

South Australia

Statutes Amendment and Repeal (Taxation Administration) Bill 2008

A BILL FOR

An Act to amend the *Emergency Services Funding Act 1998*, the *Land Tax Act 1936*, the *Pay-roll Tax Act 1971*, the *Stamp Duties Act 1923* and the *Taxation Administration Act 1996* and to repeal the *Taxation (Reciprocal Powers) Act 1989*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment and Repeal (Taxation Administration) Act 2008*.

5 **2—Commencement**

- (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act.

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 *Emergency Services Funding Act 1998*

4—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *the area factor* insert:

15 *authorised officer* means a person who is an authorised officer for the purposes of the taxation laws under the *Taxation Administration Act 1996*;

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

- (2) Section 3(1)—after the definition of *motor vehicle* insert:

non-reviewable decision—see section 4;

5—Insertion of section 4

After section 3 insert:

4—Meaning of "non-reviewable" in relation to certain decisions

If a provision of this Act provides that a decision is a *non-reviewable decision*, no court or administrative review body has the jurisdiction or power to entertain any question as to the validity or correctness of the decision.

6—Insertion of heading to Part 3 Division 1 Subdivision 1

Part 3 Division 1—before section 5 insert:

Subdivision 1—Imposition of levy

7—Amendment of section 5—Land that is subject to levy

- (1) Section 5(1)—delete "Minister" and substitute:

Commissioner

- (2) Section 5(2a)(c)—delete "*Local Government Act 1934*" and substitute:

Local Government Act 1999

8—Amendment of section 5A—Application for aggregation of non contiguous land

- (1) Section 5A—delete "Minister" wherever occurring and substitute in each case:

Commissioner

- (2) Section 5A—delete "Minister's" wherever occurring and substitute in each case:

Commissioner's

- (3) Section 5A(2)(b)—delete "(an application in respect of the 1999/2000 financial year must be received on or before 30 November 1999)"

9—Amendment of section 8—Land uses

Section 8(5), definition of *the Local Government Regulations*—delete the definition and substitute:

Local Government Regulations means the *Local Government (General) Regulations 1999*;

10—Amendment of section 12—Commissioner to keep assessment book

Section 12—delete "Minister" wherever occurring and substitute in each case:

Commissioner

11—Amendment of section 13—Alterations to assessment book

Section 13—delete "Minister" wherever occurring and substitute in each case:

Commissioner

12—Amendment of section 15—Liability for levy

5 Section 15(1)—delete "Minister" and substitute:

Commissioner

13—Amendment of section 16—Notice of levy

(1) Section 16—delete "Minister" wherever occurring and substitute in each case:

Commissioner

10 (2) Section 16(2)—after paragraph (d) insert:

(da) if the person liable to pay the levy is also liable to pay interest or a penalty levy under Subdivision 3—the amount of the interest or penalty levy; and

14—Substitution of section 17

15 Section 17—delete the section and substitute:

17—Refund resulting from assessment

If the result of an assessment of a person's liability to pay a levy or other amount under this Division is that the person has made an overpayment, the Commissioner must, subject to Subdivision 2, refund the amount overpaid.

17A—Cancellation of assessment

If the Commissioner is satisfied that—

- 25 (a) an assessment of a person's liability to pay a levy or other amount under this Division has been made in error; and
- (b) no amount has been paid as required under the assessment, the Commissioner may cancel the assessment.

17B—Payment of levy into Fund

- 30 (1) Subject to subsection (2), the Commissioner must pay money received in payment of the levy, a penalty levy or interest under this Division into the Fund.
- (2) Money received in payment of the levy, a penalty levy or interest may, instead of being paid into the Fund, be applied towards payment of any refund required to be paid under this Division.

Subdivision 2—Refunds

17C—Right to apply for refund

- 5
- (1) A person may make application for a refund of an amount that has been overpaid by the person under this Division.
- (2) An application for a refund cannot be made under this section more than 5 years after the person made the payment to the Commissioner in respect of which the refund is sought.
- 10
- (3) A determination under this section as to whether there has been an overpayment, or as to the amount of an overpayment, is to be made in accordance with the legal interpretations and assessment practices generally applied by the Commissioner in relation to matters of the kind in question at the time the person made the payment in respect of which the refund is sought except to the extent that any departure from those interpretations and practices is required by legislative change made after the payment.
- 15
- (4) If the result of determination of an application under this section is that the applicant has made an overpayment, the Commissioner must, subject to the other provisions of this Subdivision, refund the amount overpaid.

17D—Form of application for refund

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An application for a refund must be made to the Commissioner in a form approved by the Commissioner.

17E—Commissioner may refuse to determine application until information etc provided

- 25
- (1) If the Commissioner has, under Subdivision 5, made a requirement of an applicant for a refund for the purposes of determining the application, the Commissioner may refuse to determine the application until the applicant complies with the requirement.
- (2) A refusal under subsection (1) is a non-reviewable decision.

