 (d) a certificate purporting to be that of the registrar as to the time when a document of or from which an office copy or extract has been produced in evidence, was lodged in the land registry will be evidence and, in the absence of evidence to the contrary, conclusive evidence of the fact and time of the lodgement of the document; and
- 20 (e) proof of exemption from a provision of the Act will be on the person who relies on the exemption; and
- (f) it will not be necessary to prove the authority of a person to do an act or take a proceeding in the absence of evidence to the contrary.

#### 42—Protection from liability

25 No liability attaches to the Crown or any person on account of any act or thing—

- (a) done or omitted to be done under this Act; or
- (b) done or omitted to be done bona fide for the purposes of this Act and without negligence.

#### 43—Regulations

- 30 (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), those regulations may make provision—
  - 35 (a) regulating the duties of the registrar and other officers employed in the administration of this Act; and
  - (b) regulating the form of reports under this Act, and the procedure to be followed in respect of those reports; and
  - (c) the form of the register and the particulars to be entered in the register; and
  - 40 (d) fees in respect of any matter under this Act and their payment, recovery or waiver; and

- (e) exemptions (conditional or unconditional) from specified provisions of this Act; and
  - (f) fines, not exceeding \$10 000, for offences against the regulations; and
  - (g) facilitation of proof of the commission of offences against the regulations.
- 5 (3) The regulations may—
- (a) be of general application or vary in their application according to prescribed factors;
  - (b) 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 any other
- 10 person.