

House of Assembly—No 45

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South Australia

**Stamp Duties (Miscellaneous) Amendment Bill
2004**

A BILL FOR

An Act to amend the *Stamp Duties Act 1923*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Stamp Duties Act 1923*

- 4 Amendment of section 42A—Interpretation
 - 5 Amendment of section 42B—Duty on applications for motor vehicle registration or transfer of registration
 - 6 Insertion of section 42CA
42CA Refund of duty on eligibility for reduced fee
 - 7 Substitution of section 71CA
71CA Exemption from duty in respect of Family Law instruments
 - 8 Amendment of section 71CB—Exemption from duty in respect of certain transfers between spouses or former spouses
 - 9 Insertion of section 71CBA
71CBA Exemption from duty in respect of cohabitation agreements or property adjustment orders
 - 10 Amendment of Schedule 2—Stamp duties and exemptions
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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 *Stamp Duties (Miscellaneous) Amendment Act 2004*.

2—Commencement

- 5 (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.
- (2) Section 10(8) will come into operation on assent.

3—Amendment provisions

- 10 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 *Stamp Duties Act 1923*

4—Amendment of section 42A—Interpretation

Section 42A—after its present contents (now to be designated as subsection (1)) insert:

- 5 (2) For the purposes of this Act, if an applicant for registration, or
transfer of registration, of a motor vehicle makes the application by a
means of electronic communication approved by the Registrar of
Motor Vehicles, the electronic communication is taken to be an
instrument executed by the applicant and is chargeable with duty as
10 an application for registration, or transfer of registration, of a motor
vehicle (as appropriate).

5—Amendment of section 42B—Duty on applications for motor vehicle registration or transfer of registration

- (1) Section 42B(1a)—redesignate subsection (1a) as subsection (1d)
- 15 (2) Section 42B(1aa)—delete subsection (1aa) and substitute:
- (1a) An applicant for registration, or transfer of registration, of a motor
vehicle must state in the application the value of the motor vehicle as
at the date of the application.
- (1b) If the Commissioner is not satisfied that the amount stated as the
20 value of a motor vehicle in an application for registration, or transfer
of registration, of the vehicle reflects the market value of the vehicle,
the Commissioner may cause a valuation of the vehicle to be made
by a person appointed by the Commissioner and may assess the duty
payable by reference to the valuation.
- (1c) The Commissioner may, having regard to the merits of the case,
25 charge the whole or part of the expenses of, or incidental to, the
making of a valuation under subsection (1b) to the person liable to
pay the duty and may recover the amount charged as a debt due to
the Crown.
- 30 (3) Section 42B(2)—delete "subsection (1a)" and substitute:
 subsection (1d)
- (4) Section 42B(2a)—delete "The duty paid by any person" and substitute:
 The total amount paid (including stamp duty and any registration fee or
premium payable under the *Motor Vehicles Act 1959*)
- 35 (5) Section 42B—after subsection (2a) insert:
- (2b) Section 6 does not apply in relation to an application to register a
motor vehicle or an application to transfer the registration of a motor
vehicle.

6—Insertion of section 42CA

After section 42C insert:

42CA—Refund of duty on eligibility for reduced fee

5 If, on application, the Commissioner is satisfied, in relation to the registration of a motor vehicle, that the owner of the vehicle has become entitled to an exemption from, or reduction of, registration fees payable under the *Motor Vehicles Act 1959* at any time during the period for which the vehicle is registered, the Commissioner has a discretion to refund to the owner of the vehicle such part of the component of the duty paid under section 42B(1d) on the application for the registration of the vehicle in respect of a policy of insurance as the Commissioner thinks just in the circumstances.

7—Substitution of section 71CA

Section 71CA—delete the section and substitute:

71CA—Exemption from duty in respect of Family Law instruments

(1) In this section—

Family Law agreement means—

- (a) a maintenance agreement; or
- (b) a financial agreement; or
- (c) a splitting agreement;

Family Law order means an order of a court under Part VIII, VIIIA or VIIIB of the *Family Law Act 1975* of the Commonwealth;

flag lifting agreement has the same meaning as in Part VIIIB of the *Family Law Act 1975* of the Commonwealth;

financial agreement means a financial agreement made under section 90B, 90C or 90D of the *Family Law Act 1975* of the Commonwealth that, under that Act, is binding on the parties to the agreement;

maintenance agreement means—

- (a) a maintenance agreement approved by a court by order under section 87 of the *Family Law Act 1975* of the Commonwealth; or
- (b) a maintenance agreement registered in a court under section 86 of the *Family Law Act 1975* of the Commonwealth or under regulations made pursuant to section 89 of that Act;

