Legislative Council—No 229A
As reported with suggested amendments, report adopted, Standing Orders suspended and passed remaining stages, 1 November 2017

South Australia

Budget Measures Bill 2017

A BILL FOR

An Act to ~~[enact legislation in relation to the 2017 State Budget so as to impose a levy on major banks operating in the State; and to]~~ make amendments to various Acts for the purposes of the 2017 State Budget.

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The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Budget Measures Act 2017*.

2—Commencement

(1) Subject to this section, this Act will come into operation on the day on which it is assented to by the Governor.

~~[(2)]~~ ~~[Sections 4 to 14 (inclusive) and Schedule 1 will come into operation on the day on which the *Major Bank Levy Act 2017* of the Commonwealth comes into operation (and if this Act is not assented to until after that day, those sections and that Schedule will be taken to have come into operation on that day).]~~

~~[(3)]~~ ~~[Schedule 2 Part 3 clause 14 will be taken to have come into operation on 1 July 2016.]~~

~~[(4)]~~ ~~[The following provisions will be taken to have come into operation on 22 June 2017:]~~

~~[(a)]~~ ~~[Schedule 2 Part 1 (other than clause 11 which comes into operation in accordance with subsection (1));]~~

~~[(b)]~~ ~~[Schedule 2 Part 2;]~~

~~[(c)]~~ ~~[Schedule 2 Part 5.]~~

~~[(5)]~~ ~~[The following provisions will be taken to have come into operation on 1 July 2017:]~~

~~[(a)]~~ ~~[Schedule 2 Part 3 (other than clause 14 which comes into operation in accordance with subsection (3));]~~

~~[(b)]~~ ~~[Schedule 2 Part 6.]~~

~~[(6)]~~ ~~[The following provisions will come into operation on a day to be fixed by proclamation:]~~

~~[(a)]~~ ~~[Schedule 2 Part 4;]~~

~~[(b)]~~ ~~[Schedule 2 Part 8;]~~

~~[(c)]~~ ~~[Schedule 3.]~~

~~(2) Schedule 1 Part 3 clause 14 will be taken to have come into operation on 1 July 2016.~~

~~(3) The following provisions will be taken to have come into operation on 22 June 2017:~~

~~(a) Schedule 1 Part 1 (other than clause 11 which comes into operation in accordance with subsection (1));~~

~~(b) Schedule 1 Part 2;~~

~~(c) Schedule 1 Part 5.~~

~~(4) The following provisions will be taken to have come into operation on 1 July 2017:~~

~~(a) Schedule 1 Part 3 (other than clause 14 which comes into operation in accordance with subsection (2));~~

~~(b) Schedule 1 Part 6.~~

~~(5) The following provisions will come into operation on a day to be fixed by proclamation:~~

~~(a) Schedule 1 Part 4;~~

~~(b) Schedule 1 Part 8.~~

3—Amendment provisions

In [a Schedule] Schedule 1, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

[4] [Interpretation]

[In this Act, unless the contrary intention appears—]

[***ADI***] [has the same meaning as in the Commonwealth law;]

[***applicable liabilities amount***] [for a quarter of a financial year has the same meaning as in the Commonwealth law;]

[***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*);]

[***Commonwealth law***] [means the *Major Bank Levy Act 2017* of the Commonwealth;]

[***Commonwealth major bank levy***] [means the levy imposed on ADIs under the Commonwealth law;]

[***Commonwealth return day***][—an ADI's Commonwealth return day for a quarter of a financial year is the day on which the ADI is required, under the *Taxation Administration Act 1953* of the Commonwealth, to give the Commissioner of Taxation of the Commonwealth a return relating to the Commonwealth major bank levy for that quarter;]

[***GDP***] [means the gross domestic product estimate published by the Australian Bureau of Statistics (current prices, original terms);]

[***GSP***] [for South Australia means the gross state product estimate for South Australia published by the Australian Bureau of Statistics (current prices, original terms);]

[***GSP percentage***][, in relation to a quarter of a financial year, means the GSP percentage for that financial year determined by the Commissioner in accordance with section 5;]

[***quarter***] [of a financial year means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December;]

[***State major bank levy***] [means the levy imposed on ADIs under this Act.]

[5] [GSP percentage]

[(1)] [The Commissioner must, at such times as the Commissioner thinks fit, determine the GSP percentage for each financial year and publish the percentages so determined on a website determined by the Commissioner.]

[(2)] [The GSP percentage determined by the Commissioner for a financial year will be the GSP for South Australia for the financial year occurring 2 years before that financial year expressed as a percentage of the GDP for the financial year occurring 2 years before that financial year.]

[(3)] [A certificate signed by the Commissioner that states the GSP percentage determined by the Commissioner for a specified financial year is admissible in any legal proceedings and, in the absence of evidence to the contrary, is proof of the matters stated.]

[6] [Taxation Administration Act]

[This Act should be read together with the *Taxation Administration Act 1996* which makes provision for the administration and enforcement of this Act and other taxation laws.]

[7] [Liability to levy]

[(1)] [An ADI that operates in South Australia in any quarter of a financial year and that is liable, in respect of that quarter, to pay Commonwealth major bank levy is also liable to pay State major bank levy in respect of that quarter of the financial year.]

[(2)] [For the purposes of this section, an ADI will be taken to operate in South Australia in any quarter of a financial year if, at any time during that quarter, it carries on, or offers to carry on, any banking business within the meaning of the *Banking Act 1959* of the Commonwealth with persons located in South Australia.]

[8] [Payment of levy]

[State major bank levy for a quarter of a financial year is payable to the Commissioner on or before the day on which Commonwealth major bank levy for that quarter is due and payable under the Commonwealth law.]

