

House of Assembly—No 108A

As reported with amendments, report agreed to and passed remaining stages,
31 October 2019

South Australia

Land Tax (Miscellaneous) Amendment Bill 2019

A BILL FOR

An Act to amend the *Land Tax Act 1936*.

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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 *Land Tax (Miscellaneous) Amendment Act 2019*.

2—Commencement

- (1) Subject to this section, this Act comes into operation on the day on which it is assented to by the Governor.
- (2) Part 2 and Schedule 1 Part 2 of this Act come into operation on 30 June 2020 immediately after the commencement of Part 8 of the *Statutes Amendment and Repeal (Budget Measures) Act 2018*.

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 *Land Tax Act 1936*

4—Insertion of heading

Before section 1 insert:

Part 1—Preliminary

5—Amendment of section 2—Interpretation

- (1) Section 2(1), definition of *aggregation principle*—delete the definition and substitute:

administration trust means a trust under which the assets of a deceased person are held by a personal representative, but only during the period ending on the earlier of—

- (a) the completion of administration of the deceased estate; or
- (b) the third anniversary of the death of the deceased person or the further period (if any) approved by the Commissioner under subsection (1a);

- (2) Section 2(1)—after the definition of *association* insert:

beneficiary of a discretionary trust means a person, or a member of a class of persons, in whom, by the terms of the trust, the whole or any part of the trust property may be vested—

- (a) in the event of the exercise of a power or discretion in favour of the person (whether or not that power is presently exercisable); or
- (b) in the event that a discretion conferred under the trust is not exercised;

- (3) Section 2(1)—after the definition of *business of primary production* insert:

child maintenance land means land held on trust that was transferred to the trustee for the benefit of a beneficiary as the result of a family breakdown within the meaning of section 102AGA of the *Income Tax Assessment Act 1936* of the Commonwealth;

- (4) Section 2(1)—after the definition of *the Commissioner* insert:

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

- (5) Section 2(1)—after the definition of *company* insert:

concessional trust means—

- (a) a trust of which each beneficiary is—
 - (i) a person in respect of whom a guardianship order or an administration order is in force under the *Guardianship and Administration Act 1993*; or
 - (ii) a person with a disability within the meaning of the *Disability Services Act 1993*; or
- (b) a trust created under an order of a court or tribunal, or otherwise created under an Act, for the benefit of a person under disability; or
- (c) a special disability trust (within the meaning of section 5);
- (d) a trust of a kind prescribed by the regulations;

controlling interest—see section 13H;

corporation has the same meaning as in section 9 of the *Corporations Act 2001* of the Commonwealth;

- (6) Section 2(1), definition of *defined rural area*—delete "under section 9" and substitute:
- by proclamation to be a defined rural area
- (7) Section 2(1), definition of *defined shack-site area*—delete "under section 10" and substitute:
- by proclamation to be a defined shack-site area
- (8) Section 2(1)—after the definition of *determination of site value* insert:
- discretionary trust** means a trust under which the vesting of the whole or any part of the trust property—
- (a) is required to be determined by a person either in respect of the identity of the beneficiaries or the quantum of interest to be taken, or both; or
- (b) will occur in the event that a discretion conferred under the trust is not exercised,
- but does not include an excluded trust;
- (9) Section 2(1)—after the definition of *document* insert:
- excluded trust** means each of the following:
- (a) a charitable trust;
- (b) a concessional trust;
- (c) a trust the sole beneficiary or beneficiaries of which is or are an association referred to in section 4(1);
- (d) a trust, for any tax year in relation to which it is a superannuation trust;
- (e) a trust established by a superannuation trust solely for the purposes of an arrangement of a kind authorised under section 67A of the Commonwealth Superannuation Act;
- (f) a trust that holds child maintenance land;
- (g) an administration trust;
- fixed trust** means a trust that is not an excluded trust, a discretionary trust or a trust to which a unit trust scheme relates;
- (10) Section 2 (1)—after the definition of *land tax* insert:
- listed trust** has the same meaning as in the *Stamp Duties Act 1923*;
- (11) Section 2(1), definition of *owner*—after paragraph (e) insert:
- and
- (f) in any case, includes a person who is deemed by this Act to be an owner;
- (12) Section 2(1)—after the definition of *owner* insert:
- public unit trust scheme** means a listed trust or a widely held trust;
- related corporations**—see section 13G;

residential land exemption means an exemption under section 5(10)(a), (ab), (ac), (ad), (b), (ba) or (bb);

(13) Section 2(1)—after the definition of **site value** insert:

superannuation trust means, in relation to a financial year, a trust established before the start of the financial year that, in relation to the year of income ending in that financial year, is—

- (a) a complying superannuation fund (within the meaning of section 42 or 42A of the Commonwealth Superannuation Act); or
- (b) a complying approved deposit fund (within the meaning of section 43 of the Commonwealth Superannuation Act); or
- (c) a pooled superannuation trust (within the meaning of section 44 of the Commonwealth Superannuation Act);

(14) Section 2(1)—after the definition of **tax** insert:

taxable value—see section 7;

(15) Section 2(1)—after the definition of **trade** insert:

trust—

- (a) includes an administration or testamentary trust under which property of a deceased person is held by a personal representative or trustee (but only once the personal representative or trustee is actually holding the property); and
- (b) does not include an implied, constructive or resulting trust, except where expressly provided by this Act;

trustee includes trustee, executor, administrator, guardian, liquidator and any person having or taking upon themselves the possession, administration, or control of land, income, or other property of any description affected by any trust, or having the possession, control, or management of land of a person under any legal or other disability;

unit in a unit trust scheme, means—

- (a) a right or interest (whether described as a unit or a sub-unit or otherwise) of a beneficiary under the scheme; or
- (b) a right to any such right or interest,

that entitles the beneficiary to participate proportionately with other unitholders in a distribution of the property of the trust on its vesting;

unit trust scheme means an arrangement made for the purpose, or having the effect, of providing facilities for participation by a person, as a beneficiary under a trust, in any profit or income arising from the acquisition, holding, management or disposal of property under the trust, but does not include an excluded trust;

widely held trust has the same meaning as that term would have in the *Stamp Duties Act 1923* if a reference in section 97(1) of that Act to "300 unitholders" were a reference to "50 unitholders".