17F—Offset of refund against other liability

- 30
- (1) The Commissioner may apply the whole or part of an amount that would otherwise be required to be refunded to meet any amount payable by the applicant under this Division.
- 35
- (2) The whole or part of an amount that would otherwise be required to be refunded may be credited towards a person's future liability under this Division, but only with the person's consent.
- (3) A decision under this section is a non-reviewable decision.

17G—Windfalls—refusal of refund

- 40
- (1) The Commissioner may refuse to make a refund if—
- (a) the amount of the levy, penalty levy or interest to be refunded has been passed on to another person; and

- (b) the applicant has not reimbursed that other person in an amount equivalent to the amount passed on to that other person.
- (2) A decision under subsection (1) is a non-reviewable decision.

Subdivision 3—Interest and penalty levy

17H—Definition for Subdivision

In this Subdivision—

deliberate default means a default to which this Subdivision applies that wholly or partly consists of or results from a deliberate act or omission by the person liable to pay the levy or a person acting on his or her behalf and includes a default to which this Subdivision applies where the person liable to pay the levy, or a person acting on his or her behalf, deliberately failed to provide information to the Commissioner, or deliberately misinformed or misled the Commissioner, in relation to the person's liability to pay the levy in contravention of this Act.

17I—Defaults to which Subdivision applies

This Subdivision applies to a default consisting of a failure by a person to pay, in accordance with this Act, the whole or part of a levy that the person is liable to pay under this Division.

17J—Interest

- (1) If—
 - (a) a default to which this Subdivision applies occurs; or
 - (b) a person fails to pay, in accordance with this Act, the whole or part of a penalty levy payable in respect of a default to which this Subdivision applies,the person in default is liable to pay interest on the amount of the levy or penalty levy unpaid at the interest rate from time to time applying under this section.
- (2) Interest is not payable under subsection (1) in respect of a failure to pay interest under this section.
- (3) Subject to subsection (4), interest accrues on a daily basis—
 - (a) on the amount of a levy unpaid—from the date stated for payment of the levy in the notice under section 16; and
 - (b) on the amount of a penalty levy unpaid—from the date stated for payment of the penalty levy in the notice under section 17M.
- (4) If the amount of interest payable for the time being would, apart from this subsection, be less than \$20, no interest is payable.

- 5
- (5) If judgment is given by or entered in a court for an amount that represents or includes the whole or part of an unpaid levy or an unpaid penalty levy, the interest rate applying under this section continues to apply in relation to the amount of the levy or penalty levy unpaid, while it remains unpaid, to the exclusion of any other interest rate.
- (6) The Commissioner may, at the Commissioner's discretion, remit interest otherwise payable by any amount.
- (7) A decision under subsection (6) is a non-reviewable decision.
- 10 (8) The interest rate that applies under this section is the sum of—
- (a) the market rate (within the meaning of section 26 of the *Taxation Administration Act 1996*); and
 - (b) 8% per annum.

17K—Penalty levy

- 15
- (1) If a default to which this Subdivision applies occurs, the person in default is liable to pay a penalty levy in addition to the amount of the unpaid levy.
- (2) However, if the Commissioner is satisfied that the default was not a deliberate default and did not result, wholly or partly, from a failure by the person, or a person acting on his or her behalf, to take reasonable care to comply with the requirements of this Act, a penalty levy is not payable.
- 20
- (3) If the amount of a penalty levy payable in respect of the default would, apart from this subsection, be less than \$20, no penalty levy is payable in respect of the default.
- 25
- (4) The Commissioner may, at the Commissioner's discretion, remit a penalty levy otherwise payable by any amount.
- (5) A decision under subsection (4) is a non-reviewable decision.
- (6) A penalty levy imposed under this Subdivision is in addition to interest.
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17L—Amount of penalty levy

The amount of a penalty levy payable in respect of a default to which this Subdivision applies is—

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- (a) in the case of a deliberate default—75% of the amount of the levy unpaid; or
 - (b) in any other case—25% of the amount of the levy unpaid.

17M—Notification of penalty levy and interest and time for payment

- 40
- (1) The Commissioner must serve notice of any interest accrued and penalty levy payable in respect of a default to which this Subdivision applies on the person liable to pay the interest or penalty levy.

- (2) A penalty levy must be paid by the person within the period specified for that purpose in the notice under subsection (1).
- (3) If the person fails to pay the whole or a part of a penalty levy within the specified period, the Commissioner may serve on the person notice of any interest accrued in respect of the failure.

Subdivision 4—Collection of levy

17N—Definition for Subdivision

In this Subdivision—

levy includes—

- (a) a penalty levy; and
- (b) interest in relation to the levy or a penalty levy.

17O—Recovery of levy as debt

The Commissioner may recover the amount of an unpaid levy as a debt from the person liable to pay the amount under this Division.