[9] [Amount of levy]

[(1)] [Subject to subsection (2), the amount of State major bank levy payable by an ADI for a quarter of a financial year is 0.015% of the GSP percentage of the applicable liabilities amount for the quarter in relation to the ADI.]

[(2)] [If the Commonwealth Commissioner of Taxation makes a determination under the *Taxation Administration Act 1953* of the Commonwealth that has the effect of altering the ADI's liability for Commonwealth major bank levy for a specified quarter of a financial year, the amount of State major bank levy payable by the ADI for that quarter must be assessed, or reassessed, by the Commissioner under the *Taxation Administration Act 1996* and the Commissioner may assess the amount of State major bank levy payable by the ADI for that quarter taking into account the determination under the *Taxation Administration Act 1953* of the Commonwealth.]

[10] [Returns]

[(1)] [An ADI that is liable to pay State major bank levy in respect of a quarter of a financial year must, on or before the ADI's Commonwealth return day for that quarter, lodge with the Commissioner a return relating to that quarter.]

[(2)] [The Commissioner may vary the time within which a specified ADI is required to furnish a return under this section.]

[(3)] [A variation under subsection (2)]

[(a)] [may be made subject to conditions or limitations;]

[(b)] [may be made, varied or revoked by notice in writing to the ADI or by notice in the Gazette.]

[11] [Returns etc to be completed in manner approved by Commissioner]

[A return, or any other document relating to the payment of State major bank levy, that is to be provided to the Commissioner for the purposes of this Act or the *Taxation Administration Act 1996* must be provided in a manner and form determined or approved by the Commissioner.]

[12] [Notice of adjustment of Commonwealth levy liability]

[An ADI whose liability for Commonwealth major bank levy is reassessed or otherwise the subject of a determination under the *Taxation Administration Act 1953* of the Commonwealth that has the effect of altering the liability must, within 14 days after being given notice of the reassessment or other determination, give notice of the reassessment or other determination to the Commissioner (including any particulars prescribed by the regulations).]

[Maximum penalty]: [$10 000.]

[13] [Levy not to be paid by customers]

[State major bank levy payable by an ADI under this Act cannot be directly recovered from customers of the ADI and must be paid out of profits or other funds of the ADI.]

[14] [Regulations]

[(1)] [The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.]

[(2)] [Without limiting the generality of subsection (1), the regulations may —]

[(a)] [be of general or limited application; and]

[(b)] [require the use of forms approved by the Commissioner for documents required or authorised to be used for the purposes of this Act or the regulations; and]

[(c)] [leave any other matter to be determined, varied or regulated according to the discretion of the Commissioner; and]

[(d)] [prescribe fines, not exceeding $2 500, for offences against the regulations; and]

[(e)] [make different provision according to the persons, things or circumstances to which they are expressed to apply; and]

[(f)] [be brought into operation on a date specified in the regulations that is earlier than the date of their publication in the Gazette.]

[Schedule 1] [Related amendments — major bank levy]

[Part 1] [Amendment of *Taxation Administration Act 1996*]

[1] [Amendment of section 3 — Interpretation]

[Section 3(1), definition of ***tax*** — delete "or duty" and substitute:]

[, duty or levy]

~~[2] [Amendment of section 4—Meaning of taxation laws]~~

~~[Section 4 after paragraph (d) insert:]~~

~~[(da)] [the *Budget Measures Act 2017* and the regulations under that Act;]~~

~~[Schedule 2]~~Schedule 1 ~~[Other budget measures]~~Budget ~~Measures~~

Part 1—Amendment of *First Home and Housing Construction Grants Act 2000*

1—Amendment of section 3—Definitions

(1) Section 3, definition of ***Australian citizen***—delete "1948" and substitute:

2007

(2) Section 3, definition of ***commencement date***—delete the definition and substitute:

commencement date—

(a) in relation to an eligible transaction—see section 13(4);

(b) in relation to an eligible off-the-plan apartment transaction—see section 13B(4);

(3) Section 3, definition of ***completed***—delete the definition and substitute:

completed—

(a) in relation to an eligible transaction—see section 13(5);

(b) in relation to an eligible off-the-plan apartment transaction—see section 13B(5);

(4) Section 3—after the definition of ***eligibility criteria*** insert:

eligible off-the-plan apartment transaction—see section 13B;

(5) Section 3, definition of ***new home grant scheme***—delete "and seniors housing grants" and substitute:

, seniors housing grants and off-the-plan apartment grants

(6) Section 3—after the definition of ***new home transaction*** insert:

off-the-plan apartment grant means a grant authorised under section 18BB;

(7) Section 3—after the definition of ***permanent resident*** insert:

qualifying apartment has the same meaning as in section 71DB of the *Stamp Duties Act 1923*;

qualifying off-the-plan contract has the same meaning as in section 71DB of the *Stamp Duties Act 1923*;

2—Insertion of section 6A

After section 6 insert:

6A—Market value of homes

(1) For the purposes of this Act, but subject to subsections (2) and (3), the market value of the home to which an eligible transaction relates (the ***market value***) will be determined as follows:

(a) in the case of an eligible transaction constituted by a contract under section 13(1)(a)—the market value will be taken to be—

(i) unless subparagraph (ii) applies—the consideration for the eligible transaction;

(ii) if the Commissioner considers that the consideration for the eligible transaction may be less than the market value—the market value of the property on which the home is situated, as at the time when the contract is made, as determined by the Commissioner for the purposes of this provision;

(b) in the case of an eligible transaction constituted by a comprehensive home building contract under section 13(1)(b)—the market value will be taken to be the sum of the following:

(i) —

(A) unless subsubparagraph (B) applies—the consideration for the comprehensive home building contract under section 13(7);

(B) if the Commissioner considers that the total consideration payable for the relevant building work may be less than the actual costs to build the home—the actual costs to build the home, as determined by the Commissioner for the purposes of this provision; and

(ii) the market value of the property on which the home is to be built, as at the time when the building contract is made, as determined by the Commissioner for the purposes of this provision;

(c) in the case of an eligible transaction constituted by the building of a home by an owner builder under section 13(1)(c)—the market value will be taken to be the market value of the property on which the home is situated, as at the time when the eligible transaction is completed, as determined by the Commissioner for the purposes of this provision.