(16) Section 2—after subsection (1) insert:

(1a) For the purposes of paragraph (b) of the definition of *administration trust* in subsection (1), the Commissioner may approve a further period in any particular case.

(1b) A proclamation made for the purposes of the definition of *defined rural area* or *defined shack-site area* in subsection (1)—

(a) may be varied or revoked by subsequent proclamation by the Governor; and

(b) is effective from a day (which may be antecedent or subsequent to the day on which it is made) determined by the Governor.

(1c) For the purposes of this Act, the various *capacities* in which a person may be the owner of land are as follows:

(a) as legal owner;

(b) as equitable owner;

(c) as prospective owner (ie a person who has entered into a contract to purchase or acquire an estate or interest in the land);

(d) as lessee under a perpetual lease or a shack-site lease;

(e) if the land is in a defined shack-site area—as occupier.

(1d) For the purposes of this Act, a trustee's right of indemnity from the trust property is taken not to be a beneficial interest in the land subject to the trust.

6—Insertion of headings

After section 3 insert:

Part 2—Imposition of land tax

Division 1—Imposition of land tax

7—Insertion of heading

After section 4 insert:

Division 2—Exemptions and waiver

8—Insertion of section 5AA

After section 5 insert:

5AA—Minor interest may be disregarded for purposes of residential land exemption

(1) In this section—

prescribed interest—see subsections (2) and (3);

prescribed land means land that—

- (a) is owned by a natural person (the **resident**) whose interest in the land is not greater than 50% and is also owned by 1 or more other persons; and
- (b) would, if it were owned solely by the resident, fall within 1 of the grounds for exempting the land from land tax specified in section 5(10)(a) to (bb) (inclusive);

transaction includes any form of conveyance, transfer, contract, agreement or arrangement (whether or not in writing).

- (2) If the resident's interest in prescribed land is 5% or less, subsection (6) will apply in relation to the interest (a **prescribed interest**) unless the Commissioner, on the application of a person who, as an owner of the prescribed land, has an interest exceeding 5% in the land, is satisfied that there is no doubt that the resident's interest was created solely for a purpose, or entirely for purposes, unrelated to reducing the amount of land tax payable in respect of the land, or any other piece of land.
- (3) If the resident's interest in prescribed land exceeds 5% but is less than 50%, subsection (6) will apply in relation to the interest (a **prescribed interest**) if the Commissioner forms the opinion that the purpose, or 1 of the purposes, for the creation of the resident's interest was to reduce the amount of land tax payable in respect of the land, or any other piece of land.
- (4) If the Commissioner forms the opinion for the purposes of subsection (3) that the purpose, or 1 of the purposes, for the creation of the resident's interest was to reduce the amount of land tax payable in respect of land—
 - (a) subsection (6) 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.

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- (5) For the purposes of subsections (2) and (3), the Commissioner may have regard to—
 - (a) the nature of any relationships between the owners of the land, or between the owners of 2 or more pieces of land and, if relevant, the relationship between a trustee and a beneficiary or beneficiaries or between 2 or more trustees or 2 or more beneficiaries; and
 - (b) the lack of consideration, or the amount, value or source of the consideration, provided in association with the creation of the interest; and
 - (c) the form and substance of any transaction associated with the creation or operation of the interest, including the legal and economic obligations of the parties and the economic and commercial substance of any such transaction; and
 - (d) the way in which any transaction associated with the creation or operation of the interest was entered into or carried out; and
 - (e) any other matter the Commissioner considers relevant.
 - (6) If this subsection applies in relation to a prescribed interest under this section, the resident holding the prescribed interest is taken not to be—
 - (a) an owner of land for the purposes of section 5(10)(a) to (bb) (inclusive) to the extent of the prescribed interest; or
 - (b) 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.
 - (7) If the Commissioner decides to reject an application of an owner of land under subsection (2), the Commissioner must give notice of the decision to the owner—
 - (a) stating the decision; and
 - (b) stating the grounds on which the decision is based.
 - (8) If the Commissioner forms an opinion under subsection (3) so as to give rise to the application of subsection (6), the Commissioner must give notice of the operation of subsection (6) to each owner of the land—
 - (a) stating the fact that the opinion has been formed, and setting out its effect under this section; and
 - (b) stating the grounds on which the opinion is based.
 - (9) For the purposes of this section—
 - (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

(b) an interest may be or become subject to the operation of this section no matter when it was created, including in a case where the interest was created before the commencement of this section.

9—Substitution of section 6

Section 6—delete the section and substitute:

6—Minimum tax

Where the total amount of land tax payable by any taxpayer in respect of any year would, apart from this section, be less than \$20, no land tax is payable.

10—Insertion of heading

Before section 7 insert:

Division 3—Taxable value of land

11—Insertion of headings

Before section 8A insert:

Part 3—Assessment of land tax

Division 1—General

12—Amendment of section 8A—Calculation of land tax

(1) Section 8A(1)—delete subsection (1) and substitute:

(1) Subject to subsection (1a), land tax for land with a taxable value falling within a threshold set by this section is calculated in accordance with the table in Schedule 1 Part 2 for the 2020/2021 financial year and for each subsequent financial year.

(1a) If land with a taxable value exceeding \$25 000 is owned by a person as trustee of a trust, land tax for the land is calculated in accordance with the table in Schedule 1 Part 3 for the 2020/2021 financial year and for each subsequent financial year.

(1b) Subsection (1a) does not apply to—

- (a) land subject to a fixed trust if a written notice of the beneficial interests in the land is in force under section 12; or
- (b) land subject to a unit trust scheme if a written notice of the unitholdings in the scheme is in force under section 13; or
- (c) land subject to a discretionary trust if—
 - (i) the land is pre-existing trust land (within the meaning of section 13A); and
 - (ii) a written notice of a designated beneficiary of the trust is in force under section 13A; or
- (d) land subject to an excluded trust; or
- (e) land subject to a public unit trust scheme.