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

splitting agreement means—

- (a) a flag lifting agreement; or

(b) a superannuation agreement,

that has effect under Part VIII B of the *Family Law Act 1975* of the Commonwealth;

superannuation agreement has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth;

superannuation fund means—

- (a) a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or
- (b) an approved deposit fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or
- (c) a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth; or
- (d) an account within the meaning of the *Small Superannuation Accounts Act 1995* of the Commonwealth;

trustee of a superannuation fund means—

- (a) if the fund has a trustee (within the ordinary meaning of that word)—the trustee of the fund; or
- (b) if paragraph (a) does not apply and a person is identified in accordance with the regulations as the trustee of a fund for the purposes of this definition—the person identified in accordance with the regulations; or
- (c) in any other case—the person who manages the fund,

and includes any other person who has power to make payments to the members of a superannuation scheme or plan that is constituted by, or incorporates, a superannuation fund.

(2) The following instruments are exempt from stamp duty:

- (a) a Family Law agreement;
- (b) a deed or other instrument (including an application to transfer registration of a motor vehicle) to give effect to, or consequential on—
 - (i) a Family Law agreement; or
 - (ii) a Family Law order,if—
 - (iii) the marriage to which the agreement or order relates has been dissolved or annulled, or the Commissioner is satisfied that the marriage to which the agreement or order relates has broken down irretrievably; and

(iv) the instrument—

(A) provides for the disposition of property between the parties to the marriage (or former marriage) and no other person, other than a trustee of a superannuation fund (if relevant), takes or is entitled to take an interest in property in pursuance of the instrument; or

(B) in the case of an application to transfer registration of a motor vehicle—is consequential on a disposition of property between the parties to the marriage (or former marriage); and

(v) at the time of the execution of the instrument the parties were, or had been, married to each other;

(c) a deed or other instrument executed by a trustee of a superannuation fund to give effect to, or consequential on—

(i) a Family Law agreement; or

(ii) a Family Law order; or

(iii) the provisions of any Act or law (including an Act or subordinate legislation of the Commonwealth) relating to the transfer or disposition of property or any entitlements on account of a Family Law agreement or Family Law order.

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

(a) the marriage of the 2 persons had not been dissolved or annulled; and

(b) the Commissioner was not satisfied that the marriage of the 2 persons had broken down irretrievably,

a party to the marriage who paid stamp duty on the instrument is entitled to a refund of the duty—

(c) if the marriage is subsequently dissolved or annulled; or

(d) if the Commissioner is subsequently satisfied that the marriage has broken down irretrievably.

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

- (5) This section, as re-enacted by the *Stamp Duties (Miscellaneous) Amendment Act 2004*, applies—
- (a) in relation to Family Law agreements—both prospectively and retrospectively;
 - (b) in relation to any other kind of instrument—to instruments executed after the commencement of that Act.

8—Amendment of section 71CB—Exemption from duty in respect of certain transfers between spouses or former spouses

Section 71CB(2)—delete subsection (2) and substitute:

- (2) Subject to subsection (3), an instrument of which the sole effect is—
- (a) to transfer—
 - (i) an interest in the matrimonial home; or
 - (ii) registration of a motor vehicle,between parties who are spouses or former spouses; or
 - (b) to register a motor vehicle in the name of a person whose spouse or former spouse was the last registered owner of the vehicle (either alone or jointly with the person),
- is exempt from stamp duty.

9—Insertion of section 71CBA

After section 71CB insert:

71CBA—Exemption from duty in respect of cohabitation agreements or property adjustment orders

- (1) In this section—

certificated cohabitation agreement means a cohabitation agreement that is a certificated agreement within the meaning of the *De Facto Relationships Act 1996*;

cohabitation agreement means a cohabitation agreement under Part 2 of the *De Facto Relationships Act 1996*;

property adjustment order means an order of a court under Part 3 or 4 of the *De Facto Relationships Act 1996*;

superannuation fund means—

- (a) a superannuation fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or
- (b) an approved deposit fund within the meaning of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or

(c) a retirement savings account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth; or

(d) an account within the meaning of the *Small Superannuation Accounts Act 1995* of the Commonwealth;

trustee of a superannuation fund means—

(a) if the fund has a trustee (within the ordinary meaning of that word)—the trustee of the fund; or

(b) if paragraph (a) does not apply and a person is identified in accordance with the regulations as the trustee of a fund for the purposes of this definition—the person identified in accordance with the regulations; or

(c) in any other case—the person who manages the fund,

and includes any other person who has power to make payments to the members of a superannuation scheme or plan that is constituted by, or incorporates, a superannuation fund.