17P—Joint and several liability

- (1) If 2 or more persons are jointly or severally liable to pay a levy under this Division, the Commissioner may recover the whole of the levy from them, or any of them, or any 1 of them.
- (2) Nothing in this Act prevents a person who—
- (a) is jointly or severally liable to pay an amount under this Division; and
- (b) pays the amount to the Commissioner,
- from recovering a contribution from another person who is liable to pay the whole or part of that amount.

17Q—Collection of levy from third parties

- (1) The Commissioner may require any of the following persons instead of the person in default to pay a levy that is payable under this Division but remains unpaid (including a judgment debt and costs in respect of such an amount):
- (a) a person from whom money is due or accruing or may become due to the person in default;
- (b) a person who holds or may subsequently hold money for or on account of the person in default;
- (c) a person who holds or may subsequently hold money on account of some other person for payment to the person in default;
- (d) a person having authority from some other person to pay money to the person in default.

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- (2) The Commissioner's requirement is to be made by written notice served on the person.
 - (3) A copy of the notice must also be served on the person in default.
 - (4) The amount that the person is required by the notice to pay to the Commissioner is so much of the money referred to in subsection (1) as is sufficient to pay the levy remaining unpaid, or, if the money is insufficient, all of it.
 - (5) The money must be paid to the Commissioner on receipt of the notice, or when the money is held by the person, or after such period (if any) as may be specified by the Commissioner, whichever is the later or latest.
 - (6) A person subject to a requirement of the Commissioner under this section must comply with the requirement.
Maximum penalty: \$10 000.
 - (7) A person who makes a payment in accordance with this section is to be taken to be acting under the authority of the person in default and of all other persons concerned and is entitled to indemnity from the person in default in respect of the payment.
 - (8) If, after a person is given a notice under this section by the Commissioner, the whole or a part of the amount that the person is required by the notice to pay to the Commissioner is paid by another person, the Commissioner must, by written notice, advise the person of the payment and cancel the prior notice or amend it accordingly.
 - (9) An amount that is required to be paid by a person under this section but remains unpaid may be recovered by the Commissioner from the person as a debt.

17R—Duties of agents, trustees etc

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- (1) If—
 - (a) a person has possession, control or management of a business or property of another person as an agent or trustee or in any other capacity; and
 - (b) obligations under this Division (whether as to the payment of a levy or otherwise) remain undischarged by the other person or will arise in relation to the business or property,the following provisions apply:
 - (c) the person must, as soon as and so far as is practicable, ensure that the obligations of the other person under this Division that remain undischarged are discharged;
 - (d) the person must, as soon as and so far as is practicable, ensure that all further obligations that arise under this Division in relation to the business or property are discharged while the person continues to have possession, control or management of the business or property;

5 (e) for those purposes the person must set aside (and, so far as necessary, liquidate) assets of the other person (or the other person's estate) to the value of any levy that has become or becomes payable and employ those assets in payment of the levy;

10 (f) if the person fails, without the Commissioner's written permission, to set aside, liquidate and employ sufficient assets for that purpose, the Commissioner may recover from the person as a debt the whole or a part of an amount that is assessed as being payable under this Division in relation to the business or property and remains unpaid, but the person will not otherwise be personally liable for the payment of the levy;

15 (g) the person is entitled to be indemnified by the other person (or out of the other person's estate) in respect of payments made or action taken under this section;

20 (h) nothing prevents the making of a payment to the person out of the assets, in priority to a levy, of any reasonable remuneration, charges and expenses to which the person would, apart from this section, be entitled in respect of the performance of the person's functions.

(2) A person who contravenes a provision of subsection (1) is guilty of an offence.

Maximum penalty: \$10 000.

25 **15—Amendment of section 18—Levy first charge on land**

Section 18(1)—delete "and unpaid interest in relation to the levy are" and substitute:
is

16—Repeal of section 19

Section 19—delete the section

30 **17—Amendment of section 20—Sale of land for non-payment of levy**

(1) Section 20—delete "Minister" wherever occurring and substitute in each case:

Commissioner

(2) Section 20(1)—delete ", or interest in relation to a levy,"

35 **18—Amendment of section 21—Recovery of levy not affected by objection, review or appeal**

(1) Section 21(1)—delete "Minister" and substitute:

Commissioner

(2) Section 21(2)(c)—delete paragraph (c) and substitute:

- 5 (c) interest accrues on a daily basis on an amount to be refunded under paragraph (a) from the day on which the levy to which the objection, review or appeal relates was assessed as being payable or from the day on which the levy was paid, whichever is the later, until the day the amount is refunded or otherwise applied;
- 10 (d) interest accrues on an unpaid amount referred to in paragraph (b) from the expiration of 30 days from the day on which notification of the alteration or decision referred to in paragraph (b) was given to the person who initiated the objection, review or appeal until the day the amount is paid;
- (e) the interest rates that apply under this subsection are—
- 15 (a) for the purposes of paragraph (c)—the market rate (within the meaning of section 26 of the *Taxation Administration Act 1996*); and
- (b) for the purposes of paragraph (d)—the interest rate applying for the time being under section 17J.