Note—

Other provisions of this Part provide for assessment of land tax in the above cases in accordance with subsection (1) at the rates set out in Schedule 1 Part 2.

(1c) Subsection (1a) does not apply to land that is owned by a corporation if the corporation is grouped with 1 or more related corporations under Division 6 and land tax is assessed in accordance with section 13J.

(2) Section 8A(2), table, rows relating to Threshold D and Threshold E—delete these rows and substitute:

Threshold D	\$1 350 000
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(3) Section 8A(3)—delete "each of the thresholds" and substitute:
thresholds A, B and C

(4) Section 8A—after subsection (3) insert:

(3a) Subject to this section, for each financial year after the 2020/2021 financial year, threshold D will be adjusted in accordance with the following table:

Financial year	Threshold D amount
2021/2022	\$1 350 000
2022/2023	\$1 600 000
2023/2024 and each subsequent financial year	\$1 600 000 adjusted in accordance with subsection (3b)

(3b) Subject to this section, for the 2023/2024 financial year and each subsequent financial year (*year x*), threshold D will be adjusted to take into account increases in the site value of land according to the following formula:

$$\text{Threshold } D_{\text{year } x} = \$1600000 \times \text{Index Value}_{\text{year } x}$$

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where—

*Threshold D*_{year x} represents threshold D for the relevant financial year (*year x*)

*Index value*_{year x} = Index value_{year x-1} x (1 + Avg percentage change in site values_{year x})

where *Index value*_{year x} is the Index value for the relevant financial year (*year x*) and the average percentage change in site values for that financial year is determined under subsection (4), and with the Index value for the 2022/2023 financial year being 1.

(5) Section 8A(4)—delete "subsections (2a) and (3)" and substitute:

subsections (2a), (3) and (3b)

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(6) Section 8A(5)—delete subsection (5) and substitute:

(5) If, after applying subsection (4) to determine the Index value for a particular financial year (*year x*) under subsection (3) or (3b), the result would be an Index value for year x that would be less than or equal to an Index value that has applied for—

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(a) if the index value is determined under subsection (3)—the 2020/2021 financial year or a subsequent financial year occurring before year x; or

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(b) if the index value is determined under subsection (3b)—the 2022/2023 financial year or a subsequent financial year occurring before year x,

the thresholds for year x will remain unchanged (so as to be equal to the year x-1 amounts).

(7) Section 8A(10)—delete subsection (10)

13—Substitution of sections 9 to 13A

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Sections 9 to 13A (inclusive)—delete the sections and substitute:

9—Land tax where more than 1 owner of land

(1) This section applies where 2 or more persons are the owners of the same land (whether in the same or in different capacities).

(2) If 2 or more persons are owners of the same land but not all in the same capacity, the Commissioner may treat all who are owners of the land in a particular capacity (to be determined by the Commissioner) as—

5 (a) the sole owner or owners of the land; and

(b) the sole taxpayer or taxpayers for the land.

(3) If the Commissioner treats a person or persons as the sole owner or owners of land under subsection (2), the provisions of this Act under which the value of land is aggregated, for the purpose of the assessment of tax, with the value of other land will apply as if that person or those persons were the sole owner or owners of the land.

(4) Subject to subsection (5), the owners of the land are to be jointly assessed for land tax on the land as if it were owned by a single person, without regard to—

15 (a) the separate interest of each owner; or

(b) any other land owned by any owner (either alone or with someone else).

(5) Subsection (4) does not affect the operation of any provisions of this Act under which the value of land is aggregated, for the purpose of the assessment of tax, with the value of other land.

(6) In addition, each owner of the land is to be separately assessed for land tax on—

25 (a) the owner's individual interest in the land (as if the owner were the owner of a part of the land in proportion to that interest); and

(b) any other land owned by the owner alone; and

(c) the owner's individual interest in any other land.

(7) Subsection (6) does not apply to land subject to an excluded trust.

(8) Subject to subsection (9), there is to be deducted from the land tax assessed for an owner under subsection (6) an amount (if any) necessary to avoid double taxation, being the amount determined by the formula:

$$A \times B$$

Where—

35 *A* is the proportion of the owner's individual interest in the land to the total interests in that land

B is the total amount of land tax assessed on the land under subsection (4).

Note—

40 The deduction is applied to the total land tax assessed for the owner and not just to the land tax assessed for this land.

- (9) If a deduction under subsection (8) would result in a negative amount—
- (a) zero is to be substituted for that amount; and
 - (b) the amount of the difference between that amount and zero will not be credited to any liability for land tax under this Act.
- (10) If an owner of land is a trustee of a trust to which the land is subject, no regard is to be had to the existence of the trust in relation to the joint assessment of the owners of the land as referred to in subsection (4), but regard is to be had to the existence of the trust in relation to the separate assessment of the owners as referred to in subsection (6).
- (11) This section applies subject to the operation of section 5AA.

Division 2—Land divided by community or strata plan

10—Assessment of tax against land divided by community or strata plan

- (1) If land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—
- (a) in the case of the division of land by a primary plan—land tax will be assessed against the primary lots that are not divided by a secondary plan and against a development lot or lots (if any); and
 - (b) in the case of the division of land by a secondary plan—land tax will be assessed against the secondary lots that are not divided by a tertiary plan and against the development lot or lots (if any); and
 - (c) in the case of the division of land by a tertiary plan—land tax will be assessed against the tertiary lots and a development lot or lots (if any).
- (2) If land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—
- (a) in the case of the division of land by a primary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General, reasonably incidental to the use of 1 or more of the primary lots, land tax will not be levied against the common property, or that part of it, but the interest in the common property, or that part of it, that attaches to each primary lot will be regarded for the purposes of valuation as part of the lot; and