(2) For the purposes of subsection (1), if an eligible transaction relates to a home on a genuine farm, the relevant component of the farm will be taken to constitute the property on which the home is situated, or is to be built.

(3) If a person is entitled to a first home owner grant by virtue of the operation of section 5(4)—

(a) if the relevant interest relates to a comprehensive home building contract for the construction of a home—the market value of the home to which the eligible transaction relates will be taken to be the consideration for the comprehensive home building contract;

(b) in any other case—the market value of the home to which the eligible transaction relates will be determined in accordance with—

(i) the method prescribed by regulation for the purposes of subsection (6)(b) of section 18B immediately before the repeal of that subsection by the *Statutes Amendment (Budget 2010) Act 2010*; or

(ii) if another method is prescribed by regulation for the purposes of this subsection—that method.

(4) The Commissioner may adopt or approve any method the Commissioner considers reasonable for the purposes of determining any value or costs under a preceding subsection, including by requiring that a valuation of property be made by a person appointed or approved by the Commissioner.

(5) If the Commissioner requires a valuation of property to be made for the purposes of determining the value of any property under this section, the Commissioner may, having regard to the merits of the case, charge the whole or any part of the expenses of, or incidental to, the making of the valuation to the applicant or applicants and may recover the amount so charged from the applicant or applicants as a debt due to the Crown.

(6) To avoid doubt, the market value of any property on which a home is situated will, for the purposes of this section, be the market value of the land, the home and any other improvements.

(7) In this section—

genuine farm means land as to which the Commissioner is satisfied—

(a) the land is to be used for primary production by the person seeking the benefit of this section; and

(b) the land is, by itself, or in conjunction with other land owned by that person, capable of supporting economically viable primary production operations;

relevant component of a genuine farm means the part of the farm constituted by the home and its curtilage, or the part of the land that is to constitute the site and curtilage of a home that is to be built.

3—Amendment of section 7—Entitlement to grants

(1) Section 7(1a)(b)—delete "under section 18BB" and substitute:

under section 6A

(2) Section 7—after subsection (8) insert:

(9) An off-the-plan apartment grant is payable on an application under this Act if the requirements of section 18BB are satisfied.

(10) Only 1 off-the-plan apartment grant is payable in relation to a particular qualifying apartment.

4—Insertion of section 12C

After section 12B insert:

12C—Criteria—off-the-plan apartment grant

An applicant for an off-the-plan apartment grant must be a purchaser of a qualifying apartment under a qualifying off-the-plan contract.

5—Insertion of section 13B

After section 13A insert:

13B—Eligible off-the-plan apartment transactions

(1) Subject to subsections (2) and (3), a qualifying off-the-plan contract is an ***eligible off-the-plan apartment transaction*** if—

(a) the contract is made before work in relation to the building in which the apartment is to be situated has been commenced; and

(b) the contract is made between 22 June 2017 and 30 September 2017 (both dates inclusive).

(2) A qualifying off-the-plan contract is not an eligible off-the-plan apartment transaction if the Commissioner is satisfied that—

(a) the contract replaces a contract made before 22 June 2017; and

(b) the replaced contract was a contract for the purchase of the same qualifying apartment.

(3) A qualifying off-the-plan contract is not an eligible off-the-plan apartment transaction if it is a contract referred to in section 71DB(6)(c) of the *Stamp Duties Act 1923*.

(4) The ***commencement date*** of an eligible off-the-plan apartment transaction is the date when the qualifying off-the-plan contract is made.

(5) Subject to any qualifications prescribed by regulation, an eligible off-the-plan apartment transaction is ***completed*** when the purchaser becomes entitled to possession of the qualifying apartment under the contract.

6—Amendment of section 14—Application for grant

Section 14(5)—after "eligible transaction" wherever occurring insert:

or eligible off-the-plan apartment transaction

7—Amendment of section 15—All interested persons to join in application

Section 15(2)—delete subsection (2) and substitute:

(2) An ***interested person*** is—

(a) in the case of an application for an off-the-plan apartment grant—a person who is a purchaser under the qualifying off-the-plan contract; or

(b) in any other case—a person who is, or will be, on completion of the eligible transaction to which the application relates, an owner of the relevant home,

but does not include a person who is excluded from the application of this section under the regulations.

8—Substitution of section 18BB

Section 18BB—delete the section and substitute:

18BB—Off-the-plan apartment grant

(1) Subject to this section, a grant (the ***off-the-plan apartment grant***) is payable on an application under this Act if—

(a) the applicant complies with the criteria set out in section 12C; and

(b) the application relates to an eligible off-the-plan apartment transaction; and

(c) the eligible off-the-plan apartment transaction has been completed.

(2) The amount of the off-the-plan apartment grant is $10 000.

(3) This section does not give rise to an entitlement to a grant if the Commissioner is satisfied that a contract that formed the basis of an eligible off-the-plan apartment transaction for the purchase (or purported purchase) of a qualifying apartment does not constitute a genuine sale of the apartment.

(4) For the purposes of subsection (3), the Commissioner may take into account the following:

(a) whether the parties to the contract are close associates;

(b) whether the parties are otherwise not at arm's length;

(c) such other matters as the Commissioner considers appropriate.