(2) The following instruments are exempt from stamp duty:

(a) a certificated cohabitation agreement;

(b) a deed or other instrument (including an application to transfer registration of a motor vehicle) to give effect to, or consequential on—

(i) a certificated cohabitation agreement; or

(ii) a property adjustment order,

if—

(iii) the Commissioner is satisfied—

(A) that the *de facto* relationship to which the agreement or order relates has broken down irretrievably; and

(B) that the *de facto* partners cohabited continuously as *de facto* husband and wife for at least 3 years; and

(iv) the instrument—

(A) provides for the disposition of property between the parties to the former *de facto* relationship and no other person, other than a trustee of a superannuation fund (if relevant), takes or is entitled to take an interest in property in pursuance of the instrument; or

- 5 (B) in the case of an application to transfer registration of a motor vehicle—is consequential on a disposition of property between the parties to the former *de facto* relationship; and
- (v) at the time of the execution of the instrument the parties were, or had been, *de facto* partners;
- (c) a deed or other instrument executed by the trustee of a superannuation fund to give effect to, or consequential on—
- 10 (i) a certificated cohabitation agreement; or
- (ii) a property adjustment order.
- (3) Where an instrument was not exempt from stamp duty under this section by reason only that the Commissioner was not satisfied that a *de facto* relationship had broken down irretrievably, a party to the relationship who paid stamp duty on the instrument is entitled to a refund of duty if the Commissioner is subsequently satisfied that the *de facto* relationship has broken down irretrievably.
- 15 (4) The Commissioner may require a party to an instrument in respect of which an exemption is claimed under this section to provide such evidence (verified, if the Commissioner so requires, by statutory declaration) as the Commissioner may require for the purpose of determining whether the instrument is exempt from duty under this section.
- (5) This section applies—
- 25 (a) in relation to a certificated cohabitation agreement—both prospectively and retrospectively;
- (b) in relation to any other kind of instrument—to instruments executed after the commencement of this section.

10—Amendment of Schedule 2—Stamp duties and exemptions

- 30 (1) Schedule 2, clause 2(2), exemption 6—delete the exemption and substitute:
- 6 Any application to register a motor vehicle or to transfer the registration of a motor vehicle to the extent that *ad valorem* stamp duty has already been paid, or is payable, on another instrument by which or by virtue of which the property in the motor vehicle was, or will be, legally or equitably transferred to, or vested in, the applicant.
- 35 (2) Schedule 2, clause 2(2), exemption 10—delete "*Local Government Act 1934* or a controlling authority as defined in Part 13 of that Act" and substitute:
- Local Government Act 1999* or a subsidiary of a council under that Act
- (3) Schedule 2, clause 2(2), exemption 11—delete the exemption and substitute:
- 40 11 Any application to register a motor vehicle in, or transfer the registration of a motor vehicle to, the name of a person who—

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- (a) is entitled under section 38 of the *Motor Vehicles Act 1959* to have the motor vehicle registered at a reduced registration fee; and
- (b) is not enjoying the benefit of this exemption in respect of any other motor vehicle currently owned by the person.
- (4) Schedule 2, clause 2(2), exemption 15—after "where" insert:
- the vehicle was not, immediately before the date on which the application is made, conditionally registered under section 25 of the *Motor Vehicles Act 1959* and
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- (5) Schedule 2, clause 2(2), exemption 18—delete "farm machinery" and substitute:
- agricultural machinery
- (6) Schedule 2, clause 2(4), exemption 5—delete "*Local Government Act 1934* or a controlling authority as defined in Part 13 of that Act" and substitute:
- Local Government Act 1999* or a subsidiary of a council under that Act
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- (7) Schedule 2, clause 2(4), exemption 6—delete the exemption and substitute:
- 6 Policy of insurance where the application for registration is made by a person who—
- (a) is entitled under section 38 of the *Motor Vehicles Act 1959* to have the motor vehicle registered at a reduced registration fee; and
- 20
- (b) is not enjoying the benefit of this exemption in respect of any other motor vehicle currently owned by the person.
- (8) Schedule 2, clause 3(2), exemption 2—delete "financial product" and substitute:
- security of a similar kind