- 5 (b) in the case of the division of land by a secondary
plan—where the use of the common property or part of it is,
in the opinion of the Valuer-General, reasonably incidental
to the use of 1 or more of the secondary lots, land tax will
not be levied against the common property, or that part of it,
but the interest in the common property, or that part of it,
(and in the common property of the primary scheme referred
to in paragraph (a) (if any)) that attaches to each secondary
lot will be regarded for the purposes of valuation as part of
10 the lot; and
- (c) in the case of the division of land by a tertiary plan—where
the use of the common property or part of it is, in the
opinion of the Valuer-General, reasonably incidental to the
use of 1 or more of the tertiary lots, land tax will not be
15 levied against the common property, or that part of it, but
the interest in the common property, or that part of it, (and in
the common property of the primary and secondary schemes
referred to in paragraphs (a) and (b) (if any)) that attaches to
each tertiary lot will be regarded for the purposes of
20 valuation as part of the lot.
- (3) If land is divided by a primary, secondary or tertiary plan of
community division under the *Community Titles Act 1996* and the
use of the common property or any part of it is not, in the opinion of
the Valuer-General, reasonably incidental to the use of any of the
community lots, land tax will be levied against the common property
or that part of it and the relevant community corporation is liable for
25 the tax as though it were the owner of the common property.
- (4) If land is divided by a strata plan under the *Strata Titles Act 1988*,
land tax will be assessed against the strata units but not against the
30 common property.

Division 3—Land held on trust

11—Separate assessment of trust land

35 Where a person is the owner of land as trustee of a trust (other than a
trust arising because of a contract to purchase or acquire an estate or
interest in the land), the trustee is to be assessed for land tax on the
whole of the land subject to the trust as if the land were the only land
owned by the trustee.

Note—

40 This means that where an interest in 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) and the trustee is the taxpayer for the land, the
taxable value of the interest in land—

- will be aggregated with the taxable value of other land
subject to the same trust; but

- will not be aggregated with the taxable value of other land owned by the same taxpayer and not subject to the same trust.

12—Land tax for fixed trust if beneficial interests notified to Commissioner

- (1) A trustee of a fixed trust to which land is subject may lodge with the Commissioner a written notice of the beneficial interests in the land.
- (2) A notice must be in the form, and contain the information, determined by the Commissioner.
- (3) A notice takes effect, at the option of the trustee (which must be specified in the notice), for the tax year in which the notice is lodged or for the following year, and remains in force until it is withdrawn by the trustee.
- (4) Despite subsection (1), if a trustee withdraws a notice that is in force under this section in respect of a fixed trust, the trustee cannot lodge another notice under this section in respect of that fixed trust.

Note—

For changes to beneficial interests see section 13D(6)

- (5) If a notice is in force under this section for a fixed trust, the following provisions apply:
 - (a) a beneficiary of the trust is deemed, for the purposes of this Act (other than a residential land exemption), to be the owner (but not to the exclusion of the trustee) of land subject to the trust that bears the same proportion to the whole of the land subject to the trust as the beneficiary's beneficial interest in land subject to the trust bears to the total beneficial interests in land subject to the trust, and is liable for land tax on that land accordingly, together with any other land owned by the beneficiary, assessed in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2;
 - (b) however, if any land—
 - (i) constitutes the principal place of residence for all of the beneficiaries of the trust; and
 - (ii) would, if it were owned by a natural person, be wholly or partially exempted from land tax under a residential land exemption,the beneficiaries are deemed to be the owners of the land for the purposes of the residential land exemptions;
 - (c) the trustee is liable for land tax on the whole of the land subject to the trust assessed, in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2, as if the land were the only land owned by the trustee.

Note—

If the beneficiaries are exempt from land tax under paragraph (b), the trustee will also be exempt because the effect of the residential land exemptions is to render the land exempt from land tax.

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- (6) Subject to subsection (7), there is to be deducted from the land tax payable by a beneficiary under subsection (5)(a) an amount (if any) necessary to avoid double taxation, being the amount determined by the formula:

10 $A \times B$

Where—

A is the proportion of the beneficiary's beneficial interest in the land subject to the trust to the total beneficial interests in land subject to the trust

15 *B* is the total amount of land tax assessed on the trustee under subsection (5)(c).

Note—

20 The deduction is applied to the total land tax assessed for the beneficiary and not just to the land tax assessed for the land subject to the trust.

- (7) If a deduction under subsection (6) would result in a negative amount—
- (a) zero is to be substituted for that amount; and
- 25 (b) the amount of the difference between that amount and zero will not be credited to any liability for land tax under this Act.
- (8) Subsection (5)(a) does not apply to a beneficiary who holds a beneficial interest as trustee of another trust.

Note—

30 Section 13B(1)(a) deems such a person to be the owner of land.

- (9) For the purposes of this section, a reference to a fixed trust does not include a public unit trust scheme.

13—Land tax for unit trust scheme if unitholdings notified to Commissioner

- 35 (1) A trustee of a unit trust scheme to which land is subject may lodge with the Commissioner a written notice of the unitholdings in the scheme.
- (2) A notice must be in the form, and contain the information, determined by the Commissioner.
- 40 (3) A notice takes effect, at the option of the trustee (which must be specified in the notice), for the tax year in which the notice is lodged or for the following year, and remains in force until it is withdrawn by the trustee.

- (4) Despite subsection (1), if a trustee withdraws a notice that is in force under this section in respect of a unit trust scheme, the trustee cannot lodge another notice under this section in respect of that unit trust scheme.

Note—

For changes to unitholdings see section 13D(7)

- (5) If a notice is in force under this section for a unit trust scheme, the following provisions apply:
- (a) a unitholder in the scheme is deemed, for the purposes of this Act (other than a residential land exemption) to be the owner (but not to the exclusion of the trustee) of land subject to the scheme that bears the same proportion to the whole of the land subject to the scheme as the unitholder's unitholding in the scheme bears to the total unitholdings in the scheme, and is liable for land tax on that land accordingly, together with any other land owned by the unitholder, assessed in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2;
- (b) however, if any land—
- (i) constitutes the principal place of residence for all of the unitholders in the scheme; and
- (ii) would, if it were owned by a natural person, be wholly or partially exempted from land tax under a residential land exemption,
- the unitholders are deemed to be the owners of the land for the purposes of the residential land exemptions;
- (c) the trustee is liable for land tax on the whole of the land subject to the trust assessed, in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2, as if the land were the only land owned by the trustee.