19—Substitution of section 22

Section 22—delete the section and substitute:

22—Arrangements for payment of levy

- 20 (1) The Commissioner may extend the time for payment of a levy and may accept the payment of a levy by instalments.
- 25 (2) A decision of the Commissioner under this section may be made subject to conditions (for example, as to the payment of interest) determined by the Commissioner.

22A—Decisions non-reviewable

A decision under this Subdivision is a non-reviewable decision.

22B—No statute of limitation to apply

30 No statute of limitation bars or affects any action or remedy for recovery by the Commissioner of an amount assessed as being payable under this Division.

Subdivision 5—Investigation

22C—Power to require information, instruments or records or attendance for examination

- 35 (1) The Commissioner may, for a purpose related to the administration or enforcement of this Division, by written notice served on a person, require the person—
- (a) to provide to the Commissioner (either orally or in writing) information that is described in the notice; or

(b) to attend and give evidence before the Commissioner or an authorised officer; or

(c) to produce to the Commissioner an instrument or record in the person's custody or control that is described in the notice.

(2) The Commissioner must, if the requirement is made of a person to determine that person's liability to pay a levy under this Division, indicate in the notice that the requirement is made for that purpose, but the Commissioner is not otherwise required to identify a person in relation to whom information, evidence, instrument or record is required under this section.

(3) The Commissioner may require that information or evidence be provided or given under this section on oath, or in the form of, or verified by, a statutory declaration.

(4) If a person, without reasonable excuse, refuses or fails—

(a) to comply with the requirements of a notice under this section within the period specified in the notice or a further period allowed by the Commissioner; or

(b) to comply with any other requirement of the Commissioner as to the giving of evidence or the manner in which information or evidence is to be provided or given under this section,

the person is guilty of an offence.

Maximum penalty: \$10 000.

(5) A requirement under this section is a non-reviewable decision.

22D—Powers of entry and inspection

(1) An authorised officer may, for a purpose related to the administration or enforcement of this Division—

(a) enter and remain on premises; and

(b) require any person on the premises to answer questions or otherwise furnish information; and

(c) require any person on the premises to produce any instrument or record in the person's custody or control (including a written record that reproduces in an understandable form information stored by computer, microfilm or other means or process); and

(d) require the owner or occupier of the premises to provide the authorised officer with such assistance and facilities as is or are reasonably necessary to enable the authorised officer to exercise powers under this Subdivision; and

(e) seize and remove any instrument or record on behalf of the Commissioner.

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- (2) Entry may be made at any reasonable time.
 - (3) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise powers under this section, produce the officer's identity card for the inspection of the person.

22E—Use and inspection of instruments or records produced or seized

- 10
- (1) This section applies to an instrument or record that has been produced to the Commissioner or seized and removed by an authorised officer.
 - (2) An instrument or record to which this section applies may be retained for the purpose of enabling the instrument or record to be inspected and enabling copies of, or extracts or notes from, the instrument or record to be made or taken by or on behalf of the Commissioner.
 - 15
 - (3) However, if the instrument or record is required by the Commissioner as evidence for the purposes of legal proceedings, the instrument or record may be retained until the proceedings are finally determined.
 - 20
 - (4) The Commissioner must permit a person who would be entitled to inspect the instrument or record if it were not in the possession of the Commissioner to inspect the instrument or record at any reasonable time.
 - 25
 - (5) Nothing in this section prejudices a lien a person has on the instrument or record.
 - (6) A decision under subsection (2) or (3) is a non-reviewable decision.

22F—Self-incrimination

- 30
- (1) A person is not excused from answering a question, providing information or producing an instrument or record, when required to do so under this Subdivision, on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
 - (2) However, if the person objects to answering the question, providing the information or producing the instrument or record on that ground, the answer, information, instrument or record is not admissible against the person in criminal proceedings other than—
 - 35
 - (a) proceedings for an offence with respect to false or misleading statements, information or records; or
 - (b) proceedings for an offence in the nature of perjury.

22G—Hindering or obstructing authorised officers etc

- 40
- (1) A person who—
 - (a) hinders or obstructs an authorised officer in the exercise of a power under this Subdivision; or

(b) without reasonable excuse, refuses or fails to comply with a requirement of an authorised officer under this Subdivision, is guilty of an offence.

Maximum penalty: \$10 000.

5 (2) A person is not guilty of an offence under this section arising from the entry of an authorised officer onto premises unless it is established that, at the material time, the authorised officer—

(a) identified himself or herself as an authorised officer; and

10 (b) warned the person that a refusal or failure to comply with the requirement constituted an offence.