(5) For the purposes of subsection (4), 2 persons are close associates if—

(a) 1 is a relative of the other; or

(b) they are related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth); or

(c) 1 is a body corporate and the other is a director, manager or officer of the body corporate; or

(d) 1 is a body corporate (other than a public company whose shares are quoted on a financial market) and the other is a shareholder in the body corporate; or

(e) 1 has a right to participate (other than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or

(f) they are in partnership; or

(g) 1 is a beneficiary under a trust or an object of a discretionary trust of which the other is a trustee; or

(h) they fall within a class of persons prescribed by the regulations for the purposes of this subsection.

(6) For the purposes of subsection (5), 1 person is a relative of another if the other person is—

(a) a spouse or domestic partner; or

(b) a parent or remoter lineal ancestor; or

(c) a son, daughter or remoter lineal descendant; or

(d) a brother or sister; or

(e) related in any other way prescribed by the regulations for the purposes of this subsection.

(7) A reference to a first home owner grant or to a first home bonus grant in a following section of this Act (other than section 20 or 22(3)) will be taken to include a reference to an off-the-plan apartment grant under this section.

9—Amendment of section 18C—Amount of grants must not exceed consideration

Section 18C—delete "or a seniors housing grant, the total amount payable in relation to a home would (but for this section) exceed the consideration for the eligible transaction, the additional payment, first home bonus grant, housing construction grant or seniors housing grant" and substitute:

, a seniors housing grant or an off-the-plan apartment grant, the total amount payable in relation to a home or apartment would (but for this section) exceed the consideration for the eligible transaction or the eligible off-the-plan apartment transaction, the additional payment or grant

10—Amendment of section 25—Objections

Section 25(1)—after "the application" insert:

, or an applicant or former applicant who is dissatisfied with a decision of the Commissioner to impose a penalty under section 39(2) or (3),

11—Amendment of section 40—Power to recover amount paid in error etc

(1) Section 40(3)—after "was sought" insert:

, or the land on which such home was to be built,

(2) Section 40(3)—after "that home" insert:

or land

12—Transitional provision

(1) If—

(a) a person is entitled to an off-the-plan apartment grant under section 18BB of the principal Act as enacted by clause 8 of this Schedule; and

(b) the person has received a benefit constituted by an *ex gratia* payment by the State in order to provide for an off-the-plan apartment grant under section 18BB as enacted by clause 8 of this Schedule for the period between 22 June 2017 and the day on which this Act is assented to by the Governor,

the amount of the relevant entitlement will be reduced by the amount of the *ex gratia payment* (including so as to fully set off the amount of the relevant entitlement).

(2) To avoid doubt, any set off under this clause extends to a benefit or payment obtained or made before the commencement of this clause.

(3) Terms used in this clause that are defined in the principal Act have the same respective meanings as in that Act.

(4) In this clause—

principal Act means the *First Home and Housing Construction Grants Act 2000*.

Part 2—Amendment of *Land Tax Act 1936*

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

Section 5(10)—after paragraph (h) insert:

(i) land may be wholly exempted from land tax if—

(i) the current owner of the land acquired the land under a qualifying off-the-plan contract (within the meaning of section 71DB of the *Stamp Duties Act 1923*); and

(ii) the qualifying off-the-plan contract was entered into between 22 June 2017 and 30 June 2018 (both dates inclusive),

provided that land may not be exempted under this paragraph for a period that exceeds 5 financial years.

Part 3—Amendment of *Payroll Tax Act 2009*

14—Amendment of section 29—Motor vehicle allowances

(1) Section 29(7)(a)—delete paragraph (a) and substitute:

(a) the rate determined by legislative instrument under section 28-25 of the ITAA for calculating a deduction for car expenses using the "cents per kilometre method" in the financial year immediately preceding the financial year in which the allowance is paid or payable; or

(ab) if there is more than 1 rate under the determination referred to in paragraph (a), the highest of those rates; or

(2) Section 29(7)(b)—delete "prescribed" (first occurring) and substitute:

determined

15—Amendment of section 32—What is a relevant contract?

(1) Section 32(2)(c)—delete ", unless the Commissioner determines that the contract or arrangement under which the services are so supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person"

(2) Section 32(2)(d)—delete paragraph (d) and substitute:

(d) is supplied with services solely for or ancillary to the conveyance of goods by means of a vehicle provided by the person conveying them.

(3) Section 32—after subsection (2) insert:

(2a) Subsection (2)(a), (2)(b)(i), (2)(b)(iv) or (2)(d) does not apply to a contract under which services not referred to in that subsection are supplied in addition to services referred to in that subsection.

(2b) Subsection (2)(b)(ii) or (iii) does not apply to—

(a) a contract under which services not referred to in that subsection are supplied in addition to services referred to in that subsection; or

(b) a contract under which services referred to in that subsection are provided for a period exceeding a period referred to in that subsection.

(2c) Subsection (2)(c) does not apply to a contract under which work is performed in a manner other than a manner referred to in that subsection, in addition to work performed in a manner referred to in that subsection.

(2d) Subsection (2) does not apply if the Commissioner determines that the contract under which the services are supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person.

16—Amendment of Schedule 1—Calculation of payroll tax liability

(1) Schedule 1, clause 1, definition of ***R***—delete the definition

(2) Schedule 1, clause 3—after the definition of ***IW*** insert:

R—see subclause 5A(1)

(3) Schedule 1—after clause 5 insert:

5A—Rate of payroll tax for employer over threshold

(1) For the purposes of this Part, ***R*** is—

(a) if the total annualised relevant wages is more than the threshold amount and not more than $1 000 000—2.50%; or

(b) if the total annualised relevant wages is more than $1 000 000 and not more than $1 500 000—the prescribed rate; or

(c) if the total annualised relevant wages is more than $1 500 000—4.95%.