Note—

If the unitholders are exempt from land tax under paragraph (b), the trustee will also be exempt because the effect of the residential land exemptions is to render the land exempt from land tax.

- (6) Subject to subsection (7), there is to be deducted from the land tax payable by a unitholder under subsection (5)(a) an amount (if any) necessary to avoid double taxation, being the amount determined by the formula:

$$A \times B$$

Where—

A is the proportion of the unitholder's unitholding in the scheme to the total unitholdings in the scheme

B is the total amount of land tax assessed on the trustee under subsection (5)(c).

Note—

The deduction is applied to the total land tax assessed for the unitholder and not just to the land tax assessed for the land subject to the unit trust scheme.

- (7) If a deduction under subsection (6) would result in a negative amount—
- (a) zero is to be substituted for that amount; and
 - (b) the amount of the difference between that amount and zero will not be credited to any liability for land tax under this Act.
- (8) Subsection (5)(a) does not apply to a unitholder who holds units as trustee of another trust.

Note—

Section 13B(1)(b) deems such a person to be the owner of land.

- (9) For the purposes of this section, a reference to a unit trust scheme does not include a public unit trust scheme.

13A—Land tax for discretionary trust if beneficiary notified to Commissioner

- (1) A trustee of a discretionary trust to which land is subject may, not later than 30 June 2020, lodge with the Commissioner a written notice specifying 1 beneficiary of the trust who, subject to subsections (13) and (14), is to be taken to be the designated beneficiary of the trust for the purposes of this section.
- (2) For the avoidance of doubt, a trust may only have 1 person who is the designated beneficiary for the purposes of this section (and may only substitute the designated beneficiary by notice lodged under subsection (5)).
- (3) A notice takes effect, at the option of the trustee (which must be specified in the notice), for the tax year in which the notice is lodged or for the following year, and remains in force until it is withdrawn by the trustee or until the designated beneficiary notifies the Commissioner, in writing, that they no longer consent to being the designated beneficiary (in which case the notice is deemed to have been withdrawn by the trustee).
- (4) A designated beneficiary may be substituted—
- (a) if the designated beneficiary dies or becomes incapacitated; or
 - (b) if the Commissioner is satisfied that, because of a marriage, de facto relationship or domestic relationship that has broken down irretrievably, the designated beneficiary will no longer be a beneficiary of the trust; or

- (c) in circumstances prescribed by the regulations.
- (5) If the designated beneficiary may be substituted in accordance with subsection (4), a trustee of the trust may lodge with the Commissioner a written notice—
- 5 (a) advising the Commissioner of the grounds on which the designated beneficiary may be substituted; and
- (b) specifying the name of another beneficiary of the trust who is to be taken to be the designated beneficiary for the purposes of this section in place of the beneficiary named in the original notice.
- 10 (6) If a written notice is lodged under subsection (5)—
- (a) subject to subsection (13), the beneficiary of the trust specified in the notice becomes the designated beneficiary of the trust; and
- 15 (b) the notice under subsection (1) is taken to have been varied accordingly.
- (7) A notice under this section must be in the form, and contain the information, determined by the Commissioner.
- (8) Despite subsection (1), if a trustee withdraws a notice that is in force under this section in respect of a discretionary trust, the trustee cannot lodge another notice under this section in respect of that discretionary trust.
- 20 (9) If a notice is in force under this section for a discretionary trust, the following provisions apply:
- 25 (a) the designated beneficiary of the trust is deemed, for the purposes of this Act (other than a residential land exemption), to be the owner (but not to the exclusion of the trustee) of land that was subject to the trust at the prescribed time (*pre-existing trust land*) and is liable for land tax on that land accordingly, together with any other land owned by the beneficiary, assessed in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2;
- 30 (b) however, if any pre-existing trust land—
- 35 (i) constitutes the principal place of residence of the designated beneficiary; and
- (ii) would, if it were owned by a natural person, be wholly or partially exempted from land tax under a residential land exemption,
- the designated beneficiary is deemed to be the owner of the land for the purposes of the residential land exemptions;
- 40 (c) the trustee for the trust is to be assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee—

(i) in the case of pre-existing trust land—in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2; or

(ii) in the case of land that became subject to the trust after the prescribed time (*subsequent trust land*)—in accordance with section 8A(1a) at the rates set out in Schedule 1 Part 3; or

(iii) in the case where land subject to the trust consists of both pre-existing trust land and subsequent trust land—in accordance with the following formula:

$$L = \left[(R_1 \times T) \times \left(\frac{A}{T} \right) \right] + \left[(R_2 \times T) \times \left(\frac{B}{T} \right) \right]$$

Where—

L is the land tax assessed for the trustee

*R*₁ is the applicable rate of land tax set out in Schedule 1 Part 2

*R*₂ is the applicable rate of land tax set out in Schedule 1 Part 3

T is the total taxable value of all taxable land subject to the trust

A is the total taxable value of the pre-existing trust land subject to the trust

B is the total taxable value of the subsequent trust land subject to the trust.

Note—

If the designated beneficiary is exempt from land tax under paragraph (b), the trustee will also be exempt because the effect of the residential land exemptions is to render the land exempt from land tax.

(10) If land subject to the trust constitutes the principal place of residence of the trustee, this section does not affect the application of a residential land exemption to the land.

(11) Any land tax payable by the trustee under subsection (9)(c) in respect of pre-existing trust land is to be deducted from land tax payable by the designated beneficiary.

Note—

The deduction is applied to the total land tax assessed for the designated beneficiary and not just to the land tax assessed for the land subject to the trust.

(12) If a deduction under subsection (11) would result in a negative amount—

(a) zero is to be substituted for that amount; and

(b) the amount of the difference between that amount and zero will not be credited to any liability for land tax under this Act.