Subdivision 6—Secrecy

22H—Relevant persons

In this Subdivision—

15 *relevant person* means a person who is or has been engaged (whether as an officer or employee or otherwise) in the administration or enforcement of this Division.

22I—Prohibition of certain disclosures by relevant persons

20 A relevant person must not disclose information obtained under or in relation to the administration or enforcement of this Division, except as permitted by this Subdivision.

Maximum penalty: \$10 000.

22J—Permitted disclosure in particular circumstances or to particular persons

25 A relevant person may disclose information obtained under or in relation to the administration or enforcement of this Division—

(a) with the consent of the person to whom the information relates or at the request of a person acting on behalf of the person to whom the information relates; or

30 (b) in connection with the administration or enforcement of this Division, a taxation law (within the meaning of the *Taxation Administration Act 1996*), the *Petroleum Products Regulation Act 1995*, the *First Home Owner Grant Act 2000* or a law of another Australian jurisdiction relating to taxation; or

35 (c) for the purposes of legal proceedings under a law referred to in paragraph (b) or reports of such proceedings; or

(d) to the holder of an office or a body prescribed for the purposes of section 78(d) of the *Taxation Administration Act 1996*.

22K—Permitted disclosures of general nature

The Commissioner may disclose information obtained under or in relation to the administration or enforcement of this Division that does not directly or indirectly identify a particular person.

22L—Prohibition of disclosures by other persons

A person other than a relevant person must not disclose information that—

- (a) has been obtained (whether properly or improperly and whether directly or indirectly) from a relevant person; and
- (b) the relevant person obtained under or in relation to this Division,

unless—

- (c) the disclosure is of a kind that a person engaged (whether as an officer or employee or otherwise) in the administration or enforcement of this Act would be permitted to make under this Subdivision; or
- (d) if the person is the holder of an office or a body prescribed for the purposes of section 78(d) of the *Taxation Administration Act 1996*—the disclosure is made in connection with the performance of functions conferred or imposed on the person under a law of this jurisdiction or another Australian jurisdiction (including for the purposes of legal proceedings connected with the performance of such functions); or
- (e) the disclosure is made with the consent of the Commissioner.

Maximum penalty: \$10 000.

22M—Restriction on power of courts to require disclosure

A court does not have power to require a disclosure of information contrary to this Subdivision.

20—Amendment of section 27—Payment of levy into Fund

- (1) Section 27—delete "The Registrar" and substitute:

Subject to subsection (2), the Registrar

- (2) Section 27—after "the levy" insert:

under this Division

- (3) Section 27—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) Money received in payment of the levy may, instead of being paid into the Fund, be applied towards payment of any refund required to be paid under this Division.

21—Substitution of section 31

Section 31—delete the section and substitute:

31—Delegation

- 5
- (1) The Minister or the Commissioner may delegate a power, function or duty vested in or conferred on the Minister or the Commissioner (as the case may be) under this Act—
- (a) to a particular person or body; or
 - (b) to the person for the time being occupying a particular office or position.
- 10
- (2) A power, function or duty delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - 15 (c) does not derogate from the power of the delegator to act in a matter; and
 - (d) is revocable at will by the delegator.

31A—Evidence

20 Section 115 of the *Taxation Administration Act 1996* applies for the purposes of this Act as if—

- (a) this Act were a taxation law for the purposes of that Act; and
- (b) an assessment under this Act of a person's liability to pay a levy (including interest and a penalty levy under Part 3 Division 1) were an assessment by the Commissioner under
- 25 that Act of the tax liability of a person; and
- (c) a reference in that section to the Commissioner included a reference to the Minister.

22—Amendment of section 32—Service of notices

- 30
- (1) Section 32(1)—after "Minister" first occurring insert:
or the Commissioner
- (2) Section 32(1)(a)—delete "for the Minister at his or her office" and substitute:
at the office of the Minister or the Commissioner (as required)
- (3) Section 32(1)(b)—delete "Minister at his or her office" and substitute:
office of the Minister or the Commissioner (as required)

23—Amendment of section 33A—Recouping money lost on aggregation of non contiguous land

Section 33A(1)—delete "Minister" and substitute:

Commissioner

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

24—Amendment of section 11—Minimum tax

Section 11—delete "\$10" and substitute:

\$20

Part 4—Amendment of *Pay-roll Tax Act 1971*

10 **25—Amendment of section 9 —Imposition of pay-roll tax on taxable wages**

Section 9(1)(a) to (e)—delete paragraphs (a) to (e) (inclusive)

26—Amendment of section 11A—Deduction from taxable wages

Section 11A(1), definition of *prescribed amount*, (a)—delete paragraph (a) and substitute:

15 (a) where the return period is a period of 1 month—means \$42 000;

27—Amendment of section 12—Exemptions

- (1) Section 12(1)(cb)—delete "Family Planning Association of South Australia Incorporated" and substitute:

Sexual Health Information Networking and Education SA Incorporated

20 (2) Section 12(1)(daa) and (dab)—delete paragraphs (daa) and (dab)

- (3) Section 12(1)(j)—delete "Australian-American Educational Foundation" and substitute:

Australian-American Fulbright Commission

28—Amendment of section 13A—Meaning of prescribed amount

25 (1) Section 13A(1), definition of *financial year*—delete the definition and substitute:

financial year means any financial year commencing on or after 1 July 1995;

(2) Section 13A(2)(a) and (b)—delete paragraphs (a) and (b)

29—Amendment of section 18K—Interpretation

(1) Section 18K(1), definition of *financial year*—delete the definition and substitute:

30 *financial year* means any financial year commencing on or after 1 July 1995.

(2) Section 18K(2)(a) and (b)—delete paragraphs (a) and (b)

Part 5—Amendment of *Stamp Duties Act 1923*

30—Amendment of section 2—Interpretation

- (1) Section 2(1), definition of *adhesive stamp*—delete the definition
- (2) Section 2(1), definition of *Australian market licensee*—delete the definition
- 5 (3) Section 2(1), definition of *CUFS*—delete the definition
- (4) Section 2(1), definition of *financial product*, (d) and (e)—delete paragraphs (d) and (e)
- (5) Section 2(1), definition of *stamp*—delete "an adhesive stamp or"
- (6) Section 2(1), definition of *stamped*—delete "or having an adhesive stamp affixed"

31—Amendment of section 6—Denotation of duty

Section 6(2)—delete subsection (2)

32—Amendment of section 11—Appropriate stamp to be used

Section 11(3)—delete subsection (3)

33—Repeal of section 12

15 Section 12—delete the section

34—Amendment of section 20—Time for payment of duty and stamping

Section 20(5)—delete subsection (5) and substitute:

- (5) Subsection (4) does not apply in relation to an instrument that has been duly stamped in some other manner authorised by this Act within the relevant period.

35—Repeal of section 29

Section 29—delete the section

36—Amendment of section 60B—Refund of duty where transaction is rescinded or annulled

25 Section 60B(2)—delete subsection (2)

37—Amendment of section 71—Instruments chargeable as conveyances

Section 71(11)—delete "or, as the case may require, in respect of a return lodged pursuant to section 90D"

38—Repeal of section 81A

30 Section 81A—delete the section

39—Substitution of Part 3A

Part 3A—delete the Part and substitute:

Part 3A—Special provisions relating to financial products

83—Interpretation

In this Part, unless the contrary intention appears—

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

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

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

relevant company means—

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

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

84—Share buy-back

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

85—Exempt transactions

No duty is payable under this Act in relation to an exempt transaction.

86—Financial products liable to duty

- (1) This section applies to a conveyance or conveyance on sale of a financial product only where—
- (a) the financial product is—
 - (i) a financial product of a company that, under the *Corporations Act 2001* of the Commonwealth, is taken to be registered in the State; or
 - (ii) a financial product of a foreign company; or
 - (iii) a unit of a unit trust scheme; and
 - (b) the conveyance is not an exempt transaction.
- (2) Subject to section 87, a conveyance or conveyance on sale of a financial product to which this section applies is only liable to duty if the financial product is—
- (a) a financial product of a relevant company; or
 - (b) a unit of a unit trust scheme the principal register of which is situated in this State; or
 - (c) a unit of a unit trust scheme in relation to which no register exists in Australia and—
 - (i) having as the manager of the scheme a relevant company or a natural person principally resident in this State; or
 - (ii) not having a manager but with a trustee that is a relevant company or a natural person principally resident in this State.

87—Proclaimed countries

- (1) No duty is payable under this Act in respect of a conveyance or conveyance on sale of a financial product that is registered on a register kept within a proclaimed country.
- (2) The Governor may, by proclamation, declare any country to be a proclaimed country for the purposes of this section and may, by subsequent proclamation, vary or revoke any such proclamation.
- (3) This section does not operate to exempt a transaction from duty under Part 4.

**88—Transfer of financial products not to be registered unless
duly stamped**

- 5 (1) A transfer of a financial product to which section 86 applies must not
be registered by the corporation, company or society by which the
financial product was issued—
- (a) unless a proper instrument of transfer has been delivered to
the corporation, company or society in which, in the case of
a transfer by way of sale, the consideration for the financial
10 product is expressed in terms of money and the actual date
of sale and the date or dates of execution by the transferor
and transferee are set out; and
- (b) unless the instrument is duly stamped under this Act or is,
under subsection (3), taken to have been duly stamped.
- 15 (2) Despite any other provision of this Act, if financial products are
transferred pursuant to a takeover scheme, the Commissioner may, if
the Commissioner thinks it expedient to do so, on payment of the
duty payable in respect of the instruments of transfer, denote
payment of the duty on a statement in the approved form.
- 20 (3) If payment of duty is denoted on a statement pursuant to
subsection (2), each instrument of transfer to which the statement
relates will be taken to have been duly stamped.
- (4) After a transfer of a financial product has been registered by a
corporation, company or society in this State, the instrument of
transfer must be retained in this State by the corporation, company or
25 society for a period of not less than 5 years.
- (5) If a corporation, company or society contravenes or fails to comply
with any of the provisions of this section, the corporation, company
or society is guilty of an offence.
Maximum penalty: \$10 000.
- 30 (6) The right or title of a transferee or subsequent holder of a financial
product is not invalidated by reason only that the transfer of the
financial product was registered by a corporation, company or
society in contravention of the provisions of this section.