(2) For the purposes of subclause (1)(b), the ***prescribed rate*** is calculated in accordance with the following formula:

$$[2.50\%] + \left[\frac{(\textit{Total annualised relevant wages} - \$1,000,000)}{\$500,000} \times 2.45\% \right]$$

(3) For the purposes of this Part, ***total annualised relevant wages*** is calculated in accordance with the following formula:

$$\frac{(TW + IW)}{\left(\frac{C}{FY}\right)}$$

(4) Schedule 1, clause 7—after the definition of ***GTW*** insert:

R—see subclause 9A(1)

(5) Schedule 1—after clause 9 insert:

9A—Rate of payroll tax for group over threshold

(1) For the purposes of this Part, ***R*** is—

(a) if the total annualised relevant wages is more than the threshold amount and not more than $1 000 000—2.50%; or

(b) if the total annualised relevant wages is more than $1 000 000 and not more than $1 500 000—the prescribed rate; or

(c) if the total annualised relevant wages is more than $1 500 000—4.95%.

(2) For the purposes of subclause (1)(b), the ***prescribed rate*** is calculated in accordance with the following formula:

$$[2.50\%] + \left[\frac{(\textit{Total annualised relevant wages} - \$1,000,000)}{\$500,000} \times 2.45\% \right]$$

(3) For the purposes of this Part, ***total annualised relevant wages*** is calculated in accordance with the following formula:

$$\frac{(GTW + GIW)}{\left(\frac{C}{FY}\right)}$$

17—Amendment of Schedule 2—South Australia specific provisions

(1) Schedule 2, clause 2—after the definition of ***prescribed amount*** insert:

TA or threshold amount is $600 000.

(2) Schedule 2, Part 2, Division 1—delete the Division

(3) Schedule 2, clause 5(1), definition of ***R***—delete "referred to in clause 3" and substitute:

applying under clause 6A(1)

(4) Schedule 2, clause 6(3), definition of ***TA or threshold amount***—delete the definition

(5) Schedule 2—after clause 6 insert:

6A—Rate of payroll tax for employers who are not members of a group

(1) The rate of payroll tax or ***R*** for an employer who pays or is liable to pay taxable wages (including interstate wages) in a month is—

(a) if the total annualised relevant wages is more than the threshold amount and not more than $1 000 000—2.50%; or

(b) if the total annualised relevant wages is more than $1 000 000 and not more than $1 500 000—the prescribed rate; or

(c) if the total annualised relevant wages is more than $1 500 000—4.95%.

(2) For the purposes of subclause (1)(b), the ***prescribed rate*** is calculated in accordance with the following formula:

$$[2.50\%] + \left[\frac{(\textit{Total annualised relevant wages} - \$1,000,000)}{\$500,000} \times 2.45\% \right]$$

(3) For the purposes of this Division, ***total annualised relevant wages*** is calculated in accordance with the following formula:

$$\frac{(T + I)}{\left(\frac{C}{FY}\right)}$$

Where—

C is the number of days in the relevant financial year in respect of which the employer paid or was liable to pay taxable wages or interstate wages (otherwise than as a member of a group)

FY is the number of days in the relevant financial year

I represents the estimated interstate wages in the relevant financial year

T represents the estimated taxable wages in the relevant financial year.

(6) Schedule 2, clause 8(1) and (2)—delete "referred to in clause 3" wherever occurring and substitute in each case:

applying under clause 9A(1)

(7) Schedule 2—after clause 9 insert:

9A—Rate of payroll tax for groups

(1) The rate of payroll tax or ***R*** for a group in which 1 or more members pay or are liable to pay taxable wages (including interstate wages) in a month is—

(a) if the total annualised relevant wages is more than the threshold amount and not more than $1 000 000—2.50%; or

(b) if the total annualised relevant wages is more than $1 000 000 and not more than $1 500 000—the prescribed rate; or

(c) if the total annualised relevant wages is more than $1 500 000—4.95%.

(2) For the purposes of subclause (1)(b), the ***prescribed rate*** is calculated in accordance with the following formula:

$$[2.50\%] + \left[\frac{(\textit{Total annualised relevant wages} - \$1,000,000)}{\$500,000} \times 2.45\% \right]$$

(3) For the purposes of this Division, ***total annualised relevant wages*** is calculated in accordance with the following formula:

$$\frac{(T + I)}{\left(\frac{C}{FY}\right)}$$

Where—

C is the number of days in the relevant financial year in respect of which any member of the group paid or was liable to pay taxable wages or interstate wages

FY is the number of days in the relevant financial year

I represents the estimated interstate wages in the relevant financial year

T represents the estimated taxable wages in the relevant financial year.

18—Transitional provision

(1) Section 32 of the principal Act, as amended by clause 15 of this Schedule, applies in respect of work performed on or after 1 July 2017 irrespective of when amounts are paid or become payable in respect of the work.

(2) Section 32 of the principal Act, as in force immediately before the commencement of clause 15 of this Schedule, continues to apply in respect of work performed before 1 July 2017 irrespective of when amounts are paid or become payable in respect of the work.

(3) In this clause—

principal Act means the *Payroll Tax Act 2009*.

Part 4—Amendment of *Stamp Duties Act 1923* that takes effect on day fixed by proclamation

19—Amendment of section 2—Interpretation

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

stamp duty certificate means a certificate issued under section 3E in relation to an instrument;

(2) Section 2(13)—delete subsection (13) and substitute:

(13) A requirement under this Act for an instrument to be duly stamped will be taken to be satisfied if—

(a) the Commissioner has issued a stamp duty certificate certifying as to the payment of duty in respect of the instrument; and

(b) a stamp duty identification number appears on the instrument,

and such instrument will, for the purposes of the law of the State, be treated in the same way as an instrument that has been duly stamped.

(13a) If—

(a) the Commissioner has issued a stamp duty certificate certifying that an instrument has been assessed as not chargeable with duty; and

(b) a stamp duty identification number appears on the instrument,

the instrument will, for the purposes of the law of the State, be treated in the same way as an instrument that has been stamped by the Commissioner with a stamp denoting that it is not chargeable with duty.