5 (13) Subject to subsection (14), a beneficiary of a trust may be the designated beneficiary of the trust for the purposes of this section only if the beneficiary—

(a) is a natural person; and

(b) was a beneficiary of the trust at the prescribed time; and

(c) is over 18 years of age; and

10 (d) has verified by statutory declaration that the beneficiary consents to being the designated beneficiary of the trust.

(14) Where no beneficiaries of a trust are over 18 years of age, a notice under this section may specify that the trustee is to be taken to be the designated beneficiary (as if the trustee were a beneficiary of the trust) but only if the trustee is a natural person.

(15) For the purposes of this section, a reference to a discretionary trust does not include a public unit trust scheme.

(16) In this section—

20 *prescribed time* means midnight on the day on which the *Land Tax (Miscellaneous) Amendment Act 2019* was introduced in the House of Assembly.

13B—Land tax for beneficiary/trustees

(1) A person who—

25 (a) holds a beneficial interest in land subject to a fixed trust in respect of which a notice is in force under section 12 (the *first trust*) as trustee of another trust (the *second trust*) is deemed, for the purposes of this Act other than a residential land exemption, to be the owner of land subject to the first trust that bears the same proportion to the whole of the land subject to the first trust as the person's beneficial interest in the land subject to the first trust bears to the total beneficial interests in land subject to the first trust; and

30 (b) holds units in a unit trust scheme in respect of which a notice is in force under section 13 (the *first scheme*) as trustee of another trust (the *second trust*) is deemed, for the purposes of this Act other than a residential land exemption, to be the owner of land subject to the first scheme that bears the same proportion to the whole of the land subject to the first scheme as the person's unitholding in the first scheme bears to the total unitholdings in the first scheme.

35 (2) For the purposes of this section, a person referred to in subsection (1) is called a *beneficiary/trustee*.

- (3) Subject to subsection (4), there is to be deducted from any land tax payable by a beneficiary/trustee on land that is subject to the second trust an amount (if any) necessary to avoid double taxation, being the amount determined by the formula:

$A \times B$

Where—

A is—

- (a) the proportion of the beneficiary/trustee's beneficial interest in land subject to the first trust to the total beneficial interests in land subject to the first trust; or
- (b) the proportion of the beneficiary/trustee's unitholding in the first scheme to the total unitholdings in the first scheme

B is the total amount of land tax assessed on the trustee of the first trust or the first scheme on the whole of the land subject to the first trust or first scheme.

- (4) If a deduction under subsection (3) would result in a negative amount—
- (a) zero is to be substituted for that amount; and
- (b) the amount of the difference between that amount and zero will not be credited to any liability for land tax under this Act.
- (5) This section does not apply where the first or second trust, or the first scheme, is an excluded trust.

13C—Land tax for excluded trusts and public unit trust schemes

A trustee of an excluded trust or of a public unit trust scheme is liable for land tax on the whole of the land subject to the trust assessed, in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2, as if the land were the only land owned by them as a trustee.

Division 4—Miscellaneous trust land provisions

13D—Requirements for trustees to notify Commissioner

- (1) A person who becomes a trustee of land in South Australia, including a person who is already a trustee of land and acquires further land as trustee, must lodge a written notice with the Commissioner within 1 month after becoming a trustee of the land.
- (2) Subject to subsection (3), a person who, at the time of commencement of this section, is a trustee of land in South Australia and has not notified the Commissioner of that fact for the purposes of this Act, must lodge a written notice with the Commissioner within 1 month after the commencement of this section.

- 5
- (3) If, at the time of commencement of this section, land referred to in subsection (2) is excepted or exempted from land tax by the Commissioner, subsection (2) does not apply to a person who is a trustee of the land but, if circumstances change so that proper grounds for the exception or exemption cease to exist, the person must lodge a written notice with the Commissioner within 1 month after that change in circumstances.
- 10
- (4) A trustee who disposes of any land that is subject to the trust must lodge a written notice with the Commissioner within 1 month after disposing of the land if the disposal does not result in any change in the legal ownership of the land.
- (5) If—
- 15
- (a) a person is trustee of land in South Australia; and
- (b) anything happens that results in the trust to which the land is subject becoming a different category of trust,
- the person must lodge a written notice with the Commissioner within 1 month after the thing happens.
- 20
- (6) A trustee of a fixed trust in respect of which a notice is in force under section 12 must lodge a written notice with the Commissioner within 1 month after any change to the beneficial interests in land subject to the trust.
- 25
- (7) A trustee of a unit trust scheme in respect of which a notice is in force under section 13 must lodge a written notice with the Commissioner within 1 month after any change to the unitholdings in the scheme.
- 30
- (8) A corporation (***corporation 1***) that is the trustee of a fixed trust or a unit trust scheme, must lodge a written notice with the Commissioner within 1 month after another corporation becomes, or other related corporations between them become, the owner of more than 50% of—
- 35
- (a) where corporation 1 is the trustee of a fixed trust—the total beneficial interests in land subject to the trust; or
- (b) where corporation 1 is the trustee of a unit trust scheme—the total number of units held by the unit holders in the scheme,
- (and if, at the time of commencement of this section, a corporation already owns, or related corporations between them already own, more than 50% of the beneficial interests or units (as the case may be), corporation 1 must lodge a written notice with the Commissioner within 1 month after the commencement of this section).
- 40
- (9) A person who was a personal representative of a deceased estate that includes land in South Australia must lodge a written notice with the Commissioner within 1 month after the administration of that estate is completed.
- 45

(10) A trustee of an administration trust must, instead of complying with subsection (1), lodge a written notice with the Commissioner within 1 month after probate has been granted, or letters of administration have been issued, in relation to the deceased estate.

(11) A notice under this section must be in the form, contain the information and be accompanied by any documents or other evidence determined by the Commissioner.

(12) In this section—

category of trust means—

- (a) a fixed trust; or
- (b) a unit trust scheme; or
- (c) a discretionary trust; or
- (d) an excluded trust; or
- (e) a public unit trust scheme.