40—Amendment of section 106—Spoiled or unused stamps

35 Section 106—after subsection (2) insert:

- (3) In this section—
- stamp* includes an adhesive stamp purchased or otherwise obtained
from the Commissioner or a distributor of stamps under this Act
before the commencement of Part 5 of the *Statutes Amendment and*
40 *Repeal (Taxation Administration) Act 2008*;
- stamped* includes having an adhesive stamp affixed before the
commencement of Part 5 of the *Statutes Amendment and Repeal*
(Taxation Administration) Act 2008.

41—Repeal of section 106A

Section 106A—delete the section

42—Repeal of section 109

Section 109—delete the section

43—Amendment of section 112—Regulations

- 5 (1) Section 112(1) to (4)—delete subsections (1) to (4) (inclusive) and substitute:
- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Section 112(5)—delete "subsection (4)" and substitute:
- 10 subsection (1)
- (3) Section 112(5)—after paragraph (c) insert:
- (ca) prescribe fines, not exceeding \$2 000, for offences against the regulations; and
- (4) Section 112(5)—redesignate the subsection as subsection (2)

44—Amendment of Schedule 2—Stamp duties and exemptions

- 15 (1) Schedule 2, Part 1, clause 2(2), exemption 5A—delete the exemption
- (2) Schedule 2, Part 1, clause 2(4), exemption 3A—delete the exemption
- (3) Schedule 2, Part 1, clause 3(1)(a)—delete paragraph (a) and substitute:
- (a) in the case of the sale of a financial product that is not \$0.60
quoted on a recognised financial market—for every
\$100 and any fractional part of \$100 of the value of
the financial product
- 20 (4) Schedule 2, Part 1, clause 3(2), exemption 3—delete the exemption
- (5) Schedule 2, Part 1, clause 3(2), exemption 4—delete "*Industrial and Employee
Relations Act 1994*" and substitute:
- Fair Work Act 1994*
- (6) Schedule 2, Part 1, clause 3(2), exemption 5—delete "Part IX of the *Industrial
Relations Act 1988*" and substitute:
- 25 Schedule 1 of the *Workplace Relations Act 1996*
- (7) Schedule 2, Part 1, clause 4(1)(a) and (aa)—delete paragraphs (a) and (aa) and
substitute:
- (a) in the case of the disposition of a financial product \$0.60
that is not quoted on a recognised financial market—
for every \$100 and any fractional part of \$100 of the
value of the financial product
- 30 (8) Schedule 2, Part 1, clause 4(2), exemption 3—delete the exemption

- (9) Schedule 2, Part 1, clause 4(2), exemption 4—delete "*Industrial and Employee Relations Act 1994*" and substitute:

Fair Work Act 1994

- 5 (10) Schedule 2, Part 1, clause 4(2), exemption 5—delete "Part IX of the *Industrial Relations Act 1988*" and substitute:

Schedule 1 of the *Workplace Relations Act 1996*

- (11) Schedule 2, Part 1, clauses 14 and 15—delete the clauses
(12) Schedule 2, Part 2, clause 16, exemptions 13C and 14—delete the exemptions
(13) Schedule 2, Part 2, clause 16, exemption 20A—delete the exemption
10 (14) Schedule 2, Part 2, clause 16, exemption 22—delete the exemption
(15) Schedule 2, Part 2, clause 16, exemptions 24 to 24A (inclusive)—delete the exemptions
(16) Schedule 2, Part 2, clause 16, exemptions 24C and 24D—delete the exemptions

Part 6—Amendment of *Taxation Administration Act 1996*

15 45—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *Commissioner* insert:

20 *corresponding Commissioner*, in relation to a recognised jurisdiction in which a corresponding law is in force, means the person responsible for administering the corresponding law or a person holding a position in the administration of that corresponding law which corresponds to the position of the Commissioner of State Taxation;

corresponding law means a law of a recognised jurisdiction that—

- 25 (a) corresponds to a taxation law; or
(b) is declared by the Governor under subsection (2) to be a law corresponding to a taxation law;

- (2) Section 3—after the definition of *premises* insert:

recognised jurisdiction means the Commonwealth, another State or a Territory;

- 30 (3) Section 3—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) The Governor may, by proclamation—
(a) declare a law of a recognised jurisdiction to be a law corresponding to a taxation law; and
(b) vary or revoke a proclamation made under this section.