20—Insertion of Part 1 Division 4

After section 3D insert:

Division 4—Stamp duty certificates

3E—Commissioner may issue stamp duty certificate

(1) The Commissioner may, by notice published on a website determined by the Commissioner, determine classes of instruments that may be the subject of an application under this section.

(2) The Commissioner may, on application by a person made in accordance with any requirements of the Commissioner, issue a certificate (a ***stamp duty certificate***)—

(a) certifying as to the payment of duty in respect of an instrument identified in the certificate; or

(b) certifying that the instrument has been assessed as not chargeable with duty.

(3) A stamp duty certificate must include the stamp duty identification number that is to appear on the instrument and may include any other information the Commissioner thinks fit.

21—Transitional provision

Section 2(13) of the *Stamp Duties Act 1923*, as in force immediately before the commencement of clause 19 of this Schedule, continues to apply in relation to dutiable instruments described in that provision that are executed before the commencement of that clause.

Part 5—Amendment of *Stamp Duties Act 1923* that is taken to have effect on 22 June 2017

22—Amendment of section 2—Interpretation

(1) Section 2(1)—after the definition of ***financial product*** insert:

foreign person—see subsection (14);

foreign trust—see subsection (14);

(2) Section 2(1)—after the definition of ***unit trust scheme*** insert:

wholly foreign owned corporation—see subsection (14);

wholly foreign owned trust—see subsection (14);

(3) Section 2—after subsection (13) insert:

(14) In this Act—

(a) a person is a ***foreign person*** if—

(i) in the case of a natural person—the person is not—

(A) an Australian citizen within the meaning of the *Australian Citizenship Act 2007* of the Commonwealth; or

(B) the holder of a permanent visa within the meaning of section 30(1) of the *Migration Act 1958* of the Commonwealth; or

(C) a New Zealand citizen who is the holder of a special category visa within the meaning of section 32(1) of the *Migration Act 1958* of the Commonwealth; or

(ii) in the case of a corporation—

(A) the corporation is incorporated in a jurisdiction that is not an Australian jurisdiction; or

(B) a person who is a foreign person (by virtue of this paragraph) or a trustee for a foreign trust, or a number of such persons in combination—

- holds or hold 50% or more of the corporation's shares; or
- is or are entitled to cast, or control the casting of, 50% or more of the maximum number of votes at a general meeting of the corporation; and

(b) a trust is a ***foreign trust*** if—

(i) in the case of a trust where the beneficial interests are fixed—a beneficial interest of 50% or more of the capital of the trust property is held by 1 or more foreign persons; or

(ii) in the case of a discretionary trust—1 or more of the following is a foreign person:

(A) a trustee;

(B) a person who has the power to appoint under the trust;

(C) an identified object under the trust;

(D) a person who takes capital of the trust property in default; and

(c) a corporation is a ***wholly foreign owned corporation*** if a foreign person or the trustee for a foreign trust, or a number of such persons in combination—

(i) holds or hold 100% of the corporation's shares; or

(ii) is or are entitled to cast, or control the casting of, 100% of the maximum number of votes at a general meeting of the corporation; and

(d) a trust is a ***wholly foreign owned trust*** if it is not a discretionary trust and a beneficial interest of 100% of the capital of the trust property is held by 1 or more foreign persons.

(15) In subsection (14)—

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

(a) is registered as the holder; or

(b) is beneficially entitled to the property; or

(c) controls the exercise of rights attached to the property.

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

Section 71DB(6)—after paragraph (b) insert:

or

(c) a contract entered into on or after 22 June 2017 if the Commissioner is satisfied that the purchaser under the contract, or a person who is to become owner of a qualifying apartment as a consequence of the purchase, is a foreign person or the trustee for a foreign trust.

Part 6—Amendment of *Stamp Duties Act 1923* that is taken to have effect on 1 July 2017

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

(1) Section 71DB(3)—delete "2017" and substitute:

2018

(2) Section 71DB(7), definition of ***qualifying off-the-plan contract***—delete "2017" and substitute:

2018

Part 7—Amendment of *Stamp Duties Act 1923* that takes effect on assent

25—Amendment of section 71DC—Concessional duty on designated real property transfers

(1) Section 71DC(2)(iii)—delete "by a Development Plan under the *Development Act 1993*" and substitute:

under the planning and development law of this State

(2) Section 71DC(2)(iii)—delete "Development Plan" second occurring and substitute:

planning and development law

26—Insertion of Part 3 Division 9

Part 3—after Division 8 insert:

Division 9—Foreign ownership surcharge

72—Surcharge for foreign purchasers of residential land

(1) This section applies to a dutiable instrument (including a statement under section 71E) executed, or taken to have been executed, on or after 1 January 2018.

(2) If an instrument to which this section applies effects, acknowledges, evidences or records a transaction whereby an interest in residential land is acquired by a foreign person or a person who takes the interest as trustee for a foreign trust, the person is liable to pay a surcharge (a ***foreign ownership surcharge***) to the Commissioner in addition to the duty payable on the instrument.

(3) The amount of the foreign ownership surcharge is 4% of the value of the interest acquired by the person in the residential land by virtue of the transaction effected, acknowledged, evidenced or recorded by the dutiable instrument.

(4) The foreign ownership surcharge is to be taken for the purposes of this Act to be duty payable on the instrument.

(5) If—

(a) a foreign ownership surcharge was paid by a person under this section because the person was a foreign person when an interest in residential land was acquired by the person; and

(b) the person ceases to be a foreign person not more than 12 months after the acquisition of the interest; and

(c) the person retains the interest at the time that the person ceases to be a foreign person,

the Commissioner must, on application by the person, refund the amount of the foreign ownership surcharge to the person.