Division 5—Land held on implied, constructive or resulting trust

13E—Land held on implied, constructive or resulting trust

- (1) A person who is the owner of land as trustee of an implied, constructive or resulting trust is liable for land tax on the land assessed in accordance with section 8A(1) at the rates set out in Schedule 1 Part 2.
- (2) The trustee is to be assessed for land tax on the whole of the land subject to the trust as if the land were the only land owned by the trustee.

13F—Trustee's right to reimbursement under implied, constructive or resulting trust

A trustee of an implied, constructive or resulting trust who pays any land tax assessed on land subject to the trust is entitled to recoup the amount of the tax from any trust property that is subject to the trust.

Division 6—Grouping of related corporations

13G—What are related corporations?

- (1) For the purposes of this Division, corporations are related corporations in any of the circumstances specified in this section.
- (2) Corporations are *related corporations* if 1 of those corporations—
 - (a) controls the composition of the board of the other corporation; or

(b) is in a position to cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the other corporation; or

(c) holds more than 50% of the issued share capital of the other corporation.

(3) Corporations are *related corporations* if the same person has, or the same persons have together, a controlling interest in each of the corporations.

Note—

Controlling interest is defined in section 13H.

(4) Corporations are *related corporations* if—

(a) more than 50% of the issued share capital of 1 of those corporations (*corporation 1*) is held by the other corporation (*corporation 2*) together with the shareholders of corporation 2; and

(b) the percentage of the issued share capital of corporation 2 held by shareholders of corporation 1 is more than the difference between 50% and the percentage of the issued share capital of corporation 1 held by corporation 2.

(5) Corporations are *related corporations* if 1 of the corporations (*corporation 1*) is the trustee of a fixed trust or a unit trust scheme and another corporation owns, or other related corporations between them own, more than 50% of—

(a) where corporation 1 is the trustee of a fixed trust—the total beneficial interests in land subject to the trust; or

(b) where corporation 1 is the trustee of a unit trust scheme—the total number of units held by the unit holders in the scheme.

(6) Corporations are *related corporations* if 1 of those corporations is a related corporation of a corporation of which the other of those corporations is a related corporation (including a corporation that is a related corporation of the other of those corporations because of 1 or more other applications of this subsection).

Example—

If A and B are related corporations and B and C are related corporations, then by virtue of this provision A and C will also be related corporations because they are both related to B.

13H—What is a controlling interest in a corporation?

For the purposes of this Division, a person has, or persons have together, a controlling interest in a corporation if—

(a) that person, or those persons acting together, can control the composition of the board of the corporation; or

- (b) that person is, or those persons acting together are, in a position to cast or control the casting of more than 50% of the maximum number of votes that might be cast at a general meeting of the corporation; or
- (c) that person holds, or those persons acting together hold, more than 50% of the issued share capital of the corporation.

13I—Further provisions for determining whether corporations are related corporations

(1) In determining whether corporations are related corporations, the following provisions apply:

- (a) corporations may be related corporations whether or not they own land in South Australia;
- (b) a reference to the issued share capital of a corporation does not include a reference to any part of it that carries no right to participate beyond a specified amount in a distribution of either profits or capital;
- (c) subject to paragraph (d), (e), (f) and (g), any shares held or power exercisable by a person or corporation as a trustee or nominee for another person or corporation are taken to be also held or exercisable by the other person or corporation;
- (d) any shares held or power exercisable by an excluded trust must be disregarded;
- (e) any shares held or power exercisable by a person or corporation by virtue of the provisions of any debentures of another corporation, or of a trust deed for securing any issue of any such debentures, must be disregarded;
- (f) any shares held or power exercisable by, or by a nominee for, a person or corporation (not being held or exercisable as mentioned in paragraph (e)) are taken to be not held or exercisable by that person or corporation if—
- (i) the ordinary business of that person or corporation includes the lending of money; and
- (ii) the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with an associate of that person or corporation within the meaning of the *Corporations Act 2001* of the Commonwealth;
- (g) if a trustee holds controlling interests in 2 or more corporations on behalf of different trusts, those corporations are not related to each other only because of that control;

(h) the composition of a corporation's board is taken to be controlled by a person or another corporation if the person or other corporation, by the exercise of a power exercisable whether or not with the consent or concurrence of any other person, can appoint or remove all or a majority of the members of the board.

(2) Subsection (1)(h) does not limit the circumstances in which the composition of a corporation's board is to be taken to be controlled by a person or another corporation.

13J—Grouping of related corporations

(1) Related corporations that own land are to be jointly assessed for land tax on the land as if it were owned by a single corporation.

(2) Related corporations are jointly and severally liable for the land tax.

(3) Section 42 of the *Taxation Administration Act 1996* applies to the liability under this section and, accordingly, the Commissioner may issue notices of assessment for the land tax—

(a) to the related corporations jointly; or

(b) to the related corporations separately; or

(c) to any 2 or more of the related corporations jointly and the remainder separately.

(4) If 2 or more corporations are issued a notice of assessment jointly under subsection (3), those corporations will, for the purposes of that notice of assessment, be deemed to be a single corporation.

(5) A corporation that is a related corporation of another corporation because of the operation of section 13G(5) may apply to the Commissioner to be exempted from the application of this Division and to instead be treated as a single corporation for the purposes of assessment of land tax in relation to land held by the corporation.

(6) The Commissioner may only grant an application under subsection (5) if the Commissioner is satisfied—

(a) that the land is being held solely for the purpose of being developed either as a residential development of more than 10 allotments or lots or as a commercial or industrial development; and

(b) as to any other matters prescribed by the regulations.

(7) Subject to subsection (9), an exemption granted on an application under subsection (5) will be for an initial term specified by the Commissioner in the instrument of exemption (which will be based on the expected development period but may not exceed a period of 5 years).

(8) The initial term of an exemption may, on application to the Commissioner, be extended for a further period specified by the Commissioner if the Commissioner is satisfied that the development of the land is occurring over a reasonable period in the circumstances.

(9) An exemption will cease if the Commissioner determines that —

- (a) the development has been substantially completed; or
- (b) the development has not been substantially commenced within the period of 2 years after the grant of the application (or such longer period as the Commissioner may allow).