46—Amendment of section 26—Interest rate

Section 26(2)(a)—delete paragraph (a) and substitute:

- 5 (a) unless an order is in force under paragraph (b), in relation to interest accruing at any time during a particular financial year, the average rate of the daily 90-day Bank Accepted Bill Rate prescribed by the Reserve Bank of Australia for the month of May preceding the financial year (rounding up 0.005 to 2 decimal places); or

47—Amendment of section 63—Commissioner may perform functions under laws of other jurisdictions

10 Section 63—after its present contents (now to be designated as subsection (1)) insert:

- (2) The Commissioner may perform functions on behalf of a corresponding Commissioner—see Division 2A.

48—Amendment of section 66—Delegation by Commissioner

Section 66—after subsection (3) insert:

- 15 (4) Without limiting a preceding subsection—
- (a) the Commissioner may delegate any of the Commissioner's powers or functions under this Act to a corresponding Commissioner for the purposes of a corresponding law; and
- 20 (b) a corresponding Commissioner may make a further delegation if the instrument of delegation so provides.

49—Repeal of section 69

Section 69—delete the section

50—Insertion of Part 9 Division 2A

After section 76 insert:

Division 2A—Investigations under other laws

76A—Investigations for the purposes of corresponding laws

- 25 (1) The Commissioner may, by agreement with a corresponding Commissioner of a recognised jurisdiction—
- 30 (a) authorise the corresponding Commissioner to perform or exercise a function or power under Division 2 for the purposes of a corresponding law in force in that jurisdiction; or
- 35 (b) perform or exercise a function or power under Division 2 on behalf of a corresponding Commissioner for the purposes of a corresponding law in force in that jurisdiction.

- (2) For the purposes of performing or exercising a function or power under Division 2 for the purposes of a corresponding law—
- (a) a reference in this Part to a taxation law is to be read as a reference to the corresponding law; and
 - (b) a reference in this Part to a tax liability is to be read as a reference to a tax liability under the corresponding law; and
 - (c) a reference in this Part to tax is to be read as a reference to tax payable under the corresponding law; and
 - (d) a reference in this Part to a liability to tax is to be read as a reference to a liability to tax under the corresponding law.
- (3) If the Commissioner authorises a corresponding Commissioner of a recognised jurisdiction to perform or exercise a function or power under Division 2—
- (a) a reference in this Part to the Commissioner is to be read as a reference to the corresponding Commissioner; and
 - (b) a reference in this Part to an authorised officer is to be read as a reference to a person authorised to perform or exercise the function or power under a corresponding law in force in a recognised jurisdiction; and
 - (c) a reference in this Part to an authorised officer's identity card, in relation to a person authorised to perform or exercise the function or power under a corresponding law in force in the recognised jurisdiction, is to be read as a reference to an identification card or certificate issued to the person under a corresponding law.

76B—Investigations in other jurisdictions for the purposes of taxation laws

- (1) The Commissioner may—
- (a) enter into an agreement or arrangement with a corresponding Commissioner of a recognised jurisdiction to enable the performance or exercise, by or on behalf of the Commissioner, of investigative functions and powers conferred under a corresponding law for the purposes of a taxation law; and
 - (b) authorise any person who is authorised to perform or exercise a function or power under Division 2 to perform or exercise such investigative functions or powers as may be conferred on the person by a corresponding law for the purposes of a taxation law.
- (2) In this section, an investigative function or power includes any function or power that corresponds to a function or power under Division 2.

76C—Instrument of delegation to be produced

A person exercising a power under this Division under delegation must, if requested to do so, produce to a person in relation to whom he or she proposes to exercise the power, a copy of the instrument of delegation.

5

51—Insertion of section 76D

Before section 77 insert:

76D—Application of Division to corresponding laws

A reference in this Division to a *taxation law* will be taken to include a reference to a *corresponding law*.

10

52—Amendment of section 78—Permitted disclosure in particular circumstances or to particular persons

(1) Section 78(b)—delete "the *Taxation (Reciprocal Powers) Act 1989*,"

(2) Section 78(b)—delete ", the *Tobacco Products Regulation Act 1997*"

15

(3) Section 78(b)—delete "another Australian" and substitute:

a recognised

(4) Section 78(d)—delete "another Australian" and substitute:

a recognised

53—Amendment of section 80—Prohibition of disclosure by other person

20

Section 80(d)—delete "a prescribed office holder or body under a law of this jurisdiction or another Australian jurisdiction" and substitute:

the holder of an office or a body prescribed for the purposes of section 78(d)

Part 7—Repeal of *Taxation (Reciprocal Powers) Act 1989*

54—Repeal of Act

25

The *Taxation (Reciprocal Powers) Act 1989* is repealed.