(6) If—

(a) a foreign ownership surcharge was paid by a person under this section because the person was a trustee for a foreign trust when an interest in residential land was acquired by the person (taking as trustee for the trust); and

(b) the trust for which the person is trustee ceases to be a foreign trust not more than 12 months after the acquisition of the interest; and

(c) the person retains the interest on behalf of the trust at the time that the trust ceases to be a foreign trust,

the Commissioner must, on application by the person, refund the amount of the foreign ownership surcharge to the person.

(7) If, not more than 3 years after the acquisition of an interest in residential land effected, acknowledged, evidenced or recorded by an instrument to which this section applies, the person who acquired the interest becomes a foreign person, or, where the interest was acquired by the person taking as trustee, the trust for which the person is trustee becomes a foreign trust, the following provisions apply:

(a) subject to paragraph (b)—

(i) the person must, within 28 days of becoming a foreign person or the trust becoming a foreign trust, notify the Commissioner in writing of that fact; and

(ii) a foreign ownership surcharge is payable on the instrument; and

(iii) for the purposes of section 20, the surcharge is to be regarded as having become payable when the person became a foreign person or the trust becomes a foreign trust; and

(iv) the person may, at the discretion of the Commissioner, be liable to pay interest and penalty tax as if the failure to pay the surcharge at the date of the acquisition were a tax default under the *Taxation Administration Act 1996*;

(b) paragraph (a) does not apply if—

(i) the interest in the residential land was conveyed or transferred by the person or trust before the person or trust became a foreign person or a foreign trust; or

(ii) a foreign ownership surcharge has been paid, or is liable to be paid, in respect of the transaction by virtue of which the person or trust became a foreign person or a foreign trust;

(c) however, if the person or trust referred to in paragraph (b)(ii) is a corporation or trust that is not a wholly foreign owned corporation or trust—

(i) the person is liable to pay a foreign ownership surcharge on the instrument; but

(ii) the amount of the foreign ownership surcharge is to be reduced by the amount of the foreign ownership surcharge (if any) paid in respect of the transaction by virtue of which the person or trust became a foreign person or a foreign trust.

(8) Land will be taken to be residential land for the purposes of this section if—

(a) the Commissioner, after taking into account information provided by the Valuer-General, determines that it is being predominantly used for residential purposes; or

(b) the Commissioner, after taking into account information provided by the Valuer-General, determines that although the land is not being used for any particular purpose at the relevant time the land should be taken to be used for residential purposes due to improvements that are residential in character having been made to the land; or

(c) the Commissioner, after taking into account information provided by the Valuer-General, determines that the land is vacant, or vacant with only minor improvements, that the land is within a zone established under the planning and development law of this State that envisages the use, or potential use, of the land as residential, and that the land should be taken to be used for residential purposes due to that zoning (subject to the qualification that if the zoning of the land indicates that the land could, in a manner consistent with the planning and development law, be used for some other purpose (other than for primary production) then the vacant land will not be taken to be used for residential purposes).

(9) For the purposes of subsection (8), the date that is relevant to a determination as to whether land is residential land is the date of the relevant instrument.

(10) In this section—

residential land—see subsection (8).

27—Insertion of section 102AB

After section 102A insert:

102AB—Surcharge where foreign person or group acquires interest in residential land

(1) This section applies to a transaction that is dutiable under this Part if the transaction was entered into on or after 1 January 2018.

(2) If a foreign entity notionally acquires an interest in residential land as a result of a transaction to which this section applies, the entity is liable to pay a surcharge (a ***foreign ownership surcharge***) to the Commissioner in addition to the duty payable on the transaction under this Part.

(3) If a foreign entity is a member of a group that notionally acquires an interest in residential land as a result of a transaction to which this section applies, the entity is liable to pay a surcharge (a ***foreign ownership surcharge***) to the Commissioner in addition to the duty payable on the transaction by the group.

(4) The amount of the foreign ownership surcharge under subsection (2) is 4% of the value of the interest notionally acquired by the foreign entity in the residential land (as determined under section 99).

(5) The amount of the foreign ownership surcharge under subsection (3) is 4% of the value of the foreign entity's interest in the interest notionally acquired by the group in the residential land (as determined under section 99).

(6) The foreign ownership surcharge is to be taken for the purposes of this Act to be duty payable on the transaction.

(7) If—

(a) not more than 12 months after a notional acquisition of an interest in residential land as a result of a transaction to which this section applies, an entity that has paid a foreign ownership surcharge under this section on the transaction ceases to be a foreign entity; and

(b) at the time the entity ceases to be a foreign entity—

(i) the entity retains the interest notionally acquired; or

(ii) in the case of an entity that paid the surcharge by virtue of being a member of a group that notionally acquired the interest—the group retains the interest notionally acquired, and the entity retains its interest in the interest notionally acquired by the group,

the Commissioner must, on application by the entity, refund the amount of the foreign ownership surcharge to the entity.

(8) If, not more than 3 years after the notional acquisition of an interest in residential land as a result of a transaction to which this section applies, the entity that notionally acquired the interest becomes a foreign entity, or, if the interest was notionally acquired by a group, an entity that is a member of the group (and was a member of the group at the time of the acquisition) becomes a foreign entity, the following provisions apply:

(a) subject to paragraph (b)—

(i) the entity must, within 28 days of becoming a foreign entity, notify the Commissioner in writing of that fact; and

(ii) a foreign ownership surcharge is payable on the transaction; and

(iii) for the purposes of section 102B, the surcharge is to be regarded as having become payable when the entity became a foreign entity; and

(iv) the entity may, at the discretion of the Commissioner, be liable to pay interest and penalty tax as if the failure to pay the surcharge at the date of the transaction were a tax default under the *Taxation Administration Act 1996*;

(b) paragraph (a) does not apply if—

(i) the entity ceased to have a notional interest in the residential land before the entity became a foreign entity; or