(10) An application under subsection (5) or (8) must be in the form, and contain the information, determined by the Commissioner.

(11) For the avoidance of doubt, the Commissioner may only treat a related corporation as if it were a single corporation if an exemption has been granted on an application under subsection (5).

14—Insertion of heading

Before section 14 insert:

Part 4—Persons liable to land tax

15—Insertion of heading

Before section 18 insert:

Part 5—Enforcement

16—Amendment of section 19—Time for payment of tax

(1) Section 19(2)(a)—delete paragraph (a) and substitute:

(a) a person who otherwise would have been served with an assessment for—

(i) the payment of an amount of land tax; or

(ii) the correct amount of land tax,

has not been served with such an assessment or has been served with an assessment for an incorrect amount (as the case requires) on account of—

(iii) 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

(iv) receiving a waiver or refund that should not have been given; or

(v) the liability of a person who owns land as trustee of a trust not being assessed in accordance with the applicable table under Schedule 1; or

(vi) an owner's total interest in land not being included in an assessment in accordance with section 9(6); or

(vii) corporations not being grouped as related corporations in accordance with section 13G(5); and

5 (2) Section 19(2)(b)—after "assessment" insert:

, or to serve an assessment for the correct amount of land tax,

(3) Section 19(2)(b)(ii)—after "information" insert:

or a notification

(4) Section 19(3)(a)—delete paragraph (a) and substitute:

10 (a) the tax default will be taken to have occurred—

(i) in the case of a default resulting in a failure to serve an assessment for the payment of an amount of land tax on account of a matter referred to in subsection (2)(a)(iii) or (iv)—on the day on which the exemption applied from or the waiver or refund was given (as the case may be); or

15

(ii) in any other case—on the day on which the liability to an amount of land tax should have been raised; and

17—Insertion of heading

Before section 25 insert:

20

Part 6—Miscellaneous

18—Insertion of Schedule 1

After section 26 insert:

Schedule 1—Calculation of land tax (tables)

Note—

25

For Threshold values see section 8A.

Part 1—Interpretation

1—Interpretation

In this Schedule—

30

LT (TA) means the land tax payable with respect to land with a taxable value equal to Threshold A;

LT (TB) means the land tax payable with respect to land with a taxable value equal to Threshold B;

LT (TC) means the land tax payable with respect to land with a taxable value equal to Threshold C;

35

LT (TD) means the land tax payable with respect to land with a taxable value equal to Threshold D.

Part 2—Scales of land tax

2—2020/2021 and subsequent years

Land tax for the 2020/2021 financial year and for each subsequent financial year is calculated on the basis of the taxable value of the land in accordance with the following table:

5

Taxable value of land	Amount of tax
Not exceeding Threshold A	Nil
Exceeding Threshold A but not exceeding Threshold B	\$0.50 for every \$100 or fractional part of \$100 over Threshold A
Exceeding Threshold B but not exceeding Threshold C	LT (TB) plus \$1.65 for every \$100 or fractional part of \$100 over Threshold B
Exceeding Threshold C but not exceeding Threshold D	LT (TC) plus \$2.00 for every \$100 or fractional part of \$100 over Threshold C
Exceeding Threshold D	LT (TD) plus \$2.40 for every \$100 or fractional part of \$100 over Threshold D

Part 3—Scales of land tax for trusts

3—2020/2021 and subsequent years

Land tax for the 2020/2021 financial year and for each subsequent financial year is calculated on the basis of the taxable value of the land in accordance with the following table:

10

Taxable value of land	Amount of tax
Not exceeding \$25 000	Nil
Exceeding \$25 000 but not exceeding Threshold A	\$125 plus \$0.50 for every \$100 or fractional part of \$100 over \$25 000
Exceeding Threshold A but not exceeding Threshold B	LT (TA) plus \$1.00 for every \$100 or fractional part of \$100 over Threshold A
Exceeding Threshold B but not exceeding Threshold C	LT (TB) plus \$2.15 for every \$100 or fractional part of \$100 over Threshold B
Exceeding Threshold C but not exceeding Threshold D	LT (TC) plus \$2.40 for every \$100 or fractional part of \$100 over Threshold C
Exceeding Threshold D	LT (TD) plus \$2.40 for every \$100 or fractional part of \$100 over Threshold D

19—Review

- (1) The Treasurer must cause a review of the operation of the amendments to the *Land Tax Act 1936* effected by this Act and by the *Statutes Amendment and Repeal (Budget Measures) Act 2018* to be conducted by a person independent of the government.
- 5 (2) A report on the review conducted under this section must be prepared and submitted to the Treasurer on or before 31 December 2023.
- (3) The Treasurer must cause a copy of the report submitted under subsection (2) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

Schedule 1—Transitional provisions etc

10 Part 1—Provisions commencing on assent

1—Interpretation

In this Schedule—

Commissioner has the same meaning as in the principal Act;

principal Act means the *Land Tax Act 1936*.

15 2—Notices for the purposes of new Part 3 Division 3 of principal Act

Any notice that may be lodged with the Commissioner under section 12, 13 or 13A of the principal Act as in force after the commencement of Part 2 of this Act may be lodged with the Commissioner after the commencement of this clause (for the purposes of the 2020/2021 financial year) as if Part 2 of this Act had already
20 commenced (and such a notice must be in the form, and contain the information, determined by the Commissioner).

Part 2—Provision commencing on 30 June 2020

3—Defined rural areas and defined shack sites

- 25 (1) A proclamation in force under section 9 of the principal Act immediately before the commencement of section 5(6) of this Act continues in force as if it were a proclamation made pursuant to the definition of *defined rural area* in section 2(1) of the principal Act (as in force after the commencement of section 5(6)).
- 30 (2) A proclamation in force under section 10 of the principal Act immediately before the commencement of section 5(7) of this Act continues in force as if it were a proclamation made pursuant to the definition of *defined shack-site area* in section 2(1) of the principal Act (as in force after the commencement of section 5(7)).