(ii) in the case of an entity that is (but for this subparagraph) liable to pay the surcharge by virtue of being a member of a group that notionally acquired the interest—the group ceased to have a notional interest in the residential land, or the entity ceased to have an interest in the interest notionally acquired by the group, before the entity became a foreign entity; or

(iii) a foreign ownership surcharge has been paid, or is liable to be paid, in respect of the transaction by virtue of which the entity became a foreign entity;

(c) however, if an entity referred to in paragraph (b)(iii) is a corporation or trust that is not a wholly foreign owned corporation or trust, then—

(i) the entity is liable to pay a foreign ownership surcharge on the transaction; but

(ii) the amount of the foreign ownership surcharge is to be reduced by the amount of the foreign ownership surcharge (if any) paid in respect of the transaction by virtue of which the entity became a foreign entity.

(9) Land will be taken to be residential land for the purposes of this section if—

(a) the Commissioner, after taking into account information provided by the Valuer-General, determines that it is being predominantly used for residential purposes; or

(b) the Commissioner, after taking into account information provided by the Valuer-General, determines that although the land is not being used for any particular purpose at the relevant time the land should be taken to be used for residential purposes due to improvements that are residential in character having been made to the land; or

(c) the Commissioner, after taking into account information provided by the Valuer-General, determines that the land is vacant, or vacant with only minor improvements, that the land is within a zone established under the planning and development law of this State that envisages the use, or potential use, of the land as residential, and that the land should be taken to be used for residential purposes due to that zoning (subject to the qualification that if the zoning of the land indicates that the land could, in a manner consistent with the planning and development law, be used for some other purpose (other than for primary production) then the vacant land will not be taken to be used for residential purposes).

(10) For the purposes of subsection (9), the date that is relevant to a determination as to whether land is used for residential purposes is the date of the relevant transaction.

(11) In this section—

foreign entity means a foreign person or a foreign trust;

residential land—see subsection (9).

Part 8—Amendment of *Taxation Administration Act 1996*

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

Section 78(e)—after "under" insert:

this Act or

29—Amendment of section 80—Prohibition of disclosures by other persons

Section 80(c)—delete "this Division" and substitute:

this Part

30—Amendment of section 81—Restriction on power of courts to require disclosure

Section 81—delete "this Division" and substitute:

this Part

31—Insertion of Part 9 Division 4

After section 81 insert:

Division 4—Collection of information for disclosure to Commonwealth

81A—Interpretation

In this Division—

public sector agency has the same meaning as in the *Public Sector Act 2009*;

reportable information means information that is reportable by the State to the Commissioner of Taxation of the Commonwealth under Subdivision 396-B of Division 396 of Part 5-25 of Chapter 5 of Schedule 1 to the *Taxation Administration Act 1953* of the Commonwealth.

81B—Relationship with other laws

(1) Nothing in this Act or any other Act or law prevents the collection or disclosure of reportable information in accordance with this Division.

(2) Nothing in this Division prevents the collection or disclosure of reportable information in accordance with any other provisions of this Act or any other Act or law.

(3) Information may be collected and disclosed in accordance with this Division even if—

(a) the information is collected only for the purposes of disclosure to the Commissioner of Taxation of the Commonwealth and not collected under or in relation to the administration of any law of the State (except for this Division); and

(b) the information is not disclosed in connection with the administration or execution of any law of the State (except for this Division).

81C—Collection and disclosure of reportable information

(1) The Commissioner or a public sector agency may collect reportable information.

(2) A public sector agency may disclose reportable information to the Commissioner.

(3) The Commissioner may disclose reportable information to the Commissioner of Taxation of the Commonwealth.

81D—Commissioner may direct agency to collect and disclose

(1) The Commissioner may direct a public sector agency to disclose any reportable information held by the agency to the Commissioner and may also direct the public sector agency to collect reportable information for the purposes of that disclosure.

(2) A public sector agency must make such arrangements as are necessary for the collection, and disclosure to the Commissioner, of reportable information, in accordance with the direction of the Commissioner.

81E—How reportable information may be collected

(1) The Commissioner or a public sector agency may collect reportable information by requiring a person providing information for the purposes of a function carried out under a taxation law, or a law administered by the Minister to whom the public sector agency is responsible, to provide the reportable information.

(2) Without limiting subsection (1), the Commissioner or a public sector agency may require reportable information to be provided in connection with the lodgment of an instrument, record or return, or the making of an application, under a taxation law or a law administered by the Minister to whom the public sector agency is responsible.

(3) Nothing in this section limits the circumstances in which the Commissioner or a public sector agency may collect reportable information.

81F—Enforcement

The provisions of Part 8 (other than sections 48 and 59) and of section 109 extend to a person who is required by the Commissioner or a public sector agency to provide reportable information under section 81E(1) or (2) and for that purpose—

(a) a reference in section 55 to a tax officer includes a reference to any person engaged (whether as an employee or otherwise) in collecting reportable information in accordance with this Division; and

(b) a reference in any of those sections to a return or record kept or required under a taxation law includes a reference to the following:

(i) any of the reportable information that the Commissioner or public sector agency requires the person to provide;

(ii) any document, statement or return that the Commissioner or public sector agency requires to be lodged in support of that reportable information.

[Schedule 3] [Substitution of short title]

[1] [Amendments on commencement]

[On the commencement of this Schedule the following amendments are made:]

[(a)] [section 1 of this Act is repealed and the following section is substituted:]

[1] [Short title]

[This Act may be cited as the *Major Bank Levy Act 2017*.]

[(b)] [section 4 of the *Taxation Administration Act 1996* is amended by striking out paragraph (da) and substituting the following paragraph:]

[(da)] [the *Major Bank Levy Act 2017* and the regulations under that Act;]